

COUNTY HEALTH CENTERS: TRUSTEES'
LIABILITY FOR MEDICAL AND NURSING
MALPRACTICE:

Board of Trustees of County Health Center, or members, when performing statutory duties, act officially. Not legally liable for medical or nursing malpractice allegedly committed by board, or members during performance of official acts. But if board directs, participates in, or subsequently ratifies acts of malpractice of its personnel, or knowingly employes doctors and nurses lacking necessary professional qualifications, experience and fitness to perform assigned duties, then board, or members engaging in such activities would be personally liable to patient injured by malpractice of said personnel.



May 7, 1953

Honorable James R. Amos, M.D.
Director
Division of Health
Jefferson City, Missouri

Dear Sir:

This is to acknowledge receipt of your recent request for a legal opinion of this department, which reads as follows:

"Attached herewith is a letter which is self-explanatory. There are several other health units in the state where the responsibility is vested in the Boards of Trustees. It is expected that this number will increase. For that reason we believe that an opinion from your office concerning the extent of the liability of a Board of Trustees or individual members for the acts of the health personnel would be very helpful."

Subsequently to the date of your letter requesting our opinion on the above-stated subject-matter, you have clarified your inquiry both by letter, and orally in conference with personnel of this department in charge of writing said opinion.

From such clarification it appears that the specific inquiry originally intended, is whether or not the Board of Trustees of a County Health Center, or the individual members thereof, are legally liable for acts of medical or nursing malpractice allegedly committed by said Board, or its individual members, when performing the duties

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imposed upon them by law, and also the liability of the Board of Trustees or its individual members for acts of medical malpractice which might be committed by employees of the health center appointed by said Board of Trustees.

The term "malpractice", has been defined in Words and Phrases, Volume 26, page 248, as follows:

"'Malpractice' means any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice, or illegal or immoral conduct. Gregory v. McInnis, 134 S. E. 527, 529, 140 S.C. 52."

Since the inquiry was meant to refer to acts of malpractice of the Board or individual members as it relates solely to medical and nursing malpractice, our further discussion will be limited to that type of professional misconduct.

With reference to acts of malpractice committed by members of the medical profession, in the case of Isenstein vs. Malcomson, 234 N.Y.S. 52, at l. c. 53, in defining the meaning of malpractice, the court said:

"Malpractice signifies bad practice on the part of certain individuals who treat injuries to the human body, either through lack of skill or neglect to apply it. Here are some of the definitions recognized by the medical profession: 'Negligent acts on the part of a physician or surgeon in treating a patient, by means of which such patient suffers death or (unnecessary) injury,' Witthaus & Becker Med. Juris, (1894) 73, 76; 'mistreatment of a disease or injury through ignorance, carelessness, or criminal intent,' Stedman's Med. Dict. (8th Ed. 1924) 589; 'improper treatment through carelessness, or ignorance, or intentionally,' Gould's Med. Dict. (2d Ed. 1928) 757. Though these are medical works, it is noticeable that the two later definitions do not confine the acts to physicians and surgeons. In Monohan v. Divinny, supra, the learned justice (Staley, J.) stated that, 'in relation to the medical profession, it has been applied, not only to duly licensed physicians and surgeons, but to

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irregular practitioners as well, and also to nurses, midwives, and apothecaries.' He then proceeded to extend it, under the very statute we are now considering to chiropractors in an action for injuries 'unskillfully, negligently, and willfully' caused."

Again, in the case of Grainger vs. Still, 187 Mo. 197, medical malpractice was defined at l. c. 213, as follows:

"'Malpractice is the bad professional treatment of disease, pregnancy, or bodily injury, from reprehensible ignorance or carelessness, or with criminal intent.'"

Within the meaning of the law, a trustee is one who occupies a fiduciary position and holds the legal title of property for the benefit of another. The same general idea, with some modifications, prevails with reference to the Board of Trustees of a County Health Center, but it must be remembered that the qualifications, powers, and duties of such trustees have been set out by statutes, particularly Sections of the 1951 Laws of Missouri, as follows:

Sections 205.030; 205.045; 205.046; 205.060; 205.070; 205.080 and 205.090, pages 779 to 784.

Section 205.030, reads as follows:

"1. The county court shall appoint five trustees chosen from the citizens at large with reference to their fitness for such office, all residents of the county, not more than three of the trustees to be residents of the city, town or village in which the county health center is to be located, who shall constitute a board of trustees for said county health center.

"2. The trustees shall hold their offices until the next following general election, when five health center trustees shall be elected who shall hold their offices, three for two years and two for four years. The county court shall by order of record specify the terms of said trustees.

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"3. At each subsequent general election the offices of the trustees whose terms of office are about to expire shall be filled by the election of health center trustees who each shall serve for a term of four years.

"4. Any vacancy in the board of trustees occasioned by removal, resignation or otherwise shall be reported to the county court and be filled in like manner as original appointments, the appointee to hold office until the next following general election, when such vacancy shall be filled by election of a trustee to serve during the remainder of the term of his predecessor.

"5. No trustee shall have a personal pecuniary interest, either directly or indirectly, in the purchase of any supplies for the health center, unless the same are purchased by competitive bidding."

Section 205.045, reads as follows:

"1. The trustees, within ten days after their appointment or election, shall qualify by taking the oath of civil officers and organize as a board of health center trustees by the election of one of their number as chairman, one as secretary, and by the election of such other officers as they may deem necessary, but no bond shall be required of them.

"2. The county treasurer of the county in which such county health center is located shall be treasurer of the board of trustees. The treasurer shall receive and pay out all the moneys under the control of the board, upon its order as provided in this act, but shall receive no compensation from such board.

"3. No trustee shall receive any compensation for his services performed, but he may receive reimbursement for any cash expenditures actually made for personal expenses incurred as such

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trustee, and an itemized statement of all such expenses and money paid out shall be made under oath by each of such trustees and filed with the secretary and allowed only by the affirmative vote of all of the trustees present at a meeting of the board.

"4. The board of health center trustees shall make and adopt such bylaws, rules and regulations for their own guidance and for the government of the county health center as may be deemed expedient for the economic and equitable conduct thereof. They shall have the exclusive control of the expenditures of all moneys collected to the credit of the county health center fund, and of the purchase of site or sites, the purchase or construction of any county health center buildings, and of the supervision, care and custody of the grounds, rooms or buildings purchased, constructed, leased or set apart for that purpose. All moneys received for the county health center shall be deposited in the county treasury to the credit of the county health fund, and paid out only upon warrants ordered drawn by the county court upon properly authenticated vouchers of the board of health center trustees.

"5. The board of health center trustees may appoint and remove such personnel as may be necessary and fix their compensation; and shall in general carry out the spirit and intent of this chapter pertaining to establishing and maintaining a county health center.

"6. The board of health center trustees shall hold meetings at least once each month, and shall keep a complete record of all its proceedings. Three members of the board shall constitute a quorum for the transaction of business.

"7. One of the trustees shall visit and examine the county health center at least twice each month.

"8. When the county health center is established, all personnel and all persons approaching or coming within the limits of same, and

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all furniture and other articles used or brought there shall be subject to rules and regulations as the board may prescribe.

"9. The board of health center trustees may enter into contracts and agreements with federal, state, county, school and municipal governments and with private individuals, partnerships, firms, associations and corporations for the furtherance of health activities, except as hereafter prohibited."

Section 205.046 reads as follows:

"In those counties of the state now operating county health centers, pursuant to the provisions of this chapter, the county court of each such county shall immediately appoint a board of trustees as provided in section 205.030, who shall hold office until the next following general election, at which election trustees shall be elected as provided in said section 205.030. All funds and property of any health center now operating shall be turned over to the board of trustees hereby created upon the effective date of this act and all contracts, gifts and obligations by or to such health center may be enforced by or against said board of trustees after this act becomes effective."

Section 205.060 reads as follows:

"The board of county health center trustees shall not enter into contracts for the private practice of medicine, nor shall any of its personnel practice medicine nor dispense drugs, vaccines or serums for personal gain, nor shall its facilities be used for such purpose in any way except as it may be necessary and agreed upon between the board and county court or courts for the care of the indigent for whom the court or courts may be responsible, or except in furtherance of diagnostic and communicable disease control programs."

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Section 205.070 reads as follows:

"Any person, firm, organization, society or corporation desiring to make donations of money, personal property or real estate for the benefit of such health center, shall have the right to vest title of such property so donated, in the county or counties, to be controlled when so accepted by the board of health center trustees according to the terms of deed, gift, devise or bequest of such property."

Section 205.080 reads as follows:

"All buildings that may be erected or constructed under sections 205.010 to 205.130 shall have the plans and specifications approved by the board of health center trustees and bids advertised for according to law for other county public buildings."

Section 205.090 reads as follows:

"1. On or before the seventh day of January in each year, the board of health center trustees shall file with the county court a report of their proceedings with reference to the county health center and a sworn statement of all receipts and expenditures during the preceding calendar year.

"2. The board of health center trustees shall prepare and submit to the county budget officer a budget for the ensuing year at the time and in the manner provided by the county budget law applicable to such county."

Section 205.030, supra, giving the qualifications of members of the Board of Trustees does not provide that such prospective members must be licensed medical doctors, or registered nurses. In fact, this section nor any others of the Missouri Statutes makes no reference or requirements to board members being engaged in any particular profession.

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Therefore, in the absence of any statutory provisions, in the enactment of the statutes pertaining to County Health Centers, it appears to have been the legislative intent that membership on such boards of trustees was not to be limited to persons of any certain profession, trade or business, but that anyone possessing the general qualifications provided by the applicable statutes, particularly Section 205.030, supra, would be eligible for election or appointment to said boards.

The statutory duties of the board and its members are of an administrative or supervisory nature and have nothing to do with the care and treatment of those suffering from physical or mental ailments. Such duties call for the exercise of executive ability and skill in managing the affairs of the health center, especially in handling its finances, and other matters essentially of a business nature.

It appears that the board members are chosen because of their fitness to perform their duties as trustees, and not because they are doctors or nurses. It further appears that a board composed of laymen, who have the necessary statutory qualifications would function as well, and could perform all the duties required of it as a board composed entirely of medical doctors, or medical doctors and nurses. Consequently, it is immaterial whether board members are medical doctors or registered nurses, if they possess the required qualifications.

The functions of a Board of Trustees are essentially of a public nature, and are for the benefit of the general public, and the question arises as to whether the actions of the board are official acts, and whether the members occupy the status of public officials.

No exact rules or definitions can be given by which to determine whether one is or is not a public officer, and which would be applicable under every possible situation in which the inquiry might arise, but certain fundamental principles and tests to serve as a guide in determining whether one is or is not an officer under a given situation are helpful. It is believed that such principles have been embodied in some of the definitions of a public officer given in C.J.S., Vol. 67, P. 101, and which reads as follows:

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"* * * 'Public officer' has been defined as an incumbent of a public office; an individual who has been appointed or elected in a manner prescribed by law, who has a designation or title given him by law, and who exercises the functions concerning the public assigned to him by law; * * * one who performs a public function, whose authority is derived directly from the state by legislative enactment, and whose duties, powers, and authority are prescribed by law; * * *."

Bearing in mind the principles embodied in the above definitions, and also the apparent legislative intent in the enactment of the statutes quoted above, it is obvious that the members of a Board of Trustees of a County Health Center have the title and status of public officials, and have been required to perform the duties of such public officials. Paragraph 1, Section 205.045, supra, gives further confirmation to this idea, since said section requires the trustees ten days after their appointment or election to qualify "by taking the oath of civil officers", which seems to imply that trustees are to be regarded as civil or public officers, and it is our thought that such board members are "public officers", within the commonly accepted meaning of the term.

When a Board of Trustees of a County Health Center, or its individual members are performing the duties imposed upon them by the above-quoted statutes, they are acting in the capacity of public officials and not as private citizens, and this is true only as long as they stay within the scope of authority delegated to them by statute. However, when they go beyond the scope of authority delegated to them, they cease to act officially and their actions are those of private citizens.

For reasons already stated, the board or its members are not required to be doctors or nurses, nor are they required as board members to perform any duties commonly required of those who are members of either profession. Consequently, when the board or its members are performing their statutory duties as public officers in the manner aforesaid, they are not engaging in the practice of medicine or of nursing malpractice, nor are they legally liable to any person or persons injured as a direct result

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of the official acts of said Board of Trustees or of its individual members.

We next take up for consideration the phase of your inquiry regarding the liability of the Board of Trustees of a County Health Center or the individual members thereof, for acts of medical or nursing malpractice committed by personnel of the Health Center.

Subsection 5, Section 205.45, supra, authorizes the Board of Trustees to appoint, remove, and fix the compensation of such personnel, as the board in its discretion believes to be necessary for efficiently carrying out the spirit and intent of the County Health Center statutes. One of the primary purposes for establishing a health center is to provide proper facilities for the medical treatment and care of the indigent persons of the county, and, under the present statutes this is to be accomplished by public officials elected or appointed for that purpose. While the Board of Trustees are the public officials in charge of the health center, they are not required to be physicians or nurses for reasons given above, but physicians and nurses appointed by the board would occupy the status of deputy officials or assistants of the board.

Within the scope of the duties required of such employees they would be directly responsible for the performance of such duties to the board, and within such narrow limits the board would not be responsible to the public for the acts of its subordinates.

While we are unable to find any Missouri decisions so holding, we are of the opinion that the general principle of law that a public official is not liable to the public for the acts of his assistants within the scope of the latter's authority, since such acts are considered to be official.

In this connection it is believed that said general rule is fully applicable to the situation referred to in the opinion request and that it has been given in 43 AM. JUR., Officers, Section 281, and reads as follows:

"It is settled, subject, however, to a number of exceptions, that in the absence of a statute imposing liability, or of negligence on his part in appointing or supervising his assistants, an officer

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is not liable for the default or misfeasance of subordinates and assistants, whether appointed by him or not, providing the subordinates or assistants, by virtue of the law and of the appointment, become in a sense officers themselves, or servants of the public, as distinguished from servants of the officer, and providing the officer does not direct the act complained of, or personally co-operate in the negligence from which the injury results. An administrative officer is, however, liable for the misconduct or negligence in the scope of the employment of those employed by or under him voluntarily or privately, and paid by or responsible to him. And public officers having the custody of public funds or property are generally held liable for losses due to the negligence or misconduct of their subordinates. Of course, liability may be expressly provided for by statute. And where an officer fails in a duty to take action, liability may be predicated on nonaction after knowledge of the negligence of subordinates has come to his attention.

"The exemption of public officers from responsibility for the acts and defaults of those employed by or under them in the discharge of their public duties is allowed in a great measure from considerations of public policy. From this consideration it has been extended to the case of persons, acting in the capacity of public agents engaged in the service of the public, and acting solely for the public benefit, although not strictly filling the character of officers or agents of the government."

If medical or nursing personnel were guilty of acts of malpractice against patients at the health center, such misconduct would not be within the scope of their official duties and unless the board had authorized, directed, participated in, or had subsequently ratified said acts, the board, or its individual members would not be personally liable to any patients injured by its personnel.

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The board or its members might become personally liable to a patient injured through acts of malpractice of the board's employees in one instance even though the board did not direct, authorize, participate in, or subsequently ratify the acts of its employees.

The instance to which we refer is in the employment of physicians and nurses for the health center, and which we believe to be an official duty of the board. The general rule last quoted above, and the one to be presently quoted, require a public officer to exercise good faith and due care in the performance of his duties, and for an omission of which he may be personally liable to anyone injured by his negligent acts. We quote from 25 Am. Jur., Health, Section 17, as follows:

"In accordance with established principles governing the liability of public officers for injuries inflicted in connection with the performance of their official duties, the general rule is that members of boards of health and health officers are not personally liable for injuries resulting from an erroneous exercise of their judgment or discretion where they act in good faith, within the limits of their authority. The rules exempting them when they act without the scope of their authority or act with negligence amounting to malice. * * *"

In the event the board should fail to carefully select personnel upon the basis of professional qualifications, experience, and ability to perform the duties required of physicians and nurses at the health center, and should employ persons not possessing the necessary qualifications experience or ability required, and personnel known to have a long record of malpractice cases behind them, and a patient would thereafter be injured through acts of malpractice committed upon him by said employees of the board, then the board would be guilty of gross negligence, bad faith and a total lack of reasonable care in the employment of its personnel. The improper conduct of the board in that respect would not be an official act, in fact they would be far beyond the scope of their official duty, and, under the principles given in the last quoted portion from American Jurisprudence it is our thought that the members of the board who employed said persons would be personally liable to a patient injured by acts of malpractice committed by its medical and nursing personnel under above mentioned circumstances.

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CONCLUSION

It is, therefore, the opinion of this department that, when a Board of Trustees of a County Health Center, or its individual members are performing duties required of them by statute, they act officially and are not legally liable to any person for medical or nursing malpractice allegedly committed by said board or its individual members during the performance of said official acts.

It is the further opinion of this department that the Board of Trustees of a County Health Center, or its individual members are not liable to a patient injured through acts of malpractice of its medical and nursing personnel unless the board, or its individual members directed, participated in, or subsequently ratified the misconduct of said personnel, or unless the board was guilty of gross negligence and lack of reasonable care in selecting personnel upon the basis of their professional qualification, past experience and fitness to perform duties assigned to them at the health center. In either instance all members of the board who participated in the employment of professionally inferior personnel or who directed, participated in, or subsequently ratified said acts of malpractice of said personnel after their employment would be personally liable to the person injured by the misconduct of the said personnel.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul N. Chitwood.

Very truly yours,

JOHN M. DALTON
Attorney General

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