



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3731

July 1, 1985

ATTORNEY GENERAL OPINION NO. 85- 73

The Honorable Fletcher Bell  
Commissioner of Insurance  
420 SW 9th Street  
Topeka, Kansas 66612

Re: Insurance -- Health Care Provider Insurance --  
Professional Liability Insurance; Self-Insurance  
of Residents by University of Kansas Medical  
Center

Synopsis: 1985 Senate Bill No. 362 permits the University of  
Kansas Medical Center to be a self-insurer under the  
Health Care Provider Insurance Availability Act,  
K.S.A. 1984 Supp. 40-3401 et seq., for persons who  
are residents at the Medical Center. Coverage  
provided by the Medical Center for its residents is  
professional liability insurance of the same type as  
is offered by a private insurer, and accordingly  
extends to activities of the residents whenever they  
act as health care providers, either at the Medical  
Center itself or elsewhere. Cited herein: K.S.A.  
1984 Supp. 40-3401, 40-3402, both as amended by 1985  
Senate Bill No. 362; K.S.A. 1984 Supp. 40-3403;  
K.S.A. 1984 Supp. 40-3404, as amended by 1985 Senate  
Bill No. 362; K.S.A. 1984 Supp. 40-3408; 40-3409;  
K.S.A. 1984 Supp. 40-3414, as amended by 1985 Senate  
Bill No. 362; K.S.A. 1984 Supp. 65-2811.

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Dear Commissioner Bell:

As Insurance Commissioner for the State of Kansas, you request  
our opinion on behalf of the Health Care Stabilization Fund,  
which is created pursuant to K.S.A. 1984 Supp. 40-3403 and

which acts as a secondary insurer for health care providers in this state. Specifically, you inquire concerning the status of residents at the University of Kansas Medical Center, which under the provisions of 1985 Senate Bill No. 362 is now a self-insurer for such persons. Questions have arisen as to the extent to which the Medical Center is liable as self-insurer for the actions of its residents, i.e. is the school liable only for residents' actions while on the premises or under the direct supervision of a faculty member elsewhere, or is the coverage 24-hour in scope, wherever and whenever the resident undertakes to act as a health care provider?

1985 Senate Bill No. 362 amended various provisions of the Health Care Provider Insurance Availability Act, K.S.A. 1984 Supp. 40-3401 et seq. The act requires each health care provider to maintain a policy of professional liability insurance which contain basic provisions set out at K.S.A. 1984 Supp. 40-3402(a), as amended by section 2 of the bill. Any judgment which rendered in excess of the basic coverage amounts brings into play the Health Care Stabilization Fund (K.S.A. 1984 Supp. 40-3403) which is administered by your office and financed by a surcharge on each health care provider and self-insurer. K.S.A. 1984 40-3404, as amended by 1985 Senate Bill No. 362. Under the definition of "health care provider" found in the bill [K.S.A. 1984 Supp. 40-3401(f), as amended by section 1), both the Medical Center ("a medical care facility licensed by the department of health and environment") and each resident ("a person engaged in a postgraduate training program approved by the state board of healing arts") are included, and so must either have professional liability insurance or be self-insured in order to render professional services in this state.

By virtue of section 4 of the bill, which amends K.S.A. 1984 Supp. 40-3414, the Medical Center is made a self-insurer as to "persons who are engaged, under the supervision of a clinical faculty member of the university of Kansas school of medicine, in a postgraduate training program approved by the state board of healing arts and operated by the university of Kansas medical center." Such persons, who are commonly referred to as residents, have completed their course of instruction at the Medical Center or another medical school and have obtained a temporary permit to practice from the State Board of Healing Arts. Pursuant to K.S.A. 1984 Supp. 65-2811(b), a resident may engage in the practice of his or her branch of the healing arts while engaged in a postgraduate training program, although private practice is prohibited. We are informed that a number of residents at the Medical center also are employed by other health care providers (i.e. hospital emergency rooms) while in the training program at the university.

As a self-insurer, the Medical Center is liable for the surcharge assessed for the Health Care Stabilization Fund (which for 1985 will be 110% of \$600,000). In working with the Medical Center, the Health Care Stabilization Fund, in its role as excess carrier, may require the Medical Center to provide the information required of private insurers by K.S.A. 1984 Supp. 40-3402(a)(1), as amended by section 2. Such action is consistent with the responsibility of the primary insurer (i.e. the Medical Center) to conduct itself in good faith so as not to expose its insureds and any excess carrier to losses beyond the primary policy limits. In addition, the limits on the Medical Center's liability as self-insurer for each of the residents are the same as those for a private insurer (i.e. minimum of \$200,000 per occurrence, minimum of \$600,000 annual aggregate for all claims). K.S.A. 1984 Supp. 40-3408. The Medical Center, as self-insurer, is also responsible for defending actions brought by plaintiffs against one or more residents. K.S.A. 1984 Supp. 40-3409(b).

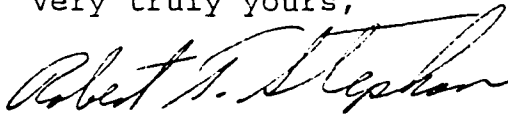
A question has been presented as to the liability of the Medical Center for residents who work elsewhere during the hours they are not employed at their postgraduate training program. A suggestion has been made that the provisions of the bill allow the Medical Center to limit its self-insurance of the residents to only activities which occur in the center itself or under the supervision of faculty at facilities elsewhere. In reading the bill, however, we find that the only limitation of coverage appears in the definition of "professional liability insurance" in K.S.A. 1984 Supp. 40-3401, as amended, which defines the term [at subsection (j)] as "insurance providing coverage for legal liability arising out of the performance of professional services rendered or which should have been rendered by a health care provider." Residents, therefore, who are "moonlighting" would appear to be covered by the Medical Center for the period of time the residents work outside the Medical Center, provided the residents are undertaking the performance of professional services. In other words, the designation of the Medical Center as a self-insurer for the residents appears to refer to the type of health care providers who are covered and not what activities are covered. Questions concerning supervision would appear to be more appropriately raised during the course of a lawsuit to determine the percentages of responsibility attributable to the various parties, rather than making coverage initially dependent upon the question of supervision.

Further, we are informed that professional liability insurance offering coverage for less than twenty-four hours per day for health care providers is not available in Kansas. As a matter of

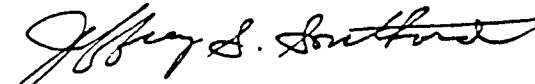
law, an insurer would be unable to obtain approval on a policy form covering less than twenty-four (24) hours because the insurer would then violate the basic coverage requirements of the Health Care Provider Insurance Availability Act, as noted above. Consequently, a resident would be unable to obtain a policy which covered only the period of time he moonlighted. Residents would therefore be faced with the choices of going without coverage in violation of the law, incurring double coverage at their own expense through the private purchase of insurance, or eliminating outside work, thus potentially restricting the availability of health care services in Kansas. In that legislation should not be construed in ways which lead to uncertainty, injustice or confusion if it is possible to do otherwise [State v. Dubish, 234 Kan. 708 (1984)], we do not believe that 1985 Senate Bill No. 362 should be read to as to limit the coverage provided by the Medical Center as self-insurer for its residents.

In conclusion, 1985 Senate Bill No. 362 permits the University of Kansas Medical Center to be a self-insurer under the Health Care Provider Insurance Availability Act, K.S.A. 1984 Supp. 40-3401 et seq., for persons who are residents at the Medical Center. Coverage provided by the Medical Center for its residents is professional liability insurance of the same type as is offered by a private insurer, and accordingly extends to activities of the residents whenever they act as health care providers, either at the Medical Center itself or elsewhere.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Deputy Attorney General

RTS:JSS:crw