

State of South Dakota

SEVENTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 1998

454B0628

HOUSE ENGROSSED NO. **SB139** - 2/24/98

Introduced by: Senators Olson, Brown (Arnold), Dunn (Jim), and Halverson and
Representatives Cutler, Belatti, Eccarius, Fiegen, Fischer-Clemens, Rost, and
Windhorst

1 FOR AN ACT ENTITLED, An Act to clarify the scope and composition of peer review
2 committees entitled to limited good faith immunity from civil liability for committee actions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 36-4 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purposes of this Act, a peer review committee is one or more persons acting as any
7 committee of a state or local professional association or society, any committee of a licensed
8 health care facility or the medical staff of a licensed health care facility, or any committee
9 comprised of physicians within a medical care foundation, health maintenance organization,
10 preferred provider organization, independent practice association, group medical practice,
11 provider sponsored organization, or any other organization of physicians formed pursuant to
12 state or federal law, that engages in peer review activity. For the purposes of this Act, a peer
13 review committee is also one or more persons acting as an administrative or medical committee,
14 department, section, board of directors, shareholder or corporate member, or audit group,
15 including the medical audit committee, of a licensed health care facility.

1 Section 2. That chapter 36-4 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 For the purposes of this Act, peer review activity is the procedure by which peer review
4 committees monitor, evaluate, and recommend actions to improve the delivery and quality of
5 services within their respective facilities, agencies, and professions, including recommendations,
6 consideration of recommendations, actions with regard to recommendations, and implementation
7 of actions. Peer review activity and acts or proceedings undertaken or performed within the
8 scope of the functions of a peer review committee include:

- 9 (1) Matters affecting membership of a health professional on the staff of a health care
10 facility or agency;
- 11 (2) The grant, delineation, renewal, denial, modification, limitation, or suspension of
12 clinical privileges to provide health care services at a licensed health care facility;
- 13 (3) Matters affecting employment and terms of employment of a health professional by
14 a health maintenance organization, preferred provider organization, independent
15 practice association, or any other organization of physicians formed pursuant to state
16 or federal law;
- 17 (4) Matters affecting the membership and terms of membership in a health professional
18 association, including decisions to suspend membership privileges, expel from
19 membership, reprimand, or censure a member, or other disciplinary actions;
- 20 (5) Review and evaluation of qualifications, competency, character, experience, activities,
21 conduct, or performance of any health professional, including the medical residents
22 of health care facility; and
- 23 (6) Review of the quality, type, or necessity of services provided by one or more health
24 professionals or medical residents, individually or as a statistically significant group,
25 or both.

1 Section 3. That § 36-4-25 be amended to read as follows:

2 36-4-25. There ~~may be~~ is no monetary liability on the part of, and no cause of action for
3 damages may arise, against, any member of a duly appointed peer review committee ~~of a state~~
4 ~~or local professional society,~~ engaging in peer review activity comprised of physicians licensed
5 to practice ~~their profession in the State of South Dakota,~~ or duly appointed member of a
6 ~~committee of a medical staff of a licensed hospital~~ medicine or osteopathy under this chapter,
7 or against any duly appointed consultant to a peer review committee or to the medical staff or
8 to the governing board of such hospital, ~~provided the medical staff operates pursuant to written~~
9 ~~bylaws that have been approved by the governing board of the hospital,~~ or member of a duly
10 appointed review committee of a South Dakota nonprofit corporation organized and operating
11 solely or partially, as a professional standards review organization, a licensed health care facility
12 for any act or proceeding undertaken or performed within the scope of the functions of any such
13 the committee which is formed to maintain the professional standards of the society established
14 by its bylaws, if such the committee member or consultant acts without malice, has made a
15 reasonable effort to obtain the facts of the matter as to which he acts under consideration, and
16 acts in reasonable belief that the action taken by him is warranted by the those facts known to
17 him ~~after such reasonable effort to obtain facts.~~ "Professional society" includes medical
18 organizations having as members as least a majority of the eligible licensees in the area served
19 by the particular society. The provisions of this section do not affect the official immunity of an
20 officer or employee of a public corporation.

21 Section 4. That § 36-4-26.1 be amended to read as follows:

22 36-4-26.1. The proceedings, records, reports, statements, minutes, or any other data
23 whatsoever, of any committee described in ~~§ 36-4-25,~~ or any administrative or medical
24 committee, department, section, board of directors or audit group, including the medical audit
25 committee, of a hospital licensed pursuant to the provisions of chapter 34-12 section 1 of this

1 Act, relating to the quality, type, or necessity of care rendered by a member of a hospital medical
2 staff or by hospital personnel, or acquired in the evaluation of the competency, character,
3 experience or performance of a physician, dentist or allied health professional seeking admission
4 or reappointment to the medical staff of a hospital, ~~shall~~ are not ~~be~~ subject to discovery or
5 disclosure under chapter 15-6 or any other provision of law, and ~~shall~~ are not ~~be~~ admissible as
6 evidence in any action of any kind in any court or arbitration forum, except as hereinafter
7 provided. No person in attendance at any meeting of any ~~such committee, department, section,~~
8 ~~board of directors or audit group,~~ described in section 1 of this Act shall be required to testify
9 as to what transpired at such meeting. The prohibition relating to discovery of evidence ~~shall~~
10 does not apply to deny a physician access to or use of information upon which a decision
11 regarding ~~his~~ the person's staff privileges or employment was based. The prohibition relating to
12 discovery of evidence ~~shall~~ does not apply to deny any person or ~~his~~ the person's counsel in the
13 defense of an action against ~~him~~ that person access to the materials covered under this section.

1 **BILL HISTORY**

2 1/21/98 First read in Senate and referred to Judiciary. S.J. 140

3 1/30/98 Scheduled for Committee hearing on this date.

4 1/30/98 Judiciary Do Pass Amended, Passed, AYES 5, NAYS 1. S.J. 256

5 2/3/98 Senate Do Pass Amended, Passed, AYES 32, NAYS 2. S.J. 307

6 2/4/98 First read in House and referred to Judiciary. H.J. 390

7 2/17/98 Scheduled for Committee hearing on this date.

8 2/17/98 Judiciary Deferred to another day.

9 2/18/98 Judiciary Do Pass, Passed, AYES 7, NAYS 2. H.J. 774

10 2/20/98 House of Representatives Deferred to another day. H.J. 826

11 2/23/98 Motion to Amend, Passed. H.J. 853

12 2/23/98 House of Representatives Do Pass Amended, Passed, AYES 62, NAYS 5. H.J. 854