



STATE OF KANSAS

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September 11, 1980

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ATTORNEY GENERAL OPINION NO. 80- 192

Elizabeth W. Carlson
Executive Secretary
Board of Healing Arts
503 Kansas Avenue, Suite 500
Topeka, Kansas 66603

Re: Insurance--Health Care Provider Insurance--Maintenance
of Professional Liability Insurance By Health Care
Providers

Synopsis: The Board of Healing Arts may not refuse to renew the license of a health care provider who does not maintain a policy of professional liability insurance as required by K.S.A. 1979 Supp. 40-3402(a). However, if the Board determines, in the exercise of sound discretion, that the failure to maintain professional liability insurance (in a specific factual context) constitutes "immoral, unprofessional or dishonorable conduct," a license revocation proceeding may be commenced, pursuant to the procedure prescribed by K.S.A. 1979 Supp. 65-2838, et seq. Cited herein: K.S.A. 1979 Supp. 40-3401, 40-3402(a), 40-3416, K.S.A. 65-2805, K.S.A. 1979 Supp. 65-2809, 65-2836, 65-2838, and 65-2842.

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Dear Mrs. Carlson:

You request our opinion as to whether the Board of Healing Arts may refuse to renew the license of a health care provider who does not maintain a policy of professional liability insurance

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as required by K.S.A. 1979 Supp. 40-3402(a). You state that, on the Board's renewal form, it is necessary for those rendering health care in Kansas to provide the name of their professional liability insurer, the policy number and the date of expiration of the malpractice insurance policy. Additionally, the Board withholds the licensee's renewal receipt until said information is provided, and you advise that some licensees have stated that they do not have malpractice insurance and are still providing health care in Kansas.

The Kansas Health Care Provider Insurance Availability Act, K.S.A. 1979 Supp. 40-3401 et seq., was enacted by the 1976 Legislature as a partial response to increasing pressure brought upon Kansas health care providers because of the national medical malpractice insurance crisis. The constitutionality of the act was upheld in State, ex rel., Schneider v. Liggett, 223 Kan. 610 (1978). A primary feature of the act is that a policy of professional liability insurance, with prescribed minimum policy limits, must "be maintained in effect by each resident health care provider as a condition to rendering professional service as a health care provider in this state, unless such health care provider is a self-insurer." K.S.A. 1979 Supp. 40-3402(a). K.S.A. 1979 Supp. 40-3416 relates to violations of the mandatory insurance requirements imposed by the act, and provides as follows:

"Whenever the commissioner [of insurance] is informed or reasonably suspects that a health care provider is rendering professional services in violation of K.S.A. 1976 Supp. 40-3402, said commissioner shall report the suspected violation to the state agency which licenses, registers or certifies such health care provider. Upon receipt of such report or other evidence of a violation of K.S.A. 1976 Supp. 40-3402, said state agency shall make such investigation as it deems necessary and take such other official action as deemed appropriate. If a violation is found to exist, said state agency shall promptly notify the attorney general of this state. Upon such notice the attorney general or county attorney of the proper county shall, in the name of the state, institute and maintain an action to enjoin the health care provider from rendering professional services in this state in the district court of the district in which such health care provider is rendering professional services." (Emphasis added.)

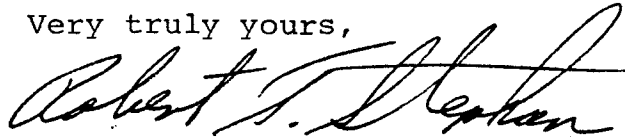
Your question is whether, under the above-quoted statute, the "official action" which the Board of Healing Arts may take includes

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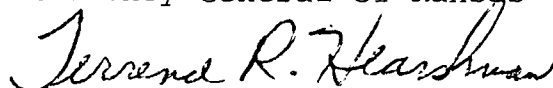
refusal to renew the license of a health care provider who has violated the mandatory insurance requirements of the act. In our judgment, the provisions of the Kansas Healing Arts Act do not permit such a construction of K.S.A. 1979 Supp. 40-3416. K.S.A. 1979 Supp. 65-2809 imposes only two conditions upon an active licensee who requests renewal of his or her license: timely payment of the prescribed renewal fee and satisfactory completion of the required program of continuing education. Although the Board may refuse to grant a license upon any of the grounds for which a license may be revoked under the act (K.S.A. 65-2805), such a provision does not authorize cancellation of a license previously granted without compliance with the notice and hearing requirements imposed by K.S.A. 1979 Supp. 65-2842. In our judgment, once a license has been issued, it must be renewed, but for failure to comply with the two above-stated statutory grounds, and can be "permanently" revoked only upon the grounds enumerated in K.S.A. 1979 Supp. 65-2836 (after notice and hearing as provided for in K.S.A. 1979 Supp. 65-2842).

Although what has been said above answers the specific question which has been raised, a related question, which we believe should be addressed, is whether the "official action" authorized by K.S.A. 1979 Supp. 40-3416 permits the initiation of proceedings to revoke or suspend the license of an active licensee who does not maintain the required policy of professional liability insurance. One of the grounds upon which a license may be revoked, suspended or limited is "immoral, unprofessional, or dishonorable conduct." K.S.A. 1979 Supp. 65-2836(b). In Kansas State Board of Healing Arts v. Foote, 200 Kan. 447 (1968), it was held that a determination of exactly what conduct is disqualifying, under the above-stated ground for revocation, is "left to the sound discretion of the board." Therefore, if the board determines, in the exercise of sound discretion, that the failure to maintain professional liability insurance (in a specific factual context) constitutes "immoral, unprofessional or dishonorable conduct," a license revocation proceeding may be initiated. We commend the following authorities to the board's attention in determining whether the facts of a particular case justify a finding of immoral, unprofessional, or dishonorable conduct. Meffert v. Medical Board, 66 Kan. 710 (1903); Crabb v. Board of Dental Examiners, 118 Kan. 513 (1925); Kansas State Board of Healing Arts v. Foote, supra; Kansas State Board of Nursing v. Burkman, 216 Kan. 187 (1975); and 61 Am.Jur.2d Physicians, Surgeons, Etc. §66.

Very truly yours,



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Attorney General of Kansas



Terrence R. Hearshman
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RTS:BJS:TRH:jm