HEALTH, STATE BOARD OF: Construction of statute referring to the order of receiving patients in county tuberculosis hospitals.

February 6, 1933.

William F. King, Secretary,
Indiana State Board of Health,
Indianapolis, Indiana.

Dear Sir:

This office is in receipt of a letter from you dated February 4, 1933, asking for the construction of the phrase "in the order of application," contained in section 4, paragraph 5 of chapter 176, of the Acts of 1913, referring to the order of receiving patients in county tuberculosis hospitals. In other words, you desire to know whether it is necessary to follow the strict wording of the statute in receiving patients, or whether it is permissible to apply this language to the various classes of patients rather than to the entire number of patients.

As stated in your letter, it would be absurd to construe this law so as to bar the admission of a man when there is a vacancy in the men's ward, for the reason that the next application in order of filing, is for a woman and the women's ward was full. In like manner, it is recognized that patients in different stages of tuberculosis are classified and assigned to wards in accordance with the stage of the disease, and hence, it would be absurd to refuse the admission of a patient in the early stages of tuberculosis when there was a vacancy in the ward assigned to that class of cases, for the simple reason that the next application in order of filing is from an advanced patient and the ward for advanced patients was full.

In volume 59 of Corpus Juris, under section 573, beginning on page 964, we find this rule of law:

"In pursuance of the general object of giving effect to the intention of the legislature, the courts are not controlled by the literal meaning of the language of the statute, but the spirit or intention of the law prevails over the letter thereof, it being generally recognized that whatever is within the spirit of the statute is within the statute, although it is not within the letter thereof, while that which is within the letter, although not within the spirit, is not within the statute. Effect will be given the real intention, even though contrary to the letter of the law. The rule of construction according
to the spirit of the law is especially applicable where adherence to the letter would result in absurdity or injustice, or would lead to contradictions, or defeat the plain purpose of the act."

Following this rule of law, it is my opinion that the purpose of this act was to prevent discrimination among patients and the showing of favoritism to certain patients, but was not intended to prevent all admissions to the hospital when there are vacancies in other wards, merely because the particular ward to which the next applicant must be assigned happened to be full. This would defeat the intention of the statute of rendering the maximum service possible. Hence, it is my opinion that the words "in the order of application" refer to patients of the same class and who would be admitted to the same ward or division of the hospital. Naturally, as to patients of the same class, or who would be admitted to the same ward or division of such hospital, there should be no discrimination and the applications should be considered in the order of their receipt.

INSURANCE COMMISSIONER: Interpretation of statutory provision with reference to exchange of policies between insurance company which has passed through receivership and the assuming company.

February 7, 1933.

Hon. John C. Kidd,
Commissioner of Insurance,
Indianapolis, Indiana.

Dear Sir:
I have before me your letter as follows:

"Paragraph 2 of section 9037, Burns Annotated Indiana Statutes of 1926, provides in part as follows:

"'No policy of life insurance shall hereafter be issued or delivered in this state, or be issued by a life insurance company organized under the laws of this state, if it contains any of the following provisions:

* * * * * * * * * * * * * * * * * * * * * * * * * * * *

"'(2) By which the policy shall purport to be issued or to take effect more than six months before the original application for the insurance was made.'