

STATE OF KANSAS

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*Curt T. Schneider  
Attorney General*

June 28, 1977

ATTORNEY GENERAL OPINION NO. 77-216

Mr. Frank L. Johnson  
Attorney for the Board  
Board of Healing Arts  
503 Kansas Avenue - Suite 500  
Topeka, Kansas 66603

Re: Physicians--Professional Liability Insurance--Requirements

Synopsis: Physicians who are employed on a full-time basis by the Veterans Administration in Kansas and who hold a Kansas license issued by the State Board of Healing Arts, but who do not practice outside the scope of their federal employment, are not required to obtain the professional liability insurance required by K.S.A. 1976 Supp. 40-3402(a) unless such physicians engage in the practice of the healing arts in this state outside of the scope of their federal employment.

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Dear Mr. Johnson:

K.S.A. 1976 Supp. 40-3402(a) provides in pertinent part thus:

"A policy of professional liability insurance approved by the commissioner . . . shall 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."

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The term "health care provider" is defined by K.S.A. 1976 Supp. 40-3401 to include, among others, "a person licensed to practice any branch of the healing arts by the state board of healing arts . . . ."

You advise that, although not required to do so, many physicians who are employed full time by the Veterans Administration maintain a Kansas license. K.S.A. 65-2872(i) exempts from licensure "[p]ractitioners of the healing arts in the United States army, navy, air force, public health service, or other military service when acting in the line of duty."

You inquire whether physicians who are employed full time by the Veterans Administration who choose to maintain a Kansas license, but who do not engage in the practice of medicine other than within the course of their federal employment, are required to furnish professional liability insurance, as provided in K.S.A. 1976 Supp. 40-3402. As you point out, the Federal Tort Claims Act prohibits medical malpractice suits against such physicians for any act or omission occurring in the course of their federal employment.

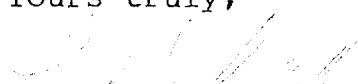
The state could not, of course, constitutionally impose its licensing requirements upon federally-employed physicians as a prerequisite for the practice of medicine in the course of their federal employment. The statutory exemption is but a recognition of the constitutional limits on the power of the state. By obtaining and maintaining a license from the Kansas Board of Healing Arts, such physicians enjoy the privilege of practicing medicine in this state outside of the scope of their federal employment, whether that privilege is ever exercised. Under K.S.A. 1976 Supp. 40-3402, the requisite insurance must be obtained "as a condition to rendering professional service as a health care provider in this state." A "health care provider," i.e., a person licensed to practice a branch of the healing arts by the Kansas Board of Healing Arts, is not required to obtain the requisite insurance unless he or she proposed to furnish professional services as a health care provider in the state.

The decision of a Veterans Administration physician to obtain a Kansas license does not bring his or her professional services in the course of that employment within the scope of the Kansas Healing Arts Act. It remains exempt by operation of law, by the statutory exclusion of such services from the act, and not by virtue of the personal wish of the physician to maintain or not to maintain Kansas licensure. Thus, in my judgment, a Veterans Administration physician who maintains Kansas licensure is not required to obtain the professional liability insurance required

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by K.S.A. 1976 Supp. 40-3402(a) unless and until that physician renders professional health care services in this state which are subject to licensure by the State Board, i.e., services outside the scope of the practice conducted in the course of his or her federal employment.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj