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OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

June 21, 1999

The Honorable Harry B. Limehouse, III  
8 Cumberland Street  
Charleston, South Carolina 29401

**Re: Informal Opinion**

Dear Representative Limehouse:

You have requested an opinion regarding the interpretation of Section 40-71-10 and 40-71-20 of the Code of Laws of South Carolina 1976, as amended. You state that in Charleston County, there is a Network (the "Network") of cardiac care physicians organized through a South Carolina business operation that is wholly owned by a South Carolina business corporation which wholly owns, manages and operates several licensed South Carolina hospitals (the "Hospital Parent Company"). All of these South Carolina hospitals (the "Hospital" or Hospitals") conduct their own peer review processes related to the members of their medical staffs. Although the Network is wholly owned by the Hospital Parent Company, the Network makes peer review decisions with respect to its member physicians through a process that is independent of the Hospital's peer review process. The Hospital does, however, share certain information with the Network including information related to the Hospital's peer review process. The Network and the Hospital possess common administrative officers and common governing body members. The State of South Carolina has adopted a statute to protect the confidentiality of peer review activities of hospitals and professional societies. See S.C. Code 40-71-20 (the "Peer Review Statute").

LAW/ANALYSIS

S.C. Code Ann. Sec. 40-71-10 provides as follows:

(A) "Professional society" as used in this chapter includes legal, medical, osteopathic, optometric, chiropractic, psychological, dental, accounting,

pharmaceutic, and engineering organizations having as members at least a majority of the eligible licentiates in the area served by the particular society and any foundations composed of members of these societies.

(B) There is no monetary liability on the part of, and no cause of action for damages arising against, a member of an appointed committee which is formed to maintain professional standards of a state or local professional society as defined in this section or an appointed member of a committee of a medical staff of a licensed hospital, provided the medical staff operates pursuant to written bylaws that have been approved by the governing board of the hospital, or a committee appointed by the Department of Health and Environmental Control to review patient medical and health records in order to study the causes of death and disease for any act or proceeding undertaken or performed within the scope of the functions of the committee if the committee member acts without malice, may make a reasonable effort to obtain the facts relating to the matter under consideration, and acts in the belief that the action taken by him is warranted by the facts known to him.

(C) The provisions of this section do not affect the official immunity of an officer or employee of a public corporation.

In addition, § 40-71-20 further provides:

[a]ll proceedings of an all dates and information acquired by the committee referred to in Section 40-71-10 in the exercise of its duties are confidential unless a respondent in the proceeding requests in writing that they be made public. These proceedings and documents are not subject to discovery, subpoena, or introduction into evidence in any civil action except upon appeal from the committee action. Information, documents, or records which are otherwise available from original sources are not immune from discovery or use in a civil action merely because they were presented during the committee proceedings nor shall any complaint or witness before the committee be prevented from testifying in a civil action as to matters of which he has knowledge apart from the committee proceedings or revealing such matters to third persons. Confidentiality provisions do not prevent committees appointed by the Department of Health and Environmental Control from

issuing reports containing solely nonidentifying data and information.

The question at issue here is whether a network of cardiac care physicians, organized through a South Carolina business operation that is wholly owned by a licensed South Carolina hospital, is encompassed within the ambit of § 40-21-10(b). The term "hospital" is not defined in § 40-71-10. Clearly, however, the Network would not itself be a "hospital" under any reasonable definition of that term. Neither is the Network an "appointed committee which is formed to maintain professional standards of a state or local professional society as defined. . . ." Thus, we must focus our attention upon the close relationship between the Network and the hospital and determine whether, due to the proximity of that relationship, the peer review statute bestows upon the Network the same confidentiality restrictions as the Hospital itself.

We start with the proposition that the peer review statute is remedial in nature and, thus, must be broadly construed. In McGee v. Bruce Hospital System, 312 S.C. 58, 439 S.E.2d 257 (1993), our Supreme Court recognized this in the following language:

[t]he overriding public policy of the confidentiality statute is to encourage health care professionals to monitor the competency and professional conduct of their peers to safeguard and improve the quality of patient care. See State ex rel. Shroades v. Henry, 187 W. Va. 723, 421 S.E.2d 264 (1992). The underlying purpose behind the confidentiality statute is not to facilitate the prosecution of civil actions, but to promote complete control and open discussion among participants in the peer review process. Cruger v. Love, 599 So.2d 111 (Fla. 1992). We adopt the Florida Supreme Court's reasoning in Cruger that:

[t]he policy of encouraging full control in peer review proceedings is advanced only if all documents considered by the committee. . . during the peer review or credentialing process are protected. Committee members and those providing information to the committee must be able to operate without fear of reprisal. Similarly, it is essential that doctors seeking hospital privileges disclose all pertinent information to the committee. Physicians who fear that information provided in an application might someday be used against them by a third party

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will be reluctant to fully detail matters test the committee should consider.

Indeed, in the words of the Fourth Circuit Court of Appeals, "if there is one instance where society should encourage uninhibited communication, it is in the review of the competency of medical professionals." Sibley v. Lutheran Hosp. of Md., 871 F.2d 479, 484 (4th Cir. 1989).

In addition, a number of other principles of statutory construction are here relevant. First and foremost, is the well-recognized rule that the intent of the General Assembly must be given paramount importance. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979).

Moreover, the true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in light of its manifest purpose. City of Cola. v. Niagara Fire Ins. Co., 249 S.C. 388, 154 S.E.2d 674 (1967). Courts may not give to particular words a significance clearly repugnant to the meaning of the statute as a whole or destructive of its obvious intent. Id. Furthermore, a choice of language in an act will not be construed with literality when to do so will defeat the lawmaker's manifest intention, and a court will reject the ordinary meaning of words used in a statute when, to accept ordinary meaning, will lead to a result that could not have been intended by the Legislature. South Carolina State Board of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 (1946).

There is analogous case law which supports the principle that a wholly owned subsidiary of a hospital is considered part of the hospital for various purposes, including peer review. For example, in Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 104 S.Ct. 2731, 81 L.Ed.2d 628 (1984), the Supreme Court of the United States held that the actions of a parent corporation and its wholly owned subsidiary could not conspire with one another under the Sherman Antitrust Act. The Court said that "[t]he officers of a single firm are not separate economic actors pursuing separate economic interests, so agreements among them do not suddenly bring together economic power that was previously pursuing divergent goals." The Court went on to say that

[a] parent and its wholly owned subsidiary have a complete unity of interest. There objections are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousness, but one. . . . With or without a formal "agreement," the subsidiary acts for the benefit of the parent, its sole shareholder. If a parent and a wholly owned subsidiary do "agree" to a course of action, there is no sudden joining of economic resources that had previously served different economic interests, and there is no justification for § 1 scrutiny. In the view of the United States Supreme Court, a parent and a subsidiary ". . . share a common purpose whether or not the parent keeps a tight rein over the subsidiary; the parent may assert full control at any moment if the subsidiary fails to act in the parent's best interests." 467 U.S. at 770.

The Fourth Circuit has applied the Copperweld reasoning to peer review procedures. In Oksanen v. Page Memorial Hospital, 945 F.2d 696 (4th Cir. 1991), the Court concluded that

[w]e think a similar unity of interest is present in the relationship between the hospital and its staff, both of which seek to upgrade the quality of patient care. Oksanen contends, however, that intracorporate immunity should not shield the participants in the peer review process for the simple reason that the medical staff and the hospital, unlike a corporation and its officers, are legally separate entities. . . . This argument, however, ignores the functional approach to the question of intracorporate characterization which we believe is mandated by the Copperweld decision. Copperweld in fact criticized the notion that a corporation can conspire with itself because this "looks to the form of an enterprise's structure and ignores the reality." 467 U.S. at 772, 104 S.Ct. At 2472. Consistent with Copperweld, we must examine the substance, rather than the form, of the relationship between the hospital and the medical staff during the peer review process.

945 F.2d at 703. In the view of the Oksanen court. "[i]n effect, the medical staff was working as the Board's agent. . . to implement a single unitary firm's policies of evaluating the conduct and competence of those to whom the hospital extended privileges." Id. (quoting Copperweld, 467, U.S. at 769) (internal quotations emitted.)

Likewise, in Boulware v. State of Nevada, Dept. of Human Resources, 960 F.2d 793 (9th Cir. 1992), the Court said that "[b]ecause NCSC is a wholly owned subsidiary of Humana, these two entities cannot form a 'combination or conspiracy' for purposes of section 1 [of the Sherman Act.] See also, Op. Atty. Gen., Dec. 3, 1996 [private corporation may be alter ego of hospital depending upon the facts].

And, in Hotel Dieu v. Williams, 410 So.2d 1111 (1982), the Supreme Court of Louisiana concluded that a private corporation controlled in membership by a hospital was the hospital's alter ego and thus entitled to the same exception from ad valorem taxation as the hospital itself. Similarly, in Ex Parte Charter Retreat Hospital, Inc. v. Charter Retreat Hospital, Inc., 538 So.2d 787 (1989), the Supreme Court of Alabama held that a wholly owned subsidiary of a parent hospital acted as the agent of the parent for purposes of venue. See also, Crosby v. Hospital Authority, 93 F.2d 1515 (11th Cir. 1996) [even if hospital and staff group are separate legal entities, staff group may be acting as agent of hospital for purposes of peer review and thus entitled to state action immunity in context of antitrust]; Eyring v. Ft. Sanders Park West Med. Center, Inc., 1997 WL 294457 (1997) [intent of peer review law is to include both committee making the recommendation as well as the hospital].

There is no doubt that a wholly owned subsidiary is a distinct and separate corporate unit from its parent. See, Gordon v. Hollywood-Beaufort Package Corp., 213 S.C. 438, 49 S.E.2d 718 (1948). In this instance, moreover, we are advised that the Network makes peer review decisions with respect to its member physicians through a process that is independent of the Hospital's peer review process. However, the Hospital shares certain information with the Network including information related to the Hospitals' peer review process. In essence, the Network, which similar to the Hospital, is wholly owned by the Hospital Parent Company, is acting in conjunction with the Hospital.

In our judgment, the foregoing cases and rules of construction dictate that the Network and the Hospital share a single unitary interest in the peer review process. Accordingly, based upon the overriding public policy underlying the peer review statute, it is our opinion that the relationship between the Hospital and the Network is such to assure that the Network is also encompassed by the peer review statute. Since the Network and Hospital are wholly owned by the Hospital Parent Company and has common administrative officers and governing body members with the Hospital, in my judgment, a court would conclude that the Network would be deemed as part and parcel of the Hospital for purposes

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of the protection of confidentiality provided by the peer review statute. In other words, the Network would for purposes of peer review statute be simply an extension of or the "hospital." While the Network may be a separate and independent corporation, for purposes of the peer review statute, the Network would be encompassed within the language "an appointed member of a committee of a medical staff of a licensed hospital" and thus subject to the confidentiality protections provided therein. Such conclusion fully effectuates the policy considerations of confidentiality recognized by our Supreme Court in the McGee case.

With kind regards, I am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/kkf