It is my opinion that the above quoted section provides ample authority for the insurance department to transfer the duly certified and licensed agents of the affiliated companies to the surviving company without necessitating new applications or relicensing of such agents. It is understood that upon expiration of such licenses the same will have to be renewed and recertified pursuant to the sections of the code referred to above.

OFFICIAL OPINION NO. 52
August 6, 1948.

Alfred W. Snedeker, M.D.,
Medical Superintendent,
Richmond State Hospital,
Richmond, Indiana.

Dear Doctor Snedeker:

I have your letter of June 29, 1948, which except for formal parts, is as follows:

"I should like you to consider the following hypothetical case and my usual procedure in such matters and render me your opinion. I have a patient in the hospital, who, in my professional opinion, needs an operation immediately. I have no signed permit from the nearest responsible relative, for operative or other extensive medical procedure or treatment. I cannot locate the responsible relative by telephone or telegram. Under these circumstances, I consider the patient as my ward, and sign an operative permit myself."

When a patient is in full possession of his mental faculties and no emergency exists for immediate surgical operation, consent of the patient is a prerequisite to a surgical operation by the physician or surgeon. Absence of the patient’s consent will predicate criminal as well as civil liability for assault and battery.

See: Annotation 139 A.L.R. 1370.
There are patients who are incapable of giving consent to an operation, or medical treatment; e.g., infants (persons under the full age of 21 years); and persons non compos mentis (feeble minded, idiotic, imbecilic, or insane). In each of the enumerated examples the patient is incapable, in the eyes of the law, to give consent, because of disability, and it is necessary to obtain the consent of someone who under the circumstances is legally authorized to give consent, otherwise the physician or surgeon is not privileged to operate. There are a few exceptions as will be noted later.

In the case of infants, the consent of the parent is necessary, for the physician or surgeon to operate. This is true, if the operation is for the benefit of another (skin grafting, blood transfusion); or, if an immediate operation is not necessary, to the preservation of life, or to prevent further aggravated physical injury to the person who is to be operated.


A boy of seventeen had his arm amputated by a surgeon, after injury to it occasioned upon alighting from a moving freight train. A scalp wound was incurred in the same accident. The boy's parents could not be located, to secure their consent. The boy was aware that some type of surgical treatment was necessary to his arm, but did not consent to amputation. The court held a surgical emergency existed, and it was the lawful duty of the surgeon to perform the operation necessary in his judgment. In such a case consent is implied.

Albert Jackovach, etc., v. A. L. Yocom, Jr., 237 N.W. 444 (Iowa 1931); See also Delahunt v. Finton (1928), 244 Mich. 226, 221 N.W. 168; and McGuire v. Rix (1929), 118 Neb. 434, 225 N.W. 120, 122.

In some instances, even though the exigencies of a situation do not demand an immediate operation, i.e., where there is no imminent peril to life, a surgeon may operate a mature
youth, if his consent has been given, and ostensibly the
parent has consented, although no express consent of the
parent has been granted, and no liability will result.


In view of all cases concerning infants, the safest policy
to follow, is of course to obtain permit from the parents
to operate. The consent of adult brothers or sisters is not
sufficient.

See: Moss v. Rishworth (1920), 222 S.W. 225 (Tex.Com.App.)

Without regard to the mental capacity of the patient in-
volved, in any case of "emergency" calling for immediate
action in order to preserve the life or health of the patient,
and it being impractical or physically impossible to obtain
the consent of the patient or anyone legally authorized to
speak for him, the physician may perform the operation with-
out consent. And liability will not ensue.

48 C. J., pages 1130-1131.

The word "emergency" denoting a need for surgical att-
tention, which obviates the necessity for consent of the patient
or guardian, is used in its common meaning.

See: Overhouser v. American Cereal Co. (1905), 128 Iowa 580, 105 N.W. 118;

It appears in view of the foregoing cases that an operative
permit is not necessary in instances of grave emergency, regard-
less of the mental condition or age of the patient.

You raise the following question in the last sentence of
the first paragraph of your letter, may you treat the patient
as your ward for the purpose of signing an operative per-
mit. Quoting from your letter, the statement is as follows:
"Under the circumstances, I consider the patient as my ward,
and sign an operative permit myself."

Sections 22-1201 to 22-1228 Burns' Statutes (1933) and
Sections 22-1215 and 22-1218 of Burns' Statutes (1947 Pocket
Supplement), concerning admissions to hospital for the insane, by order of court, provide that the superintendent shall have custody of the inmate for treatment.

The theory of the forced detention of mental patients is referred to in the Yale Law Journal, Volume 56, August 1947, Number 7, page 1181, wherein it is stated, *inter alia*, as follows:

"* * * In the commitment process as provided for by state statute, therefore, a mentally ill person may have to be taken to a hospital and detained against his will by an exercise of power authorized by law.

"An insane person has no constitutional or statutory right of liberty in the ordinary and conventional sense of that term. Accordingly, the right to restrain an insane person is not precluded by the general law which provides that no one shall be deprived of life, liberty or property without due process of law."


The care and custody of insane persons is in the people, and the state may assume full and complete care and custody of such persons.


The superintendents of the state mental institutions are the chief executive officers of each institution, with rather broad powers. See Section 22-1108 of Burns' Indiana Statutes (1933) and Section 22-130 of Burns' Indiana Statutes, 1947 Pocket Supplement. The officers acting as agents of the State have custody of insane persons, properly committed, for treatment.

"* * * Insane persons are considered as wards of the State; and the State as *paren patriae* may make provisions for their protection, provided they are not in contravention of constitutional provisions. Statutes to this effect are liberally construed to the end that their purpose may be effectuated. * * *"

32 C. J., Sec. 162, p. 627.
In a similar instance the superintendent of the Fort Wayne State School is charged with, "The mental, moral, physical and hygienic treatment * * *" of feeble-minded children. Section 22-1705 of Burns' Indiana Statutes, 1933.

In view of the foregoing, it is apparent that the treatment and maintenance of mental patients is a function undertaken by the State; and the responsibility and consideration for action is reposed in the State, rather than in the patient, or relatives. Therefore, in my opinion, consent of a relative or guardian is not needed to perform emergency operations when necessary for the health or welfare of the patient.

I have been unable to find decisions of Indiana on this subject, and there is conflict in the decisions of other jurisdictions.

In the Opinions of the Attorney General of the State of Vermont, dated March 29, 1945, it was stated:

"The Superintendent of a State Hospital for the insane is entitled to have operations and medical treatment to patients, when in the superintendent's judgment it is necessary, * * * and it is not necessary to consult the relatives of the inmate."

In the Opinions of the Attorney General of Pennsylvania, dated March 18, 1948, it was stated:

"* * * The superintendents of State mental hospitals, in their sound discretion may administer to patients of state mental hospitals, electric shock and such other treatments, which in the exercise of reasonable skill and judgment, are indicated, after observation and diagnosis, as being necessary and proper for the patients' best welfare, without first obtaining written permission for such treatments from such patients, their friends, relatives, guardians or other persons who may be legally entitled to give such consent on behalf of such patients.* * *"

In conclusion, there are two distinct premises upon which consent is implied to operate patients within your custody without consent of such patients, their relatives, or guardians. Firstly, if an emergency exists in which the patient's physical well-being is in immediate danger, then consent is unneces-
sary to operate. Secondly, since the state has custody of such patients for treatment, any approved medical treatment, which in your opinion is necessary for the patient's best welfare in connection with mental treatment, may be administered under your approval and guidance and consent is unnecessary.

OFFICIAL OPINION NO. 53


Col. Robt. Rossow,
Supt., Indiana State Police,
Indianapolis, Indiana.

Dear Col. Rossow:

Your letter of August 9, 1948, has been received in which you request an official opinion for a construction of that part of Section 4 of the Uniform Fire Arms Act of 1935, being Section 10-4737 Burns' 1942 Replacement, to-wit:

"The provisions of the preceding section shall not apply to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States or from this State, provided such members are at or are going to or from their place of assembly or target practice."

Marshals, sheriffs, prison or jail wardens or their deputies, judicial officers, policemen or other law enforcement officers, or members of the army, navy or marine corps of the United States, the National Guard or organized reserves are not to be taken as being considered in this opinion as they are specifically named in the above statute as exempt from the provisions of Section 3 of the act.

Your question is for the purpose of ascertaining the status of regularly enrolled members of the National Rifle Association or affiliated gun clubs in carrying pistols to and from target practice, so that you may issue them courtesy cards.

Section 10-4736 Burns' 1942 Replacement, same being Section 3 of Chapter 63 of the Acts of 1935, commonly known as the Uniform Fire Arms Act provides as follows: