MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 p. m., on February 2, 1978,

All members were present except: Representatives Heinemann, and Hurley, who were excused.

The next meeting of the Committee will be held at _____ a. m./p. m., on _____, 19____.

These minutes of the meeting held on _____, 19____ were considered, corrected and approved.

Chairman

The conferees appearing before the Committee were:
Rep. Loren Hohman
Payne Ratner, Jr
Dr. Dan Roberts
Jerry Levy

The meeting was called to order by the Chairman. He reminded members they had heard two bills concerning appeals procedures from the Corporation Commission. He further noted that the conferees had testified the two bills are identical and that perhaps a committee bill would be appropriate, as there seems to be no opposition on the part of the Corporation Commission nor the various utilities. He appointed Rep. Baker as a subcommittee of one to work with Mr. Griggs of the Revisor's office to combine the two bills along with suggested amendments which were agreed to by all of the sponsors and all of the conferees who testified.

The Chairman called attention to a request by the Kansas Highway Patrol that the committee introduce a bill which would give some relief to officers, not only patrolmen, but sheriffs' officers and police officers, in regard to testifying on DWI arrests. In addition, Major Elliott of the Highway Patrol had asked for legislation prohibiting the use of interception type mechanisms used by unauthorized persons in regard to law enforcement broadcasts. He asked members to think about the possibility of such introduction.

The Chairman introduced Rep. Hohman, who discussed House Bills 2338 and 2839. He explained that he was one of the sponsors of the bills, as well as a member of the Health Study Commission which recommended such legislation. He noted also, that these bills were recommended to the Commission by the Kansas Medical Society, along with SB 367 which had been considered in the last session. He explained because of a recent court ruling it was felt if such legislation is not passed, there will be an increase in the number of suits, as well as costs in trying and defending such suits, all of which will be passed on and ncrease the cost of medical care.

Rep. Ferguson stated that it would appear there might be problems in getting a local physician to testify against another local physician in malpractice matters, and suggested it might be necessary to get someone outside the state to testify on standards of care.

Rep. Hohman testified it appears to be a problem of locality and that physicians provide the best treatment they can under the circumstances. He suggested the standards are not necessarily the same all over the country, at least as understood by the study Commission.

Rep. Stites observed that on the basis of the facilities available, it might be difficult to set the standard of care throughout the state or the nation.

The Chairman stated that Justice Miller says we have never adhered to the strict locality rule.

Rep. Hohman agreed that causes previously considered took into account testimony from physicians outside the state, totally unfamiliar with the practices in Kansas, and that the decision had broadly defined standards of care.

The Chairman stated, with regard to malpractice legislation, the way JUA (Joint Underwriting Association) was set up, it was the goal to develop a reserve to be reached within ten years, and it is his understanding that it already has reached its goal. Rep. Hohman replied they had a full report of the status during the summer; that more people had opted under the program than anticipated, which accounts for the fiscal state, but further noted there are a number of good sized claims still pending, which will have an effect on the program.

The Chairman asked what had happened with regard to the private carriers, and Rep. Hohman stated the rates have leveled out, and there is a greater availability. Further, he noted that one of the things the Commission had learned with regard to insurance rates, was that companies said they couldn't predict the costs of such insurance and wanted to get out of the business, which put another unknown into the problem.

With regard to HB 2839, Rep. Hohman explained it denies the right to bring an action in a contract situation unless the contract is in writing and signed by the provider or his agent. He explained the reason is that while there have been few such suits in Kansas, most of which were not successful, it opens up a new style of practice which could result in expensive defense costs which would eventually be passed along.

Rep. Foster stated he was under the impression that such suits had never been brought in Kansas. Mr. Payne Ratner, representing the Kansas Medical Society, stated he knew of some, and that he had brought one himself a number of years ago with success. Nevertheless, he stated he felt such suits, if brought, should be solidly contracted. Mr. Ratner introduced Dr. Dan Roberts of Wichita, to comment on the three bills.

Dr. Roberts stated he is Chairman of the Kansas Medical Society Legal Medical Committee, and also had been a member of the summer Health Care Commission. He told the committee he would be talking about his experience in the past as Chairman of the Department training residents in general, and in particular family practice. He urged

that members consider the locality rule when they are considering the matters of lawsuits in malpractice cases. In particular, he spoke about so-called expert witnesses brought into rural Kansas from the East coast and the West coast, and even from Canada, and asked members to consider what those far removed people might know about practice in small rural areas where there might be only one physician, and where the equipment and facilities might be quite different than in a huge urban community. He suggested that members recognize in an emergency such a physician will be doing the best he can with the facilities at hand, and that often the local patient demands the physician in such an area to proceed with treatment. Dr. Roberts suggested that practice under such circumstances is quite different from practice in areas where there is an opportunity to consult, and where additional facilities are close at hand. He urged that when it comes to bringing in expert witnesses, consideration should be given to limiting such testimony to adjacent areas--i,e. from adjoining states in substantially the same kind of community. He testified he has never allowed himself to be reluctant to testify about his convictions in any case involving another physician, and has always made himself available in court. Further, he stated that this philosophy has not always made him popular with his colleagues. Nevertheless, he told the committee, he feels he has the respect of his fellow physicians and that the climate is improving to the point he feels most physicians are willing to testify as to their observations and beliefs. He stated he believes the day of protection is over, and that physicians are dedicated to their own specialty and are willing to stand by their professionalism.

With regard to SB 367, Dr. Roberts testified if staff is not allowed to police "their own" in the privacy of medical staff committees, it will force physicians to be less than candid and there will be more cases of poor practice; that he believes such privilege has improved the quality of care and has required physicians to not take on certain procedures beyond their training and capability. He urged members to believe the method is working and will continue to be still more effective.

The Chairman inquired about physicians who guarantee a specific result. Dr. Roberts stated he does not believe any physician he knows guarantees anything, and that the instances of such guarantees are very rare. He did suggest that very often patients hear what they want to hear, and feel they have some kind of guarantee, when in fact the physician has told the patient of the possible good results and the possible negative results. As a matter of protection, he stated he always notes on the patient's chart a good portion of the conversation with both patient and the family, and then reiterates what is written on the chart. The decision is then with the patient and the family as to the procedure when there is substantial risk. He stated that it is very sad to make so many explanations to the patient so as to jeopardize what might be a successful procedure, but that most physicians have learned it is sometimes wiser to kill a physician-patient relationship than to proceed with treatment which the physician may feel

is paramount, but which the patient is not able to comprehend.

Rep. Frey inquired if there isn't a requirement that a patient sign a consent form, and suggested it would be difficult to get a doctor to sign a guarantee. Rep. Foster observed he supposed the next thing would be to hold an insanity hearing for the patient to see if he was capable of giving consent.

Mr. Jerry Levy, representing the Kansas Trial Lawyers Association, testified that Dr. Roberts is one in a million; that truly he is an objective and good witness in lawsuits and that attorneys, patients and all others concerned can rely on accurate testimony, but that this is not true of all witnesses.

He commented on the Supreme Court case involving a stiuation in Chanute, where expert witnesses were brought in from Los Angeles and from Denver. The locality rule was struck down in the particular case, and Mr. Levy suggested this type of testimony is proper because all physicians graduate under the same requirements; that they don't graduate to practice in Chanute, or Wichita, or Chicago or any place else. He stated they can choose to practice where and when they wish, and that they are all subject to the same standards, and therefore they have the right to make judgment on each other no matter where they may be practicing.

Mr. Levy noted that he had previously testified regarding SB 367, and that his feelings with regard to the "conspiracy of silence" is well recognized.

The Chairman called attention to HB 2601, noting that the Department of Corrections had requested introduction, and now ask that the bill be not passed. It was moved by Rep. Foster and seconded by Rep. Lorentz that the bill be reported adversely. Motion carried.

The Chairman asked if members had considered the matters requested by the Highway Patrol in regard to the DWI testimony and that the interference with law enforcement transmissions. Rep. Frey stated he felt there were adequate alws to take care of the first request, but moved that the request regarding interference with law enforcement transmissions be honored and that a proposal be drafted and referred back to committee. Motion was not seconded.

The meeting was adjourned.

House Judiciary

2-2-78

Name	Address	Organization
Bob Corner	R#1, Ozawkie, Ks.	KMJ
Ken Kapfer	Wichita	KFH
Bob Lockwood	Topeka	KTLA
Ed Johnson	Topeka	Kansas Assoc. of Property Cas. Ins. Co.

Session of 1976

HOUSE BILL No. 3184

By Committee on Judiciary

2-10

AN ACT relating to the operation of motor vehicles; concerning hearings for failure to submit to certain chemical tests; amending K. S. A. 8-1001 and repealing the existing section.

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

Section 1. K. S. A. 8-1001 is hereby amended to read as follows: 8-1001. Any person who operates a motor vehicle upon a public highway in this state shall be deemed to have given consent to submit to a chemical test of breath, blood, urine, or saliva for the purpose of determining the alcoholic content of his or her blood whenever he or she shall be arrested or otherwise taken into custody for any offense involving operating a motor vehicle under the influence of intoxicating liquor in violation of a state statute or a city ordinance and the arresting officer has reasonable grounds to believe that prior to arrest the person was driving under the influence of intoxicating liquor. The test shall be administered at the direction of the arresting officer. If the person so arrested refuses a request to submit to the test, it shall not be given and the arresting officer shall make to the division of vehicles of the state department of revenue a sworn report of the refusal, stating that prior to the arrest the officer had reasonable grounds to believe that the person was driving under the influence of intoxicating liquor. Upon receipt of the report, the division immediately shall notify such person of his or her right to be heard on the issue of the reasonableness of the failure to submit to the test. If, within twenty (20) days

after receipt of said notice, such person shall make written request for a hearing, the division shall hold a hearing within the time and in the manner prescribed by K. S. A. 8-255, *except that the hearing shall be held in the county where the refusal of the chemical test was made.* Notice of the time, date and place of hearing shall be given to such person by restricted mail; as defined by K. S. A. 1975 Supp. 60-103, not less than five (5) days prior to the hearing. If a hearing is not requested or, after such hearing, if the division finds that such refusal was not reasonable, and after due consideration of the record of motor vehicle offenses of said person, the division may suspend the person's license or permit to drive or nonresident operating privilege for a period of not to exceed one (1) year.

Sec. 2. K. S. A. 8-1001 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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Kansas Peace Officers' Association

INCORPORATED

SPECIAL TRAFFIC, CRIMINAL AND JUVENILE CODE COMMITTEE

CHAIRMAN - FRED HOWARD - Chief,Police Dept.,Topeka,Ks. 66603
TRAFFIC AND SAFETY LAWS
VICE-CHAIRMAN - STUART ELLIOTT,Major,KHP, Topeka,Ks. 66603
MEMBER - ED BOZARTH - Captain, Police Dept., Topeka, Ks. 66603
MEMBER - DICK DUNBAR - Lt., KHP, 3200 E. 45th St, No., Wichita,Ks.67220
MEMBER - NICK EDVY - Inspector, Traffic, Riley Co. Police Dept.,Manhattan,Ks.66502
MEMBER - HARLAN ENLOW - Chief, Police Dept., Beloit, Ks.67420
MEMBER - GLENN FILLMORE - Lt., Police Dept., Wichita,Ks.67201
MEMBER - DICK GADBERRY - Sgt., Sheriff's Dept.,525 N. Main, Wichita, Ks.67203
MEMBER - DAVE GISH - Special Agent, Union Pacific R.R.,201 S.5th,K.C.,Ks.66101
MEMBER - RON JACKSON - Captain, Police Dept.,Overland Park,Ks.66212
MEMBER - JACK MENDENHALL - Sheriff, LaCrosse,Ks.67548
MEMBER - JIM RIGHTMIRE - Special Agent,Santa Fe R.R.,4515 Ks.Ave.,K.C.,Ks.66106
MEMBER - LEE STANLEY - Lt., Police Dept., Topeka, Ks.66603
MEMBER - ROBERT STONE - Lt., Police Dept., Hutchinson, Ks.67501
MEMBER - NORMAN THOMAS - Ptlman, Police Dept., Emporia, Ks.66801
MEMBER - DARRELL WILSON - Ass't Chief, Police Dept., Salina, Ks.67401

KANSAS HOSPITAL ASSOCIATION

MEMORANDUM

Frank L. Gentry
President

January 26, 1978

2-2

TO: The House Committee on Judiciary

FROM: Frank L. Gentry, President

SUBJECT: SENATE BILL NO. 367, AN ACT relating to the confidentiality of records and proceedings of a medical staff committee of a medical care facility.

Your Chairman, Mr. Brewster, was very cooperative in postponing committee consideration of this bill at my request, which was prompted by my having to be out of the State a few days.

It occurs to me that since it has been nearly a year since we testified in favor of the bill, it might be appropriate to briefly reiterate the points we made. These are:

- Our motivation in seeking such legislation is to enhance control in connection with quality of care and the quality of medical practice in the hospital.

- Hospitals have a moral and legal responsibility to maintain such control and this is met through the mechanism of medical staff committees making recommendations to the hospital governing body.

- The quality review of the medical staff organization has taken on several forms, such as the credentials committee, the tissue committee, or the medical audit committee, to name a few -- all working to the end of insuring that medical practice in Kansas hospitals is of a high quality.

- For these committees to be effective, there must be frank and open discussions; the minutes and records of such meetings need to be kept confidential so that this can occur.

- The quality assurance programs are the only processes now carried out within the field of medicine outside of independent studies for research purposes. Their continuation, then, strikes at the very heart of the improvement of medical care, public health, and the reduction of morbidity and mortality of Kansans.

- Inadequate protection of the process threatens not only the conduct of quality assurance programs; but could deteriorate the nature and quality of the records.

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- It is submitted that the benefits that would accrue to the general public far outweighs any harm or injustice which litigants may suffer in a particular case resulting from refusal to allow discovery of committee records.

These are excerpts from the testimony made before the House Judiciary Committee on March 17, 1977, by Harrison Hall, M.D., Topeka; C. Jerome Jorgensen, President, Stormont-Vail Hospital, Topeka; and, Wayne T. Stratton, Topeka, legal counsel for the Kansas Hospital Association. Should any of you wish to see a copy of the full testimony of any or all of them, it is available at our office.

In further support of this bill, I remind you that the Kansas Health Care Provider Malpractice Study Commission took action last summer in support of this bill.

Your recommending the bill favorably for passage is urged.

2-2

SUPREME COURT
STATE OF KANSAS

JULY TERM, 1977

PRESENT

HON. ALFRED G. SCHROEDER, CHIEF JUSTICE
HON. ALEX M. FROMME,
HON. PERRY L. OWSLEY,
HON. DAVID PRAGER,
HON. ROBERT H. MILLER,
HON. RICHARD W. HOLMES,
HON. KAY McFARLAND,
} JUSTICES.

No. 48,500

ANGELA DAWN CHANDLER, a minor, by KAREN G. CHANDLER, her mother and next friend, and KAREN G. CHANDLER, individually, *Appellants*, v. NEOSHO MEMORIAL HOSPITAL and ALEXANDER MIH, *Appellees*.

SYLLABUS BY THE COURT

1. HOSPITALS—*Standard of Medical Care—Established by Medical Experts.* The standard of medical and hospital care which is to be applied in each case is not a rule of law, but a matter to be established by the testimony of competent medical experts.
2. PHYSICIANS AND SURGEONS—*Standard of Care—Acquiring Knowledge of Standard.* An expert may acquire knowledge of the applicable standard in the same manner that he acquires his other expert knowledge—through practical experience, formal training, reading, and study, or through a combination of those.
3. SAME—*Malpractice—Excluding Testimony of Expert Medical Witnesses Error.* In a medical malpractice action, the record is examined and it is held that the trial court erred in excluding proffered testimony of plaintiff's expert medical witnesses and in directing a verdict for the defendants.

Appeal from Neosho district court, division No. 4; GEORGE W. DONALDSON, judge. Opinion filed September 7, 1977. Reversed with directions.

Gerald Michaud and *Jerry K. Levy*, of Michaud and Cranmer, Chartered, of Wichita, argued the cause, and were on the brief for the appellants.

Charles F. Forsyth, of Erie, argued the cause, and was on the brief for appellee, Alexander Mih, and *Randall D. Palmer*, of Pittsburg, argued the cause, and was on the brief for appellee, Neosho Memorial Hospital.

Wayne T. Stratton and *Harold S. Youngentob*, of Goodell, Casey, Briman & Cogswell, of Topeka, were on the brief *amici curiae* for Kansas Medical Society and Kansas Hospital Association.

M. Ralph Baehr, of Wichita, was on the brief *amicus curiae* for The Kansas Trial Lawyers Association.

The opinion of the court was delivered by

MILLER, J.: We are called upon to determine whether the trial court erred in excluding the testimony of plaintiff's expert medical witnesses in this case of alleged medical malpractice. We conclude that the court did err, and we reverse.

The minor plaintiff, Angela Dawn Chandler, was born prematurely in the Neosho Memorial Hospital. Alexander Mih was the attending physician. Plaintiff claims that the defendants, Dr. Mih and the hospital, negligently caused excessive amounts of oxygen to be continuously administered to her over an extended period of time, causing her to be blind.

During trial, plaintiff called two physicians as expert witnesses. Both were certified pediatricians with wide experience. One was a professor of pediatrics at the University of California at Los Angeles, the other at the University of Illinois. The trial judge found both witnesses to be well qualified.

Neither witness had practiced medicine in Chanute, in a community of similar size, or in a nearby community. One testified that through his study of publications of the American Medical Society and the journals published for use by general practitioners, and through his participation in medical seminars, he knew the degree of learning and skill ordinarily possessed by general medical practitioners in Chanute and similar communities; he was aware of the staff, the facilities and the equipment available at Chanute; and in his opinion the standard of care for premature infants was the same in Chanute as it is in all parts of the United States.

A proffer was made pursuant to K.S.A. 60-243 (*c*) of the witness' opinion testimony. He was prepared to testify that in his opinion the standards for the administration of supplemental oxygen to premature infants is the same for all members of the medical

profession and in all hospitals throughout the United States; that both defendants deviated from those standards; and that the departure of Dr. Mih from medical standards, and of the hospital from standard hospital procedures, was the direct cause of Angela Chandler's blindness.

The trial court held as a matter of law that the standards of care for the treatment of premature infants *could not* be the same nationwide; that the standards *must* be different in Chanute and similar communities from what the standards are elsewhere in the United States; and that since the witness had no experience in Chanute or in any similar community, he was not qualified to express his proffered opinions. A like ruling was made as to the second expert. At the close of plaintiff's evidence, the trial court held that plaintiff had failed to establish negligence and causation by expert medical testimony, which was required under the circumstances (see *Funke v. Fieldman*, 212 Kan. 524, 512 P.2d 539), and directed a verdict for the defendants.

Our rules are familiar, and have been often stated. A physician or surgeon is expected to have and to exercise that reasonable degree of learning and skill ordinarily possessed by members of his profession and of his school of medicine in the community where he practices, or similar communities; similarly, a hospital is required to exercise that degree of care, skill and diligence used by hospitals generally in the community or in similar communities under like circumstances. *Avey v. St. Francis Hospital & School of Nursing*, 201 Kan. 687, 442 P.2d 1013, and cases cited therein.

We have never adhered to the "strict locality rule," although our early cases recognized that those practicing medicine in rural communities might be subject to less stringent or different standards than those practicing in populous urban centers. See *Teft v. Wilcox*, 6 Kan. 46, decided more than a century ago.

Justice Kaul, speaking recently for a unanimous court in *Avey*, supra, said:

"It is quite clear from a review of the cases cited that this court, by including the phrase *'or similar communities,'* has not given the restrictive application to the locality rule, such as was applied in some jurisdictions, in medical malpractice cases.

. . . . . .

"In our judgment the need for emphasis on locality no longer exists. Even though in some cases allowances must be made in defining similar localities by

the recognition of such factors as population, the availability of medical facilities, medical equipment, etc., we believe the knowledge of similar conditions is the essential element rather than geographical proximity. We do not mean to say that the nature of the locality of a hospital may be totally disregarded but in our judgment geographic proximity is only one factor to be considered in determining similarity.

"The standardization of hospital and nursing procedures, brought about by the Kansas statutes, regulations promulgated thereunder, and the standards of the joint commission on hospital accreditation, serve to deemphasize the strict application of geographic locality. The standards, and regulations referred to, recognize in many instances the differences in hospitals with respect to size and services offered.

"We hold, therefore, that, where a proper foundation of knowledge of similarity of conditions is established, the testimony of an otherwise qualified expert is admissible as evidence, tending to show the standards of care required of a hospital in a similar community involving a case under like circumstances. . . ." (Emphasis supplied.) (pp. 696, 697-698.)

"Locality" has to do with population, location, hospital and laboratory facilities, staff, and the medical practitioners and specialists available. It is simply one of the factors to be considered. A small hospital would not ordinarily have or be expected to provide specialized equipment and facilities necessary for the treatment of diseases or conditions which are rarely or infrequently found; on the other hand, it would be expected to have that basic equipment essential for the care and treatment of those diseases and conditions regularly encountered among its patients.

Advances in travel, communication, and publication over the past century have markedly reduced the gap between urban and rural practitioners in all professions. Medical and other professional journals are widely and promptly distributed. Seminars, attended by practicing members of the professions from communities of all sizes, are not only commonplace but are regarded by most professionals as essential to the continuing learning process required.

No doubt many areas of medical practice and hospital care are now standard throughout the United States. In yet other areas of medical practice and hospital care, procedures and treatment may differ because of local preference and experience, because of altitude and climate, or because of the availability or lack of equipment, facilities, and staff. We are not, therefore, prepared to say that national standards apply in every area of health care; but we recognize that *some* standards may well be of universal application.

The standard of medical and hospital care which is to be applied in each case is not a rule of law, but a matter to be established by the testimony of competent medical experts. An expert may acquire knowledge of the applicable standard in the same manner that he acquires his other expert knowledge—through practical experience, formal training, reading, and study, or through a combination of those. See *Casey v. Phillips Pipeline Co.*, 199 Kan. 538, 431 P.2d 518; and *Grohusky v. Atlas Assurance Co.*, 195 Kan. 626, 408 P.2d 697.

The witnesses here, well qualified medical experts, claimed knowledge of the applicable standards of care, and they gave a reasonable explanation as to how such knowledge was acquired. We recognize the rule that the determination of the qualifications of a witness to testify as an expert is a matter left to the sound discretion of the trial court, and that discretionary rulings are not reviewable in the absence of abuse of discretion or error of law. *Avey v. St. Francis Hospital & School of Nursing*, supra. Here, however, the trial court erred as a matter of law, and not as a matter of discretion, when the court ruled that the applicable standard could not be the same in Chanute as it is elsewhere in the United States. We conclude that the proffered expert testimony should have been received and admitted into evidence.

One other matter deserves attention. Appellees contend that the expert testimony was inadmissible because the background facts upon which it was based were neither perceived by or personally known by the witness, nor "made known to the witness at the hearing," as required by K.S.A. 60-456 (*b*). Appellees argue that the only way for an expert witness (who was not personally present during the occurrence) to acquire background information and data upon which to base opinion testimony under this statute is for the witness to attend throughout the entire trial and to hear all the testimony and examine all exhibits admitted, so that the facts are perceived by him *at the hearing*. We do not so construe the statute.

K.S.A. 60-456 (*b*) reads as follows:

"If the witness is testifying as an expert, testimony of the witness in the form of opinions or inferences is limited to such opinions as the judge finds are (1) based on facts or data perceived by or personally known or made known to the witness at the hearing and (2) within the scope of the special knowledge, skill, experience or training possessed by the witness."

Where the facts and data are not perceived by or personally known by the witness, they must be supplied to the witness so that he is aware of them at the time he testifies. This may be done by having him attend throughout the trial; but it is certainly much more common, and just as proper, for counsel to provide the witness with the factual background prior to the time he expresses his opinion. The facts made known to him and upon which his opinion is based should, of course, be in evidence; as we said in *Casey v. Phillips Pipeline Co.*, supra, p. 546, "made known" as used in K.S.A. 60-456 (*b*) refers to facts put in evidence. Before stating his opinion, the witness may be examined concerning the data upon which the opinion is founded, if the judge so requires, and upon cross-examination the witness may be required to state the data which he has considered. K.S.A. 60-457, 458.

The witnesses here had not been inside the hospital. We suggest that where available hospital facilities and equipment are factors of some importance, the better practice would be to have the witnesses tour that facility before trial.

For the reasons stated, the judgment of the district court excluding the testimony of plaintiff's expert medical witnesses and directing a verdict at the close of plaintiff's evidence is reversed, with directions to grant a new trial.

In re The Complaint made against EARLE E. BREHMER by the State Board of Law Examiners

(Bar Docket No. 4253)

ORDER OF PUBLIC CENSURE

WHEREAS, In a proceeding conducted by the State Board of Law Examiners to inquire into the complaint of alleged professional misconduct by EARLE E. BREHMER, and

WHEREAS, Following a full hearing as to such complaint, the State Board of Law Examiners found that EARLE E. BREHMER, Norton, Kansas, notwithstanding admonishments of the court, neglected legal matters entrusted to him either as administrator or executor of several estates, or as attorney for the administrator or executor of said estates, by failing to meet the statutory time standard or obtain court authority to deviate from the standard, and thereby violated DR 6-101 (A) (3) of the Code of Professional Responsibility (214 Kan. lxxxvii), and

WHEREAS, The State Board of Law Examiners has made a written recommendation to this Court that said EARLE E. BREHMER be disciplined by "Public Censure" as provided by Rule 203 (*a*) (3) (220 Kan. xxviii [Adv. Sheet No. 2]), and

WHEREAS, In accordance with Rule 213 (*c*) (220 Kan. xxxiii [Adv. Sheet No. 2]), a copy of the report, findings and recommendations of the Board was mailed to respondent on July 27, 1977, along with a citation directing respondent to file with the Court either a statement that he did not wish to file exceptions, or his exceptions to the report, and

WHEREAS, Under date of August 19, 1977, respondent filed his response to the citation, stating that he did not wish to file exceptions to the report, findings and recommendations, but requesting permission to appear before the Court with counsel to make a statement regarding the recommendations for discipline, and

WHEREAS, On the 23rd day of September, 1977, after notice to respondent, a hearing was held before the Court for the purpose of allowing respondent to make his statement. The State of Kansas appeared by Philip A. Harley, assistant attorney general, and respondent appeared in person and by his attorney, Terry E. Relihan, and

WHEREAS, Upon consideration of the record and the statement