STATE OF KANSAS

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January 27, 1976

ATTORNEY GENERAL OPINION NO. 76- 27

The Honorable Loren Hohman
State Representative
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Public Health--Liability--Peer Review Committees

Synopsis: K.S.A. 1975 Supp. 65-442(b) affords no basis whatever for an assured legal conclusion that members of grievance and peer review committees of either local or state professional associations of health-care providers are immune from liability for the performance of the duties of such committees.

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Dear Representative Hohman:

K.S.A. 1975 Supp. 65-442(b) states thus:

> "There shall be no liability on the part of and no action for damages shall arise for any duly appointed member of a committee which serves to protect the recipient or the purchaser of health care from other than the quality and the quantity and the cost of professional services considered reasonable by the providers of professional health services in the area, if such member has made a reasonable effort to obtain the facts of the matter on which he acts, and acts in reasonable belief that the action taken by him is warranted by the facts known to him after such reasonable effort to obtain facts."

You advise that various professional associations, such as the Kansas State Dental Association, the Kansas Optometric Association, the Kansas State Osteopathic Association, the Kansas Medical Society and the Kansas Pharmaceutical Association appoint grievance and peer review committees for the purpose of reviewing complaints made by the public relating to the quality, quantity and cost of professional services. The question has arisen whether the immunity sought to be provided by this provision extends to the grievance and peer review committees of these and like associations.

This provision is a model of awkwardness, ambiguity and obfuscation. It provides that there shall be "no liability on the part of" any duly appointed member of a committee, and that "no action for damages shall arise for" any such member. (Surely, the legislature intended to say that no action for damages shall arise *against* such members, rather than *for* them.) The language does not specify for what kinds of causes of action immunity is granted, nor does it identify the conduct or kinds of activities out of which "no action for damages shall arise." Although duly appointed committee membership is an essential element of immunity, there is not the slightest suggestion as to the nature of these committees. For example, there is no apparent requirement that the committee member be a member of any medical profession or, indeed, that the committee itself be in any way connected with any organization of medical professionals. While a member must be "duly appointed," it does not suggest by whom or by what body the appointment must be made. To be eligible for the immunity, the committee must be one which serves to protect the recipient of health services from

> "other than the quality and quantity and the cost of professional services considered reasonable by the providers of professional health services in the area."

Presumably, this inexpressive phrase is designed to imply that committee members are eligible for the immunity sought to be provided by this subsection if they serve on a committee which serves to protect the public from health care of quality, quantity and cost which is considered unreasonable by providers of professional health care services "in the area." The language does not state that this is the case, and it is obviously subject to differing constructions.

This provision purports to grant an immunity on the broadest possible basis. Presumptively, the immunity is intended to extend to duly appointed committee members for actions taken by them in the performance of their duties as members of the committee. The statute does not restrict the immunity thus. Indeed, there is no language whatever restricting the purported immunity to causes of action

arising out of the performance of the duties of the committee. The language is obviously overbroad. Immunity is purportedly granted to the member "if such member has made a reasonable effort to obtain the facts of the matter on which he acts, and acts in reasonable belief that the action taken by him is warranted by the facts known to him after such reasonable effort to obtain facts." There is no express requirement that these actions be in the course of the performance of the duties of the committee or indeed be authorized by the committee. The terms "reasonable effort" and "reasonable belief" are subject to widely varying interpretations when applied to specific factual situations, of course, although this problem probably cannot be completely obviated by remedial draftmanship. This section is entirely silent as to access to and confidentiality of records and information, and the consequences for any breach of the important doctor-patient relationship.

It should be noted that the immunity sought to be provided extends only to members of these unspecified committees, and not to the committees or to their parent organizations.

In view of the ambiguities and inadequacies of this provision, it is impossible to conclude as a matter of law with any assurance whatever that the protection which it presumably seeks to grant will indeed extend to the grievance and peer review committees of the various professional associations of medical and health care providers.

I suggest that serious consideration be given to substantial revision of this subsection, in order to specify with some modicum of clarity the immunity which is sought to be granted.

Yours very truly,

Curt Schneider

CURT T. SCHNEIDER
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