Memorandum to Presidents

Date: May 27, 1975

From: Office of the University Counsel and Vice Chancellor for Legal Affairs

Subject: Malpractice Insurance; Student Health Services Physician

Both the Provost for Health Sciences and this office have received a large and varied body of inquiries involving the medical malpractice situation. Our principle attention has been focused upon the health science centers but another important constituency, our campus clinic physicians, are directly involved. The following advisory deals with campus clinics and the physicians employed by the University in these positions.

As a general proposition the State is self-insured against the risk of damages or loss arising out of tort claims and this policy applies fully to the campus student health centers. In the usual case, tort claims involving state premises or employees are brought against the state itself in the Court of Claims. Nevertheless, every employee remains personally liable for his or her negligent acts and may be sued personally in other courts.

In such cases, state employees, including campus clinic physicians, are protected by Section 17 of the Public Officers Law. This legislation (copy attached) provides that the state will indemnify and "save harmless" any officer or employee of the state who suffers financial loss resulting from a negligent act, or failure to act, which results in a judgment for damages. Unlike insurance, there is no dollar limitation to this protection.

There are several conditions attached to state indemnification. The act or omission, in the words of the statute, must have occurred while the employee "was acting in the discharge of his duties and within the scope of his employment and that such damages did not result from the willful and wrongful act or gross negligence of such officer. . .". If the physician is charged with responsibility for student care and the emergency care of college personnel, a negligent medical act involving such persons would be covered by Section 17. Clearly, the same result would not obtain where the negligence occurs in the course of treating a private patient, either at the campus or elsewhere.
The legislation applies to all employees, whether full-time or part-time, providing the act or omission is neither "willful and wrongful" nor an act of "gross" negligence. The latter rubric is not susceptible of precise definition but, generally, means something so offensive to accepted standards of professional medical care as to constitute wanton, reckless, or malicious conduct.

Any legal papers served upon the state employee, including the college clinic physician, must be forwarded within five days to the Attorney General. The statute does not require a defense by the Attorney General who may defer to privately retained counsel or simply elect not to participate. The cost of retaining private counsel would be subject to reimbursement by the state if the evidence establishes that the event complained of occurred within the scope of state employment.

Unless the practice of the college physician is totally limited to clinical duties performed for the State University, the physician would be well advised to continue malpractice coverage for that practice through a privately purchased policy of insurance. We are currently inquiring of the Superintendent of Insurance regarding the availability of limited coverage insurance, at a discounted premium, for the out-of-scope practice which a state employed doctor might pursue. The plan of operation for the medical malpractice insurance association, authorized by recent legislation, has not been issued as yet. We will advise you further as soon as such information comes to us.

Walter J. Relihan, Jr.

Enclosure

This memorandum addressed to:

Presidents, State-operated campuses

This memorandum for information only to:

Presidents, Community Colleges
Deans, Statutory Colleges
Chancellor Kibbee
Dean McGrath
President Rose
Mr. Tobin
§ 17. Indemnification of officers and employees of the state

1. The state shall save harmless and indemnify all officers and employees of the state from financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act by such officer or employee provided that such officer or employee at the time damages were sustained was acting in the discharge of his duties and within the scope of his employment and that such damages did not result from the willful and wrongful act or gross negligence of such officer or employee and provided further that such officer or employee shall, within five days of the time he is served with any summons, complaint, process, notice, demand or pleading, deliver the original or a copy thereof to the attorney general.

2. Upon such delivery the attorney general may assume control of the representation of such officer or employee. Such officer or employee shall cooperate fully with the attorney general's defense.

3. This section shall not in any way impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

4. The benefits of this section shall beure only to officers and employees of the state and shall not enlarge or diminish the rights of any other party.