Iowa Laws Concerning Hospitals and Hospital Care of the Indigent

Institute of Public Affairs and the
Graduate Program in Hospital Administration
of the State University of Iowa

&

and the Iowa Hospital Association

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Foreword

THIS booklet presents in non-technical language the Iowa laws relating to hospitals and hospital care of the indigent. It also includes discussions of some subjects dictated by sound personnel and financial practices, as well as certain consent forms.

The purpose of the booklet is to point out to hospital administrators and governing boards the various facets of the law with which they should be familiar. It should not be inferred, however, that a knowledge of what is contained in this publication will dispense with the need for competent counsel.

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Robert F. Ray
Director
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1 Organization

HOSPITALS are either proprietary or governmental in nature. Private hospitals usually are operated by religious or charitable institutions, while governmental hospitals may be operated by the state, a county, or a municipality.

State Hospitals

State hospitals are established by statute in Iowa. They include the University Hospitals (General, Children's, and Psychopathic), the Hospital School for Severely Handicapped Children, and the Oakdale Sanitorium (tuberculosis), under control of the State Board of Regents, and the Woodward State Hospital and School, the Glenwood State School, and the mental health institutes administered by the Board of Control of State Institutions.

County Hospitals

State law authorizes two methods for establishing county hospitals. A hospital may be organized under Code Chapter 347 as a county public hospital, or under Code Chapter 347A as a county hospital payable from revenue. Bonds issued to finance a county public hospital are paid off through tax levies. The initiative in establishing such a hospital must come from residents of the county in the form of a petition to the county board of supervisors. This petition must be signed by 200 or more resident freeholders of the county, at least 150 of whom are not residents of the city or town in which the hospital is to be located. The supervisors then submit the question to the voters at the next general election. If the bond issue, which may not exceed $500,000, is approved, the supervisors issue bonds and appoint hospital trustees to hold office until the next general election. (Code 1958, sec. 347.1; Laws 1959, Chapter 262)

County hospitals payable from revenue differ from county public hospitals in that bonds issued to establish the hospital must be paid off from rates, fees, and charges for hospital services. Such bonds do not constitute an indebtedness within the meaning of the constitutional

debt limitations of Article XI, section 3, of the Iowa Constitution. (Wickey v. Muscatine County, 242 Iowa 272, 46 N.W.2d 32, 1951) The county board of supervisors may establish the county hospital payable from revenue by resolution, but a petition from county residents will force an election on the question of establishment similar to the election required to establish a county public hospital. If the hospital is approved at such an election, or if the supervisors' resolution is unchallenged, the supervisors appoint trustees to act until the next general election.

Municipal Hospitals

All cities and towns in Iowa have authority to establish municipal hospitals. Indebtedness for the construction of a city hospital may not be incurred until it has been authorized by an election. (Code 1958, sec. 407.5) The city council may call such an election if qualified voters of the city petition the council. The question must be submitted on a separate ballot, and must state the amount of indebtedness to be contracted, if any, the amount of bonds to be issued, if any, and the annual rate of tax to be levied, if any, for payment of the bonds and interest. (Code 1958, sec. 407.9) Merely asking whether a hospital is desired without specifying the method of financing may nullify the election. (Pennington v. Fairbanks, Morse & Co., 217 Iowa 1117, 253 N.W. 60, 1934) If the project is approved the council may issue bonds and make provision for their payment with interest. Bonds for hospital construction are paid from the debt service fund. (Code 1958, secs. 404.13, 407.14) Cities or towns may provide by ordinance for the election of hospital trustees. (Code 1958, secs. 380.1-.2) However, the city council, not the board of trustees, is charged with the responsibility for contracting for the erection of a municipal hospital. (Op. Atty. Gen. 1936, p. 931) The jurisdiction of the city may extend outside its corporate limits to include all lands used for hospital purposes, and all ordinances shall be in full effect in that territory.

Code sections 380.9-.11 provide another means of financing a municipal hospital that may be used by cities of certain sizes that own and operate an electric light and power plant that is wholly paid for and that is producing an income in excess of the operating expenses and reasonable depreciation charges. The city may borrow money to construct a hospital and pledge a share of the net annual earnings of the electric plant toward repayment of this loan and interest. The council may not pledge these earnings unless this action has been approved by the city's electors.

An enactment of the Fifty-eighth General Assembly (1959), found as an amending addition to both Chapters 347 and 380, provides that

any hospital organized or existing as a municipal hospital may become a county hospital to be organized and managed as provided in Chapter 347. To accomplish the changeover, the proposition must be submitted to and approved by a majority of the electors of both the city in which the hospital is located, and of the county under whose management it is proposed that such hospital be placed. If approved, the assets and liabilities of the hospital become the property of the county; Chapter 347 governs its future management. (Laws 1959, Chapters 262 and 284)

Private Hospitals

The form and method of organizing private hospitals, whether charitable or proprietary, depends on the preference and means of the sponsor or proprietor. Under the laws of Iowa, any person may form a corporation for pecuniary profit, and any three persons or an organization may incorporate a hospital under Code Chapter 504 as a corporation not for pecuniary profit. Lines of authority, powers, and duties will be governed by the articles of incorporation and the by-laws drawn up by the incorporators themselves. Less formal organizational forms, such as associations, partnerships, and sole proprietorships, require no formalities equivalent to incorporation.

Planning

The 1958 Iowa Departmental Rules, pages 125-126 (Regulations 7 and 8), detail several factors that must be considered before any type of hospital is constructed. Local zoning restrictions must be obeyed and new hospitals should be located away from the noise of railroads, traffic, or playgrounds. The site should be away from the smoke, odors, or dust from industrial plants, yet accessible by good roads that are passable at all times of the year.

When construction is contemplated, whether of new buildings or a remodeling, preliminary plans should be submitted to the State Department of Health for review and approval. These plans must comply with the laws, rules, and regulations of licensure. (See Code 1958, Chapter 135B, and "Administration—Licensure of Hospitals," page 12 of this publication.) Before construction is actually started, complete specifications for the building or remodeling must be submitted to the State Department of Health for final approval. These plans, in addition to complying with the requirements for licensure, must show that every consideration has been given to features of design that are necessary to insure efficient care and protection to patients, including acceptable lighting, ventilating, sewage, and plumbing facilities. These requirements are promulgated by the State Department of Health and are applicable to all hospitals.

2 Administration

Governing Board

The governing board, more often referred to as the board of trustees, is the body that is ultimately responsible for the administration of the hospital.

Municipal hospitals—Cities and towns may provide by ordinance for the election of three hospital trustees whose terms of office are six years. (Code 1958, sec. 380.1) Cities that have more than 50,000 population may increase the number of trustees to five. The city or town treasurer serves as treasurer of the board of hospital trustees; he receives and disburses all funds as ordered by the board. Trustees receive no compensation for their services though they may be reimbursed for cash expenses incurred as trustees. Code section 380.6 states the broad scope of the powers granted to the city's board of hospital trustees: the board is to provide the management, control, and government of the hospital, and the necessary rules and regulations for its financial operations.

County public hospitals—The county board of supervisors appoints seven hospital trustees from among the resident citizens of the county. The trustees hold office until the next general election at which time their successors are selected for staggered six-year terms. Only four of the trustees may be from the city in which the hospital is located. No physician or licensed practitioner can be a trustee. Vacancies may be filled by appointment by the other trustees or, if fewer than four remain, by the board of supervisors. (Code 1958, sec. 347.10) The board meets at least once each month; four members constitute a quorum for transacting business. Code section 347.13 details the powers and duties that the board must exercise, and section 347.14 states the board's optional powers and duties. The trustees administer the original hospital construction, plan and contract for additions, employ personnel, manage the hospital's financial affairs, file an annual report with the county board of supervisors, and do all things necessary for the management, control, and government of the hospital unless specifically denied by Chapter 347 or delegated by Chapter 347 to other authority.

The trustees also may establish a depreciation fund, the proceeds of which are to be invested in United States government bonds until it is deemed advisable to use the funds for hospital purposes. (Laws 1959, Chapters 262 and 284) The trustees receive no compensation except their expenses. No trustee may have any pecuniary interest in supplies procured for or disposed of by the hospital. (See "Financial Management—Purchasing Departments," page 18)

County hospitals payable from revenue—Five trustees are appointed by the board of supervisors; their successors are elected to staggered six-year terms at the next election. The duties and powers of this board of trustees are similar to those of the county public hospital. (Code 1958, sec. 347A.1)

University hospitals—The State Board of Regents selects the superintendent of University Hospitals (Code 1958, sec. 262.9(2)), and manages the property belonging to the institution, directs the expenditure of all appropriations made to these institutions, and provides for the hospitals' government and management.

Private hospitals—Private hospitals usually are incorporated, and each hospital's board of directors or trustees is responsible for the management and administration of the hospital within the restrictions imposed by the corporation's articles of incorporation and by-laws. The board of trustees is chosen by the incorporators or the organization that sponsors the private hospital.

Authority of the Administrator

The hospital administrator's authority is not dealt with in Iowa statutes, but the case law of the field of agency is applicable. When boards of trustees of governmental hospitals and the controlling bodies of private hospitals employ administrators, the relationship of principal and agent is created. The crux of this relationship is that the agent—the administrator—has power to act for his principal—the board of trustees. The agent's exercise of this power is restricted to the authority that the principal has delegated to the agent. The principal usually delegates this authority expressly, but because the administrator has a job title and holds a position usually consonant with a good deal of authority, it is understandable that tradesmen and suppliers who deal with the administrator may assume that he has authority similar to that held by persons in similar positions in other organizations. Thus, the agent is said to have implied or apparent authority that may be broader than the authority expressly delegated to him. If the board of trustees desires to limit the administrator's authority to a sphere narrower than the usual authority of an administrator, they must make

the limitation apparent to persons who deal with the administrator, or else, while acting outside his delegated authority the administrator *may* bind his principal contractually in ways in which they might not approve.

The administrator's authority to contract for ordinary services and supplies seems to be impliedly or apparently a part of his duties, for the justification for his employment is based, at least in part, on the need for narrowing the exercise of authority for day-to-day management from the board or committee to a responsible individual.

Licensure of Hospitals

The apparent purpose behind the licensing of hospitals, provided in Chapter 135B of the Code of Iowa, is to establish and enforce certain basic standards for the care of patients and the construction and maintenance of hospitals in the interest of the health, welfare, and safety of the public.

No person, firm, corporation, or governmental unit can operate a hospital in Iowa unless it is licensed. To operate a hospital without a license constitutes a misdemeanor, subjecting the guilty party to a fine of from $100 to $500. Each day the violation continues after conviction is viewed as a separate offense.

Licenses are obtained from the State Department of Health. Applications must include such information as this department may reasonably require. An initial license fee of from $15 to $50 is required; the amount of the fee is based on the size of the hospital as determined by the number of beds. Each license must be renewed annually by filing a yearly report, in such form as the State Department of Health may require, and payment of a $10 renewal fee.

The State Department of Health may deny, suspend, or revoke any license if it feels there has been a substantial failure to comply with the regulations as promulgated in 1958 Iowa Departmental Rules, pages 123-131. This action becomes effective thirty days after notice by certified mail or through personal service of notice unless the applicant or licensee gives written notice requesting a hearing. A prompt, fair hearing must be held at which the department may affirm, rescind, or modify its previous order. A copy of the decision setting forth the finding of facts and the reasons for the determination is served on the applicant or licensee. This determination becomes final thirty days after the notice has been mailed or served unless it is appealed to the district court of the county in which the hospital is located or is to be located. The court may affirm, reverse, or modify the State Department of

Health ruling. Pending final disposition of the matter, the original status of the applicant or licensee shall be preserved.

A Hospital Licensing Board, composed of five individuals who have recognized ability in hospital administration, is appointed by the Governor. Its responsibilities include consulting and advising the State Department of Health regarding matters of policy in administering the licensing provisions and in developing and reviewing the standards and regulations set up by the department.

For the purpose of licensing, a hospital is defined as any place devoted primarily to the diagnosis, treatment, or care of individuals suffering from illness, injury, or deformity, or any place that gives obstetrical or other medical or nursing care, including sanatoriums or rest homes that give convalescent care. To be considered a hospital, an institution must treat at least two nonrelated patients for a period exceeding twenty-four hours. Nurseries, homes for handicapped children, boarding houses, homes for the aged that limit their functions to board and room and provide no medical care, and dispensary or first aid stations are not considered "hospitals" for licensing purposes.

A separate license is required for each hospital even though more than one is operated by the same management. A separate license is not required for different buildings located on the same grounds. The license should be conspicuously displayed on the premises.

If new rules are made while the hospital is in operation, the hospital must be given a reasonable time, not to exceed one year, in which to comply with the new minimum standards. The state department may make such inspections as it deems necessary. The department, with the advice of the Hospital Licensing Board, must prescribe regulations to the effect that, before any licensee or applicant for a license undertakes to make alterations or additions to its facilities, it must submit plans and specifications to the department for preliminary inspection and approval or recommendations regarding compliance with the authorized standards. Information obtained by the department in its reports and inspections shall not be disclosed publicly in such a manner as to identify individuals or hospitals except in a proceeding involving licensure.

For the purpose of administering the licensing law hospitals are classified in two groups: general hospitals, which provide general medical, surgical, and maternity care, and specialized hospitals or sanatoriums, which provide specialized treatment, e.g., tuberculosis, pediatrics, orthopedics, etc. A general hospital must comply with all regulations for general hospitals. A specialized hospital must comply with all the re-

quirements for general hospitals and also with such additional regulations as the department may impose in relation to the specialized services offered.

The Iowa Department of Health and the Iowa Licensing Board, under the authority of Code section 135B.7, have promulgated the requirements necessary for licensing in the 1958 Iowa Departmental Rules. These embody virtually every aspect of a hospital's operation.

3 Financial Management

THE board of trustees and the administrator are responsible for seeing that the business and financial operations of the hospital are properly handled. This chapter notes legal requirements and suggests approved practices in relation to certain aspects of that task.

Audit of Accounts

Periodic audits are a customary business practice and a hospital may benefit by thus being assured that its books are in order.

University Hospital is required by Code section 255.25 to have its accounts audited to determine the average cost per day spent on the care and maintenance of indigent patients.

For county public hospitals, the county treasurer receives and disburses all funds under the control of the county hospital trustees. Funds are paid out only on warrants drawn by the secretary of the board of trustees and countersigned by the chairman of the board of trustees after the claim has been certified as correct by the board of trustees. (Code 1958, sec. 347.12, as amended by Laws 1959, Chapter 262) During the first week in January of each year the trustees must submit to the board of supervisors a statement of all receipts and expenditures made during the preceding calendar year. (Code 1958, sec. 347.13(10))

The county treasurer is designated an ex officio member of the board of trustees of a county hospital payable from revenues. (Code 1958, sec. 347A.1) An accurate record of receipts and expenditures is needed by the trustees so that they can determine the rates necessary to enable the hospital to meet expenses and to pay the required principal and interest on outstanding bond issues.

The city or town treasurer serves as treasurer of the board of trustees of a municipal hospital; he receives and disburses all funds as ordered by the board. (Code 1958, sec. 380.2) One annual audit would seem to be approved practice, although there is no specific statutory requirement for such an examination.

The board of trustees of a private hospital also probably will desire

periodic audits. Examination of the financial records reveals whether or not the books are in order and provides a guide for better management.

Collection of Accounts

By a pre-admittance financial examination, hospitals may obtain information about the financial status of a patient. (See "Patients—Pre-admittance Financial Examination," page 36) It is the duty of the administrator and the board of trustees to collect all accounts for hospital services rendered for other than indigent patients or for patients who are entitled to free care as tubercular patients under Code Chapter 254. Code sections 347.20 and 347A.6, which pertain to county hospitals, provide that if a bill is not paid within sixty days the trustees, personally or through the administrator, may enforce collection by such means as may be necessary, including legal proceedings. Although not expressly given, the boards of trustees and administrators of other types of hospitals, by virtue of their general authority to control the fiscal conduct of the hospital, have the power and the responsibility of collecting accounts.

Mutual Hospital and Medical Service Plans

Nonprofit mutual hospital and medical plans may be incorporated under Code Chapter 504. Such insurance programs must comply with the provisions outlined in Code Chapter 514, but are exempt from the provisions of other insurance laws unless otherwise specifically provided. (Code 1958, sec. 514.1)

To provide hospital services for its subscribers, any hospital service corporation thus organized may enter into contracts with hospitals maintained by the state, a county, or a city, or by any corporation, association, or individual. The hospital services provided under such contracts must "include bed and board, general nursing care, use of the operating room, use of the delivery room, ordinary medications and dressings and other customary routine care." (Code 1958, sec. 514.5) These contracts and the rates charged by a hospital service corporation are subject to the approval of the State Commissioner of Insurance. All costs in connection with the solicitation of subscribers to any hospital or medical service plan and administrative costs, including salaries paid its officers, also are subject to the approval of the Commissioner of Insurance. (Code 1958, sec. 514.11) The Commissioner may arbitrate disputes between a hospital service corporation and any

hospital with which the corporation has a contract. His decisions may be reviewed in any court of competent jurisdiction. (Code 1958, sec. 514.13)

Medical service corporations enter into contracts with subscribers to furnish medical and surgical services through physicians and surgeons, dentists, osteopathic physicians, and osteopathic physicians and surgeons. Such contracts and the rates prescribed also are subject to approval by the Commissioner of Insurance. Fees for radiology and pathology services are considered "medical" and not "hospital" services. (Code 1958, sec. 135B.30)

These programs enable a subscriber to insure himself by spreading the risk of paying expensive hospital and medical bills. The hospital is benefited by being able to look to the hospital service corporation for payment for services rendered to a subscriber-patient.

Hospital Lien

If a person is injured in an accident not covered by the workmen's compensation act and receives hospital treatment for the injury, the hospital will have a lien on any recovery that the patient, or his representatives in case of his death, may receive from an action for damages arising out of the accident. The amount of the lien will be equal to the reasonable and necessary charges of the hospital up to the date of payment of damages. This lien is effective whether the recovery is made by judgment, settlement, or compromise. The lien may not prejudice or interfere with any lien or contract made by the patient or his heirs with any attorney for handling the claim. (Code 1958, sec. 582.1)

The lien is effective only if a written notice is filed in the office of the clerk of the district court of the county in which the hospital is located prior to the payment of any compensation for the injury. This notice must contain the name and address of the injured person, the hospital, and the person, firm, or corporation alleged to be liable for the injury. The hospital also must mail a copy of this notice and a statement of the date of its filing to the parties sought to be held liable and to their insurance carrier if its name and address are known. (Code 1958, sec. 582.2) Any person, firm, or corporation or its insurance carrier that compensates the patient for the injury without paying the lien, or such amount as can be satisfied out of the funds left after paying prior liens, remains liable to the hospital for the amount of the hospital's lien. The hospital may enforce this lien by a suit at law against the parties that made the payment within one year after the payment has been made. (Code 1958, sec. 582.3) The hospital lien

should be utilized if applicable, and if other means of account collection prove unsuccessful.

Purchasing Departments

Any hospital board or administrator is obligated to obtain supplies of satisfactory quality at minimal cost. It is provided by statute that all purchases of materials, appliances, instruments, and supplies by University Hospital, in cases in which more than $100 is to be expended, and in which the price of the commodity to be purchased is subject to competition, must be made on competitive quotations. (Code 1958, sec. 255.24) The competitive bidding must be conducted in accordance with Code Chapter 72.

Ordinarily, contracts for construction work for city, county, and state hospitals must be awarded on the basis of competitive bids. There is no statutory requirement, however, that supply purchases by city or county hospitals be made on the basis of competitive bids. Boards of trustees of private hospitals are not required to let any contract for competitive biddings either for construction or for supplies. All hospital trustees and administrators have a duty to the corporation or organization they serve, and may be subject to liability if they make purchases in such a manner as to benefit their own interests. (See Code 1958, sec. 347.15)

Insurance

The board of trustees should see that an adequate property insurance program is maintained. It is also within the board's authority to obtain malpractice and liability insurance. (Code 1958, sec. 347.14(9); Op. Atty. Gen. 1919-20, p. 145) Courts are tending to hold even hospitals operated by charitable institutions responsible for the negligence of their employees. (Haynes v. Presbyterian Hosp. Assoc., 241 Iowa 1269, 45 N.W.2d 151, 1950) This trend may be based on the fact that these institutions, as well as others, can take out insurance against malpractice damage suits.

Tax Exemptions

Hospitals receive certain tax advantages. Hospitals that are organized as corporations not for pecuniary profit need not pay the Iowa corporate income tax. (Code 1958, sec. 422.32) Other private hospitals may seek to be exempted under one of the provisions of Code section 422.34. Hospitals may be exempted from paying property tax under the provisions of Code section 427.1(1) and (9) if they are religious or charitable societies or if they constitute state property.

Gifts to hospitals are exempt from the state inheritance tax. (Code 1958, sec. 450.4(3)) Gifts and bequests to corporations not for pecuniary profit also are exempted from federal estate and gift taxes.

The object of this type of provision is to promote gifts to benevolent hospitals and such statutory sections usually are construed liberally.

Fund Raising—Gifts

Solicitations—Code Chapter 122, "Organizations Soliciting Public Donations," provides for licensing some types of organizations that solicit funds in Iowa. The rather vague language of this statute has not been interpreted by the Iowa court, but it is the opinion of the Iowa Attorney General that corporations chartered in Iowa are exempt from obtaining the permit. (Op. Atty. Gen. 1940, p. 3) All others—and this would include all unincorporated associations and individuals and all corporations neither chartered in Iowa nor licensed to do business here—must apply to the Iowa Secretary of State for a permit to solicit funds publicly in Iowa. A bond for $1,000 to secure compliance with state laws must accompany the application. The Secretary of State has full discretion in the matter of issuing permits, and he must satisfy himself that the applicant is reputable and that the cause is "legitimate and worthy."

There is a very important exception to the licensing requirement. There is no license required for "any person [apparently "person" means "individual" and not "legal person," which would include business entities] as representative or agent of any local organization, church, school, or any recognized society or branch of any church or school . . . [who publicly solicits] funds or donations from within the county in which such person resides, *or* such church, school, institution, organization, or charitable association is located, or within an adjoining county if such residence or location is within six miles of such adjoining county." (Code 1958, sec. 122.4) It may be inferred from the language of this section that this exemption of the individual person who solicits does not extend to the organization for which he solicits if the organization itself is not exempt as a corporation chartered or licensed to do business in Iowa.

Apparently private, unincorporated hospitals not chartered or licensed to do business in Iowa must comply with this statute, but the absence of court decisions makes difficult an evaluation of the ambiguous phrasings of the statute. For example, the term "publicly soliciting" has never been defined. Presumably, solicitations among members of a religious group that sponsors or supports a hospital would not be "public." In any event, the best authority available would exempt Iowa

corporations from the statute, and this probably exempts most private hospitals in Iowa. (Op. Atty. Gen. 1940, p. 3)

The statute further provides for annual reports from permit holders and makes violation of the chapter a misdemeanor.

Some cities and towns regulate solicitation of funds. Such ordinances are prompted by the desire to protect the public from solicitors who misrepresent their cause or who represent no cause in fact. Local regulations should be consulted before solicitation is begun.

Gifts—Gifts to hospitals may be made during the lifetime of the donor or by will after his death. Any conditions imposed on the gift by the donor must be observed if the gift is accepted. Conditions on the gift will not be held to be unreasonable. If the gift is not accepted, it fails in its entirety. Gifts may be of either real or personal property. Unless directed differently as a condition of the gift, any action may be taken that is ordinarily associated with ownership of the property and that is in the furtherance of the purpose for which the gift was made.

Gifts to the state—Gifts to the state must be accepted by the Executive Council and held in trust for any special purpose the donor designates, provided it is a purpose within the scope of the state's authority. (Code 1958, sec. 565.3) Any condition attached to the gift is binding on the state. (Op. Atty Gen. 1934, p. 370) The gift is not effective to pass title unless the property is accepted on behalf of the state by the Executive Council.

Gifts directly to a state institution—A gift to the University Hospitals must be accepted by the State Board of Regents. Gifts to other state institutions must be accepted by the Board of Control or by the governing board of the designated institution. Any conditions imposed must be complied with and the gift should be accepted only if its purpose is consistent with the objects of the institution.

Gifts to county or city hospitals—A gift to any county or city hospital is treated in a similar manner. An acceptance must be made by the hospital governing board; if the gift is accepted, any condition imposed by the giver is binding.* If the gift is made to establish a hospital and no provision is made for execution of the trust, the district court of the county appoints three trustees to manage and control the property.

If a gift for the purpose of establishing a city or county hospital is received and no sufficient fund is available for the property's mainte-

* Code 1958, sec. 565.6, authorizes acceptance of gifts by municipal corporations. Section 380.6, as amended by Laws 1959, Chapter 284, specifically applies to gifts, devises, or bequests to city hospitals. See also Phillips v. Harrow, 93 Iowa 92, 61 N.W. 434, 1894.

nance, or if it is received on the condition that the city or county aid in the maintenance of the institution by a property tax levy, the governing board of the municipality must submit the question to the electors. A property tax not to exceed three-fourths mill may be imposed if approved by the voters.

Any gift conditioned upon payment of an annuity to the donor may be accepted only if the amount of the annuity does not exceed five per cent of the gift and only if the annuity would not exceed an amount that could be raised from a one-mill property tax levy. An annuity tax may be imposed (Code 1958, secs. 565.13-.15); any surplus must be applied to the same purpose as the original gift.

Gifts to private hospitals—Gifts to a private hospital must be accepted by that institution's governing board; the hospital must comply with all conditions of the gift.

Limitations on gifts via will—Iowa has provided by statute, Code section 633.3, that no devise or bequest to a corporation not for profit shall be valid in excess of one-fourth of the testator's estate after the payment of debts, if a spouse, child, child of deceased child, or parent survives the testator. However, the statute has been interpreted to mean that the gift is not void automatically merely because of the survival of such relatives. Rather, one of these parties must challenge the bequest. (Karolusson v. Paonessa, 207 Iowa 127, 222 N.W. 431, 1928) The limitation imposed by the statute applies only to corporations not for profit, and a gift to trustees to be used for charitable purposes may be valid. (Rine v. Wagner, 135 Iowa 626, 113 N.W. 471, 1907) Gifts to charitable corporations that fall under the proscriptions of the statute are invalid, even if challenged, only to that amount by which they exceed one-fourth of the estate. The statute in no way impedes a person from making gifts during his lifetime.

Federal Aid

Federal funds are available for hospital planning and construction. Much of the Iowa law concerning hospital construction, financing, and planning is found in Code Chapter 135A. This chapter establishes as a part of the State Department of Health a division of hospital survey and construction; the division is aided by federal grants. The general purpose of the division is to make an inventory of existing hospitals, ascertain needs, and develop and administer a state plan for construction of public and other nonprofit hospitals. The program must comply with requirements of the federal Hospital Survey and Construction Act. (60 Stat. 1040, as amended August 14, 1958; 72 Stat. 616)

A hospital advisory council is appointed by the Governor. With its

aid, the Commissioner of Public Health submits a state plan to the U.S. Surgeon General; after his approval, the plan is made available to interested persons and organizations. This plan must be reviewed from time to time and necessary revisions, not inconsistent with the federal act, are submitted to the Surgeon General. Congress has appropriated funds to aid the state in financing these hospital surveys.

Federal funds are available also to assist in the actual construction of public or nonprofit hospitals. "Public hospital" here means a publicly owned facility for providing public health services. Public health centers that provide such related facilities as laboratories, clinics, and administrative offices also are eligible. A "nonprofit" hospital or health facility means one owned or operated by a corporation or association, no part of the earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Applications for construction projects for which federal funds are desired may be submitted to the State Commissioner of Public Health by any state or political subdivision or by any public or nonprofit agency authorized to construct and operate a hospital. Each project must be accorded a fair hearing by the Commissioner and, if it conforms to the state plan, it must be recommended to the Surgeon General. Federal and state requirements must be met. There must be no discrimination in admitting patients because of race, creed, or color. Priority in receiving federal funds must be given to rural communities and to those areas that have few financial resources. Federal aid may contribute from one-third to two-thirds of the funds needed for building the hospital. If the Surgeon General approves the project, the Commissioner establishes a hospital construction fund and receives and transmits the federal funds to the applicant. The Commissioner must inspect the construction projects and notify the Surgeon General when installments of federal funds are due the applicant.

4 Personnel

THIS chapter discusses the various classes of personnel concerned with the operation of a hospital, their qualifications, and the various laws and programs applicable to them.

ADMINISTRATOR

There is no system of accreditation or statement of qualifications for hospital administrators in the Code of Iowa. The basis of selection, and the ultimate choice of the administrator, is within the discretion of the board of trustees.

As agent of the board of trustees or governing body, the administrator owes his principal the duty of fidelity and faithfulness. Breach of this duty may result in civil liability. Misstatement of qualifications appears to be such a breach, and, at the least, is sufficient grounds for dismissal or termination of the employment contract.

PROFESSIONAL PERSONNEL

Medical Staff

The medical staff is appointed by the governing board, the administrator, or the person responsible for the management of the hospital. Even the smallest hospital must have at least one licensed physician on its staff who is responsible for the clinical and scientific work and who is available for emergency call service at all times. (1958 Iowa Departmental Rules, page 124 (Regulation 4))

To practice medicine, a person must be licensed by the Board of Medical Examiners (see Practice Acts, Code 1958, Chapters 147, 148) unless he is classified in one of those groups that are not required to qualify. Thus, licensed chiropodists, osteopaths, osteopaths and surgeons, chiropractors, nurses, dentists, optometrists, and pharmacists who are engaged exclusively in the practice of their respective professions, and physicians and surgeons in military or public health service who are acting in the line of duty, need not be licensed by the medical examiners. A student of medicine or surgery who has completed at

least two years of study in an approved medical school may prescribe medicine under the supervision of a licensed physician and surgeon, and he may render gratuitous service to persons in case of emergency. (Code 1958, sec. 148.2(3)) Interns also may be associated with the hospital. To qualify as a hospital suitable for internship, the hospital must provide the supervision of a licensed practitioner without expense to the intern. (Code 1958, sec. 148.3) Any physician who is a graduate of a medical school, who is serving as a resident, and who is not licensed to practice medicine or surgery in this state, is required to obtain from the medical examiners a temporary or special license. This authorizes the licensee to serve only as a resident, under the supervision of a licensed practitioner in an institution approved by the examiners. The license is valid for one year, but may be renewed annually for six additional years. The granting of a resident's license has no bearing on a person's eligibility for a regular license. If at any time the examiners feel that the quality of work of a licensee or the type of supervision being given him are not satisfactory, they must revoke the license. (Code 1958, sec. 148.5)

The hospital administrator should be certain that all medical staff members have been duly licensed and that those who are not licensed have met the appropriate requirements and are being supervised by a licensed physician. It is quite possible that the hospital and an administrator may be held liable for the negligence of an intern or resident. This negligence may be imputed to the administrator because it is the administrator's responsibility to see that the work of the intern or resident is adequately supervised. (See Chapter 6, "Negligence and Liability," pages 43-49)

Medical staffs within a hospital may be formally organized. Problems can be discussed and recommendations passed in an effort to give better service and to resolve misunderstandings. The administrator or governing board may enforce these recommendations. Sanctions imposed may include suspension or discharge from the medical staff.

In the management of hospitals no discrimination can be made against the practitioners of any recognized school of medicine. Each patient must have the right to employ at his expense any physician of his choice; any physician so employed by the patient shall have exclusive charge of the care and treatment of the patient, and attending nurses must be subject to the direction of the physician. These provisions apply to county public hospitals (Code 1958, sec. 347.18) and to county hospitals payable from revenue (Code 1958, sec. 347A.5). Code section 380.6 makes a similar requirement for municipal hospitals. The Iowa law recognizes three schools of healing art: medicine

and surgery, osteopathy and surgery, and chiropractic. Since the above statutes seek to prevent discrimination against any recognized school of medicine, it seems that a practitioner of any of these schools may be allowed to practice in county and municipal hospitals. (Op. Atty. Gen. 1940, p. 219)

University Hospitals admit state patients under the procedure outlined in Chapter 5, "Patients," page 32. Pay patients may be admitted at the discretion of the hospital, if their treatment and care does not interfere with the treatment of patients who are committed by court order. (Code 1958, Chapter 255) Such private patients are referred to and treated by a member of the hospital's medical staff.

Private hospitals need not permit all practitioners to use the hospital. (See Natale v. Sisters of Mercy, 243 Iowa 582, 52 N.W.2d 701, 1952, and discussion on "Patients—Admitting Procedures," page 36)

Specialists may be selected as staff members, and a system for referral of patients and consultation should be organized to make the most beneficial use of the staff. Dentists may refer certain cases, such as those involving oral surgery, to a hospital where specialized treatment may be given.

Nurses

An efficient, capable nursing service is essential to the operation of any hospital. At least one registered nurse should be on duty in a hospital at all times.

Licenses to practice nursing are issued in two classifications: the registered nurse (R.N.) and the licensed practical nurse (L.P.N.). The chief difference relates to the responsibilities that may be assumed by the nurse. To be an L.P.N. one must have a knowledge of simple nursing procedures but need not have the professional knowledge and skills of an R.N. (Code 1958, sec. 152.1)

A license to practice nursing does not confer any authority to practice medicine. For instance, a question has arisen regarding whether a nurse, even though under the supervision of a licensed physician, can legally administer anesthesia. An Opinion of the Attorney General, 1946, page 189, states that this is incident to the practice of nursing and not illegal.

To obtain a license as a registered nurse, an applicant must be twenty years of age, be of good moral character, and be a citizen of the United States or have legally declared an intention to become a citizen. An R.N. must be a graduate of an accredited high school and hold a diploma from a school of nursing aproved by the State Board of Nurse Examiners. To qualify, the school must be affiliated with a hospital

and require the completion of at least three years of study in those subjects prescribed by the board. To be licensed, the applicant must also pass the test given by the Board of Nurses Examiners for registered nurses. (Code 1958, sec. 152.3)

The requirements for a licensed practical nurse differ in that the applicant need be only nineteen years old, and have completed only the tenth grade. The L.P.N. must hold either a diploma from an approved school of nursing for licensed practical nurses or have completed one year of study in a school of nursing for registered nurses. To be a school of recognized standing for the training of licensed practical nurses, the school must be affiliated with a hospital and require at least a one-year course of study integrated in theory and practice as prescribed by the examiners. An L.P.N. must pass a test relating to the duties and services of a licensed practical nurse.

Any person who meets the age, character, and citizenship qualifications may take the examination to obtain a license as an L.P.N. without having met the educational requirements if that person has performed services comparable to those of a licensed practical nurse for a period of two years in the five years immediately preceding her application. A hospital may maintain both a school for registered nurses and a school for licensed practical nurses.

Apparently, nursing services may be performed by any person, provided the person does not hold himself out or profess to be an R.N. or L.P.N. All nurses employed in a hospital who perform the duties of an R.N. or and L.P.N. should be legally licensed as such in the state of Iowa, or obtain their license at the next examination or by reciprocity. The 1958 Iowa Departmental Rules, page 124 (Regulation 4), provides that a hospital nursing service must be administered by a capable director who is a registered nurse. All supervisors and head nurses must have had preparatory courses or experience commensurate with the responsibilities of their assignments. Applicants for employment should undergo a complete physical examination including X-ray and laboratory examinations. Examinations should be required periodically thereafter. A nurse who is absent from work because of any disease in a communicable stage should be excluded from duty in the hospital until her return is authorized by a physician.

As in the case of a doctor, it is within the discretion of each individual nurse whether or not to become a member of the professional associations she may be entitled to join. The hospital may wish to have its staff members active in such associations, but employment generally is not contingent on joining.

NON-PROFESSIONAL PERSONNEL

Nurse's aides, orderlies, clerical, food service, and maintenance workers usually comprise the non-professional employees of a hospital. The power to hire these employees may be vested in the board of trustees. For example, in a county public hospital, the board of trustees must "Employ a superintendent, a matron, and necessary assistants and employees, and fix their compensation." (Code 1958, sec. 347.13(4)) In the case of a county hospital payable from revenue it is stated: "The board of hospital trustees may employ, fix the compensation and remove at pleasure professional, technical and other employees, skilled or unskilled, as it may deem necessary for the operation and maintenance of the hospital . . ." (Code 1958, sec. 347A.1) The board of trustees of a city hospital similarly is vested with authority to provide management and control of the hospital. (Code 1958, sec. 380.6)

It would seem, however, that the discretion to employ and remove non-professional employees is generally delegated to the administrator, and that his discretion, unless arbitrarily exercised, will not meet with interference from the board of trustees.

Volunteer Workers

Because of the shortage of trained nursing personnel, volunteers may perform some hospital services. Volunteer workers should be supervised by trained personnel. The hospital may be held liable for the negligent acts of such volunteers, and the volunteers may be held liable individually. Both the hospital and the individual volunteers can insure themselves against loss that may result from such liability. (See "Financial Management—Insurance," page 18)

Wages

There are no minimum wage laws in Iowa applicable to hospital employees or staff members. The administrator should note that no deduction may be made from wages for dues of any professional association or labor organization without a written acknowledgment signed by the employee. (Code 1958, sec. 736A.5, as amended by Laws 1959, Chapter 370) The employee may at any time, but only after thirty days' notice in writing to his employer, withdraw the authorization to deduct fees or dues from his wages.

Wages due an employee may be garnisheed by a creditor, forbidding the employer to pay such wages to the employee. The hospital

should not fail to observe this prohibition for if it does pay the employee, it may be forced to pay a second time to the creditor. (Code 1958, sec. 642.13)

Labor Unions

Non-professional employees may or may not be union members, depending on the location and size of the hospital and the inclinations of the employees. Code section 553.11 does permit unions to be formed to endeavor, by lawful means, to obtain increased wages, shorter hours, and better working conditions. Code sections 736.1-.2 prohibit certain union activities and objectives. The employer may seek remedy by obtaining an injunction. (Code 1958, secs. 736A.7, 736B.5)

An employer cannot discharge any employee if the only basis for dismissal is that the employee is or is not a union member, refuses to join or intends to resign from the union, or because the employer has contracted with another person, firm, or labor organization to dismiss employees on one of these grounds. Iowa laws do not permit a closed or union shop.

Hospitals in Iowa seldom have been involved in organized labor disputes. If services required by the hospital are in some manner hindered by an outside labor dispute, it may be possible to make agreements with the parties that, in the interest of the public health and welfare, the functions of the hospital need not be interrupted.

WORKMEN'S COMPENSATION

Workmen's compensation is a method of compensating employees and their dependents for the effects of injuries and diseases incurred while in the service of an employer. The Iowa statute sets arbitrary limits on all benefits. Indemnity is certain if the injury or disease is one covered by the statute. A workman covered by the act has no right against his employer or fellow workers for covered injuries and diseases other than the right to workmen's compensation to be paid by the employer. (Code 1958, secs. 85.20, 85A.8-.9)

Covered Injuries and Diseases

Not all injuries are covered by the act. To be compensable an injury must "arise out of and in the course of" the employment. This provision is interpreted broadly by the courts. Iowa also has enacted an occupational disease compensation statute that is tied closely to the workmen's compensation statute, incorporating by reference many provisions of the latter act, including procedure and the specification of

covered employers, employees, and benefits. Seventeen diseases are covered. To be compensable a disease must be one of those listed *and* must be contracted in the manner specified in the statute for that disease.

Covered Employers and Employees

Private employers—The statute applies to all hospitals that do not reject its provisions by posting notices of rejection and filing a notice of rejection with the State Industrial Commissioner. The act is seldom rejected because the common law defenses that protected employers so effectively before workmen's compensation are denied a rejecting employer and, in addition, any injury arising out of and in the course of employment is presumed to have been caused by negligence of the employer.

Monetary gain is not a factor in determining whether an employer comes under the provisions of the act. (Gardner v. Trustees of M.E. Church, 217 Iowa 1390, 250 N.W. 740, 1933) Private hospitals, whether operated for profit or charitable purpose, are covered employers within the terms of the act.

Governmental employers—Workmen's compensation is "exclusive, compulsory and obligatory" upon the state, counties, and municipal corporations as employers. This appears to include all agencies and instrumentalities of the governments, including hospitals.

Employee's Option

Employees of private employers may reject the statute by giving notice of rejection to their employer and to the State Industrial Commissioner, but all common law defenses are available to an employer when a rejecting employee attempts to enforce liability for an injury arising out of and in the course of his employment.

Workmen's compensation provisions are "exclusive, compulsory and obligatory" upon employees of the state, counties, and municipal corporations.

Benefits

Medical—Employers must furnish reasonable surgical, medical, osteopathic, chiropractic, and chiropodial services not to exceed $1,000, and hospital services and supplies not to exceed $2,000. They also must pay in full reasonable charges for necessary services of special nurses, for one set of permanent prosthetic devices, and for all necessary ambulance services. Upon proof of necessity, the State Industrial Commissioner may allow and order an additional amount for surgical,

medical, osteopathic, chiropractic, chiropodial, and hospital services and supplies, but not to exceed an aggregate cost of $2,000 in addition to the amounts already allowed. (Laws 1959, Chapter 103)

Death—Employers must pay reasonable burial expenses not to exceed $300 when a covered injury or sickness results in death. This is in addition to other compensation and benefits. If dependents survive ("dependents" is defined by statute), the employer must pay weekly compensation to them for 300 weeks. The amount of each weekly installment is based on a percentage of the weekly earnings of the employee; the total amount payable is limited to $12,000. Dependents who were only partially dependent on the employee are paid benefits in proportion to the degree of their dependency. (Laws 1959, Chapter 103)

Disability—Three kinds of disability are covered by the statute: temporary disability (impairment or lessening of earning power without the loss of a member or permanent loss of use of a member), permanent partial disability (generally a loss of a member), and permanent total disability (generally the inability to earn). The employer must pay disability compensation up to 300 weeks for a temporary disability—the duration is designated the "healing period." Compensation is based on weekly earnings and the number of children of the employee. A maximum of $44 a week is allowed to an employee with four or more children; the compensation ranges downward to a maximum of $32 a week to an employee without children. The total weekly compensation, however, must not exceed sixty-six and two-thirds per cent of the employee's average weekly earnings. If the employee suffers a permanent partial disability he is entitled to compensation for a "healing period" (a maximum of twenty-five weeks) at the same rate as though he were temporarily disabled. In addition, he is allowed compensation according to a schedule in the statute based on the degree of his injury. The maximum number of weekly payments is 500, and the maximum total amount payable is $18,500. The same maximum payments are set in the case of an employee who is permanently totally disabled.

An employer must pay compensation only if he has actual knowledge of the occurrence of the injury or sickness, or if the employee, his dependents, or someone acting in their behalf has given notice to the employer of the occurrence of the injury or sickness.

Insurance

Workmen's compensation insurance is the usual method of funding the risk of compensation. The statute requires every covered employer

to insure his liability unless he furnishes to the Insurance Commissioner satisfactory proof of solvency and financial ability to pay compensation, or unless he deposits with the Insurance Commissioner satisfactory security as a guaranty of payment of compensation.

Employers may provide a different scheme of compensation or insurance in lieu of workmen's compensation, if the system provides benefits that are equal to, or higher than, those of the statute.

5 Patients

THIS chapter outlines special provisions concerning treatment that may be obtained for indigent and tubercular patients, the care of patients who have contagious diseases, and the admission and discharge procedures applicable to other patients.

Indigent Patients—University Hospitals

Even though a person has no financial resources he may obtain medical care. The Code provides that any adult resident of Iowa may file a statement with the clerk of the district court alleging "that any legal resident of Iowa residing in the county where the complaint is filed is pregnant or suffering from some malady or deformity that can probably be improved or cured or advantageously treated by medical or surgical treatment or hospital care, and that neither such person nor persons legally chargeable with his support are able to pay therefor." (Code 1958, sec. 255.1)

When such a statement is filed the clerk appoints a physician who lives near the prospective indigent patient. The physician examines the patient and files a report with the clerk in which he describes the patient's difficulty and states whether, in his opinion, it can be aided by treatment. (Code 1958, secs. 255.3-.5)

Then a hearing is held and the person who filed the statement, the county attorney, an agent of the board of supervisors, and the patient or his representative may introduce evidence and be heard. If the court finds that the patient is a legal resident of Iowa, that he needs medical care and that neither he nor the persons chargeable with his support can pay the expenses, the clerk must "ascertain from the admitting physician at the university hospital whether such person can be received as a patient within a period of thirty days." (Code 1958, sec. 255.8) If the patient can be admitted, the court enters such an order; if not, the court directs the board of supervisors of the county to provide treatment at county expense in the patient's home or in a hospital. Obstetrical and orthopedic cases may be committed to University Hospital without regard to the thirty-day limiting period.

Code section 255.15 provides that the University Hospital must have an admitting physician for indigent patients who is to assign patients to the appropriate clinic and the proper physician, unless he believes a patient's presence would be dangerous to other patients or that there is no reasonable probability of beneficial treatment. If the admitting physician does deny admission to a patient, he must make a report in duplicate stating his reasons. One copy is kept for the hospital records, the other is sent to the court from which the order committing the patient was issued. Apparently, no further proceeding or appeal is provided.

In emergency cases the court, in its discretion, but with the consent of the parents or legal guardian, may dispense with the examination, report, or hearing. The patient may be treated at University Hospital, unless the patient cannot be accepted there because of a lack of available facilities. In that event, the court may direct the board of supervisors to provide adequate care at county expense for the patient at home or in a hospital.

Payment for the care of indigent patients must be paid from the state appropriation for the support of University Hospital unless the number committed from any one county in a given year exceeds that county's quota by more than ten per cent. Each county's quota of committed indigent patients must bear the same relation to the total number of committed indigent patients as that county's population bears to the total population of the state according to the last census. (Code 1958, sec. 255.16) If the number of patients from a county exceeds that county's quota by more than ten per cent, the expenses of treating the additional patients must be paid from county funds. Legal residence means "actual" residence at the time of commitment, so the burden is on the county of commitment rather than on the county of legal settlement. (Op. Atty. Gen. 1946, p. 205) The quota basis does not govern the admission of obstetrical or orthopedic patients.

Indigent Patients—Other Care

If an indigent is a resident of a county that has a county public hospital, he is entitled to treatment. Such care is the liability of the county and a claim can be made as specified under Code section 252.35. If the hospital affords care to an indigent person who has legal residence outside the county, the county of his residence must reimburse the hospital for the reasonable cost of treatment. (Code 1958, sec. 347.16)

No provisions are made relating to indigent patient care in city hospitals. However, the board of supervisors of any county in which no county hospital has been established may in its discretion enter into

a contract not to exceed one year with any hospital located in the county for the hospital care of indigent persons, or others who may be the responsibility of the board of supervisors. (Laws 1959, Chapter 262) If the board of supervisors has entered into a contract with a hospital other than county hospital for the care of indigents, the board of supervisors shall determine those persons entitled to care at the county expense. (Laws 1959, Chapter 262)

Tubercular Patients

Special provisions have been made for the care of persons that have contracted tuberculosis. The board of supervisors of each county must provide suitable care and treatment for persons who suffer from tuberculosis; the facilities need not be located in the county. (Code 1958, sec. 347.16) The board may contract with any hospital that is not maintained for pecuniary profit to care for tubercular patients. Free treatment can be extended to an Iowa resident who is unable to pay or if his reasonable economic security or support in light of his obligations to his dependents will be affected. (Code 1958, Chapter 254) The patient must agree to remain under treatment until discharged as no longer having tuberculosis in a communicable stage. To obtain free treatment, a certificate must be signed by the county director of social welfare or overseer of the poor, or, if the county has a separate tuberculosis hospital, by its board of hospital trustees.

Any person who receives free treatment under Code Chapter 254 may be ordered rehospitalized by the district court of the county in which he is found if a complaint has been filed by a local or state health officer stating that the person still has tuberculosis in a communicable stage.

The state sanatorium at Oakdale is devoted solely to the care and treatment of residents of Iowa who suffer from pulmonary tuberculosis, either in its incipient or advanced states. An applicant for admission must have a thorough examination of his condition by a physician; the physician mails a report to the superintendent of the sanatorium. The superintendent may examine the applicant personally if he wishes. If the superintendent is satisfied that the applicant needs treatment, and is a resident of Iowa, the patient will be admitted to the sanatorium if there is room available. If space is not available, the patient's name will be placed on the waiting list; applicants are admitted in the order in which their names appear on the list.

Arrangements may be made to provide transportation expenses in advance. (Code 1958, secs. 271.10-.11) The State Comptroller collects from each county the amounts expended in treating legal residents of

that county. The state is liable for patients who have no legal or known settlement in the state. Patients in the sanatorium and persons who are legally bound for their support are liable for the maintenance of patients at Oakdale, except as provided in Code Chapter 254. (Code 1958, secs. 271.15-.16)

Contagious Disease Patients

The laws of Iowa authorize the establishment of special facilities for isolating and controlling contagious diseases. The county board of hospital trustees may establish in connection with the hospital a suitable building for isolating persons who are afflicted with contagious diseases subject to quarantine. (Code 1958, sec. 347.13(3)) A separate county detention hospital may be established under Code Chapter 256. The chapter on consolidation of hospital service provides that the board of hospital trustees must establish a suitable isolation center as soon as funds are available. (Code 1958, sec. 348.2(4))

If no detention hospital is established by the county, the local board of health must provide, when necessary, a suitable place for the isolation of persons infected with communicable diseases dangerous to the public health. The expenses must be paid by the county. (Code 1958, sec. 139.11) The local board of health of every city and town has exclusive jurisdiction and control for the enforcement of all sanitary and health regulations. If the local board has authority to establish a detention hospital, the facility may be located outside the city or town limits. An infected person may be removed forcibly to the designated isolation area under the procedures set forth in Code section 139.12. However, if his home is located within fifteen miles of the isolation area, his request to remain at home must be granted unless great injury to himself or to the public would result.

The 1958 Iowa Departmental Rules, page 131 (Regulation 23), provide that certain facilities and policies must be maintained if a hospital does accept communicable disease patients. Rooms and patients' beds must be arranged so as to provide control and prevent cross-infections. In planning additions or a new hospital, space must be provided for one or more rooms for contagion. The hospital or institution must cooperate with the attending physician in reporting to the proper authorities all reportable diseases that occur within the hospital. A list of reportable diseases is given in the 1958 Iowa Departmental Rules, page 115. Not all hospitals need accept patients who have contagious diseases; if a hospital does not have the proper facilities, it has an obligation *not* to extend treatment.

Local boards of health also have the authority to declare quaran-

tines. These boards may use their discretion in the proper measures to take, as long as they do not lessen any of the specific requirements set by the State Department of Health. Additional restrictions may be imposed, however, if they do not conflict with the existing departmental rules and if they are in the interests of the best public health practice.

The transfer of quarantined patients is allowed only if the proper permits are received as authorized by the local boards of health. If a transfer is to be made within the same jurisdiction, the permission of that particular board of health is adequate. If the transfer is to a different jurisdiction, the boards of both areas must consent, and so must the State Commissioner of Health. If the transfer is to a different state, the permits of the board of health that now has jurisdiction, the board of health in the area to which the case is to be moved, and the state commissioners of both states must be obtained. (1958 Iowa Departmental Rules, page 118) The hospital is under an obligation not to discharge contagious or quarantine cases knowingly if danger to the patient's family or to the general public may result. However, there has been no litigation in Iowa in regard to the liability of a hospital in case of a premature release of such a patient.

Admitting Procedures

Certain procedures should be followed customarily in admitting patients to help the hospital keep accurate records, to obtain information about the patient's ability to pay for services, and to facilitate diagnosis and treatment.

Pre-admittance financial examination—The governing body of any private hospital may regulate its own admission procedures; it can require such reasonable pre-admission financial examinations as it deems necessary. These procedures should not interfere with the hospital's obligation to furnish treatment in emergency cases, however.

Every resident of the county is entitled to treatment at a county public hospital; each patient must pay reasonable compensation for his treatment unless he can qualify as an indigent or tubercular patient. Pre-admittance financial examination can be made to facilitate collection of accounts. (See "Financial Management—Collection of Accounts," page 16)

The fact that a county operates a county hospital payable from revenue, organized under Chapter 347A, does not necessarily mean that every resident of the county is entitled to treatment in that hospital. Financial examination prior to admission might be more important than at a county public hospital.

The board of trustees of a municipal hospital may provide "all

needed rules and regulations for the economic conduct thereof." (Code 1958, sec. 380.6) Presumably, pre-admittance financial examinations could be required.

University Hospital can make such examinations of its pay patients. No further financial investigations are necessary in the case of indigent patients.

Financial examinations should try to determine arrangements for convenient and systematic payment in addition to ability to pay. Information regarding any program of insurance for medical care and hospital expenses that the patient may have should be ascertained. (See "Financial Management—Mutual Hospital and Medical Service Plans," page 16) Any resident of Iowa who does not have the ability to pay for necessary medical treatment is eligible for indigent patient care.

Routine physical examination on admittance—Every hospital must keep a record of all personal particulars and data relevant to each patient. (Code 1958, sec. 144.22) The 1958 Iowa Departmental Rules, page 125 (Regulation 5), also provides that accurate medical reports are to be kept for each patient and signed by the attending physician. These records must be easily accessible. The United States standard form of death certificate, required by Code section 141.4, specifies certain information such as last sickness particulars, the length of residence at the hospital, where the disease was contracted, and the former residence of the deceased.

Information should be obtained from the individual himself at the time of admittance, if it is practicable to do so. If this is not possible, the information should be obtained from relatives or friends. The patient's physician must specify for the record the nature of the disease and where, in his opinion, it was contracted.

Dead on arrival—When a person is dead on arrival at the hospital, the regular procedure of making a hospital record of personal particulars and date may be omitted. The funeral director, embalmer, or other person in charge of the funeral or disposition of the body is responsible for making the death certificate. (Code 1958, sec. 141.3)

Discrimination in admitting—Discrimination in admitting patients to non-governmental hospitals is not a criminal offense or a basis for civil suit in Iowa. The civil rights act (Code 1958, Chapter 735) does not include hospitals in its provisions. The act lists businesses such as theaters and places of amusement, and court decisions have not broadened the application of the statute to businesses other than those listed. If a private hospital not organized for profit wishes to obtain federal aid, however, it may not discriminate in admitting patients because of

race, color, or creed. (See "Financial Management—Federal Aid," page 21)

Private and charitable corporations have no duty to admit all patients who apply for treatment. (Natale v. Sisters of Mercy, 243 Iowa 582, 52 N.W.2d 701, 1952) In that case (which dealt with the dismissal of a doctor from the hospital staff and depriving him of the use of the hospital facilities) it was contended that the hospital's receipt of governmental aid and certain tax benefits, and its operation as being ostensibly open to the public, should constitute it a public institution. The Supreme Court of Iowa held that these factors did not change the hospital's status from that of a private corporation that may operate as its board of trustees deems best. Its acts, in good faith, in its internal management are not reviewable by the courts.

Such does not seem to be the rule with respect to governmental hospitals. By statute (Code 1958, sec. 347.16), any resident of the county is entitled to the benefits of a county public hospital (those established and supported from taxes under Code Chapter 347). This provision does not apply to county hospitals payable from revenue (those established and supported from hospital revenues under Code Chapter 347A). Denial of equal benefits to county residents by a county public hospital may give rise to civil liability. A denial by a county hospital payable from revenue of equal benefits to county residents willing and able to pay probably would have the same result.

Discrimination in admitting patients to municipal hospitals is not treated in the Code. However, it is permissible under the statutes to appropriate municipal funds for improvement or maintenance of the hospital (Code 1958, sec. 380.8), and to issue bonds payable from taxes to establish a hospital. (Code 1958, secs. 407.3-.15) These provisions are analogous to those in the statute pertaining to county public hospitals, so it seems likely that a denial of equal benefits of the hospital to city or town residents could give rise to a civil action.

There are no provisions in the statutes establishing and regulating state hospitals and institutions that pertain to discrimination in admitting patients, but the statutes do state who is eligible to be admitted to each institution. Denial of equal benefits of the hospitals to eligible persons may give rise to civil liability.

There is a dearth of Iowa cases in the field of civil rights generally, and a complete absence of cases involving discrimination by a hospital or hospital administrator.

Emergency service—The 1958 Iowa Departmental Rules, page 130 (Regulation 28), requires all hospitals to provide facilities for emergency care and treatment. This must include the "administration of

blood or blood plasma and intravenous medication, facilities for the control of bleeding, the emergency splinting of fractures, and for the administration of oxygen and anesthesia." Competent personnel must be available at all times.

Alcoholics—Since all hospitals are required to furnish emergency facilities, they are under an obligation to examine and treat any person who seeks emergency medical care. That a person has been drinking does not relieve a hospital from its responsibility, since this circumstance alone would certainly not preclude the possibility that he is urgently in need of medical treatment. Presumably, a hospital can be held liable for the negligence of the employees it hires to staff the emergency room. Negligence would be involved if a reasonable examination was not given to a person or if adequate emergency treatment was denied him merely because of his apparently intoxicated condition.

Mentally disturbed—All hospitals are not required to have the professional personnel and facilities necessary for treating mentally disturbed patients. If emergency situations arise, a general hospital is obligated to afford a patient needed medical care until he can be removed to a hospital that meets the requirements of a nervous and mental disease hospital as provided by 1958 Iowa Departmental Rules, page 133 (Regulation 33). It is specifically provided that all county public hospitals that are located at a county seat must provide a suitable room for detaining and examining persons brought before the commissioners of hospitalization of the county. (Code 1958, sec. 347.13 (7), as amended by Laws 1959, Chapter 152)

Discharge

Ordinary discharge responsibilities—A patient may be discharged if treatment in the hospital is no longer necessary, but a formal release should be obtained. In the case of minors, the parents or guardian should sign the release. A hospital should not release a minor or geriatric patient, or any patient for whom special care may be needed, unless and until it seems reasonably certain that the requisite at-home care will be provided.

The date and details of the discharge also should be entered on the medical records of the hospital. Payment for all unpaid hospital expenses should be arranged for at the time of discharge. Payment can not be made a condition of release, however, because that would violate constitutional guarantees against imprisonment for debt.

Discharge of alcoholics—Iowa Code sections 226.35-.39 provide for the rehabilitation of resident alcoholics through voluntary admission

to one of the four state mental health institutes. Once an alcoholic has been accepted as a voluntary patient at one of these institutions he may be discharged only by order of the superintendent. The superintendent, institute officials, and employees are not liable for detention of a voluntary patient until thirty days after the patient demands his release in writing, and even after the thirty-day period they are liable only if the detention was unreasonable or arbitrary. The patient has a right to seek his release by a writ of habeas corpus despite any provision of Code sections 226.35-.39 to the contrary. A patient who brings such an action attacks the legality of his commitment, for instance, by alleging that he is not in fact an alcoholic, or that his admission to the institute was not voluntary. The exemption from liability noted above applies if the patient was voluntarily admitted. The statute also provides a procedure whereby the superintendent may apply to the district court for a writ of commitment if the alcoholic patient has demanded his discharge but further treatment is necessary in the best interests of the patient and the public. The writ, if granted, may provide for commitment not to exceed ninety days.

County, municipal, and proprietary hospitals and their employees have no protection from liability for false imprisonment of an alcoholic. Probably good cause for detention of an alcoholic is no defense to a civil action for damages for false imprisonment. That the patient was admitted voluntarily is not material.

Unlawful detention—Unlawful detention is usually labeled false imprisonment—a branch of the private law field of torts. False imprisonment may be defined generally as the unlawful restraint of an individual's personal liberty. Good faith of the person who does the restraining or probable good cause for restraining are not defenses to a civil action for damages for false imprisonment. (Sergeant v. Watson Bros. Transp. Co., 244 Iowa 185, 52 N.W.2d 86, 1952)

A person who has been confined as a patient against his will can sue for false imprisonment. If a person is admitted as a patient voluntarily, the hospital, its officers, and employees cannot be held liable for false imprisonment because the voluntary submission indicates the the patient's consent. As discussed in the section on consent, such a consent by act is binding although it does not have as great an evidentiary value as a written consent. Mere consent to admission as a patient does not include consent to remain as a patient until treatment has been completed. Consent may be withdrawn or revoked as easily and informally as consent can be given. If consent is withdrawn or revoked, any detention of the patient becomes an unlawful detention

because it is against his will. (See subsection on Contagious Diseases, page 35, for a possible exception.)

Disposal of dead bodies—No person, firm, or hospital can legally keep a dead body more than seventy-two hours after death or discovery of death without obtaining a death certificate and a burial or removal permit. (Code 1958, sec. 141.2) The physician in attendance must furnish and certify personal particulars about the death and last sickness. (Code 1958, sec. 141.5) A physician may have the right to sign a death certificate, even though he was not in attendance at the time of the person's death, if he arrives soon afterward and makes an examination of the body. (Op. Atty. Gen. 1940, p. 22) The responsibility for obtaining other information and for properly executing and filing the death certificate ordinarily rests with the funeral director in charge of the disposition of the body.

When a person dies in a hospital in Iowa and his body is not claimed by relatives and the deceased had not expressed a desire that his body be buried or cremated, the body must be sent to the medical college of the state university or to one of the osteopathic or chiropractic colleges in the state if the body is suitable for scientific purposes; this is in accordance with Code sections 142.1-.2. The coroner, funeral director, or manager of a hospital must notify the nearest relative or friend of the deceased if known, and the State Department of Health by telegram. The body must be retained unburied for forty-eight hours. The department must telegraph instructions concerning the disposition of the body. (Code 1958, sec. 142.3) If relatives subsequently claim the body, it must be surrendered for burial without public expense. (Code 1958 sec. 142.4)

Normally, relatives of the deceased will contact a funeral director or embalmer who will handle execution of the death certificate and burial permit. A release should be obtained from the next of kin or the funeral director when the body is given over by the hospital for disposition.

Any property or money found with or upon the person of the deceased, if there is no person authorized to receive the same, must be turned over by the coroner to the clerk of the district court, to be held until disposed of according to law. A failure to comply with this section is a misdemeanor. (Code 1958, sec. 339.20)

Hospitals are not liable for burial or disposal costs. Friends or relatives who claim the body for burial or disposition are liable for these costs.

A simple procedure has been provided for a person who desires to

make his body available for scientific purposes when he dies. In 1955 the legislature authorized that every inhabitant of this state of the age of twenty-one years or more and of sound mind could "by his will or by a written instrument executed in the same manner as a deed" give his body or parts thereof to be used for scientific purposes or to replace diseased or worn-out parts or organs of other humans. The person having the right to the body for burial may likewise consent to this use. The testator or grantor may at any time prior to his death revoke his disposition by a written instrument in the same manner as the original grant. (Code 1958, sec. 142.12)

The statute has been used primarily as an authorization for the establishment of "eye banks." Hospital administrators can suggest that the testator may wish to make this disposition of his body for scientific purposes and the removal of certain organs. He probably should not endeavor to enforce the provisions of a grant made by the deceased, however, if relatives object to the procedure. There has been no litigation testing this legislation. The form of the written instrument is similar to that of a release. Hospitals should provide themselves with such forms. Time is of great consequence in the transplantation of parts or organs of the deceased to other humans; consequently, efficient records concerning patients who have made such wills should be kept. A person who desires to make this disposition of his body should execute the written instrument authorizing it and also should communicate his desire to his next of kin and prospective undertaker so that immediate action may be taken upon his death.

6 Negligence and Liability

NEGLIGENCE is the careless or unintentional breach of a duty. All persons owe a duty to each other to conduct themselves as reasonable, prudent men would conduct themselves. When a person omits to act as a reasonable, prudent man would act, or acts as a reasonable, prudent man would not act, he has *negligently* breached his duty. If a person's negligence is the proximate cause of injury to the property or person of another, the negligence gives rise to liability that may be enforced in a civil suit for money damages.

The study of negligence is necessarily a study of liability—the legal consequence of negligence. This chapter treats liability by considering two questions: Who are the persons that may be liable? and, To whom may they be liable? "Person" as used here means "legal person," including individuals, corporations, associations, and all other such entities. "Individual" as used in this section means "natural person."

Hospitals May Be Liable

A hospital is a legal person, whether it is a corporation, partnership, association, or some hybrid business form. As a legal person the hospital generally has the power to sue and be sued in its own name and to take action in many of the ways in which an individual may act. But the likeness to an individual is not complete. The hospital can act only through agents or employees. Thus, the hospital lacks the capacity to commit negligent acts. Nevertheless, it may be liable for the negligence of its trustees, administrators, nurses, janitors, etc., if their negligence occurs within the scope of their employment. This result is reached under the theory of *respondeat superior*. Negligence of an employee or agent that occurs within the scope of his employment is said to be imputed to his employer, because, in theory at least, the employer is in control.

State hospitals—The State of Iowa and its agencies, including hospitals, are immune to suit; there is no means of enforcing liability against the state.

County hospitals—Until recently, county hospitals were immune to

liability for negligence. This is no longer true. In Wittmer v. Letts (248 Iowa 648, 80 N.W.2d 561, 1957), the Iowa Supreme Court held that operating a county hospital was a proprietary function, at least in so far as a pay patient is concerned. This is a landmark case in Iowa, but so far it is the only pronouncement of this new view toward county hospital liability. It remains to be seen, in cases involving plaintiffs other than pay patients, just how far the new view will be extended. Technically, the Wittmer case has not changed the rule that a county hospital as a governmental function is immune from liability except for liability to pay patients. However, it is reasonable to expect that this differentiation will not remain static when suits by other types of plaintiffs, such as charity patients, are brought. The public policy of Iowa regarding hospital liability has been shifting from a position of immunity from suit or liability for negligence to the opposite view that hospitals should be liable for their negligence. The shift is complete for proprietary hospitals, and the Wittmer case may be regarded as the first step in a complete shift of policy regarding governmental hospitals. Admittedly, this is only speculation, but, if valid, the result would be consistent with the trend in the majority of the states.

Municipal hospitals—It is reasonable to expect that the liability of municipal hospitals will shift to coincide with that of county hospitals. The Iowa court gave as its most persuasive reason for the Wittmer decision the fact that it is permissive and not mandatory under our statutes that counties establish hospitals. This is equally true of municipalities, so that it is arguable that municipal hospitals are proprietary functions, at least in so far as pay patients are concerned. Note that this is speculative. The Iowa court has not applied the Wittmer rule to municipal hospitals; in fact, it does not appear that the Iowa court has been called upon to decide whether a municipal hospital is proprietary or governmental, so that no rule regarding liability has been established.

Private hospitals—A private or proprietary hospital, whether charitable or operated for profit, enjoys no immunity from suits for damages or from liability for negligence. The Iowa rule is consistent with that of the majority of the states, reflecting the policy decision that hospitals, through insurance, are better able to spread the cost of damages than are the injured individuals. (Frost v. Des Moines Still College, 248 Iowa 294, 79 N.W.2d 306, 1956)

Individuals May Be Liable

Any individual may be liable for his own negligence. An officer, agent, or employee of a hospital who negligently injures the person or property of another may be held liable in money damages, regardless

of whether or not he was acting within the scope of his employment. Immunity of the hospital employer to suit or liability does not extend to the negligent person (although in practice it may aid the negligent person who has few assets, because it is less likely that an attempt to enforce his liability by suit will be made unless his employer, who has substantially greater assets, can be joined as a defendant under the theory of *respondeat superior*).

It is the practice in suits based on negligence of an employee or agent, in which the plaintiff attempts to hold the employer under *respondeat superior,* to join as defendants the negligent person, his employer, and officers, administrators, and directors. For instance, in the Wittmer case, the county hospital, the hospital superintendent, and the individual members of the hospital board of trustees were all joined as defendants. The court held that a sufficient cause of action had been alleged against all defendants. Note that the Wittmer decision did not reach the merits. It reversed the Iowa rule regarding liability of county hospitals by holding, on a procedural point, that an allegation of negligence against each of these defendants states a sufficient cause of action. It does not follow that a plaintiff who joins such multiple defendants will be successful in his trial on the merits of his case against any or all of them. Liability of one is not determinative of the liability of any other defendant except the employer under the theory of *respondeat superior.* The officers, administrators, and trustees are not the employer in such a case; therefore, their liability can only be based on a holding that they also were negligent in some manner that had a causal connection to the plaintiff's injury.

The negligence of physicians, nurses, and other members of the medical staff may give rise to several special rules of liability. In any case, a negligent individual may be liable for his own negligence. This rule is applicable to physicians and nurses but their peculiar relationship to each other during surgical operations, in which nurses and others assist a physician, may cause the incidence of liability to shift. For example, when a hospital employs a nurse, the hospital may be liable for the negligence of the nurse in the scope of her employment under *respondeat superior,* but if the same nurse assists a physician during a surgical operation, the nurse acts under the control of the physician, and not the hospital. It is apparent that in a suit based on her negligence, a determination of who is in control—physician or hospital—would be crucial. The cases offer no rule relating to the shifting incidence of liability other than the generality that the time when control of the assistant shifts must be determined from the facts in each individual case.

Another problem involves the status of some physician members of

medical staffs. Physicians are not hospital employees; their negligence is not imputable to the hospital. Nevertheless, Frost v. Des Moines Still College (248 Iowa 294, 79 N.W.2d 306, 1956), indicates an area in which a physician's negligence may be imputable to the hospital. In that case a physician defendant was an instructor in the school of osteopathy, and the court held that although the school could not control the professional direction of staff physicians, a physician member of the teaching staff may perform non-professional functions that would be within the employer-employee relationship. Negligence in the course of a non-professional function is imputable to the employer.

To Whom Does Liability Extend?

Individuals may be liable to any person—Individuals, such as physicians, trustees, administrators, nurses, janitors, etc., who negligently injure the person or property of any person may be liable to that person for money damages.

Private hospitals—Private hospitals may be liable for injuries to patients that are caused by the negligence of employees or agents. No distinction is made between charity and pay patients. (Frost v. Des Moines Still College, 248 Iowa 294, 79 N.W.2d 306, 1956)

Proprietary hospitals usually are not liable for injuries to trespassers unless the trespasser is negligently injured after he has been discovered on the premises and is known to be in peril. (See Mann v. Des Moines Ry. Co., 232 Iowa 1049, 7 N.W.2d 45, 1942)

Private hospitals may be liable for injuries to children who trespass on hospital property and who are injured by a condition or instrumentality that reasonably could be expected to attract children. This is the attractive nuisance doctrine. When an attractive nuisance is the cause of injury to a child so young that he could not appreciate the latent danger, the person maintaining the nuisance may be liable for the injury unless ordinary care has been used to guard children from the peril. (Wilmes v. C.G.W.R. Co., 175 Iowa 101, 156 N.W. 877, 1916)

Proprietary hospitals probably are not liable for injuries to patients' visitors. The hospital may be liable to such persons for injuries caused by willful or wanton acts but *not* for *negligence* because it appears that such persons are licensees present by permission and not by invitation. (See Wilson v. Goodrich, 218 Iowa 462, 252 N.W. 142, 1934)

Proprietary hospitals may be liable for injuries to business visitors. This liability to salesmen, delivery men, etc., is the same as that to patients.

Proprietary hospitals may be liable to third persons. The hospital may be liable to strangers for injuries that occur away from the hos-

pital premises if the injuries are caused by the negligence of hospital employees or agents acting within the scope of their employment. (See subsequent section in this chapter, Operation of Auxiliary Services, for a discussion of this type of problem as it relates to governmental and proprietary hospitals.) Hospitals may be liable to employees. (See "Personnel—Workmen's Compensation," page 28)

Governmental hospitals—State hospitals are immune to suit and, in effect, liable to no one. Employees are protected, however, since all governmental hospitals are required to participate in a workmen's compensation program.

County hospitals have been held liable to pay patients. As discussed above, until recently they were liable to no one. The rule now may be expanded to include others.

Liability of municipal hospitals has not been adjudicated. Persuasive arguments may be made that their liability will approximate that of county hospitals when the Iowa court is called upon to decide the issue.

Operation of Auxiliary Services

The following discussion is included primarily to demonstrate the possible liability that may grow out of the operation of services separate from the premises of the hospital. The operation of an ambulance service has been chosen for illustrative purposes. Although many Iowa hospitals do not provide their own ambulance service, this discussion is applicable, in general, to similar ancillary services.

Drivers have a duty of due care in operating ambulances. In general, a violation of a statute pertaining to the operation of motor vehicles is a breach of this duty and is evidence of negligence. Such a breach gives rise to civil liability, and the driver may be held to respond in money damages for injury to persons or property resulting from his negligence. Drivers are liable regardless of any governmental immunity that their employer may enjoy.

State hospitals have the same immunity from suit as the state itself. This immunity extends to situations of negligent operation of ambulances owned by state hospitals. Regarding county hospitals, however, there is no case squarely on point. The recent case of Wittmer v. Letts (248 Iowa 648, 80 N.W.2d 56, 1957) could lead to some unusual results in cases in which persons other than the patient-passenger or property are injured through the negligent operation of a county hospital ambulance. The Wittmer case held that a pay patient had pleaded a good cause of action for negligence against the defendant county, county hospital, hospital superintendent, and the individual trustees, because

at least in so far as a pay patient is concerned the operation of a county hospital is a *proprietary* function and the defendants were not immune from liability. The county and its officials are immune from liability for the negligence of an employee if the negligence occurred in performance of a *governmental* function. If the county's liability for the negligent operation of an ambulance must fit the same test, then liability will turn on whether the ambulance was transporting or enroute to transport a pay patient rather than a charity patient at the time the plaintiff or his property was injured. It is also possible that the Iowa court might hold that all auxiliary services, such as ambulances, which are not indispensable to the operation of a hospital, are proprietary functions regardless of the pay status of the patients they serve.

City and town hospitals may be liable for damages for injuries caused by the negligent operation of ambulances owned by the hospital. Cities and towns and their officials are immune from liability for the negligent acts of agents or employees, such as ambulance drivers, if the negligent injury occurs in connection with a *governmental* function. The Iowa court has not been called upon to decide whether operating a municipal hospital is a governmental or a proprietary function. If the reasoning of the Wittmer case is applied to a case that involves a municipal hospital, the conclusion must be that the municipal hospital is proprietary because cities and towns are permitted but not required to establish hospitals, and the initiative for establishment must come from the residents. Such a holding would be consistent in result with the prevailing rules for county and proprietary hospitals.

Proprietary hospitals, charitable or otherwise, are liable for damages for injuries to persons or property caused by the negligent operation of their ambulances. The pay status of the patient-passenger is not relevant here as it may be if the ambulance is owned by the county, city, or town because that issue may be important only if governmental immunity is raised as a defense.

Hospitals are not liable for injuries to persons or property caused by the negligence of drivers of ambulances operated by independent contractors. When an employer is held liable for the negligence of its employee or agent, the negligence of the employee is said to be imputed to the employer, under the theory of *respondeat superior*; this theory holds that the employer is the person ultimately in control of the employee. The elements of control that an employer exercises over an employee are lacking when the ambulance operator is an independent contractor. Thus, the basis for imputing negligence of the driver to the hospital is also absent. Whether an ambulance is operated by a hospital or by an independent contractor is a question of fact. The pres-

ence of several incidents of control, such as an arrangement of convenience whereby a hospital collects ambulance fees for an ambulance operator and takes a percentage of the fees for the service, would not be indicative in itself of an employer-employee relationship.

Enforcing Liability

Every negligent act or omission does *not* result in liability. The plaintiff—the person who alleges that he or his property was injured —bears several burdens of proof that he must carry successfully to recover in an action based on negligence. In Iowa, although not in most states, the plaintiff must prove that he was not contributorily negligent, that is, that he was not negligent in a manner that contributed to his injury. Further, he must prove that the defendant was negligent and that this negligence had a causal connection to his injury. The plaintiff also must prove the extent of his injury in terms of money damages. Many negligent acts never result in law suits and many such suits fail because the evidence is too flimsy, or does not exist, to sustain these burdens. The point is that it should not be assumed that liability is an automatic consequence of negligence.

7 Hospital Records

HOSPITAL and medical records have been discussed in other sections of this book in the sections to which the particular records are applicable. Here we discuss certain special records—consent forms—and certain problems regarding publication of material from hospital and medical records.

Consent

The established rule is that if a patient consents to an operation upon his person, he becomes a party thereto, and cannot afterwards complain. Consent is necessary, however, and if it is absent, a tort has been committed. In most instances, the wrong is defined as a battery for which the surgeon may be liable for damages.

The consent, in order to justify the surgery from a legal point of view, must be an intelligent consent based on an understanding of relevant facts. Consequently, a minor, an intoxicated person, a mentally incompetent person, or an unconscious person cannot legally consent to an operation.

Consent may be express, implied in fact, or implied in law. If the consent is given expressly, no problems arise except in relation to the scope of the operation that the consent was intended to permit, and the evidentiary means of proving the express consent.

An express consent may be either written or oral. Oral consents should be substantiated by having witnesses present, although that probably is not as convincing a means of evidentiary proof as a written consent. Also, if the written forms are properly drawn, they should help clarify what the consent actually embodies.

An implied consent customarily is embodied in emergency cases. An example is Jackovach v. Yocom (212 Iowa 914, 237 N.W. 444, 1931), a case in which a youth of seventeen received a head wound and a crushed arm when he jumped from a freight train. He was taken to the waiting room of the nearby railroad station and a doctor was called. Soon after that, he was removed to a hospital and an operation was

performed. An endeavor was made to obtain consent from the boy's parents, but they lived eight miles out in the country and efforts to contact them by phone failed. The youth himself was not consulted or warned of the possibility that his arm might be amputated. He had said he expected the surgeon to "fix his arm." The arm was smashed beyond repair, however, and the doctor amputated. The Supreme Court of Iowa stated that the emergency situation created an implied consent. An emergency must be such that the threat of life or health is imminent, otherwise consent will not be implied. For protection against any claim that an emergency operation was not justified, the surgeon, if feasible, should call in other doctors to affirm his decision before operating. The doctrine of emergency is based on public policy, and as a practical matter wide discretion has been given doctors in utilizing it.

Implied consent may be involved not only in initiating an operation, but also in carrying through the object of an operation once it has been begun. Thus an implied consent may be recognized in an instance in which an operation is intended to achieve a certain purpose, and it is subsequently discovered in the course of surgery that a different means is necessary to bring about the desired result. Consent to a major operation implies consent to a lesser one that is related to accomplishing the same purpose. On the other hand, a completely separate operation, however minor and worthy, may result in liability if it is not within the scope of the purpose for which the consent was given. The rule that consent will be presumed in cases in which the patient is under anesthetic and a more serious operation is required, is limited to cases in which, for the preservation of life or health, immediate action is necessary.

Coercion and fraud vitiate a consent. However, the physician will be protected by the doctrine of implied consent if the patient submits or apparently consents and has knowledge of the circumstances.

Consents may be implied in law, as in the case of the blood test of a pregnant woman that an attending physician is required to take under Code section 140.3. Blood donations often are received without any formal written consent. Blood transfusion has become such common usage that the principles and techniques are sufficiently well understood by the medical profession and lay public alike that no written authorization from the recipient is required. An examination should be made to ascertain whether or not injury may result in the donor's condition in giving the blood. If no reasonable cause for apprehension is found, the conscious submission by the donor to the ex-

traction of his blood will be deemed an implied consent. A written form has been provided for purposes of illustration if such precaution seems necessary.

Surgical and autopsy consents should be formalized in writing so that both patient, or next of kin, and doctor will understand clearly what has been authorized before the operation, and to assist in proving such authorization after the operation. An autopsy may be performed by a physician or surgeon whenever a written consent has been obtained in any of the following ways:

1) By written authorization signed by the deceased during his lifetime.

2) By the written consent of any party whom the deceased, by written instrument during his lifetime, designated to take charge of his body for burial.

3) By consent of decedent's surviving spouse.

4) If the surviving spouse is incompetent, unavailable, or does not claim the body for burial, or if there is no surviving spouse, by consent of an adult child, parent, brother, or sister of the decedent. The consent of any one of such persons shall be sufficient provided that, prior to the autopsy, none of the others has objected in writing to the physician or surgeon by whom the autopsy is to be performed.

5) If none of the above persons is available to claim the body, then by consent of any other relative or friend who assumes custody of the body for burial.

Even though consent of the deceased or relatives is required to perform the autopsy, the physician may exercise discretion in whether or not he shall endeavor to obtain consent. No autopsy should be performed unless it will serve some good purpose.

The consent to perform an autopsy should not be limited, but should be a complete authorization to do whatever may reasonably be necessary to perform a thorough autopsy. The very essence of and reason for most autopsies is to determine the actual cause of death; this purpose may be frustrated if the examination is limited in scope. Careful attention to obtaining such consent should protect the hospital from any liability in this regard.

It is to be noted that no consent, however inclusively or conclusively written, will absolve a surgeon if he does not exercise his duty of proper care. Any unreasonable or inadvisable action still may result in liability. This is another aspect of public policy. The surgeon will be held to the same standard of care and treatment afforded by others of his profession in the locality even if the consent purports to grant

him the right to do "all he deemed necessary" in performing an operation.

Forms for Consent and Release

1. ANESTHETIC

_____

(date)

I consent to the administering of a (general) (local) anesthetic under the direction of Dr. _____ in connection with *(surgery) (treatment)* to be performed on _____.

(date)

_____

(signature)

2. ALCOHOL CONTENT TEST

_____

(date)

I consent to the taking of a blood sample from my body. The sample may be tested to determine the percentage of alcohol in my blood and *(the sample) (a report of the results of the test)* may be released to _____.

_____

(signature)

3. BLOOD DONOR

_____

(date)

I release the _____ hospital, its officers, agents, and employees from liability for injury or complication that may result directly or indirectly by reason of a donation of my blood on _____.

(date)

_____

(signature)

4. Departure from Hospital

_____

(date)

(Against) (Without) the advice of Dr. _____, my physician, I have determined to leave _____ hospital. I release Dr. _____, _____ hospital, its officers, agents, and employees from liability for any injury or complication that may result directly or indirectly by reason of my leaving the hospital.

_____

(signature)

5. Autopsy

_____

(date)

I request and authorize a representative of the _____ _____ hospital to perform a complete post mortem examination on the remains of _____. I consent to the removal and retention of such organs, tissues, and body parts as may be considered useful. I further consent to the use and study of any such organs, tissues, or parts that may be removed, for the purpose of alleviating suffering or prolonging life in others.

This consent and request is given with the understanding that due care will be exercised to avoid disfigurement or mutilation of the body, and that no expense to the deceased or to the undersigned will be incurred in the performance of the autopsy.

_____

(signature)

_____

(relationship to deceased)

_____

(address)

6. SURGERY

_____

(date)

I consent to the performance of surgery upon my body on _____ _____ (date) _____ by Dr. _____ for the purpose of correcting or alleviating the following condition: _____ _____.

I authorize Dr. _____ to perform any procedure that he may consider necessary to correct or alleviate any other unhealthy condition that he may encounter in the course of this surgery and I consent to medical procedures upon my body by technicians, assistants, nurses, and others under the supervision of Dr. _____ _____ before, during, and after this surgery. I understand that neither Dr. _____ nor the _____ _____ hospital guarantees that this surgery will be successful in correcting or alleviating the above condition.

I consent to the retention of such organs, tissues, and body parts necessarily removed in the course of this surgery that may be considered useful. I further consent to the preservation, use, and study of any such organs, tissues, or parts for the purpose of alleviating suffering or prolonging life in others.

_____

(signature)

7. PHOTOGRAPHY

_____

(date)

I consent to photography of the affected parts of my body during the course of *(surgery) (treatment)* to be performed upon me by Dr. _____ on _____ (date) _____. This consent is given with the understanding that all such photographs will be kept in strict confidence for use only in diagnosis, treatment, and instruction of medical personnel.

_____

(signature)

8. RELEASE OF MEDICAL RECORDS

_____
(date)

I authorize _____ hospital to release to _____ the medical records including photographs and X-ray reports pertaining to the case history of *(surgery) (treatment)* performed upon me between the _____ (date) _____ and _____ (date) _____.

_____
(signature)

9. TREATMENT

_____
(date)

I consent to treatment on _____ by Dr. _____ for the purpose of correcting or alleviating the following condition: _____ _____. I understand that neither Dr. _____ nor the _____ hospital guarantees that this treatment will be successful in correcting or alleviating this condition.

_____
(signature)

Invasion of Privacy

Persons have a right to live without unwarranted publicity. The Iowa Supreme Court, in accord with the trend of decisions in this country, has recognized that an intrusion upon this right is a tort—a private wrong that may be redressed by a civil action for money damages. (Bremmer v. Journal-Tribune Pub. Co., 247 Iowa 817, 76 N.W.2d 762, 1956) "Invasion of privacy" is a so-called intentional tort, as distinguished from a negligent tort. It further differs from other torts in that the injury resulting from the wrong is completely non-material. Only the plaintiff's feelings are injured, and it is unnecessary to show that the plaintiff's reputation has been injured, or that he has been physically harassed as a result of the invasion. Unlike libel and slander, truth of the matter published is no defense and malice is not an element. (See Prosser, Torts, Chapter 20, 2d ed., 1955)

An individual's privacy is invaded when another person disseminates private information about him, or photographs of him, or when an individual's name or photograph is appropriated for some commercial scheme without his permission. Oral dissemination usually has been held not actionable. Newspapers are frequent defendants, even though the press enjoys the privilege of publishing material that would be private otherwise if the subject matter is of news value or of legitimate public interest and is not indecent. But publication in the press is only one way in which privacy may be invaded. Hospitals may invade the privacy of patients by releasing medical records, photographs, or information about a patient without the patient's authorization. A hospital may be held liable for invasion of privacy by its agents or employees because the tort of the employee may be imputed to the employer if it was committed within the scope of his employment. (See Mechem, Agency, 394, 4th ed., 1952)

Preventive measures can minimize or eliminate the danger of such liability. All records and information containing or pertaining to private facts about patients should be safeguarded. Information made available to or sought by the press should be screened so that patients' privacy is not violated. The fullest use should be made of written consents signed by the patient when records, photographs, X-rays, etc. are released or used for purposes other than diagnosis and therapy.

Libel and Slander

Libel and slander actions may be related to "invasion of privacy" suits. Libel and slander refer to defamatory statements published about a person—statements that tend to hold him up to public hatred, contempt, or ridicule, or to injure him in the conduct of his business or profession. In general, libel refers to printed matter and slander to the spoken word. If the libel or slander involves the imputation of a crime, a loathesome disease, unchastity, or inadequacy or incompetence relating to a person's business or professional ability, damages need not be shown. To be actionable, defamation, either libel or slander, must be communicated to some third person or persons other than the one to whom the statement refers.

In regard to a hospital's liability for statements made by its employees, the law of agency applies. The hospital, as a principal, will not be held liable unless the employee acted within his scope of employment in making defamatory statements. (Vowles v. Yakish, 191 Iowa 368, 179 N.W. 117, 1920) As a general policy, it is unwise for anyone connected with a hospital to discuss details of patients' illnesses with the public. Probably no liability would inure to the hospital for

such statements, however. That an employee made such statements would not fall within the scope of his employment if the making of such statements is not specifically authorized by the principal nor impliedly authorized as a function necessary or even incidental to the proper completion of the employee's duties.

Private duty nurses and members of the medical staff may be independent contractors. If so, the hospital would have no legal responsibility for their acts, provided it does not hold them forth as its employees. Whether or not an individual is an independent contractor depends on the relationship he maintains with the hospital. If it is one of affiliation rather than actual employment, the position is probably that of an independent contractor. Each relation, and the consequent legal liabilities, must be determined on the factual issues of the particular case. (See Chapter 6, "Negligence and Liability," pages 43-49)

No civil action will lie for defamation of the deceased on behalf of his estate. However, if there is a reflection upon persons still living, they may use that defamation as the basis of maintaining a suit in their own right.

Communications to doctors who are staff members of the hospital may be privileged in regard to giving testimony in a subsequent legal action. To qualify as privileged the communication must originate in confidence while the doctor was acting in his professional capacity, and the element of confidentiality must relate to the satisfactory treatment of the patient. (Code 1958, sec. 622.10) Privileged communications are of a personal nature and a hospital, as an organization, could not be a party to them.

Medical records should not be open for public inspection without sufficient cause. It is within the discretion of hospital authorities and the attending physician what information should be released to the press. The desires of the patient and his relatives should guide this discretion.

8 Miscellaneous Statutory Provisions

Drugs

The 1958 Iowa Departmental Rules, page 128 (Regulation 22), require all medicines, poisons, and stimulants kept in the nursing service of hospitals to be labeled plainly and stored in a specially designated cabinet, closet, or storeroom that is well illuminated and accessible only to authorized personnel. There must be adequate refrigeration for biologicals and drugs that require it. Pharmacies operated in connection with hospitals also must comply with Regulation 22. Such a pharmacy must be operated under the supervision of a pharmacist licensed to practice in Iowa.

Alcohol

To purchase liquor for medicinal, laboratory, and scientific purposes, a hospital must have a special permit from the Iowa Liquor Control Commission. The permit is good for one year. A nominal fee is charged. (Code 1958, sec. 123.27)

Narcotics

Under Iowa statute it is unlawful for any person, including corporations, to manufacture, possess, control, sell, prescribe, administer, dispense, or compound any narcotic drug except as provided in the statute. It is the duty of the Iowa Pharmacy Examiners to approve hospitals that can be entrusted with the custody and the professional use of narcotics under the direction of a physician. Licensed manufacturers and wholesalers may sell narcotics to a person who is in charge of a hospital, but that person must not dispense, administer, or otherwise use drugs except for scientific or medicinal purposes and within the scope of his employment or official duty.

The person in charge of a hospital must use an official written order in duplicate signed by himself or by his duly authorized agent to obtain narcotics from a licensed manufacturer or wholesaler. The original copy goes to the seller and the duplicate must be retained by the

hospital for two years so that it is readily accessible for inspection by enforcement officers.

Medical doctors and, to a limited extent, osteopaths, or nurses and interns under their direction and supervision, may administer narcotics. The practitioner must act in good faith in the course of his professional practice when prescribing, administering, or dispensing narcotics. Persons who administer or use narcotics professionally must keep a record of all narcotics received and administered, dispensed, or used professionally. The statute includes no provision regarding the length of time this record should be kept.

Violation of the requirement to record is a misdemeanor. Violation of any other provision of the statute is a felony punishable by fine of $2,000 and imprisonment for a minimum of five years for first conviction, up to a maximum of twenty years for third conviction.

The 1958 Iowa Departmental Rules, page 128 (Regulation 22), requires that places where narcotics are stored be locked securely at all times and accessible only to persons in charge.

Adoption

It has been the history of the Iowa statutes that relate to the adoption of children to channel more and more adoptions through licensed agencies. Any person, including individuals, partnerships, associations, and corporations, that undertakes to place children, temporarily or permanently, in private homes, or that receives children for that purpose, or that represents itself as placing children for that purpose, is a child placing agency as defined in Code sections 238.1-.2. All child placing agencies must be licensed by the State Board of Social Welfare. (Code 1958, secs. 238.3-.10) Violation is a misdemeanor. (Code 1958, sec. 238.43) Issuance of a license is conditional upon a showing that the applicant and his employees are properly equipped by training and experience to select suitable temporary or permanent homes for children and to supervise the homes after children have been placed in them. (Code 1958, sec. 238.4) Licensees are subject to frequent inspection and rigid control.

A written consent is a prerequisite to a legal adoption. (Code 1958, sec. 600.3) When a licensed agency signs the consent, the natural parent or parents are not present and cannot force the agency to disclose information about the adoption later. When an adoption is arranged by someone other than a licensed agency, such as a physician, the natural parent or parents must sign the consent, which must include, when signed, the names of the adopting parents. Placements without a

court order, or which are not by a child placing agency, are voidable and subject to punishment as a misdemeanor.*

Nuisances

A nuisance is "Whatever is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as essentially to interfere with the comfortable enjoyment of life or property, . . ." (Code 1958, sec. 657.1) A nuisance is a condition, not an act or failure to act. Code Chapter 657, Nuisances, includes the definition quoted above, and a list of particular nuisances and the provision of sanctions against persons who maintain nuisances. Code Chapter 413, Housing, which applies to all cities that have populations of 15,000 or more, provides that violation of the chapter may be a nuisance. All cities and towns may adopt housing regulations that are consistent with Code Chapter 413, and Code sections 368.3-.4 permit all cities and towns to regulate nuisances.

A condition may be a *public* nuisance when it affects the rights of people generally, or it may be a *private* nuisance when it invades the rights of particular individuals. When either a public or private nuisance is charged, the court may decree (1) that the nuisance must be abated at the defendant's expense, or (2) that the defendant is enjoined from continuing the nuisance or allowing it to recur, or (3) that the defendant pay damages, or (4) a combination of two or three of these results. When a public nuisance in violation of Code Chapter 657 is charged, the court may include in the judgment a fine of not more than $1,000 or imprisonment not to exceed one year.

Hospitals might create or maintain nuisances if they violate building codes or permit certain prohibited conditions to exist. It is not a defense to a charge of maintaining a nuisance that the defendant has exercised due care, or employed approved methods or equipment, or intended no harm.

* For details on the Iowa law of adoption see Judge Harvey Uhlenhopp, *Adoption in Iowa,* 40 Iowa Law Review 228 (1955).

9 Medico-Moral Problems

THERE are some activities that a hospital may be called on to perform that pose both legal problems and moral issues. This section does not endeavor to advise what decision should be made in these situations. Its primary purpose is to create an awareness of the problems and the possible consequences of the courses of action that may be taken.

Sterilization

Sterilization operations, if performed with the consent of the patient, usually do not create legal difficulties. Such operations may be classified according to purpose: (1) therapeutic, to safeguard the personal health of an individual; (2) contraceptive, performed as a permanent method of birth control; (3) punitive, which a few states still authorize as punishment for certain crimes though it is rarely done; and (4) eugenic, to prevent procreation by those who are mentally or physically unfit and of whom it is believed that the offspring may have the same characteristics.

Therapeutic sterilization is legal if it is done with the consent of the patient. Contraceptive sterilization also may be performed by consent, except in a few jurisdictions, not including Iowa, where state legislation specifically prohibits it.

Eugenic sterilization operations performed without consent have become the basis of controversy in this area. In twenty-three states, including Iowa, consent of the person is not required before performing the operation. Constitutionality questions were answered in Buck v. Bell (274 U.S. 200, 1927), in which the United States Supreme Court indicated it would uphold such state legislation if due process requirements are met.

Present provisions for eugenic sterilization are found in Code Chapter 145. It establishes the State Board of Eugenics; this board conducts hearings on cases reported to it by the superintendents of various state institutions. If, in the judgment of a majority of the board, procreation by an individual would produce children who would have an inherited

tendency to be feebleminded, insane, syphilitic, habitually criminal, morally degenerate, or sexually perverted, or a menace to society, and that there is no probability that the condition will improve, it is the duty of the board to recommend sterilization. If the individual consents in writing, the operation may be performed. If he does not, the district court reviews the board's determination. If the board's decision is affirmed, the operation will be performed even though no consent is obtained. The individual may choose the physician subject to the approval of the board.

Before performing any eugenic sterilization authorized under Code Chapter 145, the hospital and physician in charge should be certain that its provisions have been followed. Other sterilization operations should not be performed unless a written consent has been given by the individual.

Artificial Insemination

Artificial inseminations are categorized as homologous or AIH, in which the husband furnishes the semen, and as heterologous or AID, in which a third person is the donor. There are many moral and legal conflicts inherent in artificial insemination.

Legislation concerning this subject has been proposed in 34 Iowa Law Review 658 (1949). Interested persons are referred to that journal for discussions of some of the basic problems involved.

Euthanasia

The taking of a human life, regardless of motive, involves religious and moral as well as legal issues. Some leaders would condemn euthanasia except in instances in which the patient definitely requests the action. Others view it as an interference with the will of a Supreme Being, or as a practice so likely to be abused that it should never be permitted. For a discussion of these issues and other medico-moral problems see 31 New York University Law Journal 1157 (1956).