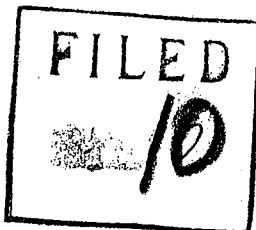HOSPITALS:
COUNTY HOSPITALS:
BOARD OF TRUSTEES:

County hospital board of trustees' rule that, for a short time, the name of any patient who has died will be withheld from public pending notification of next of kin, is reasonable regulation and thus authorized by Secs. 205.190(4) and 205.280, RSMo 1949, but the rule that any patient who expressly requests it need not have his name revealed is unreasonable and thus violates these sections.

October 17, 1955

Honorable Joseph M. Bone
Prosecuting Attorney
Audrain County
Mexico, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

> "I am enclosing a copy of a letter which I received from Mr. Robert M. White, II, general manager of the Mexico Ledger, which is self-explanatory.

> "I would appreciate the opinion of your department on the question if a citizen of Audrain County or a newspaper can require the Audrain County Hospital personnel to make available for inspection and information accurate lists of who is a patient at the Audrain County Hospital, who died there and who was born there. Such information would, of course, not seek to inquire what is wrong with them, just merely the news facts of patients admitted, names of those who died and those who are born there.

> "It seems that in answer to this request made to the Board of Trustees by the Mexico Ledger, the Board of Trustees through a letter dated August 10, 1955, and signed

Honorable Joseph M. Bone

            by C. R. Stribling, Chairman of the Board
            of Trustees, stated it would make avail-
            able lists of admissions, discharges, births,
            deaths and other pertinent information rela-
            tive to the hospital census, 'however, the
            Board will withhold from this list the name
            of any patient who expressly requests it,
            and, for a reasonable time, the name of any
            patient who has died pending notification of
            the next of kin'."

    Two provisions of the county hospital law are relevant to
your inquiry:  Section 205.190 (4) provides:

            "The board of hospital trustees shall make
            and adopt such bylaws, rules and regulations
            for their own guidance and for the govern-
            ment of the hospital as may be deemed ex-
            pedient for the economic and equitable con-
            duct thereof, not inconsistent with sections
            205.160 to 205.340 and the ordinances of the
            city or town wherein such public hospital
            is located. * * *"

Section 205.280 provides:

            "When such hospital is established the phy-
            sicians, nurses, attendants, the persons
            sick therein and all persons approaching
            or coming within the limits of same, and
            all furniture and other articles used or
            brought there shall be subject to such
            rules and regulations as said board may
            prescribe."

    These rules and regulations promulgated by the hospital
board of trustees must be reasonable.  See 41 C.J.S., Sec. 5,
pages 336-337.  Consonant with this general principle, the
Supreme Court of Arkansas, in Ware v. Benedikt, 280 S.W. 2d
234, at p. 236, recently held that a public hospital may enact
rules and regulations "which bear a reasonable and fundamental
relation to the safety, interest, and welfare of patients and
the general public."

    The issue then is whether these two rules of the Audrain
County Hospital Board of Trustees bear this reasonable relation

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to the welfare of both patients and public. It seems to us that the practice of the Board in withholding the names of deceased patients until an effort has been made to notify the next of kin is clearly fair and within the public interest. To imply that a newspaper should print such information, and that people should thus circulate the news, before an attempt has been made to notify next of kin is to ignore the consequences to those relatives from hearing this information in an indirect manner. It should be added, however, that the effort to notify next of kin must not consume a long period of time. For this purpose, a few hours would seem to suffice.

The other regulation allows the name of any patient to be withheld if he so requests. Taxpayers are entitled to know how their money is being spent by their county hospital. For this object, the names of the patients are as essential as the number of patients in the hospital. To say that one entering a county hospital must reveal his name to the public is to hold, of course, that these patients should receive less privacy than those who may enter a private hospital.

Yet, when one enters a county hospital, he subjects himself to certain requirements which he would not have to undergo in a private hospital. A public hospital is "an institution owned by the public and devoted chiefly to public uses and purposes." 41 C.J.S., Sec. 1, page 332. In the formulation of rules governing a county hospital, the public's right to knowledge must be given a consideration which need not be accorded by the regulations of a private hospital. To require the release of patients' names would not jeopardize the care given them by the hospital and would, moreover, satisfy the public's proper interest in the management of its tax-supported institution.

This second regulation is, thus, unreasonable, or in the words of the Missouri Supreme Court, "arbitrary, capricious and illegal," thereby justifying a court's setting it aside. See State ex rel. Swofford et al. v. Randall et al., 236 S.W. 2d 354; In re Botz, 159 S.W. 2d 367, 236 Mo. App. 566. The abrogation of this rule should threaten neither the welfare of the patient nor the orderly management of the hospital.

## CONCLUSION

It is, therefore, the opinion of this office that a county hospital board of trustees' rule, that for a short time the name of any patient who has died will be withheld from the public

Honorable Joseph M. Bone


pending notification of next of kin, is a reasonable regulation and thus authorized by Section 205.190(4) and Section 205.280, RSMo 1949, but the rule, that any patient who expressly requests it need not have his name revealed, is unreasonable and thus violates these sections.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walker La Brunerie, Jr.

Yours very truly,


John M. Dalton
Attorney General


WLaB:vlw