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 OPINION COMMITTEE

April 17, 2003

R.Q-0045-GA

The Honorable Greg Abbott
 Attorney General, State of Texas
 Attn: Opinion Committee Chairperson
 P.O. Box 12548
 Austin, TX 78711-2548

VIA CERTIFIED MAIL
 RETURN RECEIPT REQUESTED

RE: Authority of Board of Managers of El Paso
 County Hospital District to Delegate Credentialing
 Authority to its Professional Affairs Committee

FILE # ML-43070-03
 I.D. # 43070

Dear General Abbott:

This is to request your opinion regarding whether the Board of Managers ("Board") of the El Paso County Hospital District ("District") may delegate credentialing authority to the Professional Affairs Committee.

R. E. Thomason Hospital, operated by the El Paso County Hospital District, currently credentials medical staff and allied health professionals utilizing a procedure outlined in the hospital's Credentialing Manual, a copy of which is enclosed. The procedure requires that applications for initial appointment or for reappointment be approved (or denied) by the applicant's clinical department, the Credentials Committee, the Medical Executive Committee, the Professional Affairs Committee and by the district's Board of Managers.

The Professional Affairs Committee has asked the Board of Managers to delegate to it the authority to recredential medical staff and allied health professionals. The request was prompted by a concern that there could be a gap of a few days between the expiration of an appointment and final approval by the Board of Managers. Such a gap, however brief, is not permitted by the Joint Commission for Accreditation of Healthcare Organizations.

Background

Under the existing medical staff bylaws, only the Board has authority to appoint, reappoint and renew or modify clinical privileges. Initial appointment is for a period of one year and reappointments are for a period of two years. The hospital and medical

staff bylaws provide that applications for appointment and reappointment shall be reviewed by the applicant's clinical department, the Credentials Committee, the Medical Executive Committee, and the Professional Affairs Committee before final approval by the Board of Managers. The Professional Affairs Committee consists of ten (10) members and is composed of two (2) members of the Board of Managers, the Chief Executive Officer, Chief of Staff, the Chief of Staff-Elect, the Immediate Past Chief of Staff, a representative of House Staff to be designated by the Chief of Staff, and three individuals selected by the Chief Executive Officer. In addition, the Chair of the Board of Managers is an ex-officio member.

The process to review an application for renewal can be lengthy and normally takes between three and four months to complete. In some cases, an application may not complete the process prior to the expiration date of the current membership. To avoid a lapse in these situations, it has been proposed that the board by laws and the medical staff bylaws be amended to authorize the Professional Affairs Committee to grant temporary reappointments and clinical privileges for a period not to exceed thirty (30) days.

Analysis

While JCAHO accreditation is required for many purposes, hospitals must also comply with state laws and regulations. Texas's hospital licensing requirements are found in Chapter 241 of the Texas Health and Safety Code and in Title 25, Chapter 133 of the Texas Administrative Code. Chapter 241 specifically requires the Texas Board of Health to consider "the standards of the Joint Commission on Accreditation of Healthcare Organizations" and "attempt to achieve consistency with those conditions and standards" when adopting rules regarding hospital licensing standards. H&S 241.026(b). Chapter 241, in describing the responsibilities of the governing board, provides that the governing body may "make rules" about medical staff membership.ⁱⁱ The Administrative Code states that the medical staff consists of those "who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital . . ."ⁱⁱⁱ; that [T]he governing body of the hospital shall take final action on the application for medical staff membership or privileges . . ."^{iv}; and that [T]he medical staff shall be composed of . . . practitioners appointed by the governing body."^v

JCAHO's credentialing guidelines provide that "[T]he governing body appoints and reappoints to the medical staff and grants initial, renewed, or revised clinical privileges, based on medical staff recommendations, in accordance with the bylaws, rules and regulations, and policies of the medical staff and of the hospital." The JCAHO standards also state that "[T]he governing body, pursuant to its bylaws, may elect to delegate the authority to render initial appointment, reappointment, and renewal or modification of clinical privileges decisions to a committee of the governing body."^{vi} The only limitation on this delegation is that the committee consist of "at least two governing board members".

In summary, Chapter 241 does not expressly authorize the delegation of authority, yet the JCAHO guidelines clearly allow for it. Given the statutory directive achieve consistency

with JCAHO standards, it is arguable that Chapter 241 and Chapter 133 of the Administrative Code do not prohibit the proposed delegation. However, we must also consider the governmental status of the Hospital and the limited authority conferred on the Board of Managers by statute.

The El Paso County Hospital District was created under the authority of Article 4494n, Texas Civil Statutes (now Chapter 281 of the Health and Safety Code). A hospital district has only such authority as is expressly conferred on it by statute or necessarily implied from the authority expressly conferred to effectuate the express powers. JC-068 (1999)(El Paso County Hospital District had no implied authority to enter into an interest rate hedge contract). Implied powers of the District are those that are indispensable to effectuate the District's express purposes and not those that are merely convenient or useful. Id. Section 281.028(a) states that "[T]he board may appoint doctors to the district's staff . . ." The question is whether these provisions impliedly authorize the Board to delegate its credentialing authority.

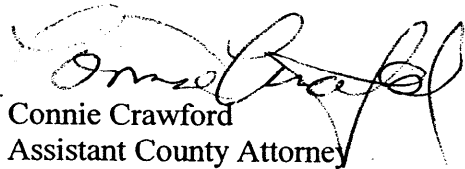
Prior rulings by the Attorney General on hospital districts and implied authority have consistently held that the purpose for which a hospital district is created should be narrowly construed. See JC-068 (no implied authority to enter into interest rate hedge contract; LO-95-088 (no implied authority to expend funds to recruit medical examiner); Attorney General Opinion M-256 (1968) (hospital district lacked authority to expend funds for building and operating a "Crime Lab"); Attorney General Opinion H-31 (1973) (hospital district lacked authority to assume duties and functions of city and county health departments).

Summary Conclusion

Nothing in Texas statutes or applicable regulations expressly authorize the governing body of a hospital to delegate temporary credentialing authority to a sub-committee of the governing body. JCAHO guidelines allow delegation to a subcommittee of the governing body that consists of at least two members of the governing body. The Board of Managers of the Hospital District only has such limited authority as is conferred by statute or may be implied therefrom.

Accordingly, we respectfully request that you provide an opinion on whether the Board of Managers of the El Paso County Hospital District may delegate to its Professional Affairs Committee the authority to recredential medical staff and allied health professionals.

Sincerely,



Connie Crawford
Assistant County Attorney