

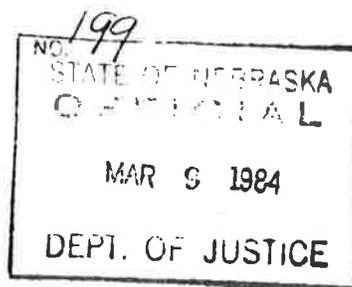
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

PAUL L. DOUGLAS
Attorney General
GERALD S. VITAMVAS
Deputy Attorney General
JOHN R. THOMPSON
Deputy Attorney General

March 8, 1983



Senator Karen Kilgarin
Nebraska State Legislature
State Capitol Building
Lincoln, Nebraska 68509

Dear Senator Kilgarin:

In your February 24, 1984, letter you requested our opinion with respect to certain aspects of Neb.Rev.Stat. §44-2828 and Neb.Rev.Stat. §25-222.

We understand you wish to know whether the six year period of limitations in §44-2828 is an absolute unconditional bar for all malpractice actions in view of the Supreme Court's decision in Sacchi v. Blodig, 215 Neb. 817 concerning §25-222. You also ask whether there are constitutional problems concerning the above statutes.

We have reviewed the recent court decisions, the above statutes, and LB 692 with all amendments to date.

The two statutes are essentially identical. Section 44-2828 apparently was intended to cover actions where the physician or hospital is qualified under the Nebraska Hospital Medical Liability Act while §25-222 covers other professional negligence situations. In Sacchi the Court held that the ten year limitation period in §25-222 is not an absolute bar for actions in which the plaintiff was under a disability contemplated by Neb.Rev.Stat. §25-1213.

It is our opinion in view of the Sacchi decision that the six year limitation in §44-2828 would also be interpreted as not being an absolute bar of those actions where the plaintiff is an infant or is otherwise under a disability contemplated by

Assistants

Bernard L. Packett
Mel Kammerlohr
Harold J. Mosher
Ralph H. Gillan
Terry R. Schaaf
Marilyn B. Hutchinson

Patrick T. O'Brien
J. Kirk Brown
Royce N. Harper
Sharon M. Lindgren
Ruth Anne E. Galter
G. Roderic Anderson

Dale A. Comer
Martel J. Bundy
Mark D. Starr
Dale D. Brodkey
Frank J. Hufless
Linda L. Wilard

John D. Boehm
Henry M. Grether III
Michaëla M. White
Calvin D. Hansen

Senator Karen Kilgarin
March 8, 1984
Page -2-

Neb.Rev.Stat. §25-213. Any other interpretation probably would subject §44-2828 to equal protection and due process problems.

There could be equal protection or other constitutional questions raised concerning the differences between the six and ten year periods in the two statutes. However, it appears that LB 692, as amended, would conform the two statutes in all essential respects and avoid such possible constitutional infirmities. We understand that LB 692 would amend §44-2828 to clearly exclude actions subject to §25-213 and to increase the six year period to ten, the same as in §25-222.

Please let us know if you have further questions.

Very truly yours,

PAUL L. DOUGLAS
Attorney General



John R. Thompson
Deputy Attorney General

JRT:pjs
cc: Patrick O'Donnell
Clerk of the Legislature