

MAINE STATE LEGISLATURE

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December 8, 1952

To Alexander A. LaFleur, Attorney General
Re: Mal-Practice Insurance for Physicians at State Institutions.

In answer to the inquiry of Mr. Greenlaw and Dr. Sleeper as to the liability and the possibility of having insurance for mal-practice, I would deem that it would be wise for the Department of Institutional Service to carry such insurance for Superintendents and resident physicians at our state institutions.

I had quite a chat with Herbert Locke, Esq., who has represented the insurance companies that have protected the physicians in our state since 1918. It is his feeling that the physician would be liable to the patient, even though the state might be immune from suit, although there is some authority to the contrary.

In any event, it might be wise to have someone that the patient could turn to if and when he is injured in one of our institutions, for we know that all men are not infallible. We have at least one precedent for insurance, with the insuring of the motor vehicles that the State operates, as part of its governmental functions.

I would have two reservations to the policy that might issue:- (1) that it would cover the doctor only in his capacity as a servant of the State; we don't want to protect him if he might also be practising on the outside; (2) that there should be an endorsement on the policy that would state that the company agrees not to defend any suit on the grounds of governmental immunity to the insured. We want the issue to be straight liability.

The problem of insuring unlicensed doctors arose in our conversation, but I believe that this can be solved, or so I am informed.

Dr. Sleeper mentioned that the Superintendent would be liable for the negligence of his subordinate doctors. I cannot find anything to sustain this view from a superficial examination of the case law, but on the contrary find at least one case that says that a superintendent is not liable where he has used reasonable care and diligence in selecting his subordinate, and goes further, saying that he is a public officer and in carrying on his duties has governmental immunity. (Ketterer v. State Board of Control, 131 Ky. 287; 115 S. W. 200.)

Roger A. Putnam
Assistant Attorney General