

First Supplement to Memorandum 96-50

Quasi-Public Entity Hearings: Application to Private Hospitals

Attached as an Exhibit is a letter from Stephen G. Auer concerned that the recommendation on quasi-public entity hearings could be construed to apply to private for-profit and non-profit hospitals. "The proposed language is susceptible of two different, and opposite, interpretations regarding its applicability to the quasi-judicial proceedings of hospital medical staffs. If passed in its present form, this legislation is likely to result in litigation to determine its scope."

Our intent has not been to apply this proposal to private hospitals, but only to statutorily created bodies that, while private in form, are state agencies for all practical purposes. Of course, one of our most difficult drafting challenges has been to describe the coverage of the statute with sufficient precision that people can tell what it applies to and what it doesn't.

If we adopt the language proposed in Memorandum 96-50, it will help Mr. Auer's concern about private hospitals — the statute would apply to a private entity only if the entity "is created by ~~or pursuant to~~ statute for the purpose of administration of a state function." In addition, the staff suggests addition of Comment language that may help in the construction of the statute:

This section does not apply to a private entity unless the entity was created by statute for the purpose of administering a state function. Thus the statute governs hearings of a statutory entity such as the Winegrowers of California Commission (Food & Agric. Code § 74061) or the Escrow Agents Fidelity Corporation (Fin. Code § 17311). But the statute does not govern hearings of a private entity such as a licensed health care provider (Health & Saf. Code § 1200 et seq.) or a board of trustees established pursuant to statute under an interindemnity, reciprocal, or interinsurance contract between members of a cooperative corporation (Ins. Code § 1280.7).

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Stephen G. Auer, 7/31/96 5:53 PM, Tentative Recommendation re Administrative**1**

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Mime-Version: 1.0
Date: Wed, 31 Jul 1996 10:53:46 -0700
To: comment@clrc.ca.gov
From: "Stephen G. Auer" <sgauer@jdcclaw.com>
Subject: Tentative Recommendation re Administrative Adjudication by
Quasi-public Entities
Status: RO
X-Status:

Ladies and Gentlemen:

I have recently reviewed the Commission's Tentative Recommendation regarding Administrative Adjudication by Quasi-Public Entities and the proposed legislation, Government Code section 11410.60.

My question concerns the applicability of this proposed legislation (if passed in its Feb. 22, 1996 form) to private for-profit and non-profit hospitals. Specifically, hospital medical staffs have extensive bylaws which establish the procedures for the conduct of quasi-judicial hearings concerning the granting or denying of physician medical staff privileges and for the restriction, suspension or termination of such privileges. These procedures were noted in the Commission's discussion of the proposed legislation as an example of adjudicative proceedings of private entities which affect the public interest and are therefore subject to common law "fair procedure" requirements.

The proposed legislation is susceptible of two different, and opposite, interpretations regarding its applicability to the quasi-judicial proceedings of hospital medical staffs. If passed in its present form, this legislation is likely to result in litigation to determine its scope. It does not make sense that the 500+ hospitals in California would have to radically alter their medical staff bylaws to comply with the state's APA when the bylaws must already comply with Business and Professions Code sections 805-809, the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) requirements, and a rather extensive body of case law which has developed around the peer review process.

Please advise as to whether the proposed legislation applies to private for-profit and non-profit hospitals. (If you don't mind, please also advise as to the rationale for the APA's applicability.) Also, please advise as to the status of the proposed legislation.

I look forward to your response.

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