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HOSPITALIZATION — FACILITIES: OPERATING ROOM, DELIVERY ROOM, SPECIAL NURSES, FOR INDIGENT PATIENT — NOT POOR RELIEF AS DEFINED IN SECTION 3391 G. C.—EXPENSE MAY NOT BE PAID BY LOCAL POOR RELIEF AUTHORITY—

MEDICINES, DRESSINGS, LABORATORY EXAMINATIONS, X-RAY, RADIUM, ETC. — “SERVICES OF A HOSPITAL”—SECTION 3480-1 G. C.—“SPECIAL CHARGE”—HOW COST PAID—WHERE PHYSICIAN HAS CARE OF INDIGENT PATIENT WHO RECEIVES HOSPITAL CARE — HOW EXPENSE MAY BE PAID.

SYLLABUS:

1. *Operating room facilities, delivery room facilities, special nurses' care and accommodations to an indigent patient furnished by a hospital are not poor relief within the meaning of that term as defined in Section 3391, General Code, and the expense thereof may not be paid by the local poor relief authority.*

2. *When a hospital furnishes medicines, dressings, laboratory examinations, x-ray examinations, radium for the treatment of an indigent patient in such hospital for which no separate charge is made in addition to that made for the ordinary services of the hospital, such services constitute “services of a hospital” within the meaning of that term as used in Section 3480-1, General Code, and the cost thereof may not be paid by the local relief authority.*

3. *When a hospital furnishes medicines, dressings, laboratory examinations, x-ray examinations or radium for the treatment of an indigent pa-*

tient of such hospital, under the advice of a physician employed by such hospital, to the extent that the cost to the patient therefor is not regularly included in the general charge for hospital care, but is made the subject of a special charge to the patient, such cost may be paid by the local poor relief authority from poor relief funds as medical care.

4. *When a hospital furnishes medicines, dressings, laboratory examinations, x-ray examinations or treatments, radium or deep therapy treatments under the supervision of and as the agent of a physician who has the care of an indigent patient, who is receiving hospital care at such hospital, the expense of furnishing such items may be paid from poor relief funds by the local relief authority under authority of Sections 3391, et seq., General Code.*

Columbus, Ohio, August 13, 1940.

Hon. Ralph J. Bartlett, Prosecuting Attorney,
Columbus, Ohio.

Dear Sir:

Your request for my opinion reads:

“Should medicines, dressings, operating room expenses, laboratory examinations, anesthetics, x-rays, delivery room expenses, special nurse’s expenses, radium or deep therapy expenses and emergency services furnished or administered by a hospital as such to an indigent person be considered as ‘hospitalization’ to be paid for by the township or should any of the above mentioned expenses be paid for by the county?”

Your inquiry arises by reason of the enactment of House Bill No. 675 by the present General Assembly wherein the term “poor relief” is defined to include “medical care” but to exclude what is popularly known as “hospitalization.” (See Section 3391, General Code.)

In an opinion rendered by me under date of September 13, 1939 (Opinions of the Attorney General for 1939, Vol. II, page 1732,) I ruled as stated in the first syllabus:

“The enactment of House Bill No. 675 by the Ninety-third General Assembly did not alter the duties imposed by Section 3480-1, General Code, on boards of township trustees to furnish services of a hospital to needful indigent persons having a legal settlement in such township.”

In another opinion rendered by me under date of December 30, 1939 (Opinions of the Attorney General for 1939, Vol. III, page 2459,) I had further occasion to rule that it was the duty of the local poor relief authority to furnish that type of public assistance known as "medical care" and of the township trustees to furnish that type known as "hospitalization."

In distinguishing between "hospitalization" and "medical care," we have the benefit of a legislative definition as to "medical care," but not as to the term "hospitalization." Such definition is as follows (Section 3391, General Code):

"'Medical care' means medicines and the services, wherever rendered, of a physician or surgeon or the emergency services of a dentist, furnished at public expense."

From such legislative definition, it is apparent that when medicines or services of a physician are furnished to a person under such circumstances that the cost thereof may be paid from "poor relief funds" under authority of law, it is immaterial whether they are furnished in a home, a hotel or a hospital. The language of the statute is "wherever furnished."

In using the term "services of a physician," the legislature evidently intended to include within the meaning of poor relief only those services performed by a physician in his professional capacity. In the construction of a statute, we must assume that the legislature used the terms contained therein in their ordinarily accepted meaning unless there is something in the context which would indicate that a different meaning was intended. *Eastman v. State*, 131 O. S., 1; *Woolford Realty Company, Inc., v. Rose*, 268 U. S., 568. Similarly, the compensations for services of a physician would include compensation to the physician for all services performed by him in his professional capacity. It may well be that physicians at the present time, by reason of custom or accepted practice, do or do not furnish services which were furnished by physicians of an earlier period, as fifty or a hundred years ago.

I have been informed that at one time there was a custom of physicians, as an incident to their practice, to dispense the drugs and medicines which they believed proper as aids in diagnosis or for treatment of the ailments of their patients; of surgeons to manufacture splints and other devices for the correction of bone or joint disorders. I am not advised as to whether these practices have been entirely discontinued. (See Philadelphia Dental College

Appeal, 190 Pa., 121, 123.) It would appear to me that to the extent that such conduct is a part of the practice of the profession of medicine and surgery, such dispensation would be a part of the services of a physician or surgeon.

Likewise, I am informed that it is the custom of hospitals to furnish certain medicines and accessories and accessory services as a part of the hospital services, for which no additional charge is made by the hospital. To the extent that the practice exists, to include such services as incidental to hospital care or as a part of the hospitalization, it would seem to me that they are services of the hospital and could not be included as medical care and paid for as poor relief.

In the case of *Edwards v. West Texas Hospital* (Tex.) 89 S. W. 2d, 801, 805, the court held that hospitalization included all services furnished by a hospital including those of the staff physician, such services being incidental to the hospital services. The court intimated that if the services of the physician were contracted for and paid for by the patient directly to the physician, they would not be a part of hospitalization. It should be noted that the Ohio statute (Section 3480-1, General Code) does not use the term "hospitalization" but rather uses the term "services of a hospital." It is thus apparent that any and all services and supplies furnished for an indigent patient by a hospital, as distinguished from "procured for the patient while in the hospital," are services of the hospital and not within the definition of "poor relief" as defined by Section 3391, General Code.

When we come to a determination of what is included within the term "medicine," we must bear in mind that such word is a common or ordinary word which must be given its ordinary meaning unless the context in which it is found indicates a different meaning.

I am unable to find anything in the act, of which Section 3391, General Code, is a part, which would indicate that it was used in a technical sense. In Webster's New International Dictionary, the term is defined as "any substance or preparation used in treating disease; a medicament; a remedial agent; a remedy; physic." In 40 C. J., 626, it is defined as "a remedial agent; a remedial substance; a remedy; a combination of drugs in largely varying proportions; any substance liquid or solid that has the property of curing or mitigating disease or that is used for that purpose; any substance administered in the treatment of the disease; any substance or preparation used in treating disease."

I am not unmindful that the medical technicians use the term "medicine" as a curative agent as distinguished from an antiseptic — which is used for the prevention of disease, an analgesic — which is used to relieve pain, an anaesthetic — which is used to produce an insensible condition in order to enable the physician to proceed with his treatments, a sedative — which is used for easing the intensity of pain rather than the cure of the cause, a diagnostic agent — a drug used as an aid to diagnosis rather than treatment of disease. However, as I have pointed out, it would appear to me that the legislature has used the term "medicine" in its ordinary sense rather than in its technical meaning. The ordinary person does not understand the term "medicine" in such restricted sense, nor does he so use the term. When a physician prescribes sodium bicarbonate for the treatment of an ailment, the patient regards the substance as a medicine, although under other circumstances he would regard it as baking soda. In other words, the meaning of the term "medicine" which is commonly understood is any substance prescribed by or used by a physician in connection with the remedying of the ailment of a patient.

Categorically answering your inquiry, in view of the observations above made, it would seem to me that operating room facilities, delivery room facilities or special nurse services could not, even under the broadest meaning of the term "medicine," be construed as medical care. It would further seem that when medicines, dressings, laboratory examinations, anesthetics, x-rays, radium or deep therapy expense are a part of the treatment being administered by a physician, they would be within the term services of a physician or medicines, as such term is used in Section 3391, General Code. With respect to medicines, including radium and supplies for surgical dressing, I am unable to discern by what line of reasoning they would be any the less medicines, whether purchased at a drug store, a grocery or a hospital storeroom, if they are used by the physician for the treatment or cure of a physical ailment or disease. It would further appear to me that if a laboratory examination or x-ray examination were made for the purpose of aiding a physician in the diagnosis or treatment of a physical ailment, when such examination is made under the supervision and control of the physician as distinguished from the hospital, such might well be considered as medical care and the cost therefor paid by the local poor relief area. However, if the laboratory examinations, x-ray examinations, deep therapy expenses and emergency services were furnished by the hospital, as such, through its staff of nurses, internes,

or resident doctors, and the charge therefor included in the contracted rate for hospital care, it would seem to me that they should be considered as incidental to and a part of the hospital services and for such reason would not be a part of "poor relief" as that term is defined in Section 3391, General Code.

In Section 3391, General Code, the definition of "medical care", above quoted, states that "'medical care' means medicines and * * * furnished at public expense." In such definition, there is no limitation upon the term "medicines", as to the person by whom they may be furnished. The statute does not state that medicines shall constitute poor relief when furnished by any particular person. Since the term "medicine", in its ordinary acceptance, includes substances when used as an intended cure for physical ailments rather than when used as a beverage or condiment, we must presume that the legislature used such term in that sense. Since the practice of medicine in part consists in the prescribing, advising, recommending, administering, for compensation, a drug or medicine, appliance or application for the cure or relief of a wound, fracture or injury, infirmity or disease, I believe it is fair to assume that the legislature only intended to authorize the inclusion of medicines within medical care when such medicines were lawfully dispensed or administered to indigent persons at public expense. Since a hospital, as such, has no authority of law to prescribe or administer medicines, I do not believe it was the legislative intent to permit such institutions to be compensated from public funds for acts which they may not lawfully do. I am not unmindful that in connection with the normal operation of a hospital there are included on its staff licensed physicians in the capacity of internes, resident physicians and staff physicians and surgeons who have been licensed by the state to practice medicine, who treat patients in hospitals both medically and surgically. Such physicians, by virtue of having complied with Ohio statutes, are authorized by law to and I presume do both prescribe for and administer medicines to patients confined in a hospital. Since Section 3391, General Code, in defining medicine as medical care, does not contain any limitations upon the type of medicines that may be included in medical care, we must construe the term as it is used and include all medicines lawfully administered.

Therefore, when administered or prescribed by a licensed physician, such medicines would, of course, be lawfully administered whether or not such physician is employed by a hospital. It would consequently appear that

medicine furnished to a patient who is being cared for in a hospital by or under the direction of a licensed physician, whether it be an interne, house physician, staff doctor or otherwise, would be medicine or medical care within the definition thereof in Section 3391, General Code; especially, when it is not intended either by the hospital or the patient that such medicine be a part of the hospital service contracted for.

It should be borne in mind, however, that the mere fact that medicines were furnished to an indigent patient by a hospital is not sufficient to entitle the person furnishing the same to compensation therefor. Section 3391-2, General Code, prescribes the circumstances under which poor relief may be furnished by a local relief authority. Since medical care is poor relief it can be dispensed only as provided in such section. By way of illustration, such section, among other things, prescribes that:

“Poor relief shall be granted only after sworn application therefor and proper home investigation to ascertain facts of need and available means of support.” (Emphasis mine.)

Many other limitations are contained in such section. I have assumed for the purpose of this opinion that the indigents for whom the services in question were furnished are, within the provisions of law, entitled to poor relief from the local relief authority, and have purposely refrained from any consideration of such proposition in this opinion.

Specifically answering your inquiry, it is my opinion that:

1. Operating room facilities, delivery room facilities, special nurses' care and accommodations to an indigent patient furnished by a hospital are not poor relief within the meaning of that term as defined in Section 3391, General Code, and the expense thereof may not be paid by the local poor relief authority.

2. When a hospital furnishes medicines, dressings, laboratory examinations, x-ray examinations, radium for the treatment of an indigent patient in such hospital for which no separate charge is made in addition to that made for the ordinary services of the hospital, such services constitute “services of a hospital” within the meaning of that term as used in Section 3480-1, General Code, and the cost thereof may not be paid by the local relief authority.

3. When a hospital furnishes medicines, dressings, laboratory ex-

aminations, x-ray examinations or radium for the treatment of an indigent patient of such hospital, under the advice of a physician employed by such hospital, to the extent that the cost to the patient therefor is not regularly included in the general charge for hospital care, but is made the subject of a special charge to the patient, such cost may be paid by the local relief authority from poor relief funds as medical care.

4. When a hospital furnishes medicines, dressings, laboratory examinations, x-ray examinations or treatments, radium or deep therapy treatments under the supervision of and as the agent of a physician who has the care of an indigent patient, who is receiving hospital care at such hospital, the expense of furnishing such items may be paid from poor relief funds by the local relief authority under authority of Sections 3391, et seq., General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.