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Interpretation of Subsection 27(d) of the Consumer Product Safety Act. Public Law 92-573

By memorandum dated June 21, 1973, you inquired whether section 27(d) of the CPSA applies to NEISS hospitals and related contractors.

You stated that the Bureau of Epidemiology is responsible for continuing contracts with numerous hospitals and other agencies which provide product-related injury information as part of its surveillance activity. You then pointed out that some of the NEISS hospitals have determined not to disclose victim identity, thereby precluding investigatory interviews by Commission personnel

The hospital administration's reluctance to identify victims is predicated on their desire to control the confidentiality of medical records and to avoid the possibility of civil liability from patients or their attending physicians.

In regard to civil liability for disclosing information to the Commission, section 27(d) of the CPSA, 14 U.S.C. 2075(d) states:

> "No person shall be subject civil liability to any person (other than the Commission or the United States) for disclosing information at the request of the Commission."

Your question is whether NEISS hospitals come within the meaning of "person" as used in section 27(d), above.

In this connection 1 U.S.C. 1 provides in relevant part:

> "In determining the meaning of any Act or resolutionof Congress,. . .the word person may extend and be applied to partnerships and corporations,. . .unless the context shows that such words were intended to be used in a more limited sense. . . ."

In most, if not all cases, NEISS hospitals are incorporated bodies. As such, the word""payson" as used in section 27 of the CPSA, supra., "may extend and be applied to (them). . . unless the context shows that such words were intended to be used in a more limited sense. . .". Even if the NEISS hospitals or related contractors were not a corporation or a partnership, it is our view that they would still be

included within the meaning of the word "person" as used in section 27. We believe that Congress did not intend to use the word "person" in a narrow sense but rather, meant for it to be given a broad construction. We base this belief on the fact that the word "person" in section 27 includes both the Commission and the United States within its meaning -- "No person shall be subject to civil liability to any person (other than the Commission or the United States) . . ." (emphasis added). Both the Commission and the United States are referred to as "any person". It is thus clear that Congress did not intend to use "person" in a limited sense.

Additionally, it is significant to note that the legislative history of the CPSA reveals that section 27(d) was added at the request of hospitals and insurance companies. 118 Cong. Rec. 8594 (1972) (remarks of Representative Moss). It would be logical to conclude that they had the question of their liability in mind when they requested the adoption of this section.

Based on the foregoing discussion, NEISS hospitals and related contractors would not be subject to civil liability to any person other than the Commission or the United States for disclosing information at the request of the Commission.

In regard to the confidentiality of medical records, section 25(c) of the Act states:

> "(c) Subject to sections 6(a)(2) and 6(b) but notwithstanding section 6(a)(1), (1) any accident or investigation report made under this act by an officer or employee of the Commission shall be made available to the public in a manner which will not identify any person treating him, without the consent of the person so identified . . . ."

ASchoem:jh:7/12/73
cc: GC Files/Chron
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