



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 25, 1978

ATTORNEY GENERAL OPINION NO. 78-249

Mr. Ron Todd
Assistant Commissioner
Kansas Insurance Department
1st Floor - State Office Building
Topeka, Kansas 66612

Re: Insurance--Health Care Provider Insurance Availability
Act--Health Care Providers

Synopsis: The holder of a license to practice medicine issued by the Board of Healing Arts which is denominated "inactive" solely because the holder does not engage in the active practice of medicine in this state and for that reason is relieved from compliance with the continuing medical education requirements of the Board remains a "health care provider" as defined at K.S.A. 1977 Supp. 40-3401(f).

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Dear Mr. Todd:

You inquire concerning the Health Care Provider Insurance Availability Act, K.S.A. 1977 Supp. 40-3401 *et seq.*

You advise that as administrator of the fund, you have permitted any Kansas resident physician who is licensed by the State Board of Healing Arts to comply with the minimum basic professional liability insurance requirements of the act and obtain the excess coverage provided by the health care stabilization fund. The term "health care provider" is defined, insofar as pertinent here, as "a person licensed to practice any branch of the healing arts by the state board of healing arts."

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The 1978 legislature amended K.S.A. 1977 Supp. 65-2809 to provide in pertinent part thus:

"The license shall expire on June 30 of each year and may be renewed annually upon request of the licensee. . . . Except as otherwise provided in this section, from and after July 1, 1978, the board shall require every licensee in the active practice of the healing arts within the state to submit evidence of satisfactory completion of a program of continuing education required by the board."

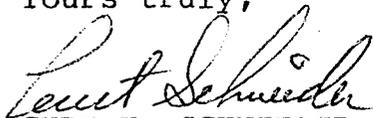
The question has been raised whether a physician who resides in the State of Kansas and who holds a license from the State Board of Healing Arts, but who practices medicine solely in the State of Missouri is eligible to participate in the insurance availability program of the Act. Because the physician does not engage in the active practice of medicine in the state, he has not complied with the continuing medical education requirements of the board which are applicable to practitioners active in Kansas. Accordingly, he has executed and filed with the Board an affidavit which states in part that he "will not engage in the active practice of the healing arts in the State of Kansas during the term of my license," being July 1, 1978 to June 30, 1979, and has been issued a license stamped "inactive."

In 1976, the legislature first amended K.S.A. 65-2809 to require that effective July 1, 1978, every licensee must submit with a request for renewal evidence of satisfactory completion of a program of continuing medical education approved by the board. It soon became apparent that many physicians continued to maintain Kansas licenses even after they had retired or moved to practice in another state, and that compliance with Kansas continuing medical education requirements might be unduly burdensome for many such licensees. Accordingly, the 1978 legislature amended the requirement to relieve licensees who did not maintain an active practice in Kansas from compliance with the continuing medical education requirement, and yet permit them to continue to maintain Kansas licenses. Thus, although the licensing statutes do not expressly provide for so-called "inactive" licenses, the Board has of necessity to identify renewed licenses as "active" and "inactive" based upon the status of the licensee as an active practitioner in the state at the time of renewal.

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The definition of "health care provider," at K.S.A. 1977 Supp. 40-3401(f), as "a person licensed to practice any branch of the healing arts by the state board of healing arts," does not distinguish between persons actively engaged in the practice in this state, and others holding licenses issued by the board but who do not engage in the active practice in this state. When this definition was adopted in 1976, of course, every license issued to a physician by the Board of Healing Arts authorized the holder to engage in the practice of medicine in this state. With the 1978 amendment exempting licensees who do not engage in the active practice of medicine in this state from continuing medical education requirements, but permitting, nonetheless, renewal of the licenses of such physicians, two kinds of licenses are now issued, one which permits the holder to practice in the state, and one which does not. The definition of "health care provider" does not recognize this distinction, and defines a "health care provider" by one criterion alone, licensure by the Board of Healing Arts, without regard to whether that license permits the holder to practice in this state. As a result, in my judgment, the holder of a license issued by the Board of Healing Arts which is denominated "inactive" solely because the holder does not engage in the active practice of medicine in this state and for that reason is relieved from compliance with the continuing medical education requirements of the Board remains a "health care provider" as defined at K.S.A. 1977 Supp. 40-3401(f), and is entitled to participate in the Act.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj