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.'
"May we have an interpretation of this provision with a special reference to the so-called exchange of policies between an insurance company which has passed through receivership and the assuming company."

The last paragraph of your letter as quoted above is not entirely clear, but I assume that you refer to the practice of some reinsuring companies which, after entering into the reinsurance contract, seek to have the policyholders of the reinsured company to exchange their old policies in said reinsured company for new policies in the reinsuring company. When this procedure is followed, the new policies are frequently dated back to the date of the original policy. In the particular case submitted by you, the exchange is made upon an application for exchange which makes the original application for the original insurance a part of the new policy much the same as if the new policy had been issued pursuant to it.

It is upon this basis that it is contended that the "original application" referred to in paragraph (2) of section 9037, supra, as applied to an exchange of policies under the conditions set out in your letter, is the original application upon which the original policy was issued and not the application for exchange of policy, and that so long as the new policy issued in exchange for another does not predate the date of the original application upon which such other was issued more than six months, the statute is not violated. I think the language of this statute is clear. It prohibits the issuance or delivery in Indiana of a policy of life insurance which contains a provision by which the policy purports to be issued or to take effect more than six months before the original application "for the insurance was made." (Our italics.)

If the transaction embodied in the exchange of policies as set out in your letter is within the provisions of the statute, I think, however, that the application for the exchange must be considered the "original application," because it is pursuant to it that the new policy is issued. While the original application to the company whose business is reinsured is made a part of the new policy in this particular case, the new policy is not issued upon that application in a strict and literal sense, but upon said application for exchange, and to hold otherwise, I think, would be a clear misuse of the functions of interpretation.
I do not think, however, that the foregoing provision of the statute is properly construed as prohibiting the exchange of life insurance policies upon sufficient consideration and without fraud in cases such as heretofore have been referred to, which make the original application for the original policy a part of the new policy. While the issuance of a new policy is involved in the transaction, the insurance, I think, must be treated as a continuing insurance. It has been held that such an exchange, unless a different rule is made to apply by express language, relates back to the date of the application for the original policy for the effectiveness of its provisions, irrespective of the date of the new policy, when the original application, as in this case, is made a part of the new policy. It was so held in the case of Arrowsmith v. Old Colony Life Insurance Company, 190 Ill. App. 460. In that case, the insured had taken out a policy in the Provident Annuity Life Association of Illinois, pursuant to an application dated September 9, 1907. This application, which was made a part of the new policy upon exchange, provided that self-destruction within two years from its date was a risk not assumed by the association. On March 17, 1909, this policy was exchanged for a new policy in Old Colony Life Insurance Company. The new policy contained a like provision as to suicide within two years. The insured committed suicide on October 6, 1909, and the question arose in a suit upon the new policy, as to whether the above two-year period began to run on September 9, 1907, the date of the original application for the original policy, or on the date of the new policy. The court held that such period began to run with the date of the original application for the original policy.

The above case, of course, is not the case submitted by you, but I think the reasons upon which the conclusion there reached was based, do have a relation to your question. The case treats the insurance as continuing, and by making the old application a part of the new policy, said application becomes as effective as regards the new policy as if the new policy was actually issued pursuant to it. Irrespective of the date of the new policy, it apparently relates back in such case to the original application. The prohibition of the statute, however, applies to the time the application was made and not to its date, so that even if the original application for the
original policy is to be treated as the "original application" for the purpose of applying the provisions of paragraph (2) of section 9037, supra, as has been contended, there would be no legal right, if the statute applies, to predate the new policy more than six months prior to the date when such application was made. If the Appellate Court of Illinois is correct in the foregoing opinion, and if the above statute applies to exchanges such as are under consideration in this opinion, then the reinsuring company making such exchanges is confronted with the peculiar situation of being unable to legally predate its policies and at the same time being liable as and to the same extent as if they had been predated. I do not think the statute requires such a construction. While I do not think the original application for the original policy can be treated as the application for the purpose of applying the provisions of the above statute, I do think that the validity of the new policy with respect to such an exchange as affected by the above statute, must be determined upon the basis of whether the original policy violates said section. If the original policy does not violate it, then I do not think giving to the new policy the same date would violate it. In other words, the insurance under the new policy which makes the original application a part of it, is properly treated as a continuation of the original insurance, and if the original policy does not violate the above statute, the new policy, being a continuation of it and bearing the same date, would not violate it.

INSURANCE COMMISSIONER: Whether number of directors of ............... insurance company are controlled by by-laws or articles of incorporation.

February 10, 1933.

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

Dear Sir:
The ............... Life Insurance Company was organized in September, 1894, under chapter 136 of the Acts of 1883, entitled:

"An act to provide for organizing and regulating the business of life insurance corporations, associations, and societies transacting business on what is known as