

**OPINION  
49-63**

May 13, 1949 (OPINION)

FEES

RE: Doctor on Insanity Board

Your letter of May 11 addressed to the Attorney General has been received and contents noted.

The question you present, as I understand from the information in your letter, is whether the physician who is a member of the insanity board may charge the fee of five dollars for examining a patient in addition to his per diem of five dollars.

Section 25-0311 provides, among other things, that the board shall appoint a regularly practicing physician of the county, who may or may not be a member of the board, to visit such person and make a personal examination touching upon the truth of the allegations contained in the information and upon the actual condition of such person.

It is clear, therefore, that the physician who is a member of the insanity board may also be appointed as the examining physician. In other words, such physician, when appointed, acts in a dual capacity. If he is appointed to examine the patient, such examination is a function which he must perform in addition to his duties as a member of the insanity board. Having made his examination he makes his report to the board.

Section 25-0312 provides that, "As soon as practicable after the return of the physician's statement to the insanity board, the board shall conclude its investigation and determine whether or not the person alleged to require treatment and observation at the state hospital does in fact require the same."

It seems that there can be no doubt that where a physician who is a member of the board is appointed by the board to make an examination of the patient and he accepts such appointment, he is then acting in the capacity other than as a member of the board. He is examining the patient in order to ascertain whether or not in his judgment such patient requires treatment and observation at the state hospital. He then makes a report to the board and the board will then consider the report and determine whether or not the patient is a fit subject for custody of the hospital.

The writer of this letter was state's attorney in his county for ten years and this was the practice that was invariably followed in such cases. It is my opinion that where a physician who is a member of the insanity board is appointed by the board to make an examination of the patient, he is entitled to the five dollars provided for in section 25-0315 in addition to his regular per diem of five dollars.

WALLACE E. WARNER

Attorney General