



STATE OF KANSAS

## Office of the Attorney General

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*Curt T. Schneider*  
Attorney General

July 15, 1976

ATTORNEY GENERAL OPINION NO. 76- 219

Mr. Robert M. Corbett  
Attorney  
Department of Health and Environment  
Building 740 - Forbes AFB  
Topeka, Kansas

Re: Health Care Provider--Professional Liability Insurance--  
Applicability to State Employed Physicians

Synopsis: 1976 Senate Bill 646 requires physicians employed by the state but falling within the statutory definition of "health care provider" must secure professional liability insurance.

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Dear Mr. Corbett:

You inquire whether the recent provisions of 1976 Senate Bill No. 646 apply to physicians employed by the Kansas Department of Health and Environment.

1976 Senate Bill 646 in part provides that "health care providers" in this state shall maintain in effect a specific policy of liability insurance approved by the Commissioner of Insurance as provided in the act. "Health care provider" is defined in pertinent part as:

"(f) . . . a person licensed to practice any branch of the healing arts by the state board of healing arts, a person who holds a temporary permit to practice any branch of the healing arts issued by the board of healing arts, a

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person engaged in a postgraduate training program approved by the state board of healing arts . . . ."

You advise that several individuals employed by the Department of Health and Environment are licensed by this state to practice the healing arts, but that their employment entails little, if any, direct patient care. Also, you inquire whether the governmental immunity provisions of K.S.A. 46-9011 as well as the Good Samaritan Law (K.S.A. 65-2891 *et seq.*) may provide immunity from liability so as to exempt these physicians from the requirements of 1976 Senate Bill 646.

While the physicians employed by the Department of Health and Environment may be exposed to a very low profile of liability in the course of their duties, the statute does not qualify the mandatory insurance requirements based upon greater or lesser risks. In specifying the three categories of individuals practicing under license from the State Board of Healing Arts (as above quoted) the act defines who shall be required to secure liability insurance by focusing on the license held and the professional service to be rendered and not on the potential liability which may be incurred. We find no exceptions to this save for the "self-insurer" provisions.

Accordingly, we are constrained to conclude that the terms and conditions of 1976 Senate Bill 646 require after July 1, 1976, as a mandatory condition precedent that each health care provider as defined therein who desires to provide professional

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1. We note that K.S.A. 46-901 does not per se cloak the individual employed by a state agency with immunity. However, where acting within one's official scope of authority as a public officer, an employee may be able to rely upon the recognized general rule that public officers in the performance of duties imposed upon them by statute and exercising in good faith the judgment and discretion necessary therefor, are not liable personally in damages for injuries to private individuals resulting as a consequence of their official acts. *Kern v. Miller*, 216 Kan. 724, 533 P.2d 1244 (1975); *Tillotson v. Fair*, 160 Kan. 81, 159 P.2d 471 (1945).

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service as such must secure the requisite professional liability insurance, his or her potential liability notwithstanding.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JPS:kj

cc: Dr. James Hill  
Executive Secretary  
Kansas Board of Healing Arts  
503 Kansas Avenue - 5th Floor  
Topeka, Kansas 66603