



STATE OF KANSAS

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December 1, 1987

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ATTORNEY GENERAL OPINION NO. 87-172

The Honorable Nancy Brown  
Representative, Twenty-Seventh District  
15429 Overbrook Lane  
Stanley, Kansas 66224-9744

Re: Public Health -- Emergency Medical Services; Cities  
and Counties -- Care Rendered Pursuant to  
Instructions; Liability of Training Personnel

Synopsis: Hospitals, physicians and nurses involved in  
training medical intensive care technicians are not  
insulated from liability by K.S.A. 65-4307(a) for  
their wrongful acts. Cited herein: K.S.A. 1986  
Supp. 65-2891; K.S.A. 65-4301, as amended by L.  
1987, ch. 248, sec. 4; 65-4305; 65-4306;  
65-4307; 65-4308; 75-6115.

\* \* \*

Dear Representative Brown:

As Representative of the Twenty-Seventh District, you have  
requested our opinion regarding emergency medical services.  
Specifically, you inquire whether physicians, nurses and  
hospitals have any statutory protection from liability when  
they participate in training mobile intensive care technicians  
(MICT's).

MICT's are required to receive a minimum of 200 hours training  
in didactic and clinical experience in a cardiac care unit and  
in an emergency vehicle unit. K.S.A. 65-4308. The training  
program is to be certified by the University of Kansas medical  
school. K.S.A. 65-4305. For a training program to be  
certified, it must consist of didactic, clinical, and field

training, with an accumulation of well beyond the 200 hours statutory requirement. These areas of training are conducted consecutively, with possible overlap between the clinical and field internship phases. See generally, Operational Policies & Procedures Manual for Mobile Intensive Care Technician Instructors/Coordinators, page 7-9 (Rev. August, 1987). While in training at a hospital, MICT's are authorized to administer medications subcutaneously, intramuscularly or intravenously under the direct supervision of a physician or nurse. K.S.A. 65-4306(b). We have previously opined that such administration of parenteral medications in a hospital setting is authorized whether or not an emergency exists. Attorney General Opinion No. 78-43.

Physicians and nurses have some protection from liability for giving instructions to MICT's during emergencies. Pursuant to K.S.A. 65-4307(a), absent gross negligence in giving instructions, persons who are licensed to practice medicine and surgery or who are registered professional nurses are not liable for damages resulting from instructions given to an MICT during an emergency. An MICT is defined as a person who has "been specially trained on emergency cardiac and noncardiac care in a training program certified by the university of Kansas school of medicine." K.S.A. 65-4301(g), as amended by L. 1987, ch. 348, sec. 4. We believe, however, that K.S.A. 65-4307(a) does not insulate physicians and nurses from liability for claims arising out of MICT training. That section makes no reference to MICT's-in-training, but merely references MICT's, which by definition includes those who have already been trained. It applies only in emergency situations. In addition, K.S.A. 65-4307(a) makes no mention of hospitals being immune from liability.

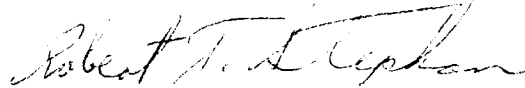
Our opinion is not in conflict with other well known statutes regarding liability of persons practicing medicine and surgery. For example health care providers who render professional services, even though they are governmental employees, are not included in the provisions of the tort claims act. K.S.A. 75-6115. See also, Attorney General Opinion No. 81-139. However, health care providers rendering care or assistance in an emergency are not liable for damages resulting from their acts, absent gross negligence or willful and wanton acts or omissions. K.S.A. 65-2891(a). These references are generalities, and not meant to be substitutes for more detailed analysis of each statutory scheme. There are nuances to each, and individuals who are included in one statute may be excluded in another. For example, registered professional nurses, except registered nurse anesthetists, and

licensed practical nurses are not health care providers for purposes of the tort claims act, and thus may be indemnified for damage awards if they are a governmental employee, but those persons are health care providers within the meaning of the good samaritan statute.

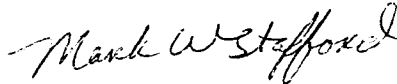
Establishing that physicians, nurses and hospitals are not insulated from liability by K.S.A. 65-4307(a) during an MICT's training period does not mean that each is automatically liable when damages occur as a result from their role in training an MICT. Obviously, there must be a reason for liability which can be determined only on a case-by-case basis. Similarly, individual situations may give rise to defenses which we cannot now predict. For example, a nurse may, under the circumstances, be an employee within the meaning of the tort claims act. Such defenses, however, must come from somewhere other than K.S.A. 65-4307(a) as it is currently written.

In conclusion, it is our opinion that hospitals, physicians and nurses involved in training MICT's are not insulated from liability by K.S.A. 65-4307(a) for their wrongful acts.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



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