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CHAPTER 71

Liability of Members of Professional Committees

**SECTION 40‑71‑10.** Members of certain professional committees exempt from tort liability.

(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. It also includes the South Carolina Law Enforcement Accreditation Council.

(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 a committee appointed by the Department of Mental Health, 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, has made 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) No person acting pursuant to subsection (B) shall be subject to any monetary liability or cause of action for damages for any action for restraint of trade, violation of the South Carolina Unfair Trade Practices Act, or other action predicated upon unfair or illegal competition unless such person acted with malice.

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

HISTORY: 1978 Act No. 524; 1989 Act No. 158, Section 1; 2004 Act No. 296, Section 1; 2005 Act No. 32, Section 12; 2012 Act No. 275, Section 2, eff June 26, 2012.

Editor’s Note

2005 Act No. 32, Section 7(B), provides as follows:

“(B) Upon approval by the Governor, this act takes effect July 1, 2005, for causes of action arising after July 1, 2005, except that as of this act’s effective date, the State Treasurer shall relinquish the management of funds in the Patients’ Compensation Fund, created pursuant to Section 38‑79‑420, to the Board of Governors of the fund, and premiums paid on or after this act’s effective date must be deposited with the Board of Governors of the fund. The fund must be fully transferred to the Board of Governors, and the State Treasurer may not hold any deposits of the fund as of ninety days after this act’s effective date.”

2012 Act No. 275, Section 3, provides as follows:

“This act take effect upon approval by the Governor and applies to any investigative action undertaken as provided herein where the underlying event giving rise to the investigation occurs on or after the effective date.”

Effect of Amendment

The 2012 amendment substituted “a committee appointed by the Department of Mental Health, or” for “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” in subsection (B).

**SECTION 40‑71‑20.** Confidentiality of certain proceedings, records and information; reporting accidents and incidents.

(A) All proceedings of and all data 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 complainant 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.

(B) Confidentiality provisions do not prevent committees appointed by the Department of Health and Environmental Control from issuing reports containing solely nonidentifying data and information.

(C) Nothing in this section affects the duty of a facility or activity licensed by the Department of Health and Environmental Control to report accidents or incidents pursuant to the department’s regulations. Provided, however, anything reported pursuant to the department’s regulations shall not be considered to waive any privilege or confidentiality provided in subsection (A).

HISTORY: 1979 Act No. 171 Section 1; 1989 Act No. 158, Section 2; 2006 Act No. 372, Section 1.

**SECTION 40‑71‑30.** Judicial review of documents claimed to be confidential; penalty against party found to be unreasonably asserting confidentiality.

When a party asserts a claim of confidentiality over documents pursuant to Section 40‑71‑20 and the party seeking the documents objects, the documents must be filed under seal with the circuit court having jurisdiction over the pending action and are subject to judicial review by the circuit court judge. If the court determines that any of the documents are not subject to confidentiality pursuant to Section 40‑71‑20 and are otherwise discoverable, the court shall provide the documents to the requesting party. In the event the court finds that a party acted unreasonably in unsuccessfully asserting the claim of confidentiality, the court shall assess attorney’s fees against that party for any fees incurred by the requesting party in obtaining the documents.

HISTORY: 2005 Act No. 32, Section 13.

Editor’s Note

2005 Act No. 32, Section 7(B), provides as follows:

“(B) Upon approval by the Governor, this act takes effect July 1, 2005, for causes of action arising after July 1, 2005, except that as of this act’s effective date, the State Treasurer shall relinquish the management of funds in the Patients’ Compensation Fund, created pursuant to Section 38‑79‑420, to the Board of Governors of the fund, and premiums paid on or after this act’s effective date must be deposited with the Board of Governors of the fund. The fund must be fully transferred to the Board of Governors, and the State Treasurer may not hold any deposits of the fund as of ninety days after this act’s effective date.”