Legislative Research Department October 22, 1975

MINUTES

SPECIAL COMMITTEE ON MEDICAL MALPRACTICE

October 14, 1975

Members Present

Senator Wesley H. Sowers, Chairman
Representative Earl Ward, Vice-Chairman
Senator Bert Chaney
Senator Robert V. Talkington
Senator D. Wayne Zimmerman
Representative Ronald Hein
Representative Loren Hohman
Representative Rex B. Hoy
Representative Michael G. Johnson
Representative Marvin L. Littlejohn
Representative Harry A. Sprague

Staff Present

Emalene Correll, Legislative Research Department
Bill Wolff, Legislative Research Department
Bill Edds, Revisor of Statutes Office
Norman Furse, Revisor of Statutes Office

Others Present

Rosanne Winter, Kansas Trial Lawyers Association, Topeka, Kansas
Jerry Slaughter, Kansas Medical Society, Topeka, Kansas
Carl Schmitthenner, Kansas State Dental Association, Topeka, Kansas
Joe Wempe, Insurance Department, Topeka, Kansas
Cinda S. Vogel, Kansas Chiropractors Association, Topeka, Kansas
Dick Brock, Kansas Insurance Department, Topeka, Kansas
Richard Payne, Farmers Alliance, McPherson, Kansas
L. M. Cornish, Kansas Association of Property and Casualty Insurance Companies, Topeka, Kansas
Mark L. Bennett, American Insurance Association, Topeka, Kansas
Ellen Laner, Mission Hills, Kansas

Others Present (Cont'd)

Jim Tolbert, Department of Administration, Topeka, Kansas
David Mose, State Treasurers Office, Topeka, Kansas
Cathy Talbert, Kansas Trial Lawyers Association, Topeka, Kansas
Joan Baker, Kansas Insurance Department, Topeka, Kansas
Judy Runnels, Kansas State Nurses Association, Topeka, Kansas
Darb Ratner, Kansas Medical Society, Wichita, Kansas
Wilma Naethe, Kansas Association Nurse Anesthetists, Topeka, Kansas
Dennis Hawver, Kansas Department of Health and Environment; Topeka, Kansas

The meeting was called to order at 10:00 a.m. by the Chairman.

The following corrections were made to the minutes of the September meeting:

Page 9 - paragraph 1: Add the sentence, "The motion carried."

Page 10 - Medical Guarantees: Change "allocation" to "allegation".

Page 12 - The date should be October 28.

Attachment 5 - No. 9: The limit should be one million.

A motion was made and seconded to approve the minutes as corrected. Motion carried.

Limitation on Pain and Suffering. Staff presented a draft bill as requested by the Committee. (Attachment 1), noting they had followed the language of the wrongful death statute and that the definition of "health care provider" used in the draft bill would also be used in other proposed bills.

The necessity of the clause "there shall be no limit on the damages awarded for pecuniary loss," was questioned. Staff stated they could think of no particular reason not to strike it.

A motion was made and seconded to strike "there shall be no limit on the damages awarded for pecuniary loss, but". The motion carried.

A question was raised as to whether or not the bill would raise geographical problems since it does not stipulate that it is

limited to a person licensed to practice in Kansas. It was felt this would not be a problem since the law of the state in which the cause of action arises would apply.

For clarification, a motion was made and seconded to delete "cannot" in line 5 and to insert in lieu thereof "shall not". Motion carried.

A motion was made and seconded to approve the bill for introduction as amended. Motion carried.

Procedure of Submitting Bills. Staff explained that this year committees will approve bills to be prefiled and they may recommend to the Coordinating Council the bill be introduced as either a Senate or a House bill. However, the Coordinating Council will make the final determination regarding the house in which it is to be introduced.

By consensus, Committee action taken on the bill at the last meeting is to be changed to read that the Committee recommended it be introduced as a Senate bill.

By consensus, the Committee will not take any action recommending in which house bills be introduced until all bills are before them.

Periodic Payment of Judgments. Staff presented a draft bill as requested by the Committee, (Attachment 2) noting the Committee may want to include something to the effect that if a party defaults, the total amount would be due. The bracketed language allows for changed conditions of any parties to the action. The motion at the last meeting did not speak to who should handle the money or how it should be administered. As the proposed bill is written this would be the responsibility of the court.

In discussion it was noted that at the last meeting the Committee had decided that the total judgment should be paid even if the person dies before all payments are made. Payments could be assigned to the estate.

A question was raised as to whether or not the proposed bill gives the judge the right to change the amount of the judgment. Staff noted that the intent was that the judge would not have the authority to change the aggregate amount. A conceptual motion was made and seconded to ask staff to amend the proposed bill to clarify that the judge cannot modify the total amount of the judgment. Motion carried.

A motion was made and seconded that the bill as conceptually amended be approved for introduction. Motion carried.

Approval of Attorney's Fees. Staff presented a draft bill as requested by the Committee. (Attachment 3). The Chairman noted that since the last meeting it had been pointed out to him that in workmen's compensation, the fees are not to exceed 25 percent plus expenses and under the federal tort claims act, there shall be a reasonable attorney's fee not to exceed 25 percent.

It was noted in discussion that in workmen's compensation cases liability is not usually an issue and there is a set schedule for most injuries. Also the 25 percent is not an absolute limit but is a limit on what can be a part of a lien on the judgment. Staff noted that nationwide figures which are quoted are based on what the plaintiff received after expenses were deducted.

A motion was made and seconded to approve the bill as written. There was opposition to setting out fee limitations by statute and a feeling was expressed that those advocating such a limitation would not want this same statutory restriction placed on their fees.

A question was raised as to whether the court would be reviewing the contract between the attorney and client or an itemized statement submitted by the attorney. It was noted the court would have to have enough information on which to base approval or disapproval of the fee. In answer to a question, it was noted that the judge could override a contract.

A substitute motion was made and seconded to amend a bill to allow reasonable fees up to 25 percent plus expenses. It was suggested that this go into effect in cases over $100,000 to make sure the person seriously injured gets a good share of the judgment.

A question was raised regarding cases where the client does not want a contingent fee contract and the attorney's hourly fee exceeds the 25 percent. It was felt this amendment would limit people getting legal help in complicated cases. In answer to a question, it was stated that six states have taken steps to limit attorney's fees. The feeling was expressed that the court would be better qualified to make a judgment regarding fees than the legislature. The substitute motion failed.

A substitute motion was made and seconded to delete "counterclaim" in line 2 and insert in lieu thereof "claim" and to delete "claiming" in line 3 and insert in lieu thereof "for". This would make it apply to all claims. The substitute motion carried. Representative Hohman recorded a "no" vote.

A motion was made and seconded to approve the bill as amended. Motion carried. Representative Hohman recorded a "no" vote.

Collateral Source Rule. Staff presented a draft bill as requested by the Committee. (Attachment 4). A question was raised as to conditions under which services provided by an HMO would not be paid for either by the individual or a private employer. Staff noted that the state might contract with an HMO to cover Title XIX recipients or it might be applicable in the case of some federal employees covered by a prepaid health care plan. A motion was made and seconded to approve the bill as written. Motion carried.

Statute of Limitation. Staff presented a bill as requested by the Committee. (Attachment 5). Staff noted that sevetal statutes relating to a limitation on the time for bringing a tort action were included in the proposed bill. The last sentence on page one, which also occurs at the end of other sections, attempts to avoid any constitutional problem in amending these statutes.

A motion was made and seconded to strike "six (6)" in Section 1 and Section 2 and insert in lieu thereof "four (4)". A question was raised as to the application of this statute to an engineer or an architect. It was noted that the court has ruled that the cause of action occurred at the time of injury. Motion carried. Representative Hein recorded a "no" vote.

Staff noted that Section 2 was included since current statutes include a separate provision for ionizing radiation. There is the assumption that injury could occur from other than X-Ray treatment, i.e., an employee giving the treatment might be injured because the equipment was not adequately shielded.

Staff noted that two alternatives were given for Section 3 stating that Alternative B is more precise and avoids the possibility of an interpretation extending the time in which an action could be filed.

In discussion, Senator Talkington stated that the intent of his motion at the last meeting was that if the eight years had not run at the time of death, there would be one year after death in which to file. He stated further that his intent was that if an injury occurs at the time a person is 17½, this person would still have two years and not just one and half years in which to file.

A motion was made and seconded to approve Alternative B as Section 3. Motion carried.

A motion was made and seconded to approve the bill, as amended, for introduction. Motion carried.

The meeting was recessed at 11:55 a.m. and was reconvened by the Chairman at 1:30 p.m.

Screening Panel. Staff presented another draft of the screening panel bill submitted at the last meeting. (Attachment 6). This draft provides that findings are not available to the court and panel members are not allowed to testify in later court proceedings.

Copies of a letter to Senator Sowers from Dr. Gregg M. Snyder, Kansas Medical Society, were distributed (Attachment 7).

A question was raised as to whether or not the bill would make it difficult to get witnesses. It was noted that witnesses appearing before the panel would be allowed to testify in later court proceedings and that an attorney would know in advance those witnesses he wanted to use and would object to their being a member of the panel.

It was suggested that court costs could be reduced by allowing a witness' testimony to be used as a deposition. A motion was made to strike "proceedings" and "records" in Section 5, page 3, line 32. It was felt this would raise a question as to what part of the proceedings would be admissable. The intent of the motion was to make only the testimony of witnesses admissable. For example, if a witness gives conflicting testimony, the attorney could ask the judge to have his testimony before the panel admitted to impeach the witness and the judge would pass on the admissability.

It was suggested that the motion be changed to a conceptual motion that a proviso be inserted allowing a witness' testimony to be used for the impeachment of a witness in subsequent court proceedings. The maker of the original motion felt this proviso would be too limiting. Motion lost for lack of a second.

The feeling was expressed that the size and makeup of the panel should be set by statute.

A motion was made to redraft the bill making panel hearings open; making findings admissable in future court proceedings and allowing witnesses and panel members to testify in future court proceedings. Motion lost for lack of a second.

By consensus the Committee will hold this bill for further consideration.

Immunity. Staff presented a draft bill as requested by the Committee. (Attachment 8). Because an individual may not necessarily be giving information before the Board of Healing Arts in a formal procedure, the criminal code provisions re perjury might not be applicable and, because of the Committee's discussion regarding frivolous and malicious information at the last meeting, the words "under oath and in good faith" were put in Section 1(a). This section is made a part of the Healing Arts Act.

A motion was made and seconded to approve the bill. In answer to a question regarding whether or not the bill resulted in a practical difference from existing law, staff stated Kansas recognizes a qualified interest as a defense to an action. Under the bill, the court would not have to find an interest in the subject matter on the part of the person reporting. Motion carried. Senator Talkington recorded a "no" vote.

By consensus the Committee asked staff to draft similar bills relative to boards governing other health providers listed in the bills previously adopted.

JUA, Patient Compensation Fund, Limit on Recovery. Copies of a memo from Fletcher Bill, Insurance Commissioner, in answer to questions raised by the Committee at the last meeting were distributed. (Attachment 9). It was noted that he did not express any opinion relative to legislation making it easier for a mutual insurance company formed in another state to operate in Kansas.

The Chairman noted that although actions taken by this Committee would set the climate for insurance availability, companies will not give any assurance it will be available. After talking to Mr. Bell and representatives from other states, he suggests the Committee consider the following:

1) Legislation enabling the Insurance Commissioner to organize a JUA including all companies writing liability insurance in Kansas to provide basic coverage ($100,000-$300,000) to those who can show that they are unable to get coverage from the usual commercial sources.

2) Legislation establishing a patient's compensation fund financed by health providers through a surcharge based on their basic coverage premium which would pick up after the $100,000 basic coverage; establishing a minimum and maximum amount from which to increase or decrease the surcharge; authorizing a state guarantee for the first year or two with the proviso that all state monies be paid back. Based on projected 1976 doctor and hospital premiums for basic coverage, a 30% surcharge would develop one million dollars per year. It is estimated that the surcharge would be less than the umbrella coverage premiums for which it is a substitute.

3) Legislation establishing a one million dollar limit on recovery. To date this would not have affected anyone adversely. If necessary, the limit could be readjusted after a few years of experience. A limit is necessary to establish a level for the patient's compensation fund and to make such a fund feasible.

It was noted that the above suggestions need to be adopted as a package if any one of them are to succeed.

The fairness of requiring insurance companies with no experience in medical malpractice to participate in a JUA was questioned. It was noted that insurance companies could pull out of the state but since the risk would be so small they probably would not.

A motion was made and seconded to authorize the staff to draft a bill to establish a JUA as outlined by the Chairman and by Mr. Bell's memo; to create a patient's compensation fund as outlined by the Chairman establishing a one million dollar limit on recovery, such limit to include the basic $100,000.

Concern was expressed over the Attorney General representing a doctor or a hospital. The Chairman stated he had discussed this with Mr. Bell and with legislators from California and Indiana and they see no problems with having the Insurance Commissioner or the Attorney General representing the fund. Contracting with the private sector for administration and management of the fund was suggested as an alternative.

The following points were made in answer to questions: very few doctors would qualify for coverage by the JUA: companies would probably not refuse coverage for more doctors because they would still be at risk under the JUA; the fund has two economy factors -- no marketing charges and being based on Kansas experience only; administrative costs would be paid from the fund; since the second injury fund under workmen's compensation has the right to settle out of court, it would appear the patient's compensation fund could settle out of court; health providers would be required to carry $100,000-$300,000 basic coverage. Motion carried.

<u>Incompetency Clause</u>. Noting this phrase had inadvertently been left out of an earlier amendment to the Healing Arts Act, a motion was made and seconded to authorize staff to draft a bill to reinstate the professional incompetency clause in the Healing Arts Act. Motion carried.

<u>Requiring Payment of Endorsement on Claims Made Policies</u>. Based on the assumption that the patient's compensation fund can be set up on a claims occurrence basis, consensus was to pass over this agenda item for the time being.

<u>Immunity of Hospital Boards</u>. Staff distributed copies of K.S.A. 65-442, the current statute covering immunity. (Attachmen 10).

It was felt the Committee had not heard sufficient testimony to consider changing the present statute. After discussion, the consensus of the Committee was to recommend a continuing study of the medical malpractice problem with immunity of hospitals listed as a specific item to be studied.

Continuing Education. Staff read the letter from the Board of Healing Arts sent in answer to questions raised by the Committee at the last meeting. A copy of the letter is to be attached to the minutes. (Attachment 11).

After discussion, a motion was made and seconded to authorize staff to draft a bill amending the Healing Arts Act to require continuing education and to require the Board of Healing Arts to set standards for continuing education by rules and regulations. Motion carried.

By consensus, staff was asked to review statutes governing the other health providers included in bills previously adopted and where indicated to draft similar bills mandating continuing education and setting standards by rules and regulations.

The next meeting of the Committee will be October 28, 1975.

The meeting was adjourned at 3:45 p.m.

Prepared by Emalene Correll

Approved by Committee:

10/28/75
(Date)

PROPOSED BILL NO.____

By Special Committee on Medical Malpractice

Re Proposal No. 43

AN ACT relating to damages; providing for installment or periodic payments of damages awarded.

Be it enacted by the Legislature of the State of Kansas:

Section 1. In any civil action, whenever judgment is entered on a claim for recovery of damages for tortious conduct resulting in death, personal injury or property damage, the court may include in such judgment a requirement that the damages awarded be paid in whole or in part by installment or periodic payments, and any installment or periodic payment upon becoming due and payable under the terms of any such judgment shall constitute a separate judgment upon which execution may issue. [Any judgment ordering any such payments shall specify the amount of each payment, the interval between payments and the number of payments to be paid under the judgment. For good cause shown, the court may modify such judgment with respect to the amount of such payments and the number of payments to be made or the interval between payments.]

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

10/14/75
5 RS 166
Attachment

PROPOSED BILL NO.____

By Special Committee on Medical Malpractice

Re Proposal No. 43

AN ACT relating to damages in certain professional liability actions.

Be it enacted by the Legislature of the State of Kansas:

Section 1. In any action for damages for personal injuries arising out of the rendering of or the failure to render professional services by any health care provider, [there shall be no limit on the damages awarded for pecuniary loss, but] the damages awarded for pain and suffering ~~cannot~~ shall not exceed the sum of twenty-five thousand dollars ($25,000). As used in this section, "health care provider" means a person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed medical care facility, health maintenance organization, licensed dentist, licensed professional nurse, licensed practical nurse, licensed optometrist, registered podiatrist or registered physical therapist or an officer, employee or agent thereof acting in the course and scope of his or her employment or agency.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

5 RS 166

PROPOSED BILL NO.____

By Special Committee on Medical Malpractice

Re Proposal No. 43

AN ACT relating to attorneys' fees in certain professional liability actions.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Whenever a civil action is commenced by filing a petition or whenever a pleading shall state a counterclaim in a district court claiming damages for personal injuries or death arising out of the rendering of or the failure to render professional services by any health care provider, compensation for reasonable attorneys' fees to be paid by each litigant in the action shall be approved by the judge prior to final disposition of the case by the district court. Compensation for reasonable attorneys' fees for services performed in an appeal of a judgment in any such action to the court of appeals shall be approved by the chief judge or by the presiding judge of the panel hearing the case. Compensation for reasonable attorneys' fees for services performed in an appeal of a judgment in any such action to the supreme court shall be approved by the departmental justice for the department in which the appeal originated. In approving such compensation, the judge or justice shall examine the same and make such determination considering the nature and difficulty of the issues involved in the case and the time reasonably necessary to prepare and present the same. As used in this section, "health care provider" means a person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed medical care facility, health maintenance organization, licensed dentist, licensed professional nurse, licensed practical nurse, licensed optometrist, registered podiatrist or registered physical therapist or an officer, employee or agent thereof acting in the course and scope of his or her employment or agency.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

PROPOSED BILL NO.____

By Special Committee on Medical Malpractice

Re Proposal No. 43

AN ACT relating to the admissibility of evidence of payments or services received by an injured party from sources collateral to the wrongdoer in certain professional liability actions.

Be it enacted by the Legislature of the State of Kansas:

Section 1. In any action for damages for personal injuries or death arising out of the rendering of or the failure to render professional services by any health care provider, evidence of any reimbursement or indemnification received by a party for damages sustained from such injury, excluding payments from insurance paid for in whole or in part by such party or his or her employer, and services provided by a health maintenance organization to treat any such injury, excluding services paid for in whole or in part by such party or his or her employer, shall be admissible for consideration by the trier of fact. Such evidence shall be accorded such weight as the trier of fact shall choose to ascribe to that evidence in determining the amount of damages to be awarded to such party. As used in this section, "health care provider" means a person licensed to practice the healing arts or engaged in a postgraduate training program approved by the state board of healing arts, licensed medical care facility, health maintenance organization, licensed dentist, licensed professional nurse, licensed practical nurse, licensed optometrist, registered podiatrist or registered physical therapist or an officer, employee or agent thereof acting in the course and scope of his or her employment or agency.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

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PROPOSED BILL NO. ____

By Special Committee on Medical Malpractice

Re Proposal No. 43

AN ACT concerning civil procedure; relating to limitation of certain actions; amending K. S. A. 1975 Supp. 60-513, 60-513b and 60-515 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K. S. A. 1975 Supp. 60-513 is hereby amended to read as follows: 60-513. The following actions shall be brought within two (2) years: (1) An action for trespass upon real property.

(2) An action for taking, detaining or injuring personal property, including actions for the specific recovery thereof.

(3) An action for relief on the ground of fraud, but the cause of action shall not be deemed to have accrued until the fraud is discovered.

(4) An action for injury to the rights of another, not arising on contract, and not herein enumerated.

(5) An action for wrongful death.

(6) An action to recover for an ionizing radiation injury as provided ~~in-sections-2,-3-and-4-of-this-act~~ K. S. A. 1975 Supp. 60-513a, 60-513b and 60-513c and amendments thereto.

The cause of action in this section shall not be deemed to have accrued until the act giving rise to the cause of action first causes substantial injury, or, if the fact of injury is not reasonably ascertainable until some time after the initial act, then the period of limitation shall not commence until the fact of injury becomes reasonably ascertainable to the injured perty, but in no event shall the period be extended more than ~~ten-(10)~~ six (6) years beyond the time of the act giving rise to the cause of action. The provisions of this section as it was constituted prior to the effective date of this act shall continue in force and effect with respect to any act giving rise to a cause of action occurring prior to the effective date of this act.

[Sec. 2. K. S. A. 1975 Supp. 60-513b is hereby amended to read as follows: 60-513b. No action may be brought to recover for an ionizing radiation injury more than two (2) years after the person suffering such injury had knowledge or ought reasonably to have had knowledge of having suffered the injury and of the cause thereof, but in no event more than ~~ten-(10)~~ six (6) years from the date of the last occurrence to which the injury is attributed. The provisions of this section as it was constituted prior to the effective date of this act shall continue in force with respect to any occurrence giving rise to a cause of action for an ionizing radiation injury occurring prior to the effective date of this act.]

[Alternative A]

Sec. 3. K. S. A. 1975 Supp. 60-515 is hereby amended to read as follows: 60-515. (a) Effect. If any person entitled to bring an action, other than for the recovery of real property or a penalty or a forfeiture, at the time the cause of action accrued, or at any time during the period the statute of limitations is running, be within the age of eighteen (18) years, or an incapacitated person, or imprisoned for a term less than his natural life, such ~~person-shall-be-entitled-to-bring-such-action within-one-(1)-year-after-such-disability-shall-be-removed,-but no-such~~ action shall be maintained by or on behalf of ~~any~~ such person under the disabilities specified ~~after-twenty-two-(22) years-from~~ within eight (8) years after the time the cause of action shall have accrued. ~~The-provisions-of-this-subsection-as it-was-constituted-prior-to-the-effective-date-of-this-act-shall continue-in-force-and-effect-with-respect-to-any-person-who-was at-least-eighteen-(18)-years-of-age-and-not-more-than-twenty-one (21)-years-of-age-on-the-effective-date-of-this-act.~~

(b) Death of person under disability. If any person entitled to bring such action die during the continuance of any disability specified in subsection (a) of this section and no determination be had of the title, claim, interest, or action to him accrued, any person entitled to claim from, by or under him, may commence

such action within one (1) year after his death, but ~~not-after that-period~~ in no event shall any such action be maintained after eight (8) years from the time the cause of action accrued.

(c) The provisions of this section as it was constituted prior to the effective date of this act shall continue in force and effect with respect to any act giving use to a cause of action occurring prior to the effective date of this act.

[Alternative B]

Sec. 3. K. S. A. 1975 Supp. 60-515 is hereby amended to read as follows: 60-515. (a) Effect. If any person entitled to bring an action, other than for the recovery of real property or a penalty or a forfeiture, at the time the cause of action accrued, or at any time during the period the statute of limitations is running, be within the age of eighteen (18) years, or an incapacitated person, or imprisoned for a term less than his natural life, such person shall be entitled to bring such action within one (1) year after such disability shall be removed, but no such action shall be maintained by or on behalf of any person under the disabilities specified after ~~twenty-two-(22)~~ eight (8) years from the time the cause of action shall have accrued. ~~The provisions-of-this-subsection-as-it-was-constituted-prior-to-the effective-date-of-this-act-shall-continue-in-force-and-effect-with respect-to-any-person-who-was-at-least-eighteen-(18)-years-of age-and-not-more-than-twenty-one-(21)-years-of-age-on-the-effective-date-of-this-act.~~

(b) Death of person under disability. If any person entitled to bring such action die during the continuance of any disability specified in subsection (a) of this section and no determination be had of the title, claim, interest, or action to him accrued, any person entitled to claim from, by or under him, may commence such action within one (1) year after his death, but ~~not-after that-period~~ in no event shall any such action be maintained after eight (8) years from the time the cause of action accrued.

(c) The provisions of this section as it was constituted prior to the effective date of this act shall continue in force and effect with respect to any act giving rise to a cause of

action occurring prior to the effective date of this act.

Sec. 4. K. S. A. 1975 Supp. 60-513, 60-513b and 60-515 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

1

2 ______ BILL NO.______

3 By Special Committee on Medical Malpractice

4 AN ACT authorizing the convening of medical malpractice screening
5 panels; providing for the powers, duties and functions
6 thereof.

7 Be it enacted by the Legislature of the State of Kansas:

8 Section 1. Where a petition is filed in a district court
9 of this state claiming damages for personal injury or death on
10 account of alleged medical malpractice, the judge of the district
11 court or of the division of the district court to which such case
12 is assigned may convene a medical malpractice screening panel
13 hereafter referred to as the "screening panel." The district
14 judge shall appoint such persons as he or she deems necessary to
15 serve on the screening panel. The persons appointed shall
16 constitute the screening panel for the particular medical
17 malpractice claim to be heard.
18 Sec. 2. The district judge shall notify the parties to the
19 action that a screening panel has been convened and that the
20 members of such screening panel have been appointed. One member
21 of the screening panel shall be designated by the district judge
22 to serve as chairman of the screening panel. Members of such
23 screening panel shall receive compensation and expenses as may be
24 provided by rules of the supreme court of Kansas.
25 Sec. 3. The screening panel shall convene with notice in
26 writing to all parties and their counsel and shall hear evidence
27 and argument on the question of liability and on the question of
28 damages. The screening panel shall give notice and conduct its
29 meetings in accordance with rules of procedure adopted by the
30 supreme court of Kansas to govern notice and conduct of such
31 meetings, except strict adherence to the rules of procedure and
32 evidence applicable in civil cases shall not be required. All

1 meetings of the screening panel shall be held in camera.

2 The chairman of the screening panel shall preside at all
3 meetings of the screening panel and shall determine all questions
4 of procedure, including the admissibility of evidence. Witnesses
5 may be called, all testimony shall be under oath, testimony may
6 be taken either orally before the screening panel or by
7 deposition, copies of records, x-rays and other documents may be
8 produced and considered by the screening panel and the right to
9 subpoena witnesses and evidence shall apply as in all other
10 proceedings in the district court. The right of
11 cross-examination shall apply to all witnesses who testify in
12 person. The parties to the action shall be entitled,
13 individually and through counsel, to make opening and closing
14 statements. No transcript or record of the proceedings shall be
15 required, but any party may have the proceedings transcribed or
16 recorded. No screening panel member shall participate in a trial
17 arising out of the cause of action either as counsel or witness.

18 Sec. 4. (a) The screening panel shall make its
19 determination according to the applicable substantive law. Its
20 determination on the issue of liability and, if liability is
21 found, on the issue of fair and just compensation for damages
22 shall be made in a written opinion. The screening panel shall
23 state its findings of fact and its conclusions of law. A
24 concurring or dissenting member of the screening panel may file a
25 written concurring or dissenting opinion.

26 (b) The screening panel shall notify all parties when its
27 determination is to be handed down, and, within seven (7) days of
28 its decision, shall provide a copy of its opinion and any
29 concurring or dissenting opinion to each party and each attorney
30 of record and to the district judge.

31 (c) The findings of fact, conclusions of law and final
32 determination of the screening panel shall not be admitted into
33 evidence in any subsequent legal proceeding.

34 Sec. 5A. Within thirty (30) days following the date of
35 decision of the screening panel, the parties shall file written

1 notice with the clerk of the district court, with copies to each
2 other of their acceptance or rejection of final determination of
3 the screening panel. If all of the parties accept the final
4 determination of the screening panel, judgment may be entered
5 accordingly. In the event that one or more of the parties
6 rejects the final determination of the screening panel, the
7 plaintiff may proceed with the action in the district court.
8 Nothing herein shall be construed to prohibit the parties from
9 agreeing in writing at any time prior to the final determination
10 of the screening panel that such determination shall be binding
11 upon the parties.
12 Sec. 5B. (a) The parties may, by unanimous written
13 agreement, elect to be bound by the determination of the
14 screening panel at any time. Whenever the parties have
15 unanimously agreed to be bound by the determination of the
16 screening panel, the district court shall enter judgment thereon,
17 unless the parties shall unanimously agree that no judgment be
18 entered.
19 (b) In cases where the determination of the screening panel
20 is unanimous, and where the parties have not unanimously agreed
21 in writing to be bound by the determination of the screening
22 panel, each party shall file with the clerk of the district court
23 a written acceptance or rejection of the determination within
24 thirty (30) days of receipt of the written opinion. Any party not
25 timely filing a rejection of the determination shall be deemed to
26 have accepted such determination. If the determination is
27 accepted by all parties, the district court may enter judgment
28 thereon.
29 (c) In the event that one or more of the parties rejects
30 the final determination of the screening panel, the plaintiff may
31 proceed with the action in the district court.
32 Sec. 6. All proceedings, records, findings of fact,
33 conclusions of law, final determinations and deliberations of a
34 screening panel shall be confidential and shall not be used in
35 any other proceeding, or otherwise publicized, except as herein

1 provided, nor disclosed by any party, witness, counsel, screening
2 panel member, or other person, on penalty of being found in
3 contempt of court. The manner in which a screening panel and
4 each member thereof deliberates, decides, and votes on any matter
5 submitted to the screening panel, including whether the final
6 determination is unanimous or otherwise, shall not be disclosed
7 or made public by any person, except as herein provided.
8 Sec. 7. No member of the screening panel shall be subject
9 to a civil action for damages as a result of any action taken or
10 recommendation made by such member acting without malice and in
11 good faith within the scope of such member's official capacity as
12 a member of the screening panel.
13 Sec. 8. No witness testifying in good faith before any
14 screening panel shall be subject to a civil action for damages as
15 a result of such testimony.
16 Sec. 9. Unless otherwise provided by order of the district
17 judge, the costs shall be allowed to the party in whose favor the
18 final determination of the screening panel was made. Items which
19 may be included in the taxation of costs shall be those items
20 enumerated by K. S. A. 1975 Supp. 60-2003.
21 Sec. 10. This act shall take effect and be in force from
22 and after its publication in the statute book.

Attachment I

Wichita Neurological Institute, P. A.
3333 EAST CENTRAL SUITE 816
WICHITA, KANSAS 67208
TELEPHONE 685-2377

NEUROSURGERY
GREGG M. SNYDER, M.D.
JOHN J. CASEY, M.D.
PAUL S. STEIN, M.D.

NEUROLOGY
ELECTROENCEPHALOGRAPHY
LAUREN K. WELCH, M.D.
ARNOLD M. BARNETT, M.B., M.R.C.P.

October 10, 1975

The Honorable Wesley Sowers, Ewq.
Chairman
Joint Legislative Study Committee
on Malpractice
State Capital Building
Topeka, Kansas 66612

Dear Senator Sowers:

Concern over the status of recommendations presented by the KMS prompts me to respectifully draw your Committee's attention to certain of our key recommendations, which may not be fully understood. We appreciate the generous time allotted by your Committee for presentation of our concept of their problem. We did not formally present our recommendations for correction of the situation. You will recall that indeference to your Committee's congested schedule, the KMS relinquished it's valuable time for testimony to outlining our recommendations so that others could be heard, hoping the thrust of our proposals receive your attention through written material. We are concerned that some of our recommendations have not been fully emphasized nor well understood, and submit the following information in several important areas for your continued studious review.

Serious insurance problems remain unsolved. One of these, claims-made policies, impose an enormous burden on physicians. At retirement, disability, or the need to change from a claims-made company to another company, a physician is required to purchase a so-called reporting endorsement providing him protection for the "long tale" occasion by the Statute of Discovery and Limitations. The present Discovery and Filing Statute are excessive, all groups readily agree. Reduction of the Statuates to a maximum of six years as currenctly considered, simply fails to meet the crucial need of thirty six percent of our physicians insured by one company. The St. Paul Fire and Marine Insurance Company has gone on record with it's intentions of offering only claims-made policies. They do insure thirty six percent of Kansas Physicians. No other market is available to these physicians. Therefore, the Kansas Medical Society simply cannot live with a Discovery Statuate and Statute of Limitations which succeeds a two year total. The combined discovery and filing period must coincide with the terms of the new claims-made policies, since these appear to be the form most likely to be adopted by all companies offering medical liability insurance. In the states surrounding Kansas, Statuates for Discovery and Limitations have created no problem because they are shorter. Your Committee absolutely must recommend a Statuate in concert with our unique needs as imposed by the insurance companies, who we have discovered much to our chagrin, remain insensitive to the needs of medicine.

In the area of insurance availability physicians still face insurmountable obstacles in obtaining excess coverage at reasonable premiums as well as continued scarcity in basic limits coverage. We are assured that our State Insurance Commissioner has some input into regulation of premiums for basic coverage. However, the excess market is quite beyond his reach, and will continue to be so in the foreseeable future. To compensate for loss of excess coverage, increasing numbers of physicians are forced to extend basic coverage limits to higher levels of $200-600,000 or $300-500,000 levels. With proper legislative stabilization, availability of basic limits of $100-300,000 should prevail. Hence, our recommendation that a maximum liability of $100,000 for any health care provider be guaranteed through proper legislation. This brings us to the epitome of the quid pro quo and the recommendation of the patient's compensation fund. The Kansas Medical Society would not have the audacity to ask for special protection without willingness to provide benefits and protections to the public. The patient's compensation fund is such a benefit. It provides protection for recovery of the medically injured patient in claims exceeding the basic $100,000 gate. It is created and supported by the willingness of all health care providers to pay a surcharge based on a percentage of the basic coverage premium into the fund. It is designed to replace conventional excess coverage which is rapidly being priced out of the market. However, protection against fund depletion by excess or coincidental claims is essential and would be insured by establishing a maximum limit on claims not to exceed $500,000. We recognize the potential constitutionality question of limiting claims based on tort, and we are prepared to propose alternative methods of fund protection. We understand a proposal has been considered in your Committee, to develop a patient's compensation fund to satisfy judgements over a maximum individual liability level, then a recovery pool through a patient's compensation fund, finally supported by the concept of excess insurance for claims exceeding an arbitrary figure of something like one million dollars. This proposal actually requires the health care provider to foot the bill for providing not only basic, excess coverage, but also a third new layer in the middle between basic and excess. Such a program would be at least as expensive if not more so than the present combination of basic and excess coverage, and again would be unacceptable to all members of the Kansas Medical Society.

In another area, we have proposed screening panels which are designed to provide equal protection to plantiff and defendant alike, and would continue to operate within the present legal structure. Virtually all groups appearing before your Committee favor screening panels. Such a panel would study the medical facts in any given claim and relate these to medical injury. A variety of recommendations from the panel would be possible ranging from confirming the presence or absence of negligence, or making the recommendation that the facts at hand would not and could not permit a clear cut recommendation. In such cases, the screening panel might recommend that the case be remanded for conventional trial. Since these cases involve complicated medical facts and issues, we recommend they be composed of physicians only, chaired by an attorney who would serve as a source of guidance and legal information. Your Committee has recommended a panel composed partially of physicians, and attorneys, and possibly lay members. While there is great public appeal for such a balanced panel, it will ultimately fail in establishing facts since the minority physician member must strive to educate non-medical members in the hopelessly complex medical facts to sufficient degree they can make medical decisions. In an arbitration area, a balanced, mixed panel might work well because the issues are those with which all citizens have some

exposure and understanding. However, the Kansas Medical Society feels strongly that the panel should be composed only of physicians. To insure objectivity, and protect against any possibility of conspiracy, one panel member should be appointed by the plantiff, one by the defendant, and a third by the combined agreement of those two appointed panel members. Appointments would be made from lists of recognized, prominent, fully qualified physicians who after service on a panel would drop from the head to the foot of the list so that members would rotate. In support of the panel concept the Kansas Association of obstetricians and gynecologists has used a similar system in adjudicating forty nine cases. In addition to savings in cost, high creditability has distinguished this pilot program. We submit that this method of establishing fact at an early level in negotiation will serve all Kansans well by providing the purest talent available for the task. Keeping in mind the voluntary nature of any panel system, we seriously doubt that Kansas Health Care Providers would be willing to serve on mixed panels because of the extreme difficulty educating non-medical personnel to make proper judgements.

The Kansas Medical Society continues to feel that contingency fee practices are long overdue for review and modifications. By a growing number of attorneys, including those in high positions of the KBA, KTLA, and KDA, in spite of their published opinions. In full agreement with them however, we recognize that contingency fees per se do not cause the present malpractice crisis. To the extent that they contribute to high claims, we submit that an attorney becomes a prejudical party to the action when in fact his fee is determined by a percentage of the total claim. The higher the claim, the higher his fee. In order that sufficient remains to provide reasonable amounts for the plantiff, the claims must be higher to allow also for a contingency fee. The Kansas Medical Society does not have the temerity to recommend fee regulation for any profession. However, in the public interest, we feel the contingency fee system must be modified. Precident exists in the Federal Claims Tort Act establishing a twenty five percent maximum contingency fee. The Relative Sliding Scale Contingency Fee of New Jersy provides another model. Other deserving systems can be devised. A positive constructive recommendation pertaining to the contingency fee system by your Committee could achieve mutual cooperation and understanding from the Members of the Kansas Medical Society in greater measure than virtually any single recommendation you could make.

As negotiations progress, trends within KMS are developing which concern us greatly. Physicians with a retirement option available by virtue of age or outside income sources are in increasing numbers exercising it. Physicians are simply saying by their actions, that rather than continue to expose themselves to the distracting forces of the current malpractice crisis, they will opt out if given a reasonable choice. Frankly, we can't blame them, especially those physicians in the retirement or near retirement age. Other members to whom the retirement option isn't available, are becoming more militant, and restive. To date, the many small fires have been quelled. By the concerted efforts of the KMS leadership, demonstrations have been forestalled. While not intended in any way to be construed as a threat, the KMS leadership advises you and your Committee of these changing attitudes, at the same time reassuring you that we commit ourselves to every means possible to insure quietude in the days ahead. We hope reason, equanimity, and wisdom will prevail. To the extent possible, we will advise all KMS Members of the diligent com-

mitment you and your Committee Members have devoted to the monumental study of the malpractice crises.

In conclusion, the strong support afforded our program by the Kansas Association of Commerce and Industry, the Kansas Hospital Association, the Kansas Association of Nurse Anesthetist, the Kansas Association of Osteopathic Medicine, The Kansas Association of Nurses, and many other professional organizations is drawn to your attention. In increasing numbers individual members of the public who understand the problem are volunteering their support in our behalf. We are convinced that our proposal guarantees the rights of patients to recover, protects the physician, and should provide the stability which seems high in the minds of the insurance industry. We desperately need your understanding and support in these recommendations, but no less than Kansas desperately needs to serve and encourage it's devoted physicians to continue in their service to the public. Toward this proposition do we respectfully request your continued assistance and cooperation.

With kindest appreciation, and best regards, I remain

Sincerely yours,

Gregg M. Snyder, M.D.

GMS:saw

cc: John W. Travis, M.D.
Mr. Jerry Slaughter
Mr. Wayne Stratton
Payne Ratner, Jr., Attorney
Mr. George Trombold

_____ BILL NO. _____

By Special Committee on Medical Malpractice

AN ACT concerning the state board of healing arts; providing immunity from a civil action for damages for persons reporting certain information to such board.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) No person reporting to the state board of healing arts under oath and in good faith any information such person may have relating to alleged incidents of malpractice by a person licensed to practice the healing arts shall be subject to a civil action for damages as a result of reporting such information.

(b) This section shall be a part of and supplemental to the Kansas healing arts act.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Attachment 1

MEMORANDUM

TO: Mr. Bill Wolfe
Legislative Research Department

FROM: Fletcher Bell
Commissioner of Insurance

SUBJECT: Medical Malpractice Insurance

DATE: October 13, 1975

The following information is submitted in response to your questions on behalf of the Interim Legislative Committee on Medical Malpractice.

Your first question requested my opinion as to existing statutory authority for me to initiate a JUA for medical malpractice insurance coverage. My response is as follows:

> K.S.A. 40-2111 states that the Commissioner of Insurance has authority to direct companies to cooperate in the preparation and submission of a plan for the apportionment among insurers of applicants who are entitled to such insurance but who are unable to procure the same through ordinary methods. Specifically, this section deals with the kinds of insurance specified in subsection (a), (b) and (c) of K.S.A. 40-901 and subsection (b) and (c) of K.S.A. 40-1102. Subsection (b) and (c) of K.S.A. 40-1102 would appear to be specifically in point with regard to liability insurance generally. These subsections read as follows:

(b) to insure against the liability of the insured for the death or disability of or damages suffered by an employee or other person, and to insure the obligations accepted by or imposed upon employers under the laws for workmen's compensation.

(c) to insure against loss of or damage to, or destruction of property of the insured, or to the property interests of the insured, and to insure against such loss or damage to the property of others or to the property interests of others, for which loss or damage of the insured may be liable.

The intent of this section was to enact enabling legislation permitting the creation of an "assigned risk plan" for any type of liability insurance if such plan were deemed necessary by the Commissioner. The authority to write Medical Malpractice Insurance does fall within the scope of K.S.A. 40-1102(b). Therefore, I do feel that such statutory authority exists.

As background to the proposal and enactment of such legislation in 1969, there was an immediate need for the creation of an assigned risk plan for fire insurance policies which is covered by the reference to K.S.A. 40-901(a). In drafting the legislation to permit the creation of such

a plan, references were also included to the specific sections of K.S.A. 40-901 and 40-1102 to include basically all types of property and liability insurance in order to negate the necessity of specific legislation in the future after a problem area arises.

Your second question asks for my opinion regarding a JUA for Kansas. I believe the answer to this question was contained in my report to the Committee on August 28, 1975. Such report contained my recommendation to "Provide for a Joint Underwriting Association (JUA), or another pooling mechanism, of insurers to collectively assume malpractice risks that are not assumed individually which would be implemented upon a determination that malpractice insurance is not reasonably available. The JUA would be composed of all insurers authorized to write liability insurance in the state of Kansas." I anticipate that the JUA would be available to all duly licensed health-care providers (physicians, nurses and hospitals).

I feel there is need for a specific statute to authorize the creation of a JUA for medical malpractice in Kansas today. One of our current problems relate to the cost and/or availability of secondary or excess limits coverage above a primary offering available in today's market. There is a very limited need for some doctors to obtain basic or primary coverage (100/300) today. We know of one or two physicians in this state who are apparently practicing today without any form of medical malpractice liability insurance. The bulk of our inquiries and problems, however, have

related to certain classes of doctors attempting to obtain a "middle layer" of coverage above whatever amount of primary coverage they are presently able to obtain. We are finding that most physicians are able to secure needed excess insurance if they are able to purchase not less than $500,000 of primary coverage. I feel there is a current need for a facility to guarantee the availability of either the primary and/or secondary layers of coverage; however, I believe that specific legislative direction is desirable in order for the department to proceed. I believe we need a statute which establishes the amount of coverage that should be available to the practicing physician or licensed hospital from such a facility. The "basic" coverage which most physicians can readily purchase today (100/300 or 200/600) are considered to be grossly inadequate by most health-care providers. We have been informed, for example, that some Kansas anesthesiologists have indicated they simply would not practice their profession if they were unable to procure limits of less than two million dollars. Many physicians and surgeons feel that the present social climate and court awards being handed down today demand that they carry extremely high limits in order for them to feel secure in their practice. I feel that the legislature should make a specific expression of their intent as to how much coverage should be made available through a Joint Underwriting Association. Such legislation should also include a specific requirement that all companies writing liability insurance in Kansas are required to participate in the "pool" or JUA for medical malpractice insurance.

As contemplated in my previous report to the Committee, the JUA I proposed would be an alternate to other methods of providing relatively high limits of insurance such as a patients' compensation fund. Such a JUA is needed, however, for basic limits (100/300) coverage if the intent is to require such coverage for all licensed practitioners.

As a further explanation of why I believe a specific JUA statute is needed and why I have not exercised the authority contained in K.S.A. 40-2111, the following points are pertinent:

(1.) We have encountered tremendous difficulty in attempting to establish an amount of insurance that should be made available through a JUA. As described above, the amount of insurance felt necessary varies by physician, and there is no "minimum amount" specified by the legislature that can be used as a "benchmark" as is done, for example, with financial responsibility limits for automobile liability insurance. It is felt, therefore, that the implementation and successful operation of a JUA would be facilitated if the amount or maximum limit expected to be provided by the JUA was prescribed statutorily.

(2.) We have also encountered difficulty in establishing a base over which to spread the medical malpractice risks. Our original

intent was to require only the insurance companies now writing such risks to belong to the JUA. However, after much study and many conferences, it is now evident that there are too few insurance companies now writing such coverage and the risks to be assumed are too great in order to practically effect this theory. We are apprehensive that companies representing the majority of the medical malpractice market would cease writing such coverage altogether rather than assume such risks through the JUA that they have already refused to write. Therefore, a larger base needs to be developed - such as all companies now writing any kind of liability insurance (General Liability, Automobile, Workmen's Compensation, etc.) - in order to provide the financial capabilities and spread of risk necessary to have an effective JUA. Again, it would greatly facilitate the implementation of such a JUA if specific legislative intent on this point were in existence.

In response to your request for the amount of premium dollars paid to insurance carriers in Kansas for the year 1974 for medical malpractice insurance, I must advise that the total amount is not presently available. Prior to 1975 insurers were not required to automatically report medical malpractice premiums as a separate item in their annual statements submitted to this or any other state insurance department. This

results in the unavailability of specific premium or loss information from our present records. The National Association of Insurance Commissioners has responded to this particular problem by requiring insurers to report medical malpractice premiums and losses as a separate item on their financial statements as of December 31, 1975. In view of this, the specific information requested will not be available from Insurance Department records until March 1, 1976 when companies are required to file their 1975 annual statements with our office.

In order to be of some assistance, however, I have contacted the two major writers of this insurance requesting information on their 1974 writings. Based upon the assumption that these companies write approximately 85 percent of the malpractice insurance for physicians and surgeons and 55 percent of the hospital malpractice coverage in Kansas, it is estimated that the total amount of premium being paid in Kansas for this insurance is $2,186,207. Exhibit A attached to this memorandum projects this information separately for physicians and surgeons and hospitals.

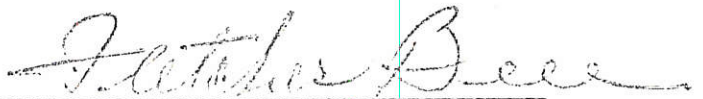
You have requested my views on the establishment or creation of mutual insurance companies - doctor-owned or provider-owned. I understand the question arises out of an inquiry related to doctors in several states who have organized to create a larger base from which to operate a company.

My view on such a "doctor-owned" company is that it could be another means to responding to the issue of availability of needed insurance coverage. Such a company could presently be formed under authority existing in the Kansas Insurance Code. This idea was advanced around the first of the year by more than one person inquiring as to the requirements to create and operate an insurance company exclusively for the purpose of providing medical malpractice insurance. The concept might be attractive if the carrier itself could assure that it would be guaranteed the ability to write coverage for more than 50 percent of the practicing physicians and surgeons in the state of Kansas and further that the type of physician to be written would not be exclusively of one speciality. As an example, it would be financially unfeasible if the company were to write only anesthesiologists and brain surgeons and other high-risk categories or specialities. A company generally needs a "rounded" book of business in order for it to maintain itself in the market. It should probably have a number of the low-risk practitioners as well as some of the high-risk practitioners in its book of business so that any one speciality which might sometime in the future become a target would not overbalance other specialities of health-care providers. I believe that such a company would be confronted with the same problems of pricing its coverage and obtaining needed reinsurance unless it had a substantial portion of the overall market in the state. We had previously been informed by a Chicago insurance broker that it

would be desirous of proposing a plan to be used in the state of Kansas if it could be assured of writing more than 50 percent of all doctors in the state and with the further assurance that they would not be requested to write only those providers who have had claims or who were engaging in a high-risk speciality.

I anticipate the above comments together with the attached exhibit will adequately respond to your inquiry; however, please let me know if you have any additional questions.

Respectfully submitted,



Fletcher Bell
Commissioner of Insurance

FB:llc
Attachment

EXHIBIT A

1. Physicians and Surgeons

Company	1974 Premiums
St. Paul Fire & Marine Ins. Co. (Writes approximately 35% of business)	$692,562
Medical Protective (Writes approximately 50% of business)	$798,537
All Other Companies, which write the remaining 15% of business	$263,135*
Total	$1,754,234

*This is an estimated figure. It is 15% of the total amount.

2. Hospitals

Company	1974 Premiums
St. Paul Fire & Marine Ins. Co. (Writes approximately 55% of business)	$237,585
All Other Companies (45% of business)	$194,388#
Total	$431,973

#This is an estimated figure. It is 45% of the total amount.

74 Supp.

65-442. Liability for damages of members of medical staff and medical review committees; limitations. (*a*) There shall be no liability on the part of, and no action for damages shall arise against, any duly appointed member of the governing board or the duly appointed member of a committee of the medical staff of a licensed medical care facility for any act, statement or proceeding undertaken or performed within the scope of the functions of such committee of the medical staff if such member has made a reasonable effort to obtain the facts of the matter as to 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, and the medical staff operates pursuant to written bylaws that have been approved by the governing board of the medical care facility.

(*b*) 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. [K. S. A. 65-442; L. 1973, ch. 248, § 12; July 1.]