NY CLS Pub O § 17

Current through 2021 released Chapters 1-49, 61-101

New York Consolidated Laws Service > Public Officers Law (Arts. 1 — 8) > Article 2 Appointment and Qualification of Public Officers (§§ 3 — 19)

§ *17*. Defense and indemnification of state *officers* and employees

1.

(a) As used in this section, unless the context otherwise requires the term "employee" shall mean any person holding a position by election, appointment or employment in the service of the state, including clinical practice pursuant to subdivision fourteen of *section two hundred six of the **public** health **law***, whether or not compensated, or a volunteer expressly authorized to participate in a state-sponsored volunteer program, but shall not include an independent contractor. The term employee shall include a former employee, his estate or judicially appointed personal representative and persons who assist the education department or the department of health as consultants or expert witnesses in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings, or criminal prosecutions for unauthorized practice pursuant to title eight of the education ***law*** or title II-A of the ***public*** health ***law***.

(b) For the purposes of this section, the term "employee" shall include members, ***officers*** and other persons in the employment of the New York state energy research and development authority, members of the board of directors, ***officers*** and other persons in the employment of the New York state science and technology foundation, and members of the board of directors, ***officers*** and other persons in the employment of the New York state olympic accommodations control corporation or serving on its board of directors on or before June thirtieth, nineteen hundred eighty.

(c) For the purposes of this section, the term "employee" shall include members of the state patient qualification review board appointed by the commissioner of health pursuant to article thirty-three-A of the ***public*** health ***law***.

(d) For the purposes of this section, the term "employee" shall include directors, ***officers*** and employees of the facilities development corporation.

(e) For the purposes of this section, the term "employee" shall include directors, ***officers*** and employees of the environmental facilities corporation.

(f) For the purposes of this section, the term "employee" shall include ombudsmen designated under section five hundred forty-four and *section five hundred forty-five of the executive **law***, and shall include such ombudsmen without regard to whether they are volunteers or paid staff of the office for the aging or of designated substate ombudsman programs under the direction of the office.

(g) For the purposes of this section, the term "employee" shall include the members of the board, ***officers*** and employees of the greenway heritage conservancy for the Hudson river valley or the greenway council.

(h) For the purposes of this section, the term "employee" shall include members of the board, ***officers*** and employees of the New York local government assistance corporation.

(i) For purposes of this section, the term "employee" shall include the ***officers*** and employees of the Central Pine Barrens joint planning and policy commission.

(j) For purposes of this section, the term “employee” shall include directors, ***officers*** and employees of the dormitory authority.

(k) For the purposes of this section only, the term “employee” shall include any member, director, ***officer*** or employee of a soil and water conservation district created pursuant to *section five of the soil and water conservation districts **law*** who is working on a project which receives funding from the state and has received approval by the state soil and water conservation committee or who is carrying out the powers and duties pursuant to article two of the soil and water conservation districts ***law*** by working with any agency of the state as defined by subdivision five of *section three of the soil and water conservation districts **law***.

(l) For the purposes of this section and consistent with the provisions of section 13 of a chapter of the ***laws*** of 1997, amending the ***public*** authorities ***law***, the ***public*** health ***law***, the ***public officers law***, chapter 41 of the ***laws*** of 1997 relating to providing a retirement incentive for certain ***public*** employees, and the civil service ***law***, relating to the creation of the Roswell Park Cancer Institute corporation and providing for the rights, powers, duties and jurisdiction of such corporation, the term “employee” shall include directors, ***officers*** and employees of the Roswell Park Cancer Institute corporation.

(m) For the purposes of this section, the term “employee” shall include the members of the spinal cord injury research board within the department of health.

(n) For the purposes of this section, the term “employee” shall include directors, ***officers***, and employees of the Governor Nelson A. Rockefeller empire state plaza performing arts center corporation.

(o) For the purposes of this section, the term “employee” shall include the directors, ***officers*** and employees of the state of New York mortgage agency.

(p)[Repealed]

(q) For the purposes of this section, the term “employee” shall include the members, ***officers*** and employees of the tobacco settlement financing corporation.

(r) For the purposes of this section, the term “employee” shall include the directors, ***officers***, and employees of the state of New York municipal bond bank agency and the directors, ***officers***, employees,trustees and other managers (however denominated), of any tax lien entity (as defined in subdivision sixteen of *section twenty-four hundred thirty-two of the **public** authorities **law***) of the state of New York municipal bond bank agency.

(s) For the purposes of this section, the term “employee” shall include the members of the board, ***officers*** and employees of the Niagara river greenway commission.

(t) For the purposes of this section, the term “employee” shall include the members of the board, ***officers*** and employees of the dormitory authority for purposes of *section sixteen hundred eighty-l of the **public** authorities **law***.

(u) For the purposes of this section, the term “employee” shall include the members of the empire state stem cell board within the department of health.

(v) For the purposes of this section, the term “employee” shall include the members of the board, and ***officers*** and employees of the New York city off-track betting corporation.

(w)[There are two sub 1, paras (w)] [Repealed]

(w)[There are two sub 1, paras (w)] For purposes of this section, the term “employee” shall include a person certified by the office of court administration and paid by the city of New York to serve as a guardian ad litem in an action or proceeding pending in the housing part of the civil court of the city of New York.

(x) For the purposes of this section, the term “employee” shall include the members of the board, ***officers*** and employees of the dormitory authority for purposes of *section sixteen hundred eighty-q of the* ***public*** *authorities* ***law***.

(y) For purposes of this section, the term “employee” shall include members of the board, ***officers*** and employees of the New York state thruway authority or its subsidiaries.

(z) For purposes of this section, the term “employee” shall include members of the governing board, ***officers*** and employees of the New York state canal corporation.

2.

(a) Upon compliance by the employee with the provisions of subdivision four of this section, the state shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his ***public*** employment or duties; or which is brought to enforce a provision of section nineteen hundred eighty-one or nineteen hundred eighty-three of title forty-two of the United States code and the act or omission underlying the action occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his ***public*** employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the state.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the employee shall be entitled to be represented by the attorney general, provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding whenever the attorney general determines based upon his investigation and review of the facts and circumstances of the case that representation by the attorney general would be inappropriate, or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his choice. The attorney general shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel. The attorney general may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this section, the attorney general shall so certify to the comptroller. Reasonable attorneys’ fees and litigation expenses shall be paid by the state to such private counsel from time to time during the pendency of the civil action or proceeding subject to certification that the employee is entitled to representation under the terms and conditions of this section by the head of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the comptroller. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys’ fees shall be resolved by the court upon motion or by way of a special proceeding.

(c) Where the employee delivers process and a request for a defense to the attorney general as required by subdivision four of this section, the attorney general shall take the necessary steps including the retention of private counsel under the terms and conditions provided in paragraph (b) of subdivision two of this section on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

3.

(a) The state shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim, or shall pay such judgment or settlement; provided, that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his ***public*** employment or duties; the duty to indemnify and save harmless or pay prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing on the part of the employee.

(b) An employee represented by the attorney general or by private counsel pursuant to this section shall cause to be submitted to the head of the department, commission, division, office or agency in which he is employed any proposed settlement which may be subject to indemnification or payment by the state and if not inconsistent with the provisions of this section such head of the department, commission, division, office or agency in which he is employed shall certify such settlement, and submit such settlement and certification to the attorney general. The attorney general shall review such proposed settlement as to form and amount, and shall give his approval if in his judgment the settlement is in the best interest of the state. Nothing in this subdivision shall be construed to authorize the state to indemnify and save harmless or pay an employee with respect to a settlement not so reviewed and approved by the attorney general.

(c) Nothing in this subdivision shall authorize the state to indemnify or save harmless an employee with respect to fines or penalties, or money recovered from an employee pursuant to article seven-a of the state finance ***law***; provided, however, that the state shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his ***public*** employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States. The attorney general shall promulgate such rules and regulations as are necessary to effectuate the purposes of this subdivision.

(d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the head of the department, commission, division, office or agency in which he is employed; and if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by such head of the department, commission, division, office or agency. If the attorney general concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the comptroller. On or before January fifteenth the comptroller, in consultation with the department of ***law*** and other agencies as may be appropriate, shall submit to the governor and the legislature an annual accounting of judgments, settlements, fees, and litigation expenses paid pursuant to this section during the preceding and current fiscal years. Such accounting shall include, but not be limited to the number, type and amount of claims so paid, as well as an estimate of claims to be paid during the remainder of the current fiscal year and during the following fiscal year.

4.The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon (i) delivery to the attorney general or an assistant attorney general at an office of the department of ***law*** in the state by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document, and (ii) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the state based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the state provide for his defense pursuant to this section.

5.The benefits of this section shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal any provision of the workers' compensation ***law***.

6.This section shall not in any way affect the obligation of any claimant to give notice to the state under *section ten of the court of claims act* or any other provision of ***law***.

7.The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

8.The provisions of this section shall apply to all actions and proceedings pending upon the effective date thereof or thereafter instituted.

9.Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any

unit, entity, ***officer*** or employee of the state or any other level of government, or any right to defense and/or indemnification provided for any governmental ***officer*** or employee by, in accordance with, or by reason of, any other provision of state or federal statutory or common ***law***.

10. If any provision of this section or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

11. The provisions of this section shall not apply to physicians who are subject to the provisions of the plan for the management of clinical practice income as set forth in the policies of the board of trustees, title 8, New York codes[,]* rules and regulations, regarding any civil action or proceeding alleging some professional malpractice in any state or federal court arising out of the physician's involvement in clinical practice as defined in that plan.

History

Add, L 1978, ch 466, § 1, eff Sept 4, 1978; amd, L 1980, ch 704, § 1; L 1980, ch 866, § 8; L 1981, ch 208, § 5, eff June 12, 1981; L 1981, ch 228, § 2, eff June 15, 1981; L 1982, ch 507, § 1; L 1982, ch 613, § 1; L 1983, ch 190, § 1, eff May 31, 1983, and applicable to all actions and proceedings pending upon May 31, 1983 or thereafter instituted; L 1983, ch 309, § 1; L 1983, ch 697, § 2, eff July 26, 1983; L 1984, ch 204, § 2, eff June 12, 1984; L 1984, ch 440, § 8; L 1985, ch 768, § 1, eff Aug 1, 1985; L 1986, ch 844, § 1, deemed eff April 1, 1985 and applicable to all actions, proceedings, judgments or settlements pending or commenced thereafter; L 1989, ch 719, § 2, eff July 24, 1989; *L 1991, ch 2, § 8*, eff Jan 29, 1991; *L 1991, ch 748, § 12* (see 1991 note below); *L 1991, ch 749, § 16*, eff Dec 31, 1991; *L 1992, ch 293, § 11*, eff June 30, 1992; *L 1992, ch 499, § 16*, eff July ***17***, 1992, deemed eff July 1, 1991; *L 1993, ch 262, § 15*, eff July 13, 1993 (see 1993 note below); *L 1995, ch 83, § 188*, eff Sept 1, 1995 (see 1995 note below); *L 1996, ch 484, § 1*; *L 1997, ch 5, § 16*, eff Oct 14, 1997; *L 1998, ch 338, § 3*, eff Jan 1, 1999; *L 2000, ch 250, § 1*, eff Aug 16, 2000; *L 2000, ch 455, § 1*, eff Sept 20, 2000; *L 2001, ch 345, § 1*, eff Sept 19, 2001; *L 2001, ch 383, § 7* (Part Z), eff Oct 29, 2001; *L 2003, ch 62, § 4* (Part D3), eff May 15, 2003; *L 2003, ch 435, § 1*; *L 2004, ch 96, § 1*, eff May 25, 2004; *L 2004, ch 460, § 3*, eff March 20, 2005; *L 2005, ch 488, § 1*, eff Aug 9, 2005; *L 2006, ch 311, § 2*, eff July 26, 2006; *L 2007, ch 6, § 79*, eff March 13, 2007; *L 2007, ch 58, § 2* (Part H), eff April 9, 2007, deemed eff on and after April 1, 2007; *L 2008, ch 115, § 25*, eff June ***17***, 2008; *L 2010, ch 131, § 5*, eff June 18, 2010 (see 2010 note below); *L 2010, ch 510, § 1*, eff Sept ***17***, 2010; *L 2011, ch 58, § 4* (Part C), eff March 31, 2011; *L 2012, ch 60, § 10* (Part D), eff March 30, 2012; *L 2013, ch 57, § 36* (Part GG), eff March 29, 2013; *L 2015, ch 58, § 4* (Part G), effective April 13, 2015; *L 2017, ch 58, § 2* (Part LL), effective April 20, 2017.

Annotations

Notes

Prior *Law*:

Former § ***17***, add, L 1971, ch 1104; repealed, L 1978, ch 466, § 1, eff Sept 4, 1978.

Editor's Notes:

* The bracketed punctuation has been inserted by the Publisher.

Laws 1991, ch 748, § 2**,** eff Dec 31, 1991, provides as follows:

§ 2. Short title. This act shall be known and may be cited as the “Hudson river valley greenway act”.

Laws 1993, ch 262, §§ 1**, 16,** eff July 13, 1993, provide as follows:

Section 1. This act shall be known as “The Long Island Pine Barrens Protection Act”.

§ 16. This act shall take effect immediately provided that if by June 30, 1995, the commission has not formally adopted the plan-generic impact statement as provided pursuant to subdivision 12 of section 57-0121, as added by this act, this act shall be deemed to expire and upon such date the amendments made to article 57 of the environmental conservation ***law*** by this act shall revert to and be read as set out in ***law*** on the date immediately preceding the effective date of this act; the chair of the Central Pine Barrens Joint Planning and Policy Commission shall notify the legislative bill drafting commission by June 30, 1995 with one or more of the towns of Riverhead, Brookhaven or Southampton not ratifying The Comprehensive Central Pine Barrens land use plan in order that the commission may maintain an accurate and timely effective data base of the official text of the ***laws*** of the state of New York in furtherance of effecting the provisions of *section 44 of the legislative* ***law*** and *section 70-b of the* ***public officers law***. (Amd, *L 1993, ch 263, § 10*, eff July 13, 1993, *L 1995, ch 3, § 2*, eff March 13, 1995.).

Laws 1995, ch 83, § 362 **(in part),** eff June 20, 1995, provides as follows:

§ 362. This act shall take effect immediately provided however:

10. Sections one hundred seventy-seven through one hundred ninety of this act shall take effect immediately and the dormitory authority shall have the right, only upon reasonable notice and during normal business hours, to inspect or review any and all premises, books, papers and records in whatever form maintained by each of the agency and the corporation as the authority shall deem necessary in order to facilitate the succession effected by sections one hundred seventy-seven through one hundred ninety of this act, except that sections one hundred seventy-seven through one hundred eighty-five, one hundred eighty-seven, one hundred eighty-eight, and one hundred eighty-nine of this act shall take effect September 1, 1995 and except that the provisions of section one hundred eighty-eight and one hundred eighty-nine of this act shall be applicable to any action or proceeding, whether civil or criminal, arising out of events occurring only during the period beginning on September 1, 1995 and ending on September 1, 1997.

Laws 1998, ch 338, § 1**,** eff Jan 1, 1999, provides as follows:

Section 1. Declaration of legislative findings and intent. The legislature finds and declares that every year, some 10,000 Americans sustain spinal cord injuries; the major cause being motor vehicle accidents.

The conventional wisdom had long been that most persons with a spinal cord injury could be rehabilitated to some extent, but that damage to neural tissue could not be reversed. That view has changed dramatically. Researchers in Sweden, the United States and Britain have demonstrated that there are no fundamental biological barriers to repairing damaged spinal cord neural tissue and that the possibility of effective regenerative therapies for human neural cell injury is no longer speculation but a realistic goal.

There is more hope today than there ever has been that persons whose lives have been devastated by spinal cord injury can see their injuries reversed to some extent. For years, however, the bulk of monies have been spent on rehabilitation research - not basic neurological tissue regeneration research with a cure as its objective.

The intention of this legislation is unequivocally to provide funding for research to find a cure for spinal cord injury.

Laws 2007, ch 6, § 80**,** eff March 13, 2007, provides as follows:

§ 80. The superintendent of insurance, in consultation with the chair of the workers’ compensation board, may promulgate regulations relating to the standards to be followed in the approval of forms and in the procedural

requirements needed to implement the provisions of this act, and the chair of the workers' compensation board, in consultation with the superintendent of insurance, may promulgate regulations relating to the procedural requirements needed to implement the provisions of this act.

Laws 2008, ch 115, § 1**,** eff June ***17***, 2008, provides as follows:

Section 1. Legislative findings and intent. The legislature hereby finds that the New York city off-track betting corporation (NYC OTB) is insolvent and facing closure. The legislature further finds that nearly 1.1 billion dollars, almost half of all money wagered on horse racing in New York state, is wagered through NYC OTB. The revenue distributed to the racing industry, which is derived from wagering through NYC OTB, plays an integral role in sustaining the viability of the entire horse racing industry in New York state, and NYC OTB employs almost 1,500 people in New York. The legislature therefore determines that the continued operation of NYC OTB corporation is of paramount importance to the ***public*** interest.

The legislature further finds that, since its inception in 1973, New York's regional off-track betting system has provided state and local governments with significant revenues to support government operations and to aid in reducing increases in local property taxation. The regional off-track betting system has been integrated into the state's pari-mutuel racing and breeding industry to provide statewide accessibility and exposure to New York's quality thoroughbred and harness racing. Such accessibility and exposure has significantly contributed to the economic well being of New York's racetracks, their horsemen and employees and the growth of horse breeding in the state.

The legislature further finds that since its inception, the statutory framework under which the regional off-track betting system must function and operate has met obstacles to change in a changing technological environment. The static statutory framework has caused economic distress among the regional off-track betting corporations which may lead to reduced revenues to state and local governments, local employment and a negative impact on racing and breeding in New York. As a result, an in-depth analysis of this system should be conducted to determine how to enhance and improve the system of off-track betting in New York state in the future.

Laws **2010. ch 131, § 6,** eff June 18, 2010, provides as follows:

§ 6. This act shall take effect immediately; provided, however, that section two of this act shall be deemed to have been expired and repealed on and after December 31, 2010; and provided further, that section five of this act shall not apply to any individual who ceased to be a member of the board or an ***officer*** or employee of the New York state theatre institute corporation on or before the eleventh day of June, 2010.

Amendment Notes:

2013. Chapter 57, § 36 (Part GG) amended:

By adding sub 1, par (x).

2012. Chapter 60, § 10 (Part D) amended:

By repealing sub 1, par (p).

2011. Chapter 58, § 4 (Part C) amended:

By repealing sub 1, par (w) [first setout].

2010. Chapter 510, § 1 amended:

By adding sub 1, par (w) [second setout].

2008. Chapter 115, § 25 amended:

By adding sub 1, par (v).

2007. Chapter 6, § 79 amended:

By adding sub 1, par (t).

2007. Chapter 58, § 2 (Part H) amended:

By adding sub 1, par (u).

2006. Chapter 311, § 2 amended:

Sub 1, par (r) by deleting at fig 1 “and”.

The 2015 amendment by ch 58, § 4 (Part G), added 1(y).

The 2017 amendment by ch 58, § 2 (Part LL), added 1(z).

Notes to Decisions

1. In general

State was not relieved of its obligation under CLS *Pub O § **17*** to defend state correction ***officer*** in federal lawsuit brought by inmate (alleging use of excessive force) by virtue of fact that ***officer*** failed to attend scheduled deposition since (1) there was no evidence of willful or avowed obstruction of proceeding on part of ***officer***, and (2) ***officer***'s failure to attend deposition, without more, did not constitute material and substantial failure to cooperate so as to warrant state's withdrawal from his defense, inasmuch as another deposition was scheduled 10 weeks later, which he did attend. *New York State Inspection, Security and **Law** Enforcement Employees, Dist. Council 82, AFSCME, AFL-CIO v Abrams, 135 A.D.2d 304, 525 N.Y.S.2d 402, 1988 N.Y. App. Div. LEXIS 2072 (N.Y. App. Div. 3d Dep't 1988)*.

Attorney General properly refused to provide legal representation under CLS *Pub O § **17**(2)* to correction ***officers*** who were defendants in federal civil right action brought by inmate for unprovoked assault on him where undisputed evidence established that there was no justification for force used on inmate, since it occurred after disturbance had been quelled, and in situation where there was no resistance by inmate. *Sharrow v State, 216 A.D.2d 844, 628 N.Y.S.2d 878, 1995 N.Y. App. Div. LEXIS 7571 (N.Y. App. Div. 3d Dep't)*, app. denied, *87 N.Y.2d 801, 637 N.Y.S.2d 688, 661 N.E.2d 160, 1995 N.Y. LEXIS 4959 (N.Y. 1995)*.

Where the insurer as subrogee of the physicians employed by the State University of New York, sought indemnification for the physicians' malpractice, the testimony of the person involved in the negotiation of the CBA was not necessary to determine whether the physicians waived their rights to indemnification; while the malpractice occurred before the CBA, the claims were commenced after *N.Y. Pub. Off. **Law § 17*** was amended to exclude such indemnification, and therefore, the trial court properly denied the insurer's motion for a commission to depose the person involved the CBA negotiation. *Frontier Ins. Co. v State, 299 A.D.2d 600, 748 N.Y.S.2d 882, 2002 N.Y. App. Div. LEXIS 10573 (N.Y. App. Div. 3d Dep't 2002)*.

While it was correct for Attorney General to defend Family Court judge in contempt proceedings for Family Court judge's willful violation of Supreme Court order staying proceedings before Family Court, it was inappropriate and impermissible for Attorney General's office to go beyond attempt to ward off sanctions, and to adopt Family Court judge's position in dispute. *Young v Young, 130 Misc. 2d 527, 496 N.Y.S.2d 317, 1985 N.Y. Misc. LEXIS 3234 (N.Y. Sup. Ct. 1985)*.

In action brought against state by insurer, as subrogee, seeking legal fees and expenses incurred in defending malpractice suit against its insured, state university professor of medicine, state could not avoid liability by asserting that insurer was not obligated to defend physician, such duty arising under terms of policy only if "insurance carrier" for state declined coverage, since neither insurer nor physician had any control over or knowledge of whether state

would choose to fulfill its CLS *Pub O § **17*** obligation by obtaining coverage through insurance carrier, acting as self-insurer, or simply absorbing losses. *Frontier Ins. Co. v State, 146 Misc. 2d 237, 550 N.Y.S.2d 243, 1989 N.Y. Misc. LEXIS 855 (Ct. Cl. 1989)*.

In action brought against state by insurer, as subrogee, seeking legal fees and expenses incurred in defending malpractice suit against its insured, state university professor of medicine, state could not avoid liability on ground insurer as third party could not be subrogated to statutory rights of physician, where policy between insurer and physician expressly excluded coverage for actions arising out of physician's state employment and provided that insurer would be subrogated to physician's rights upon assuming defense, since CLS *Pub O § **17**(7)* states that statute should not be construed to impair rights of insurers. *Frontier Ins. Co. v State, 146 Misc. 2d 237, 550 N.Y.S.2d 243, 1989 N.Y. Misc. LEXIS 855 (Ct. Cl. 1989)*.

CLS *Pub O § **17**(11)*, which provides that state is no longer bound to defend and indemnify State University of New York faculty physicians who are sued for malpractice by clinical practice plan patient, does not apply retroactively, since such physicians have vested right in defense and indemnification. *Frontier Ins. Co. v State, 160 Misc. 2d 437, 609 N.Y.S.2d 748, 1993 N.Y. Misc. LEXIS 586 (N.Y. Ct. Cl. 1993)*.

2. Purpose

Nothing in CLS *Pub O § **17*** imposes direct liability on state for negligent acts or omissions of its employees or makes state real party in interest in actions against them; furthermore, statute does not purport to diminish remedies available to injured party. *Morell v Balasubramanian, 70 N.Y.2d 297, 520 N.Y.S.2d 530, 514 N.E.2d 1101, 1987 N.Y. LEXIS 18649 (N.Y. 1987)*.

Section ***17*** of ***Public Officers Law*** was intended to make uniform state's obligation to defend and indemnify its ***officers*** and employees when they are sued personally, which obligation had previously been assumed by piecemeal legislation relating to particular employments, and ***law*** is directed at protecting such persons from personal financial loss, so that ***law*** is reasonably susceptible to interpretation other than that it waives state's eleventh amendment immunity from suit in federal courts. *United States v DCS Dev. Corp., 590 F. Supp. 1117, 1984 U.S. Dist. LEXIS 24449 (W.D.N.Y. 1984)*.

3. Scope of employment

In deciding whether state must provide legal representation to employee under CLS *Pub O § **17**(2)*, court must first review allegations of complaint to determine if it is alleged that employee committed wrongful act while acting within scope of his employment. *Sharrow v State, 216 A.D.2d 844, 628 N.Y.S.2d 878, 1995 N.Y. App. Div. LEXIS 7571 (N.Y. App. Div. 3d Dep't)*, app. denied, *87 N.Y.2d 801, 637 N.Y.S.2d 688, 661 N.E.2d 160, 1995 N.Y. LEXIS 4959 (N.Y. 1995)*.

Federal civil rights complaint, alleging that correction ***officers*** were employed by Department of Correctional Services, were assigned to particular correctional facility, and were "acting under color of state ***law***" at time they assaulted plaintiff did not definitively allege that ***officers*** were acting within scope of their ***public*** employment or duties as provided by CLS *Pub O § **17**(2)*. *Sharrow v State, 216 A.D.2d 844, 628 N.Y.S.2d 878, 1995 N.Y. App. Div. LEXIS 7571 (N.Y. App. Div. 3d Dep't)*, app. denied, *87 N.Y.2d 801, 637 N.Y.S.2d 688, 661 N.E.2d 160, 1995 N.Y. LEXIS 4959 (N.Y. 1995)*.

Correction ***officer*** was entitled to a defense paid for by the State in the action brought against him in federal court by an inmate alleging assault because the correction ***officer***'s guilty plea to official misconduct did not establish, as a matter of ***law***, that he acted outside the scope of his employment, and engaged in intentional misconduct that caused injury to the inmate as the only misconduct that the correction ***officer*** admitted to was taking a baton from the prison; nothing in the guilty plea established any connection between the baton and the alleged assault on the

inmate; and the State was obligated to provide the correction ***officer*** a defense as his admission did not preclude indemnification on the entire inmate's action. *Matter of Warner v Schneiderman, 55 Misc. 3d 1019, 51 N.Y.S.3d 315, 2015 N.Y. Misc. LEXIS 5136 (N.Y. Sup. Ct. 2015)*.

Claim of injured highway worker against senior engineering technician who supervised and inspected highway project is dismissed, where actions of technician were within course of employment, because state is true party in interest and is protected from federal jurisdiction of claim against it by Eleventh Amendment. *Mohammed v D.H. Farney Contractors, 881 F. Supp. 110, 1995 U.S. Dist. LEXIS 4160 (S.D.N.Y. 1995)*.

Under local ***law*** which authorized representation of town employees under circumstances resembling those under which representation may be provided state or municipal employees under ***Public Officers Law §§ 17*** and *18*, in determining whether the town superintendent of highways, who, after being advised that the town attorney would not represent him in its individual capacity, retained his own counsel without the prior consent of the town board, should be reimbursed for legal expenses, consideration must be given to scope of employment issues and the effect of contrasting allegations in the complaint, i.e. (1) acting in scope of employment, and (2) acting in individual capacity. Also, absence of prior town board approval of retention of attorney to defend, the doctrine of ratification should also be considered. As to the duty of the state or a municipality to provide a legal defense to an employee under ***Public Officers Law § 17*** or § 18 respectively, the courts have equated the duty under those sections to the duty of an insurance company to provide a defense under an insurance policy, and correspondently the duty to defend has been said to be broader than the duty to indemnify. 1982 Op St Compt 82-243 and other prior opinions are superseded to the extent they are inconsistent. 1990 Op St Compt 90-47.

4. Settlement

Private insurer of state-employed physicians, which had defended physicians in malpractice cases and settled such cases, was not precluded from seeking indemnification of settlement costs from state by virtue of CLS *Pub O § **17**(3)(b)* requiring proposed settlements to be submitted for certification, since such subdivision applies only to claimants represented by Attorney General “or by private counsel pursuant to this section.” *Frontier Ins. Co. v State, 239 A.D.2d 92, 665 N.Y.S.2d 451, 1997 N.Y. App. Div. LEXIS 12980 (N.Y. App. Div. 3d Dep't 1997)*, app. denied, *92 N.Y.2d 807, 678 N.Y.S.2d 593, 700 N.E.2d 1229, 1998 N.Y. LEXIS 2780 (N.Y. 1998)*.

CLS *Pub O § **17**(3)(d)*, providing that settlement be submitted to head of agency and certified to Attorney General, is nothing more than safeguard so that appropriate parties can certify that actual settlement is in accordance with previously submitted proposal as provided for in CLS *Pub O § **17**(3)(b)*, and such submission was not required where it would have been superfluous inasmuch as Attorney General had already determined that state employees involved were not entitled to protections afforded by § ***17***. *Frontier Ins. Co. v State, 239 A.D.2d 92, 665 N.Y.S.2d 451, 1997 N.Y. App. Div. LEXIS 12980 (N.Y. App. Div. 3d Dep't 1997)*, app. denied, *92 N.Y.2d 807, 678 N.Y.S.2d 593, 700 N.E.2d 1229, 1998 N.Y. LEXIS 2780 (N.Y. 1998)*.

5. Time limitations

Attorney General could not, in later indemnity suit, raise objection that malpractice summons and complaint were not delivered within 5-day period provided for by CLS *Pub O § **17**(4)* where, at time state-employed physicians had sought defense under statute, Attorney General declined on ground that alleged malpractice had not occurred within scope of physicians’ employment rather than failure to comply with notice provision. *Frontier Ins. Co. v State, 239 A.D.2d 92, 665 N.Y.S.2d 451, 1997 N.Y. App. Div. LEXIS 12980 (N.Y. App. Div. 3d Dep't 1997)*, app. denied, *92 N.Y.2d 807, 678 N.Y.S.2d 593, 700 N.E.2d 1229, 1998 N.Y. LEXIS 2780 (N.Y. 1998)*.

Court first denied the individual’s cross motion to disqualify the Office of the New York State Attorney General from acting as counsel for the state on the ground that the Attorney General failed to respond to her correspondences because the state was not required to serve any response to a notice of Intention to File a Claim, even if it

appeared to be jurisdictionally defective, and the Notice of Intent to File a Claim requirement was not applicable to federal claims under *42 U.S.C.S. § 1983*. Moreover, the individual's attorney advised the magistrate judge that she would be filing a second amended complaint, and the Attorney General stated that he would move to dismiss the complaint thereafter. *Jackson v New York, 381 F. Supp. 2d 80, 2005 U.S. Dist. LEXIS 16478 (N.D.N.Y. 2005)*.

6. Applicability to particular *officers* and employees

State's duty to defend a correctional ***officer*** (CO) in an inmate's *42 U.S.C.S. § 1983* suit did not cease when CO pled guilty to official misconduct as: (1) neither CO's allocution nor the elements of official misconduct established that the acts alleged in the civil suit occurred while CO was acting outside the scope of his employment or that the inmate's damages were due to CO's intentional wrongdoing; (2) CO did not particularize the crime to the acts alleged in the inmate's suit in his allocution; (3) the amended bill of particulars could not provide the missing factual detail; and (4) the guilty plea did not establish whether CO intentionally authored false statements or reports that resulted in disciplinary action against the inmate. *Matter of Rademacher v Schneiderman, 155 A.D.3d 1459, 66 N.Y.S.3d 541, 2017 N.Y. App. Div. LEXIS 8476 (N.Y. App. Div. 3d Dep't 2017)*.

A bus driver for a subsidiary corporation of the Niagara Frontier Transportation Authority is not a State employee entitled to indemnification who may be sued individually within a three-year Statute of Limitations (***Public Officers Law, § 17***) but instead such employee falls within the purview of *section 1299-p of the **Public** Authorities **Law*** which not only mandates that the authority assume liability but also affords it the protection of a one-year Statute of Limitations. *Niemczyk v Pawlak, 98 Misc. 2d 532, 414 N.Y.S.2d 285, 1979 N.Y. Misc. LEXIS 2109 (N.Y. Sup. Ct. 1979)*, aff'd, *76 A.D.2d 84, 429 N.Y.S.2d 511, 1980 N.Y. App. Div. LEXIS 11730 (N.Y. App. Div. 4th Dep't 1980)*.

7. —Attorneys, judges and court personnel

State was not obligated to defend or indemnify town justice, sued by man who slipped and fell while appearing for arraignment at justice's residence, since town justices are town employees, not state employees. *Cunningham v Aetna Casualty & Surety Co., 125 A.D.2d 950, 510 N.Y.S.2d 347, 1986 N.Y. App. Div. LEXIS 63129 (N.Y. App. Div. 4th Dep't 1986)*.

Defendant administrative judge would be entitled to representation by the Attorney General in an attorney's libel action based on defendant's filing of charges of professional misconduct against plaintiff that contained allegedly slanderous statements, since defendant's filing of charges was a "judicial act" in that defendant was required by the applicable administrative regulations to inform the appropriate disciplinary committee of any questionable conduct by attorneys. *Rolle v Nolan, 119 Misc. 2d 1050, 464 N.Y.S.2d 930, 1983 N.Y. Misc. LEXIS 3642 (N.Y. Civ. Ct. 1983)*.

State Attorney-General's decision that a court-appointed referee who conducted a foreclosure sale that gave rise to a civil rights action was an independent contractor rather than an employee, and therefore not entitled to be provided a defense, was arbitrary and capricious, based on the clear evidence that such a referee acted in a purely ministerial capacity for the court under whose auspices such a judicial sale was conducted. *O'Brien v Spitzer, 24 A.D.3d 9, 802 N.Y.S.2d 737, 2005 N.Y. App. Div. LEXIS 11088 (N.Y. App. Div. 2d Dep't 2005)*, rev'd, *7 N.Y.3d 239, 818 N.Y.S.2d 844, 851 N.E.2d 1195, 2006 N.Y. LEXIS 1764 (N.Y. 2006)*.

New York Attorney General properly found that an attorney in private practice who was sued as a result of having acted as a court-appointed referee in a foreclosure proceeding was an independent contractor under *N.Y. Pub. Off. **Law** § **17**(2)(a)* and therefore not entitled to defense and indemnification; there was ample evidence that the attorney set his own hours, worked without day-to-day control, paid his own expenses, and was otherwise substantially more independent from state control than the typical state employee. *Matter of O'Brien v Spitzer, 7 N.Y.3d 239, 818 N.Y.S.2d 844, 851 N.E.2d 1195, 2006 N.Y. LEXIS 1764 (N.Y. 2006)*.

Judge who was being represented by Attorney General of New York in Federal District Court action should recuse in cases in which attorney(s) handling that matter appeared before judge, but need not recuse in cases where representation was by other assistant attorneys general. Ops Adv Comm Jud Ethics No. 98-14.

8. —Health and medical

1992 amendment to CLS *Pub O § **17*** could not be applied where underlying malpractice action was commenced in 1988. *Woeppel v Abrams, 216 A.D.2d 955, 628 N.Y.S.2d 918, 1995 N.Y. App. Div. LEXIS 7349 (N.Y. App. Div. 4th Dep't)*, app. denied, *87 N.Y.2d 804, 639 N.Y.S.2d 782, 662 N.E.2d 1072, 1995 N.Y. LEXIS 5711 (N.Y. 1995)*.

Inmate's claims against the two doctors who were not employed by the Department of Corrections and Community Supervision should be dismissed without prejudice because, while the statutory defense and indemnity provisions appeared to apply to them, the record was not fully developed to make such a definite determination. *Rothschild v Braselmann, 157 A.D.3d 1027, 69 N.Y.S.3d 375, 2018 N.Y. App. Div. LEXIS 53 (N.Y. App. Div. 3d Dep't 2018)*.

Protection afforded by ***Public Officers Law*** subdivision concerning indemnity by the State for financial loss from alleged negligence applies to staff physicians who are full-time state employees working on premises of either downstate or upstate medical center hospitals where fees for their services are paid to the State. *Lapidot v State, 88 Misc. 2d 1090, 389 N.Y.S.2d 539, 1976 N.Y. Misc. LEXIS 2836 (N.Y. Ct. Cl. 1976)*.

Inmate failed to meet his prima facie burden of establishing that the State was vicariously liable for the acts of a county medical center under the theory of agency or control in fact because the contract between the medical center and the Department of Corrections and Community Supervision (DOCCS) specifically tracked the language of *Correction **Law** § 24-a*, which extended the benefits of ***Public Officers Law § 17*** to non-employee health professionals of DOCCS. *Snyder v State of New York, 2020 N.Y. Misc. LEXIS 10345 (N.Y. Ct. Cl. 2020)*.

9. — —Medical school professors

Court of Claims properly determined that physician employed by state medical school, who participated in surgical procedure in connection with her teaching duties, was entitled to be defended by state in malpractice action arising out of surgery pursuant to CLS *Pub O § **17***; fact that physician received fee from patient did not render her services outside scope of her state employment. *Frontier Ins. Co. v State, 172 A.D.2d 13, 576 N.Y.S.2d 622, 1991 N.Y. App. Div. LEXIS 15072 (N.Y. App. Div. 3d Dep't 1991)*.

State was obligated to represent petitioner, who was assistant professor of gynecology-obstetrics at state university, in medical malpractice action brought against him by patient for injuries sustained during laparoscopy procedure performed by petitioner, since petitioner was engaged in both patient care and teaching duties in connection with laparoscopy procedure, and he was acting within course of his state employment during procedure. *Munabi v Abrams, 199 A.D.2d 1037, 606 N.Y.S.2d 119, 1993 N.Y. App. Div. LEXIS 12649 (N.Y. App. Div. 4th Dep't 1993)*.

Physician who, at time of alleged negligent treatment, was engaged in patient care and teaching duties, and was acting within course of his state employment, was entitled to defense and indemnification by state under CLS *Pub O § **17***. *Woeppel v Abrams, 216 A.D.2d 955, 628 N.Y.S.2d 918, 1995 N.Y. App. Div. LEXIS 7349 (N.Y. App. Div. 4th Dep't)*, app. denied, *87 N.Y.2d 804, 639 N.Y.S.2d 782, 662 N.E.2d 1072, 1995 N.Y. LEXIS 5711 (N.Y. 1995)*.

Physicians employed as professors of medicine by State University of New York medical schools, who were members of clinical practice plans at hospitals in which they taught, waived whatever rights they possessed under CLS *Pub O § **17*** by reason of their 1991-1995 collective bargaining agreement, which provided, inter alia, that "The State shall prepare, secure introduction and recommend passage of legislation to amend [CLS *Pub O § **17***] to reflect the longstanding agreement of the parties that the physicians who participate in the clinical practice

plan...shall be responsible for their own malpractice insurance. It is the expressed understanding of the parties that [§ ***17***] does not cover any malpractice claims that arise from the conduct of or participation in the clinical practice plan." *Frontier Ins. Co. v Koppell, 225 A.D.2d 93, 648 N.Y.S.2d 812, 1996 N.Y. App. Div. LEXIS 11281 (N.Y. App. Div. 3d Dep't 1996)*, app. denied, *90 N.Y.2d 806, 663 N.Y.S.2d 511, 686 N.E.2d 223, 1997 N.Y. LEXIS 2948 (N.Y. 1997)*.

Where physicians' alleged acts of malpractice occurred during context of teaching in their capacity as professors of medicine at State University of New York, such acts occurred while they were acting within scope of their ***public*** employment and thus required state to indemnify settlement costs incurred by physicians' private insurer after Attorney General refused to defend. *Frontier Ins. Co. v State, 239 A.D.2d 92, 665 N.Y.S.2d 451, 1997 N.Y. App. Div. LEXIS 12980 (N.Y. App. Div. 3d Dep't 1997)*, app. denied, *92 N.Y.2d 807, 678 N.Y.S.2d 593, 700 N.E.2d 1229, 1998 N.Y. LEXIS 2780 (N.Y. 1998)*.

10. —National Guard

Attorney General was authorized to provide defense to former New York Air National Guard Major in action brought against her by former New York Air National Guard Captain, although there was no specific allegation in complaint that Major was acting within scope of her employment, where fair reading of complaint indicated that acts of sexual harassment complained of were all alleged to have taken place while Major was acting in her military capacity, and complaint also alleged that Major caused hearing to be held, result of which was disciplinary actions taken against Captain. *Zaccaro v Parker, 169 Misc. 2d 266, 645 N.Y.S.2d 985, 1996 N.Y. Misc. LEXIS 215 (N.Y. Sup. Ct. 1996)*, aff'd, *249 A.D.2d 1003, 671 N.Y.S.2d 362, 1998 N.Y. App. Div. LEXIS 5181 (N.Y. App. Div. 4th Dep't 1998)*.

11. —Power authority

Provisions of CLS *Pub A § 1020-bb* providing for immunity, defense and indemnification of trustees and ***officers*** of Long Island Power Authority from personal or civil liability resulting from carrying out authority'spurposes do not violate CLS *NY Const Art VII § 8*, which proscribes giving or lending of credit of state in aid of ***public*** corporation, since statute creates no state debt, does not require any borrowing by state, and does not confer gift, regardless of whether authority is involved in governmental or proprietary activity. *Long Island Lighting Co. v Mack, 137 A.D.2d 285, 529 N.Y.S.2d 502, 1988 N.Y. App. Div. LEXIS 5490 (N.Y. App. Div. 2d Dep't 1988)*, app. dismissed, *74 N.Y.2d 804, 546 N.Y.S.2d 561, 545 N.E.2d 875, 1989 N.Y. LEXIS 2721 (N.Y. 1989)*.

Provisions of CLS *Pub A § 1020-bb* providing for immunity, defense and indemnification of trustees and ***officers*** of Long Island Power Authority from personal or civil liability resulting from carrying out authority's purposes do not conflict with Federal Securities Acts of 1933 and 1934, and thus do not violate Supremacy Clause, even though authority might sell bonds or float securities in order to finance acquisition of another company, since CLS *Pub A § 1020-bb* accomplishes its purpose by making provisions of CLS *Pub O §§ **17*** and *18* applicable to authority trustees, both CLS *Pub O §§ **17*** and *18* deny indemnification to employee who engages in intentional wrongdoing, and federal statutes apply to authority as political subdivision of state, if at all, only in cases of intentional wrongdoing. *Long Island Lighting Co. v Mack, 137 A.D.2d 285, 529 N.Y.S.2d 502, 1988 N.Y. App. Div. LEXIS 5490 (N.Y. App. Div. 2d Dep't 1988)*, app. dismissed, *74 N.Y.2d 804, 546 N.Y.S.2d 561, 545 N.E.2d 875, 1989 N.Y. LEXIS 2721 (N.Y. 1989)*.

12. —Traffic, highways and bridges

Action by injured worker against New York Department of Traffic engineer, who was supervising work site, was barred by Eleventh Amendment if engineer was acting in course of his employment, no matter how irregularly, since engineer would be entitled to indemnification from state for any liability flowing from his state employment, pursuant to CLS *Pub O § **17***, and thus state was real party in interest; to constitute abandonment of employment, plaintiff

must show factually that at time of accident, state employee was serving his own or some other purpose, wholly independent of state's business. *Mohammed v D.H. Farney Contractors, 881 F. Supp. 110, 1995 U.S. Dist. LEXIS 4160 (S.D.N.Y. 1995)*.

Under local ***law*** which authorized representation of town employees under circumstances resembling those under which representation may be provided state or municipal employees under ***Public Officers Law §§ 17*** and *18*, in determining whether the town superintendent of highways, who, after being advised that the town attorney would not represent him in its individual capacity, retained his own counsel without the prior consent of the town board, should be reimbursed for legal expenses, consideration must be given to scope of employment issues and the effect of contrasting allegations in the complaint, i.e. (1) acting in scope of employment, and (2) acting in individual capacity. Also, absence of prior town board approval of retention of attorney to defend, the doctrine of ratification should also be considered. As to the duty of the state or a municipality to provide a legal defense to an employee under ***Public Officers Law § 17*** or § 18 respectively, the courts have equated the duty under those sections to the duty of an insurance company to provide a defense under an insurance policy, and correspondently the duty to defend has been said to be broader than the duty to indemnify. 1982 Op St Compt 82-243 and other prior opinions are superseded to the extent they are inconsistent. 1990 Op St Compt 90-47.

13. Delivery of summons and complaint to Attorney General

Where Attorney General had more than sufficient notice to intervene in malpractice suit against physician hired by State, it was prerogative of Attorney General to take no action, but where he opted to take no action, he would not be heard to complain that he had not intervened, though process in malpractice action had been delivered to business affairs office rather than directly to Attorney General. *Lapidot v State, 88 Misc. 2d 1090, 389 N.Y.S.2d 539, 1976 N.Y. Misc. LEXIS 2836 (N.Y. Ct. Cl. 1976)*.

Purpose of requirement of ***Public Officers Law*** for delivery of summons and complaint against state ***officer*** to Attorney General is to afford state an opportunity to determine whether employee was acting within scope of his employment and whether alleged damages resulted from willful and wrongful act or gross negligence. *Lapidot v State, 88 Misc. 2d 1090, 389 N.Y.S.2d 539, 1976 N.Y. Misc. LEXIS 2836 (N.Y. Ct. Cl. 1976)*.

Where physician, hired by State, when served with complaint in malpractice action, relied on instructions found in handbook and assurances therein, immediately delivering process to the business affairs office, which delivered summons and complaint to carrier, who in turn retained counsel, there was appearance which was not unauthorized, and which was appearance of which State would be held to have had knowledge, though summons and complaint were not delivered to Attorney General; in any event, actions of State by its ***officers*** or agents estopped it from disclaiming liability, responsibility and obligation to save claimant harmless under ***Public Officers Law***. *Lapidot v State, 88 Misc. 2d 1090, 389 N.Y.S.2d 539, 1976 N.Y. Misc. LEXIS 2836 (N.Y. Ct. Cl. 1976)*.

Notice provisions of ***Public Officers Law*** are not jurisdictional. *Lapidot v State, 88 Misc. 2d 1090, 389 N.Y.S.2d 539, 1976 N.Y. Misc. LEXIS 2836 (N.Y. Ct. Cl. 1976)*.

Where physician hired by State was led to believe that he was protected from financial loss by indemnity provision of ***Public Officers Law***, he complied with its requirement for delivery of summons within five days to Attorney General by delivering process to business affairs office, amounting to constructive delivery to Attorney General in view of fact that there was no issue as to whether employee was acting within scope of his employment or as to whether alleged damages resulted from willful and wrongful act or gross negligence, and where also there was no default in the malpractice action. *Lapidot v State, 88 Misc. 2d 1090, 389 N.Y.S.2d 539, 1976 N.Y. Misc. LEXIS 2836 (N.Y. Ct. Cl. 1976)*.

14. Miscellaneous procedural matters

In an action by the State of New York for property damage, in which it was contended that an accident involving an automobile owned and operated by defendant and a State-owned vehicle operated by its employee resulted from defendant's negligence, the defendant's third-party complaint against the State's employee seeking judgment for contribution in the event the State was successful in the main action would be dismissed; since the accident occurred within the scope of the State employee's employment, the State would be liable for the negligence of its employee under the doctrine of respondeat superior and must indemnify him for losses occasioned by such negligent conduct, and an impleader action does not lie against one liability has been precluded. *State v Popricki, 89 A.D.2d 391, 456 N.Y.S.2d 850, 1982 N.Y. App. Div. LEXIS 18392 (N.Y. App. Div. 3d Dep't 1982)*.

State correction ***officers*** were entitled to representation by the State Attorney General in a federal lawsuit under *42 USC § 1983* which alleged they had violated the civil rights of a prisoner, despite a finding as a result of an investigation by the Attorney General that the acts complained of occurred outside the scope of the ***officers***' employment, since *Pub O § **17*** unambiguously requires the State to defend any action against ***public*** employees brought under § 1983. *Spitz v Abrams, 105 A.D.2d 904, 482 N.Y.S.2d 68, 1984 N.Y. App. Div. LEXIS 21022 (N.Y. App. Div. 3d Dep't 1984)*.

In a personal injury action in which defendant had filed a third-party complaint against a state employee on which the jury had rendered a verdict of no cause of action, the trial court erred in ordering a new trial for its refusal to allow defendant to impeach third-party defendant's expert witnesses, who were also state employees, by establishing that the state was obligated to indemnify third-party defendant for any liability for his negligence pursuant to *Pub O § **17***, where the jury knew of the coemployee relationship between third-party defendant and his experts and that the Attorney-General represented the third-party defendant, defendant's counsel had emphasized the relationship in summation, and one of the experts had testified he was not familiar with § ***17***. *Levo v Greenwald, 107 A.D.2d 991, 484 N.Y.S.2d 712, 1985 N.Y. App. Div. LEXIS 49861 (N.Y. App. Div. 3d Dep't)*, aff'd, app. dismissed, *66 N.Y.2d 962, 498 N.Y.S.2d 784, 489 N.E.2d 753, 1985 N.Y. LEXIS 18254 (N.Y. 1985)*.

An infant, allegedly injured as the result of the negligence of a state employee, could maintain an action against that employee after having settled a prior action against the state in the Court of Claims seeking to recover damages for the same injuries, since *Pub O § **17***, the statutory indenification of state employees, must be construed as simply creating a cause of action on behalf of State employees against the State for indemnification, without affecting remedies available to an injured plaintiff and the state was not the real party in interest by reason of its statutory obligation to indemnify its employee. Moreover, the provisions of *Gen Oblig § 15-108* did not bar the infant's action since that section is applicable only to contribution rights, as set forth in CPLR Article 14, and is inapplicable to causes of action involving indemnification. *Ott v Barash, 109 A.D.2d 254, 491 N.Y.S.2d 661, 1985 N.Y. App. Div. LEXIS 49749 (N.Y. App. Div. 2d Dep't 1985)*.

Article 78 proceeding was not appropriate remedy, and Appellate Division would convert proceeding to declaratory judgment action, where proceeding was brought by state correction ***officer*** who sought to be indemnified by state for damages he had paid in settlement of action against him, and who alleged that Commissioner of Correctional Services had wrongfully failed to "certify" such settlement to Attorney General in accordance with indemnification procedure established by CLS *Pub O § **17***; commissioner's refusal to act could not have been arbitrary, capricious, or abuse of discretion since fact issue existed as to whether correction ***officer*** had been acting within scope of his employment when liability was incurred, and resolution of such issue was proper subject for declaratory judgment. *Spitz v Coughlin, 128 A.D.2d 281, 516 N.Y.S.2d 346, 1987 N.Y. App. Div. LEXIS 43554 (N.Y. App. Div. 3d Dep't 1987)*.

CLS *Pub O § **17**(7)* did not bar action by physicians' malpractice insurer against state to recover cost of defense where malpractice policies were issued for reduced premium in consideration for which they did not purport to insure physicians for acts for which physicians were entitled to defense and indemnification pursuant to CLS *Pub O § **17***. *Frontier Ins. Co. v State, 197 A.D.2d 177, 610 N.Y.S.2d 647, 1994 N.Y. App. Div. LEXIS 3855 (N.Y. App. Div. 3d Dep't 1994)*, aff'd, *87 N.Y.2d 864, 638 N.Y.S.2d 933, 662 N.E.2d 251, 1995 N.Y. LEXIS 4744 (N.Y. 1995)*, in part, *1995 N.Y. LEXIS 3393 (N.Y. Sept. 5, 1995)*.

Public employees were not entitled to suppression of their examinations before trial on ground that Attorney General had not properly represented them during their pretrial examinations where (1) both employees were represented by assistant attorney general during proceedings, (2) there was no indication that their testimony was misleading or untrue, and (3) requiring plaintiff to redepose employees would create additional delay of long-pending matter. *Messinger v Yap, 203 A.D.2d 870, 611 N.Y.S.2d 322, 1994 N.Y. App. Div. LEXIS 4356 (N.Y. App. Div. 3d Dep't 1994)*.

Arbitration determination resulting in discharge of 2 correction ***officers*** was confidential personnel document within scope of CLS Civ R § 50-a(1), but Attorney General was authorized by CLS Civ R § 50-a(4) to use such records in investigating underlying facts in order to determine whether dismissed correction ***officers*** were entitled to be provided with legal representation under CLS *Pub O § **17**(2)*. *Sharrow v State, 216 A.D.2d 844, 628 N.Y.S.2d 878, 1995 N.Y. App. Div. LEXIS 7571 (N.Y. App. Div. 3d Dep't)*, app. denied, *87 N.Y.2d 801, 637 N.Y.S.2d 688, 661 N.E.2d 160, 1995 N.Y. LEXIS 4959 (N.Y. 1995)*.

In action to recover legal fees from state, Comptroller's quasi-judicial review and payment of claimant's vouchers did not preclude state from arguing that sums already paid, resulting from claimant's overbilling, could be recouped if state prevailed at trial. *Slate v State, 284 A.D.2d 767, 728 N.Y.S.2d 523, 2001 N.Y. App. Div. LEXIS 6623 (N.Y. App. Div. 3d Dep't 2001)*.

Attorney General erroneously determined that prison guard was not entitled to defense paid for by state in inmate's federal action against him alleging assault and civil rights violation because he was acting outside scope of his employment at time of incident, where inmate alleged that at all relevant times he was employed as prison guard, and underlying facts were not so clear-cut that reasonable minds could only conclude that he was acting outside scope of his employment; assault on inmate by guard, involving excessive force, does not necessarily mean that guard was acting outside scope of employment. *Mathis v State, 140 Misc. 2d 333, 531 N.Y.S.2d 680, 1988 N.Y. Misc. LEXIS 332 (N.Y. Sup. Ct. 1988)*.

Under CLS *Pub O § **17***, prison guard was entitled to be represented by private attorney of his choice in federal action against him brought by prison inmate where Attorney General had initially refused to provide defense under § ***17*** on ground that he was acting outside scope of his employment at time of incident; conflict of interest existed, since it was in guard's interest to zealously advocate his version of facts to federal jury, including his claim that he was acting within scope of employment. *Mathis v State, 140 Misc. 2d 333, 531 N.Y.S.2d 680, 1988 N.Y. Misc. LEXIS 332 (N.Y. Sup. Ct. 1988)*.

In action brought against state by insurer, as subrogee, seeking legal fees and expenses incurred in defending malpractice suit against its insured, state university professor of medicine whom state allegedly had primary obligation to defend under CLS *Pub O § **17***, insurer's motion for summary judgment would be denied, although state would be liable if patient who sued physician had been subject of medical instruction, since record did not conclusively establish that patient was being treated in furtherance of physician's role as professor rather than as purely private patient. *Frontier Ins. Co. v State, 146 Misc. 2d 237, 550 N.Y.S.2d 243, 1989 N.Y. Misc. LEXIS 855 (Ct. Cl. 1989)*.

In action brought against state by insurer, as subrogee, seeking legal fees and expenses incurred in defending malpractice suit against its insured, state university professor of medicine whom state allegedly had primary obligation to defend under CLS *Pub O § **17***, state's motion for summary judgment would be denied where insurer alleged that plaintiff in malpractice action was patient receiving care pursuant to physician's practice plan, which permitted him to augment teaching income through limited private practice, since allegation if true would obligate State to defend and indemnify physician. *Frontier Ins. Co. v State, 146 Misc. 2d 237, 550 N.Y.S.2d 243, 1989 N.Y. Misc. LEXIS 855 (Ct. Cl. 1989)*.

Government lawyer assigned to represent individual constituent should be alert to statutes governing representation of agency employees and officials, and should advise individual client about them, as relevant, when discussing conflicts of interest. Asso Bar City of New York, Comm on Prof and Jud Ethics, Formal Opinions No. 2004-1.

15. —Attorney-client relationship

Fact that state was obligated to pay counsel fees for services rendered to state employee, pursuant to CLS Pub O § **17**, did not trigger attorney-client relationship between claimant and state so as to entitle state to disclosure of material protected by attorney-work-product rule and attorney-client privilege, as conflict of interest between state and state employee, which gave rise to need for separate attorney, precluded formation of attorney-client relationship between retained attorney and state, negating any dual agency relationship. *Slate v State, 268 A.D.2d 857, 701 N.Y.S.2d 729, 2000 N.Y. App. Div. LEXIS 600 (N.Y. App. Div. 3d Dep't 2000)*.

Fact that CLS Pub O § **17**(4)(ii) required state employee to give "full cooperation" in defense of underlying action did not, by implication, waive attorney-client privilege with employee's private counsel so as to entitle state to discover material protected by attorney-work-product rule and attorney-client privilege in counsel's Court of Claims action to recover legal fee, as attorney is bound to maintain confidences unless client consents after full disclosure, and state's interests were clearly adverse to those of state employee such that state could not be considered client of attorney who represented state employee. *Slate v State, 268 A.D.2d 857, 701 N.Y.S.2d 729, 2000 N.Y. App. Div. LEXIS 600 (N.Y. App. Div. 3d Dep't 2000)*.

Where the assistant attorney general represented a prison doctor and others in a federal lawsuit brought by an inmate's estate, the assistant attorney general did not have a duty pursuant to ***Public Officers Law § 17*** to advise the doctor of a potential separate private action involving non-parties. *McPhillips v Bauman, 133 A.D.3d 998, 19 N.Y.S.3d 367, 2015 N.Y. App. Div. LEXIS 8262 (N.Y. App. Div. 3d Dep't 2015)*, app. denied, *27 N.Y.3d 901, 51 N.E.3d 563, 32 N.Y.S.3d 52, 2016 N.Y. LEXIS 410 (N.Y. 2016)*.

16. —Complaint

Petitioner was entitled to defense pursuant to CLS Pub O § **17**(2)(a) in pending federal action alleging that, as plaintiff's supervisor, he misused his position, created abusive and hostile work environment, and discriminated against plaintiff and deprived her of due process of ***law*** based on her sex and her refusal to submit to his sexual advances; complaint alleged facts and circumstances, some of which could be construed as alleging that petitioner's actions were within scope of his employment. *LoRusso v New York State Office of Court Admin., 229 A.D.2d 995, 645 N.Y.S.2d 209, 1996 N.Y. App. Div. LEXIS 9049 (N.Y. App. Div. 4th Dep't 1996)*.

Court properly granted respondent Attorney General's motion to dismiss, and properly denied petitioner's motion to renew, Article 78 proceeding challenging Attorney General's refusal to certify, under CLS Pub O § **17**(2)(b), that petitioner was entitled to be represented by private counsel of his choice in federal action brought against him and others under *42 USCS § 1983* where complaint in federal action did not allege that petitioner was not executing Attorney General's policy or otherwise acting beyond scope of his employment, there was never any possibility that petitioner would be held liable for unreimbursable damages, and petitioner's allegations did not show that Attorney General was asserting position that exposed petitioner to unreimbursable liability, was contemplating such position, or was otherwise putting himself in conflict with petitioner. *Samuels v Vacco, 251 A.D.2d 10, 674 N.Y.S.2d 11, 1998 N.Y. App. Div. LEXIS 6381 (N.Y. App. Div. 1st Dep't 1998)*.

In determining whether petitioner was entitled to defense paid for by state in inmate's federal action against him alleging assault and civil rights violation, Attorney General properly looked behind inmate's pleading to facts underlying occurrence, since allegations of inmate's complaint were insufficient to determine "duty to defend" issue, where inmate claimed that at all relevant times petitioner was employed as prison guard but did not specifically allege that petitioner was acting within scope of his employment. *Mathis v State, 140 Misc. 2d 333, 531 N.Y.S.2d 680, 1988 N.Y. Misc. LEXIS 332 (N.Y. Sup. Ct. 1988)*.

Trial court properly dismissed the prison doctor's legal malpractice action against the assistant attorney general who represented him and others in a federal lawsuit brought by an inmate's estate because the malpractice complaint did not allege pecuniary damages. The assistant attorney general's alleged conflict of interest did not give

rise to a viable legal malpractice claim absent pecuniary damages. *McPhillips v Bauman, 133 A.D.3d 998, 19 N.Y.S.3d 367, 2015 N.Y. App. Div. LEXIS 8262 (N.Y. App. Div. 3d Dep't 2015)*, app. denied, *27 N.Y.3d 901, 51 N.E.3d 563, 32 N.Y.S.3d 52, 2016 N.Y. LEXIS 410 (N.Y. 2016)*.

17. —Criminal proceedings

A State hospital employee may not recover from the State the legal expenses incurred in defense of a criminal action against him after he was accused of sexually molesting a patient during the course of his employment, which charges were subsequently dismissed; although *section **17** of the **Public Officers Law***, which deals with the defense and indemnification of State ***officers*** and employees, contains no specific prohibition against indemnification for the expenses of a defense of criminal proceedings, only civil suits are envisioned in its protective ambit. *Wassef v State, 98 Misc. 2d 505, 414 N.Y.S.2d 262, 1979 N.Y. Misc. LEXIS 2104 (N.Y. Ct. Cl.)*, aff'd, *73 A.D.2d 848, 1979 N.Y. App. Div. LEXIS 15725 (N.Y. App. Div. 2d Dep't 1979)*.

18. —Effective date

CLS *Pub O § **17**(11)* did not bar action by physicians' malpractice insurer against state to recover cost of defense where alleged wrongful acts of physicians and suits predicated thereon occurred prior to effective date of § ***17***(11); fact that action by insurer was commenced after such date did not require contrary result. *Frontier Ins. Co. v State, 197 A.D.2d 177, 610 N.Y.S.2d 647, 1994 N.Y. App. Div. LEXIS 3855 (N.Y. App. Div. 3d Dep't 1994)*, aff'd, *87 N.Y.2d 864, 638 N.Y.S.2d 933, 662 N.E.2d 251, 1995 N.Y. LEXIS 4744 (N.Y. 1995)*, in part, *1995 N.Y. LEXIS 3393 (N.Y. Sept. 5, 1995)*.

19. —Jurisdiction

Court of Claims had subject matter jurisdiction over claim under CLS *Pub O § **17*** for reimbursement of settlement amount and cost of defending malpractice action against claimant's subrogor (assistant professor of medicine at state university). *Physicians' Reciprocal Insurers v State, 213 A.D.2d 361, 625 N.Y.S.2d 5, 1995 N.Y. App. Div. LEXIS 3643 (N.Y. App. Div. 1st Dep't 1995)*.

Although provision in § ***17*** for reimbursing of ***public officers*** found liable for damages in performance of official duties may be deemed waiver of immunity by State, State may ordinarily waive immunity liability without waiving power to choose court or jurisdiction in which it allows self to be sued; accordingly, unless State explicitly waives immunity to suit in federal court, Eleventh Amendment bars assertion in federal court of claim based on such waiver. Since New York has not authorized assertion of claim under ***Public Officers Law*** in federal court, claim by chief of mental hygiene unit of incarceration facility, who was defendant in class action pertaining to prison conditions and who filed cross claim against Office of Mental Health for indemnification in event he is held liable, may not be heard in federal court. *Langley v Coughlin, 715 F. Supp. 522, 1989 U.S. Dist. LEXIS 6609 (S.D.N.Y. 1989)*.

20. —Limitations periods

Action in Court of Claims brought by insurer as subrogee of state-employed physicians who were sued for medical malpractice, challenging state's denial of physicians request for defense under CLS *Pub O § **17*** and demanding judgment against state for amounts expended in defending and indemnifying them, was governed by 4-month limitations period applicable to Article 78 proceedings, as Attorney General's decision to deny defense under § ***17***(2)(a) constituted administrative determination amenable to Article 78 review; insurer could not avoid short limitations period by denominating its claim as plenary action for indemnification of costs of defense. *Frontier Ins. Co. v State, 87 N.Y.2d 864, 638 N.Y.S.2d 933, 662 N.E.2d 251, 1995 N.Y. LEXIS 4744 (N.Y. 1995)*.

Article 78 proceeding against Comptroller, brought by executors of estate of former Governor to recover unreimbursed legal fees incurred by estate as result of rates charged by private counsel for services rendered to estate in separate litigation which exceeded amounts established by Comptroller in rate schedule setting forth maximum rate to be paid for such legal services under CLS Pub O § **17**(2)(b), was not timely commenced where it was not commenced within 4 months after Comptroller's letter and rate schedule, since Comptroller's determination was clear, final and nonnegotiable, and fees set forth therein were binding on petitioners in absence of court intervention challenging reasonableness of comptroller's maximum rates. *O'Brien v Regan, 182 A.D.2d 869, 581 N.Y.S.2d 911, 1992 N.Y. App. Div. LEXIS 5430 (N.Y. App. Div. 3d Dep't)*, app. denied, *80 N.Y.2d 758, 589 N.Y.S.2d 308, 602 N.E.2d 1124, 1992 N.Y. LEXIS 3260 (N.Y. 1992)*.

At time when Attorney General declined to defend physicians employed by state university in medical malpractice action, his determinations became final and binding, thereby invoking provisions of CLS *CPLR § 217*, and physicians were thus obliged to commence Article 78 proceeding within 4 months to compel him to provide defense. *Frontier Ins. Co. v State, 197 A.D.2d 177, 610 N.Y.S.2d 647, 1994 N.Y. App. Div. LEXIS 3855 (N.Y. App. Div. 3d Dep't 1994)*, aff'd, *87 N.Y.2d 864, 638 N.Y.S.2d 933, 662 N.E.2d 251, 1995 N.Y. LEXIS 4744 (N.Y. 1995)*, in part, *1995 N.Y. LEXIS 3393 (N.Y. Sept. 5, 1995)*.

21. —Mandamus

Mandamus might lie in proper circumstances to compel state comptroller to conduct audit under CLS *Pub O § **17**(2)(b)* and thereafter to compel payment of "[r]easonable attorneys' fees and litigation expenses." *Galvin & Morgan v McCall, 251 A.D.2d 869, 674 N.Y.S.2d 812, 1998 N.Y. App. Div. LEXIS 7333 (N.Y. App. Div. 3d Dep't 1998)*.

Under no circumstances could mandamus be used to compel state comptroller to pay full amounts requested in unaudited bills submitted by outside counsel for attorney fees and litigation expenses incurred in their representation of former state senate employee under CLS *Pub O § **17**(2)(b)* where those amounts were $20,107.20 for one month and $31,185.79 for another month. *Galvin & Morgan v McCall, 251 A.D.2d 869, 674 N.Y.S.2d 812, 1998 N.Y. App. Div. LEXIS 7333 (N.Y. App. Div. 3d Dep't 1998)*.

22. —Mootness

Article 78 proceeding to compel state comptroller to pay unaudited bills submitted by outside counsel for attorney fees and litigation expenses incurred in their representation of former state senate employee under CLS *Pub O § **17**(2)(b)* was moot where bills had been audited, and amounts as reduced by audits had been paid. *Galvin & Morgan v McCall, 251 A.D.2d 869, 674 N.Y.S.2d 812, 1998 N.Y. App. Div. LEXIS 7333 (N.Y. App. Div. 3d Dep't 1998)*.

Appellate Division's decision that Article 78 proceeding to compel state comptroller to pay unaudited bills submitted by outside counsel for attorney fees and litigation expenses incurred in their representation of former state senate employee under CLS *Pub O § **17**(2)(b)* was moot would not preclude timely challenge, through commencement of Article 78 proceeding, to amount paid as reduced by audits. *Galvin & Morgan v McCall, 251 A.D.2d 869, 674 N.Y.S.2d 812, 1998 N.Y. App. Div. LEXIS 7333 (N.Y. App. Div. 3d Dep't 1998)*.

23. —Offset and counterclaim

State could properly offset claimant attorney's alleged overbilling as affirmative defense and seek recoupment by way of counterclaim since Court of Claims has subject matter jurisdiction to entertain it. *Slate v State, 284 A.D.2d 767, 728 N.Y.S.2d 523, 2001 N.Y. App. Div. LEXIS 6623 (N.Y. App. Div. 3d Dep't 2001)*.

24. —Real party in interest

Public Officers Law § 17 merely creates cause of action on behalf of state employee or ***officer*** against state for indemnification for financial loss sustained by virtue of employee's or ***officer***'s negligence while acting within scope of employment; state does not become real party in interest, since there is no assumption of direct liability for employee's negligent act; statute of limitations for state employee's negligent operation of automobile is 3 years as provided by *CPLR § 214* since action is not against state. *Paone v Tryon, 112 A.D.2d 149, 491 N.Y.S.2d 669, 1985 N.Y. App. Div. LEXIS 56435 (N.Y. App. Div. 2d Dep't 1985)*.

If, under fact as established in federal civil rights action brought in state court by motorist who was allegedly "manhandled" by state police ***officer*** during arrest, New York statute was applicable which provided for indemnification of state employees for losses arising out of claims against employee arising out of acts performed in discharge of his duties, state would be real party in interest in suit and suit would be barred by Eleventh Amendment; such application of indemnification statute would not violate supremacy clause of Federal Constitution. *Brody v Leamy, 90 Misc. 2d 1, 393 N.Y.S.2d 243, 1977 N.Y. Misc. LEXIS 1979 (N.Y. Sup. Ct. 1977)*.

Supreme Court, not Court of Claims, had subject matter jurisdiction over attorney's defamation suit against trustees and executive director of Clients' Security Fund of State of New York since state was not real party in interest where action was based solely on alleged negligence by state employees in performance of their duties, and where state had assumed no direct liability for its employees' negligent acts and was involved only by virtue of its obligation to indemnify those employees pursuant to CLS *Pub O § **17***. *Schettino v Alter, 134 Misc. 2d 254, 510 N.Y.S.2d 806, 1986 N.Y. Misc. LEXIS 3095 (N.Y. Sup. Ct. 1986)*, aff'd in part and rev'd in part, dismissed, *140 A.D.2d 600, 528 N.Y.S.2d 862, 1988 N.Y. App. Div. LEXIS 5583 (N.Y. App. Div. 2d Dep't 1988)*.

25. —Standing

Malpractice insurer of physician employed as professor at state medical school had standing under CLS *Pub O § **17*** to recover, as subrogee, costs of defending professor in medical malpractice action arising out of her state employment. *Frontier Ins. Co. v State, 172 A.D.2d 13, 576 N.Y.S.2d 622, 1991 N.Y. App. Div. LEXIS 15072 (N.Y. App. Div. 3d Dep't 1991)*.

Plaintiff did not have standing to object to representation of defendant by Attorney General pursuant to CLS *Pub O § **17***. *Zaccaro v Parker, 169 Misc. 2d 266, 645 N.Y.S.2d 985, 1996 N.Y. Misc. LEXIS 215 (N.Y. Sup. Ct. 1996)*, aff'd, *249 A.D.2d 1003, 671 N.Y.S.2d 362, 1998 N.Y. App. Div. LEXIS 5181 (N.Y. App. Div. 4th Dep't 1998)*.

26. —Waiver, estoppel and forfeiture

A state corrections ***officer*** was properly determined not to have forfeited his right, pursuant to *Pub O § **17***, to representation by the Attorney General in a federal civil action brought against him by an inmate who alleged, inter alia, that the corrections ***officer*** and others had assaulted him and confiscated his property, where the ***officer*** had satisfactorily cooperated with and assisted the Attorney General in the furtherance of his defense in all respects except that he had given a false answer during his deposition by the inmate's attorney as to his previous arrest on charges of reckless endangerment, where it could not fairly be concluded that the ***officer*** had deliberately lied in that he was quick to correct the situation despite the absence of any assistance from the Assistant Attorney General who attended his deposition, and in that the ***officer*** contended that he had fully disclosed the arrest and all details of the incident to the Assistant Attorney General and had given his negative answer to the question due to his confusion over the Assistant Attorney General's instructions to refuse to answer any questions concerning the disciplinary proceedings that had followed the arrest, where the ***officer*** demonstrated no attitude of avowed obstruction, and where the falsehood was of inconsequential dimension in that it was most likely inadmissible in the federal case and, were such evidence to be admitted, the defense would have an opportunity to explain; however, the trial court erred in concluding that the ***officer*** was entitled to private counsel of his own choice at State expense,

since Pub O § **17**(2)(b) permits representation by private counsel at state expense only in situations in which review of the facts makes it apparent that representation by the Attorney General would be inappropriate or in which a conflict of interests exists. *Garcia v Abrams, 98 A.D.2d 871, 471 N.Y.S.2d 161, 1983 N.Y. App. Div. LEXIS 21183 (N.Y. App. Div. 3d Dep't 1983)*.

Action by physicians' malpractice insurer against state to recover cost of defense was not waived by long standing agreement between state and physicians' labor union to effect that physicians were responsible for their own malpractice insurance, since agreement did not expressly state that physicians waived their statutory rights under CLS Pub O § **17**. *Frontier Ins. Co. v State, 197 A.D.2d 177, 610 N.Y.S.2d 647, 1994 N.Y. App. Div. LEXIS 3855 (N.Y. App. Div. 3d Dep't 1994)*, aff'd, *87 N.Y.2d 864, 638 N.Y.S.2d 933, 662 N.E.2d 251, 1995 N.Y. LEXIS 4744 (N.Y. 1995)*, in part, *1995 N.Y. LEXIS 3393 (N.Y. Sept. 5, 1995)*.

A prior Federal court civil rights action (*US Code, tit 42, § 1983*) in which a State police ***officer*** was held personally liable to claimant for unlawfully arresting and then physically abusing claimant, may not be used by claimant as collateral estoppel in an action against the State based on the same alleged acts of police brutality since the State, which initially appeared for the individual ***officers*** involved pursuant to *section **17** of the **Public Officers Law*** but then properly withdrew from the defense of the two ***officers*** because of the existence of a possible conflict of interest between the codefendants themselves and between the codefendants and the State, did not have a full and fair opportunity to contest the jury verdict in the Federal court. The doctrine that a party who had the right to control the conduct of the litigation can be estopped from relitigating the issues even though not a party or privy to the prior suit only operates against those who will be directly responsible, vicariously or by agreement should judgment go against the party defendant. *Duverney v State, 96 Misc. 2d 898, 410 N.Y.S.2d 237, 1978 N.Y. Misc. LEXIS 2699 (N.Y. Ct. Cl. 1978)*, aff'd, *76 A.D.2d 962, 429 N.Y.S.2d 70, 1980 N.Y. App. Div. LEXIS 12079 (N.Y. App. Div. 3d Dep't 1980)*.

State University of New York (SUNY) faculty physicians who were sued for malpractice by clinical practice plan patient did not impliedly waive right to defense and indemnification by state, which CLS Pub O § **17** continues to provide to them, by purchasing malpractice insurance from private insurance carrier, since (1) they secured private insurance because situations exist in which treatment of practice plan patients is not covered by CLS Pub O § **17**, and (2) medical services rendered by them which were altogether unrelated to their work for SUNY would be covered by private insurance carrier. *Frontier Ins. Co. v State, 160 Misc. 2d 437, 609 N.Y.S.2d 748, 1993 N.Y. Misc. LEXIS 586 (N.Y. Ct. Cl. 1993)*.

Personal injury claimant was entitled to summary judgment against state on liability issue based on res judicata and collateral estoppel effect of Supreme Court's determination that state employee who was driving car was 100 percent responsible for accident for failing to yield right of way to plaintiff's vehicle, considering state's participation in defense of Supreme Court action through appearance by Attorney General pursuant to CLS Pub O § **17** and relation between state and negligent driver through doctrine of respondeat superior and CLS *Veh & Tr § 388*. *Pratt v State, 181 Misc. 2d 488, 694 N.Y.S.2d 604, 1999 N.Y. Misc. LEXIS 315 (N.Y. Ct. Cl. 1999)*.

27. Under former *law*

The operator of an automobile owned by the state was not immune from liability for injuries and damage caused by him on the ground that the state was the real party in interest and that exclusive jurisdiction was vested in the Court of Claims, since the statute indemnifying ***officers*** and employees of state from financial loss arising out of claim by reason of negligence provided such ***officer*** or employee was acting in discharge of his duties and within course of his employment merely created a cause of action in behalf of employee or ***officer*** against the state for indemnification. *De Vivo v Grosjean, 48 A.D.2d 158, 368 N.Y.S.2d 315, 1975 N.Y. App. Div. LEXIS 9564 (N.Y. App. Div. 3d Dep't 1975)*.

Prior to enactment of statute providing that state shall save harmless and indemnify all ***officers*** and employees from financial loss arising out of claim or judgment by reason of alleged negligence or other act by ***officer*** or

employee acting in discharge of duties and within the scope of his employment, state employees were subject to suit in the Supreme Court for their negligent acts in the course of their employment and employee's liability was primary and that of state was secondary. *Olmstead v Britton, 48 A.D.2d 536, 370 N.Y.S.2d 269, 1975 N.Y. App. Div. LEXIS 9936 (N.Y. App. Div. 4th Dep't 1975)*.

Statute stating conditions under which ***officers*** and employees of state may be indemnified for financial loss arising out of claims, suits or judgments by reason of alleged negligence when the employees were acting within scope of their employment when the damages were sustained, would not abrogate right of injured plaintiff to sue state employee in the Supreme Court, and such suit would not have to be brought in the Court of Claims. *Sutton v Coulter, 78 Misc. 2d 730, 358 N.Y.S.2d 333, 1974 N.Y. Misc. LEXIS 1483 (N.Y. Sup. Ct. 1974)*.

Opinion Notes

Agency Opinions

1. In general

The Roosevelt Island Operating Corporation may enter into a contract amendment with the consultant contractor operating and managing the Tramway whereby the corporation will indemnify the contractor in exchange for his agreement to resume operation of the Tramway. *1986 NY Ops Atty Gen 86-F* 1.

Indemnification of employees under the provisions of ***Public Officers Law***, *Section **17**(3)(a)*, must be based upon a case by case review of the facts and circumstances and are limited by the qualifying language of said statute. 1978 NY Ops Atty Gen Nov 1.

A member of the staff of the BOCES district superintendent who is serving as integrity ***officer*** under the supervision of State Education Department is eligible for state-provided defense and indemnification. *2013 N.Y. Op. Att'y Gen. No. 2013-F1, 2013 N.Y. AG LEXIS 6*.

The directors of the Independent Livery Driver Benefit Fund are not eligible for the defense, indemnification, and immunity that may be accorded to ***public officers***. *N.Y. Op. Att'y Gen. No. 2011-9, 2011 N.Y. AG LEXIS 10*.

2. Scope of employment

Under § 18 of CLS ***Public Officers Law***, a local ***public*** entity only may defend its employees in an action or proceeding in state or federal court arising out of an act or omission allegedly occurring while the employee was acting within the scope of his ***public*** employment or duties; a local government may extend its obligation to provide defense through the enactment of a local ***law***. 1987 NY Ops Atty Gen No. 87-28 (Informal).

3. Applicability to particular *officers* and employees

4. —Attorneys, judges and court personnel

Members of the Joint Bar Association Grievance Committees of the Second Judicial Department are not employees or ***officers*** of the State for purposes of indemnification and representation, pursuant to *section **17** of the **Public Officers Law***. *1977 N.Y. Op. Att'y Gen. No. 68, 1977 N.Y. AG LEXIS 33*.

Members of the Joint Bar Association Grievance Committees of the Second Judicial Department can be made eligible for indemnification and representation, pursuant to section ***17*** of the ***Public Officers Law***. 1978 NY Ops Atty Gen Sept 28.

Eligibility for indemnification and representation pursuant to ***Public Officers Law, § 17***, for members of the Central Screening Committee in the Appellate Division, First Judicial Department, can be assured by incorporating express reference to the Committee in the First Department Rules. 1979 NY Ops Atty Gen Dec 20 (formal).

County clerks in counties within City of New York are entitled to defense and indemnification under ***Public Officers Law § 17*** in actions arising out of their duties as clerks of Supreme Court, but there is no such coverage in actions arising from performance of other "local" functions. 1986 N.Y. Op. Att'y Gen. No. 86-26.

Attorneys who volunteer to serve as bar mediators and pro bono special counsels on behalf of Supreme Court, Appellate Division, First Department, in administration of Department's disciplinary system, are covered by CLS Pub O § ***17***. 1992 NY Ops Atty Gen F 92-7.

Participants in Voluntary Lawyers Project of Housing Court are employees within meaning of CLS Pub O § ***17*** and thus are eligible to receive defense and indemnification by state, subject to procedural terms and conditions of statute. 1999 NY Ops Atty Gen F 2000-1.

Provisions of CLS Pub O §§ ***17*** and 19 do not authorize reimbursement to employee for legal fees incurred by hiring private attorney to respond to complaint filed with Disciplinary Committee of New York Supreme Court, Appellate Division, First Department. 2002 NY Ops Atty Gen F 2002-4.

Employees of Interest on Lawyer Account (IOLA) Fund are eligible for state-provided defense and indemnification for acts and omissions within scope of their employment, subject to limitations and procedural requirements set forth in CLS Pub O § ***17***(3) and (4). 2004 NY Ops Atty Gen F 04-6.

State budget appropriations will cover CLS Pub O § ***17*** indemnification costs incurred by employees of Interest on Lawyer Account (IOLA) Fund, except under special circumstances set forth in Budget Bulletin B-1129. 2004 NY Ops Atty Gen F 04-6.

Unpaid guardians ad litem serving in New York City Civil Court's guardian ad litem program are eligible for State-provided defense and indemnification. 2006 NY Ops Atty Gen F 06-3.

Compensated guardians ad litem serving in New York City Civil Court's guardian ad litem program are not eligible for state-provided defense and indemnification. 2006 NY Ops Atty Gen F 06-5.

Although a district attorney is a local ***officer*** for purposes of providing for his legal defense and indemnification, he is a state ***officer*** for purposes of the constitutional provision which bars an increase or decrease in the compensation of each State ***officer*** named in the Constitution during a term of office. 1980 Op St Compt File #194.

5. —Community development and trade

Neither section ***17*** nor section 18 of the ***Public Officers Law*** covers ***officers*** and directors of Safe Affordable Housing, Inc., a not-for-profit community development corporation organized by the Division of Housing and Community Renewal, even though the ***officers*** and directors are also ***officers*** and employees of the division. The corporation is authorized to indemnify its ***officers*** and directors. 1982 N.Y. Op. Att'y Gen. No. 32, 1982 N.Y. AG LEXIS 49.

Public Officers Law § 17 does not apply to directors, ***officers*** and employees of the Harlem International Trade Center Corporation. 1991 NY Ops Atty Gen F 91-3.

6. —Consumer protection

Employee of Consumer Protection Board (CPB) when serving as Board's representative on Advisory Board to Targeted Accessibility Fund is employee in service of state who is covered by provisions of CLS *Pub O § **17***; in virtually all cases, suit against CPB for monetary damages must be brought against state in Court of Claims and appropriation is available to pay any judgment or settlement. 1998 N.Y. Op. Att'y Gen. No. 98-F11, *1998 N.Y. AG LEXIS 127*.

Members of Nassau County Rent Guidelines Board are eligible for state-provided defense and indemnification under CLS *Pub O § **17***. 2009 NY Ops Atty Gen F 09-1.

7. —Education

Student proctors on State University campuses, generally known as resident assistants, who act as dormitory counselors and perform certain clerical and office duties in exchange for waiver of room rent, are employees of the State eligible for the indemnity benefits of ***Public Officers Law § 17***. 1976 NY Ops Atty Gen May 10 (informal).

There is no authorization for state to defend and indemnify Hunter College Foundation and its employees. 1997 NY Ops Atty Gen F 97-8.

District superintendent of supervisory school district is entitled to protections of CLS *Pub O § **17*** as to lawsuits that arise from performance of superintendent's state functions. 1997 NY Ops Atty Gen F 97-10.

Consultants hired by state education department to assist in review of doctoral program curricula are not entitled to defense and indemnification by State. N.Y. Op. Att'y Gen. No. 88-F7.

8. —Health and medical

A member of a board of visitors of a hospital in the Department of Mental Hygiene is an ***officer*** of the State for purposes of *section **17** of the **Public Officers Law***. 1977 NY Ops Atty Gen May 18.

Members of the State Cardiac Advisory Committee appointed to serve the Commissioner of Health are eligible for indemnification pursuant to ***Public** Health **Law**, § 14-a*, rather than ***Public Officers Law, § 17***. 1977 NY Ops Atty Gen Sept 28.

Representation and indemnification of health care providers performing professional services at the request of the Department of Correctional Services on a per diem or contract basis are not provided for in ***Public Officers Law, § 17***. However, *Correction **Law**, § 24-a*, makes ***Public Officers Law, § 17***, applicable to certain licensed professionals under these circumstances, and indemnification and representation can be provided pursuant to *Correction **Law**, § 24-a*, subject to the terms and conditions in ***Public Officers Law, § 17***. 1980 NY Ops Atty Gen July 1 (Formal).

Examiners who are paid on a per diem basis by the State Education Department to conduct the practical examination component of the professional licensing examination in dentistry are employees within the meaning of *section **17** of the **Public Officers Law***. 1983 NY Ops Atty Gen 83-F18.

Members of Regional Emergency Medical Services Councils and Regional Emergency Medical Advisory Committees are eligible to receive defense and indemnification under CLS *Pub O § **17***. *1996 N.Y. Op. Att'y Gen. No. 96-F9, 1996 N.Y. AG LEXIS 33*.

Physicians who perform services for Division of State Police under CLS *Exec § 215* are not eligible for defense and indemnification under CLS *Pub O § **17***; there currently is no statutory provision comparable to CLS *Pub Health § 14* that would bring those physicians within coverage of CLS *Pub O § **17***. 1998 NY Ops Atty Gen F 98-2.

New York State citizen members of the Interstate Sanitation Commission are State employees for purposes of defense and indemnification under CLS *Pub O **Law § 17***. NY Ops Atty Gen 89-F13.

9. —National Guard

National Guard personnel in an inactive duty training or annual training status under *32 US Code, §§ 502–505* are State "employees" under the provisions of *section **17** of the **Public Officers Law***. 1980 NY Ops Atty Gen June 23 (Formal).

10. —Peace *officers*

Regional park-police ***officers*** who are off duty and are employed as security guards for private organizations or individuals who had obtained permits to use State park or historic facilities, are not entitled to representation and indemnification by the State of New York under ***Public Officers Law, § 17***. *1981 N.Y. Op. Att'y Gen. No. 26, 1981 N.Y. AG LEXIS 8*.

Peace ***officers*** who are privately employed while off-duty are not entitled to representation and indemnification under *Criminal Procedure **Law** § 2.20(3)* unless their acts do not arise from their responsibilities to private employers, and are in all other respects a lawful exercise of peace ***officer*** powers. 1990 NY Ops Atty Gen F 90-14.

11. —Traffic, highways and bridges

The New York members of the Lake Champlain Bridge Commission are ***officers*** of the State within the meaning of ***Public Officers Law, § 17***, and entitled to indemnification. 1978 NY Ops Atty Gen August 8.

Commissioners and employees of Lake George Park Commission are "employees" within meaning of CLS *Pub Off L § **17***. 1988 N.Y. Op. Att'y Gen. No. 88-F10, *1988 N.Y. AG LEXIS 93*.

Members of local emergency planning committees established pursuant to Federal Superfund Amendments and Reauthorization Act of 1986 (*42 USCS §§ 11001* et seq.) are state employees for purposes of defense and indemnification under CLS *Pub Off L § **17***. NY Ops Atty Gen 89-F 2.

Experts employed in preparing or presenting disciplinary proceedings against licensed professionals or persons filing complaints relative thereto are protected by an absolute privilege against liability in an action for libel or slander. Experts employed in such proceedings on a per diem basis are not employees within the meaning of *section **17** of the **Public Officers Law***. 1977 NY Ops Atty Gen May 23.

Workers subject to the direction and control of State personnel and regularly engaged in carrying out the functions of a State institution for compensation are State employees within the meaning of § ***17 Public Officers Law*** even though they are paid with C.E.T.A. funds and even though they may be on the payroll of a city or county at the time. 1979 NY Ops Atty Gen Aug 8 (informal).

A State employee trained in cardio-pulmonary resuscitation by the Red Cross in a program established by his office who renders medical assistance to a person stricken in the ***public*** office during working hours is deemed to be acting within the scope of his or her employment. Whether such employee would be covered in a particular case would depend on whether the State received due notice of the claim as provided under ***Public Law** section **17*** and whether the action did not occur as a result of an intentional wrongdoing or recklessness on the part of the employee. 1979 NY Ops Atty Gen October 23 (Formal).

State employees who follow the procedures specified in ***Public Officers Law, § 17***, will be defended by the Attorney General and indemnified by the State so long as the employees' acts are within the coverage of section ***17***. 1981 NY Ops Atty Gen Feb 24 (formal).

Public members of the Board of ***Public*** Disclosure established by Executive Order 10.3 are "employees" eligible for defense and indemnification under ***Public Officers Law, § 17***. 1981 NY Ops Atty Gen Oct 26 (Formal).

Labor Department employees serving as members of private industry councils receive defense and indemnification for these activities under CLS *Pub O § **17***; municipalities in service delivery area may elect to confer benefits of CLS *Pub O § 18* upon members of incorporated private industry councils serving their areas. 1987 NY Ops Atty Gen No 87-F10.

There is no authorization for Department of Transportation to reimburse employee for legal fees incurred in hearing before Department of Motor Vehicles to determine right of employee to retain his driver's license. 1997 NY Ops Atty Gen F 97-9.

Members of New York State Independent Living Council are independent contractors who are not entitled to defense and indemnification under CLS *Pub O § **17***. 1997 NY Ops Atty Gen F 97-11.

General provisions defining scope of CLS *Pub O §§ **17*** and *18* contemplate coverage of particular entities rather than distinguishing among categories of entity's personnel. 2004 NY Ops Atty Gen F 04-6.

Where Legislature specifically designates ***public*** entity for CLS *Pub O § **17*** coverage and entity's enabling act contemplates hiring of staff, coverage is ordinarily extended to both ***officers*** and employees. 2004 NY Ops Atty Gen F 04-6.

Directors of Independent Livery Driver Benefit Fund are not eligible for defense, indemnification, and immunity that may be accorded to ***public officers***. *2011 N.Y. Op. (Inf.) Att'y Gen. 09*.

Members of Security Guard Advisory Council are eligible for defense and indemnification under CLS *Pub O § **17***. *2012 N.Y. Op. Att'y Gen. 02*.

Volunteers retained by authority to perform duties on authority's behalf and under its supervision are agents of authority, and when acting pursuant to authority's enabling legislation, which includes provisions of CLS *Pub Auth § 2623*, are entitled to defense and indemnification under CLS ***Public Officers § 17***. N.Y. Op. Att'y Gen. No. 88-F3.

12. Miscellaneous procedural matters

13. —Criminal proceedings

A county may not implement a plan requiring a person accused of a criminal offense to repay to the county the cost of providing legal counsel, when that person is indigent at the time of the criminal proceeding, but subsequently acquires the means to bear the cost of the legal defense. 1985 N.Y. Op. Att'y Gen. No. 85-78.

Village may authorize reimbursement of legal expenses of employee incurred in successful defense of criminal action; such reimbursement, however, is not authorized by CLS *Pub O § 18*. 1988 NY Ops Atty Gen No. 88-6 (Informal).

14. Under former *law*

Physicians who are employees of the Department of Correctional Services shall be indemnified as provided in *Section **17** of the **Public Officers Law***. 1971 NY Ops Atty Gen Dec. ***17***.

Employees of the Division for Youth, operating private vehicles in the course of their employment, and who comply with the provisions of *Executive **Law**, Section 501-a* and ***Public Officers Law**, Section **17***, are entitled to indemnification for financial loss incurred as a result of an accident. 1974 NY Ops Atty Gen Jan. 28 (formal).

A physician appointed to a medical residency at the Roswell Park Memorial Institute, who, while receiving payment from a Canadian Government fellowship, is nevertheless under the direct control and supervision of the State and who performs the same tasks and has the same clinical responsibilities as any other medical resident, is a State employee and is entitled to the protection of the indemnification provisions of ***Public Officers Law, § 17***, subdivision 1. 1975 NY Ops Atty Gen May 15.

Non-voting student members of the Board of Trustees of the State University of New York, the Councils of state-operated institutions, Universities, the Board of Higher Education of the City of New York and the Board of Trustees of each Community College holding office under the provisions of ***Laws*** of 1975, chapter 587, are not ***public officers*** as defined in ***Public Officers Law***, § 2, and, therefore, the provisions of ***Public Officers Law***, §§ 10, ***17*** and 73 through 78 are not applicable to the non-voting student members of these boards. 1975 NY Ops Atty Gen Nov. 25.

The protection provided by ***Public Officers Law § 17*** applies to staff physicians who are full-time State employees working on the premises of either the Downstate or Upstate Medical Center hospitals when fees for their services are paid to the State. 1975 NY Ops Atty Gen May 28.

Research References & Practice Aids

Cross References:

This section referred to in § 18; CLS *Educ §§ 355-b*, *371*, *6205*, *6510*; *CLS ECL § 27-1105*; CLS *Exec §§ 259-g*, *501-a*; CLS Jud § 468-b; CLS *Men Hyg §§ 7.05*, *7.35*, *13.35*, *19.10*, *19.13*, *19.21*, *45.07*, *80.05*; CLS *Pub A §§ 50*, *1269-a*, *2571*, *2623*, *3020*; CLS *Pub Health §§ 14*, *230*; CLS *Priv Hous Fin § 56-a*; CLS *Retire & SS § 179*; CLS *St Fin §§ 97-t*, *97-v*; CLS *Trans § 402*; CLS Work Comp §§ 19-c, 27-a, 87-a, 87-b, 87-c, 87-d, 87-g, 87-h, 2404; CLS Unconsol ch 22 § 12; ch 23-A § 13; ch 196 § 8; ch 214 § 12; ch 252 § 4; ch 252-C § 4, ch 252-D § 12.

Civil actions against department personnel, CLS Correc § 24.

General duties, CLS *Exec § 63*.

Patients' records, CLS *Men Hyg § 9.11*.

Mental health volunteers, CLS *Men Hyg § 9.11*.

Petition, CLS *Men Hyg § 81.08*.

Industrial materials recycling program, CLS *Pub A § 1285-g*.

Professional medical conduct, CLS *Pub Health §§ 230* et seq.

Emergency Medical Services Personnel Training Act of Nineteen Hundred Eighty-Six, CLS *Pub Health §§ 3050* et seq.

Controlled Substances Therapeutic Research Act, CLS *Pub Health §§ 3397-a* et seq.

Citizen-taxpayer actions, CLS *St Fin §§ 123* et seq.

Time of filing claims and notices of intention to file claims, CLS Ct C Act § 10.

Codes, Rules and Regulations:

Payment of private counsel fees for representation of a state employee pursuant to *section **17** of the **Public Officers Law*** 2 NYCRR Part 20 .

Jurisprudences:

13 NY Jur 2d Businesses and Occupations § 141.

18A NY Jur 2d Civil Servants and Other ***Public Officers*** and Employees § 20, 205–211, 213.

31 NY Jur 2d Criminal ***Law*** § 110.

44 NY Jur 2d Defamation and Privacy § 280.

55 NY Jur 2d Environmental Rights and Remedies § 57.

62 NY Jur 2d Government Tort Liability § 46.

62A NY Jur 2d Government Tort Liability §§ 117, 259.

64 NY Jur 2d Health and Sanitation § 11.

71 NY Jur 2d Insurance § 2187.

73A NY Jur 2d Judgments § 376.

83A NY Jur 2d Physicians, Surgeons, and Other Healers§ 4.

85 NY Jur 2d Police, Sheriffs, and Related ***Officers*** § 19.

88 NY Jur 2d ***Public*** Welfare and Old Age Assistance § 257.

105 NY Jur 2d Trial § 631.

109 NY Jur 2d Workers' Compensation § 160.

39 Am Jur 2d, Health §§ 30, 31.

*63C Am Jur 2d, **Public Officers** and Employees §§ 303*, 308, 407.

Law **Reviews:**

Reviewability of quasi-legislative acts of ***public*** officials in New York under Article 78 of the CPLR. 39 St. John's L Rev 49.

Matthew Bender's New York Civil Practice:

3 Carrieri, Lansner, *New York Civil Practice: Family Court Proceedings § 50.10*.

Annotations:

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering ***public officers*** or employees for liability arising out of performance of ***public*** duties. *71 ALR3d 6*.

Validity and construction of statute authorizing or requiring governmental unit to indemnify ***public officer*** or employee for liability arising out of performance of ***public*** duties. *71 ALR3d 90*.

Matthew Bender's New York Practice Guides:

Lexis Nexis AnswerGuide New York Negligence § 7.10[6] Defining Liability of Hospitals.

LexisNexis AnswerGuide New York Negligence § 7.10. Defining Liability of Hospitals.

Hierarchy Notes:

NY CLS Pub O, Art. 2

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