

NURSING HOME ADMINISTRATORS

147.118 to 147.134 Transferred to chapter 155.

MALPRACTICE

See also chapter 519A relating to insurance

147.135 Peer review committees — nonliability — records and reports privileged and confidential.

1. A person shall not be civilly liable as a result of acts, omissions, or decisions made in connection with the person's service on a peer review committee. However, such immunity from civil liability shall not apply if an act, omission, or decision is made with malice.

2. As used in this subsection, "peer review records" means all complaint files, investigation files, reports, and other investigative information relating to licensee discipline or professional competence in the possession of a peer review committee or an employee of a peer review committee. As used in this subsection, "peer review committee" does not include examining boards. Peer review records are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release to a person other than an affected licensee or a peer review committee and are not admissible in evidence in a judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review record and whose competence is at issue. A person shall not be liable as a result of filing a report or complaint with a peer review committee or providing information to such a committee, or for disclosure of privileged matter to a peer review committee. A person present at a meeting of a peer review committee shall not be permitted to testify as to the findings, recommendations, evaluations, or opinions of the peer review committee in any judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review committee meeting and whose competence is at issue. Information or documents discoverable from sources other than the peer review committee do not become nondiscoverable from the other sources merely because they are made available to or are in the possession of a peer review committee. However, such information relating to licensee discipline may be disclosed to an appropriate licensing authority in any jurisdiction in which the licensee is licensed or has applied for a license. If such information indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. This subsection shall not preclude the discovery of the identification of witnesses or documents known to

a peer review committee. Any final written decision and finding of fact by a licensing board in a disciplinary proceeding is a public record. Upon appeal by a licensee of a decision of a licensing board, the entire case record shall be submitted to the reviewing court. In all cases where privileged and confidential information under this subsection becomes discoverable, admissible, or part of a court record the identity of an individual whose privilege has been involuntarily waived shall be withheld.

3. A full and confidential report concerning any final hospital disciplinary action approved by a hospital board of trustees that results in a limitation, suspension, or revocation of a physician's privilege to practice for reasons relating to the physician's professional competence or concerning any voluntary surrender or limitation of privileges for reasons relating to professional competence shall be made to the board of medical examiners by the hospital administrator or chief of medical staff within ten days of such action. The board of medical examiners shall investigate the report and take appropriate action. These reports shall be privileged and confidential as though included in and subject to the requirements for peer review committee information in subsection 2. Persons making these reports and persons participating in resulting proceedings related to these reports shall be immune from civil liability with respect to the making of the report or participation in resulting proceedings. As used in this subsection, "physician" means a person licensed pursuant to chapter 148, chapter 150, or chapter 150A.

Notwithstanding subsection 2, if the board of medical examiners conducts an investigation based on a complaint received or upon its own motion, a hospital pursuant to subpoena shall make available information and documents requested by the board, specifically including reports or descriptions of any complaints or incidents concerning an individual who is the subject of the board's investigation, even though the information and documents are also kept for, are the subject of, or are being used in peer review by the hospital. However, the deliberations, testimony, decisions, conclusions, findings, recommendations, evaluations, work product, or opinions of a peer review committee or its members and those portions of any documents or records containing or revealing information relating thereto shall not be subject to the board's request for information, subpoena, or other legal compulsion. All information and documents received by the board from a hospital under this section shall be confidential pursuant to section 272C.6, subsection 4.

[C77, 79, 81, §147.135]

86 Acts, ch 1211, §14; 90 Acts, ch 1086, §7

147.136 Scope of recovery.

In an action for damages for personal injury

against a physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, or nurse licensed to practice that profession in this state, or against a hospital licensed for operation in this state, based on the alleged negligence of the practitioner in the practice of the profession or occupation, or upon the alleged negligence of the hospital in patient care, in which liability is admitted or established, the damages awarded shall not include actual economic losses incurred or to be incurred in the future by the claimant by reason of the personal injury, including but not limited to, the cost of reasonable and necessary medical care, rehabilitation services, and custodial care, and the loss of services and loss of earned income, to the extent that those losses are replaced or are indemnified by insurance, or by governmental, employment, or service benefit programs or from any other source except the assets of the claimant or of the members of the claimant's immediate family.

[C77, 79, 81, §147.136]

95 Acts, ch 108, §6

147.137 Consent in writing.

A consent in writing to any medical or surgical procedure or course of procedures in patient care which meets the requirements of this section shall create a presumption that informed consent was given. A consent in writing meets the requirements of this section if it:

1. Sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks, if any, of death, brain damage, quadriplegia, paraplegia, the loss or loss of function of any organ or limb, or disfiguring scars associated with such procedure or procedures, with the probability of each such risk if reasonably determinable.
2. Acknowledges that the disclosure of that information has been made and that all questions asked about the procedure or procedures have been answered in a satisfactory manner.
3. Is signed by the patient for whom the procedure is to be performed, or if the patient for any reason lacks legal capacity to consent, is signed by a person who has legal authority to consent on behalf of that patient in those circumstances.

[C77, 79, 81, §147.137]

147.138 Contingent fee of attorney reviewed by court.

In any action for personal injury or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor or nurse licensed under this chapter or against any hospital licensed under chapter 135B, based upon the alleged negligence of the licensee in the practice of that profession or occupation, or upon the alleged negligence of the hospital in pa-

tient care, the court shall determine the reasonableness of any contingent fee arrangement between the plaintiff and the plaintiff's attorney.

[C77, 79, 81, §147.138]

95 Acts, ch 108, §7

147.139 Expert witness standards.

If the standard of care given by a physician and surgeon licensed pursuant to chapter 148, or osteopathic physician and surgeon licensed pursuant to chapter 150A, or a dentist licensed pursuant to chapter 153, is at issue, the court shall only allow a person to qualify as an expert witness and to testify on the issue of the appropriate standard of care if the person's medical or dental qualifications relate directly to the medical problem or problems at issue and the type of treatment administered in the case.

86 Acts, ch 1211, §16

147.140 to 147.150 Reserved.

SPEECH PATHOLOGISTS AND AUDIOLOGISTS

147.151 Definitions.

As used in this division, unless the context otherwise requires:

1. "Audiologist" means a person who engages in the practice of audiology as defined in this section.
2. "Board" means the Iowa board of speech pathology and audiology examiners established pursuant to section 147.14, subsection 9.
3. The "practice of audiology" means the application of principles, methods, and procedures for measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to hearing and disorders of hearing and associated communication disorders for the purpose of non-medically evaluating, identifying, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals, including the determination and use of appropriate amplification.
4. The "practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to the development and disorders of speech, fluency, voice, or language for the purposes of non-medically evaluating, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals.
5. "Speech pathologist" means a person who engages in the practice of speech pathology as defined in this section.

[C77, 79, 81, §147.151]

**Civil Caseload Activity Report for Iowa's District Courts
January through July, 2005**

Entire State Torts	Activity Jan. thru July		# Pending End of July
	Filed	Disposed	
P.I. - Med/dental malp	137	151	361
P.I. - Motor vehicle	1,379	1,443	2,926
P.I. - Premises liability	262	276	563
P.I. - Prod liab & toxic	46	31	80
P.I. - Other negl/intent.	352	377	846
Other prof. malp (no PI)	37	50	86
Other torts (no PI)	312	346	715
Law: Contract/Comrc.			
Contract - Debt Collect.	5,190	5,286	4,493
Fraud/Misrep.	82	97	193
Employment claim	161	180	305
Cont/comrc: other	700	741	1,185
Equity			
Mortgage Foreclosure	3,886	4,098	2,824
Other Real Property	302	290	442
Other Equity	1,190	1,230	1,736
Other Civil			
Admin Appeals to DCt	309	241	377
Distress warrants	74	52	45
Foreign judgments	330	311	95
Liens	3,478	3,643	2,163
Post conviction relief	181	236	488
Other actions	3,003	2,809	3,361
Total Reg. Civil	21,411	21,888	23,284

Table prepared at the request of James Carney, ISBA (Aug. 24, 2005)
 Note: These statistics are tentative and subject to change after review by
 the Clerks of District Court.

For more information about these court caseload statistics contact:

**Detailed Dispositions Report for Civil Cases in Iowa's District Courts:
January through July, 2005**

Entire State	DISPOSITIONS YEAR TO DATE							
	TOTAL Dispos	TRIAL		WITHOUT TRIAL				
		Jury	Nonjury	Deflt jgmt	Other jgmt	Vol Dism	Other dism	Transfer
Torts								
P.I. - Med/dental malp	151	18	7	0	2	40	81	3
P.I. - Motor vehicle	1,418	54	29	66	16	452	787	14
P.I. - Premises liability	272	25	3	1	2	74	163	4
P.I. - Prod liab & toxic	27	3	0	1	0	5	16	2
P.I. - Other neg/intent.	366	24	18	8	14	97	200	5
Other prof. malp (no PI)	48	2	2	2	2	17	23	0
Other torts (no PI)	324	12	30	25	18	47	188	4
Law: Contract/Comrc.								
Contract - Debt Collec	4,813	4	256	1,491	1,019	494	1,464	85
Fraud/Misrep.	94	5	8	2	3	12	62	2
Employment claim	171	1	16	7	11	20	102	14
Cont/commerc: other	706	13	91	62	51	107	377	5
Equity								
Mortgage Foreclosure	3,545	0	302	748	971	448	1,076	0
Other Real Property	262	1	61	26	41	26	107	0
Other Equity	1,084	2	203	109	271	90	407	2
Other Civil								
Admin Appeals to DCt	223	0	86	11	37	14	75	0
Distress warrants	27	0	0	6	20	0	1	0
Foreign judgments	236	0	2	72	160	0	2	0
Liens	635	0	0	186	446	1	2	0
Post conviction relief	184	0	56	1	8	2	117	0
Other actions	1,682	5	311	502	564	30	257	13
Total Reg. Civil	16,268	169	1,481	3,326	3,656	1,976	5,507	153

Table prepared at the request of James Carney, ISBA (Aug. 24, 2005)

Note: These statistics are tentative and subject to change after review by the Clerks of District Court.

For more information about these court caseload statistics contact:

John Goerd
State Court Administration
Des Moines, IA

Regular Civil Filings in Iowa's District Courts: 2002 to 2004

Created: Mar. 1, 2005

Law: Torts	2002	2003	2004	% change: 2002-2004	% change: 2003-2004
P.I. - Medical/dental malp*	335	245	236	-29.6%	-3.7%
P.I. - Motor vehicle*	2,807	2,567	2,521	-10.2%	-1.8%
P.I. - Premises liability*	490	499	439	-10.4%	-12.0%
P.I. - Product liab/toxic subst*	91	75	51	-44.0%	-32.0%
P.I. - Other negl/intent.*	674	678	620	-8.0%	-8.6%
Other prof. malp (no P.I.)	65	58	67	3.1%	15.5%
Other tort (no P.I.)	684	656	508	-25.7%	-22.6%
Total Torts	5146	4,778	4,442	-13.7%	-7.0%
Law: Contract/Comrc.					
Contract - Debt Collec	7,148	6,737	8,770	22.7%	30.2%
Fraud/Misrep.	169	200	147	-13.0%	-26.5%
Employment claim	297	331	287	-3.4%	-13.3%
Cont/comrc: other	1,396	1,245	1,260	0.9%	1.2%
Total Contract/Comrc	9010	8,513	10,454	16.1%	22.9%
Equity					
Mortgage Foreclosure	5,507	6,370	6,876	24.9%	7.9%
Other Real Property	634	578	531	-16.2%	-8.1%
Other Equity	2,468	2,374	2,152	-12.8%	-9.4%
Total Equity	8609	9,322	9,559	11.0%	2.5%
Other Civil					
Admin Appeals to DCt	399	465	409	-2.5%	-12.0%
Distress warrants	391	122	101	-74.2%	-17.2%
Foreign judgments	668	613	581	-13.0%	-5.2%
Liens	5,885	5,700	6,651	13.0%	16.7%
Post-conviction relief	282	284	299	6.0%	5.3%
Other actions	5,071	4,957	5,170	2.0%	4.3%
Total Other Civil	12696	12,141	13,211	4.1%	8.8%
TOTAL REGULAR CIVIL	35461	34,754	37,676	6.2%	8.4%

*P.I. = Personal injury

NOTE: The caseload statistics for 2004 could be amended until mid-March 2005. The 2004 statistics should be considered tentative until then.

Not for publication or distribution without permission of the State Court Administrator

Jim Carney

From: Sue.Harson@jb.state.ia.us
Sent: Friday, September 23, 2005 4:17 PM
To: carney@carneylawfirmiowa.com
Subject: Medical Malpractice Claims

Mr. Carney,
Have done some research and have come up with 2 cases filed since 1997 and both were dismissed before going to trial. I have been here since 1982 and can't remember ever having a malpractice go to trial. Another staff member has been here since 1976 and she can't remember a case actually going to trial. Hope this helps.

Sue Harson
Clerk of District Court
Wright County