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ATTORNEY GENERAL OPINION NO. 92-140

Ted D. Ayres
General Counsel
Kansas Board of Regents
Suite 609, Capitol Tower
400 S.W. 8th
Topeka, Kansas 66603-3925

Re: State Boards, Commissions and Authorities--State Board of Regents--Scholarships for Kansas Osteopathic Students; Agreements; Practice Obligations; Primary Care Residency or Practice

Synopsis: K.S.A. 1991 Supp. 74-3266 requires primary care practice in the designated underserved areas of this state for osteopathic scholarship agreements entered into after June 30, 1988. We find no similar requirement for completing residency in a primary care specialty, but would encourage notifying students, prior to entering residency, of the primary care practice obligations. Cited herein: K.S.A. 1991 Supp. 74-3266; 76-374; 76-375; L. 1988, ch. 362, § 3.

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Dear Mr. Ayres:

You request our opinion regarding the Kansas osteopathic scholarship program. Specifically, you inquire whether 1988 amendments to K.S.A. 74-3266 require scholarship recipients to complete a "primary care" residency and practice "primary care" for the designated amount of time in certain underserved geographic locations in Kansas. "Primary care" is defined in

K.S.A. 1991 Supp. 76-374(g) as "general pediatrics, general internal medicine and family practice."

The osteopathic scholarship program is administered by the Kansas board of regents pursuant to K.S.A. 74-3265 through 74-3268a, as amended. To receive a scholarship under this program, students must agree to: complete the required course of instruction culminating in receipt of the degree of doctor of osteopathy; obtain a Kansas license to practice medicine and surgery; and engage in such practice for 12 months for each scholarship awarded, such practice to commence within 9 months of being licensed or completing a residency program. K.S.A. 1991 Supp. 74-3266(a). In 1988 K.S.A. 74-3266 was amended by adding the following provisions:

"(b) Each Kansas student who enters into an agreement under this section after June 30, 1988, shall serve the practice obligations incurred by such student under such agreement within an area of the state designated as a service commitment area I pursuant to K.S.A. 76-375 and amendments thereto. Such student shall select a service commitment area I in accordance with the provisions of K.S.A. 76-375 and amendments thereto and shall be subject to the provisions of subsections (c) and (d) of such K.S.A. 76-375 and amendments thereto in the same manner and to the same effect as a person required to engage in the full-time practice of medicine and surgery in a service commitment area I pursuant to any agreement under K.S.A. 76-373 through 76-377a and amendments thereto, except that in lieu of informing or notifying the university of Kansas school of medicine of certain matters under the provisions of subsections (c) and (d) of such K.S.A. 76-375 and amendments thereto such student shall inform and notify the state board of regents thereof.

"(c) A person awarded a scholarship in accordance with the provisions of K.S.A. 74-3265 through 74-3268 and amendments thereto may satisfy the obligation to engage in the practice of medicine and

surgery, under an agreement entered into pursuant to this section, even though such person is engaged in practice in an area not designated a medically underserved area by specialty, or a critically medically underserved area by specialty, through employment on a part-time basis by the state board of regents, for the practice of medicine and surgery at any state medical care facility or institution. . . ." L. 1988, ch. 362, § 3.

According to the minutes of the house committee on appropriations, these amendments were offered to address two concerns: "first, it requires that recipients of osteopathic scholarships serve in medically underserved areas in repaying the state, as is currently required of the recipients of medical scholarships; and secondly, it allows all medical scholarship recipients to serve in state institutions on a part-time basis and still be in compliance with the requirements for restitution." Dr. A.J. Yarmat of the university of Kansas medical center, speaking in support of the proposed amendments, pointed out that "this bill if enacted would address a limited number of specialties, because the institutions would basically need general practice or family practice physicians." Minutes, House Committee on Appropriations, Jan. 20, 1988.

It is our understanding that the underserved locations designated as service commitment area I traditionally cannot support a full-time practice in specialities other than those considered primary care. Thus, the purpose of requiring service in these areas would not be furthered if the scholarship recipient chose to practice in a non-primary care specialty which is not a demand in such locations. Further, K.S.A. 1991 Supp. 74-3266 specifically references and adopts provisions of K.S.A. 1991 Supp. 76-375 which, in subsection (e)(3), makes clear that for scholarships awarded after January 1, 1986 the service obligation must be in a primary care specialty. For these reasons the board of regents has interpreted K.S.A. 1991 Supp. 74-3266 to require, after June 30, 1988, primary care practice in a service commitment area I. We believe this interpretation to be reasonable and thus, in accordance with the rule granting deference to reasonable agency interpretation of statutes it administers [Kaufman v. State Dept. of SRS, 248 Kan. 951, 960 (1991)], we opine that K.S.A. 1991 Supp. 74-3266 requires primary care practice in the designated underserved areas of this state for osteopathic

scholarship agreements entered into after June 30, 1988. We find no similar requirement for completing residency in a primary care specialty, but would encourage notifying students, prior to entering residency, of the primary care practice obligations.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm