May 13, 2004

Anquenette Sloan, President
State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, Ohio 43215-6127

SYLLABUS: 2004-018

1. Pursuant to R.C. 4731.36(A)(1), R.C. 4731.01-.47, including the various certification requirements contained therein, do not apply to commissioned officers in the Armed Forces of the United States who practice medicine within the state of Ohio as part of their professional duties as such officers, whether or not those duties include participation in civilian clinical training in a civilian facility and the treatment of civilian patients.

2. Pursuant to 10 U.S.C.A. § 1094(d) (1998), a physician who possesses a current, unrestricted license to practice medicine may, in the performance of authorized duties for the Department of Defense, practice medicine within the state of Ohio in a facility described in 10 U.S.C.A. § 1094(d)(1), whether or not the facility is a civilian facility or the patients treated are civilian patients, without first complying with the certification requirements contained in R.C. 4731.01-.47.

3. Pursuant to 4730.03(A), the provisions of R.C. Chapter 4730 do not apply to physician assistants or their supervising physicians while performing their duties in active service in the Armed Forces within the state of Ohio, whether or not those duties are performed in a civilian facility or the patients treated are civilians.

4. Pursuant to 10 U.S.C.A. § 1094(d) (1998), a physician assistant who possesses a current license to practice as a physician assistant may, in the performance of authorized duties for the Department of Defense, practice as a physician assistant within the state of Ohio in a facility described in 10 U.S.C.A. § 1094(d)(1), whether or not the facility is a civilian facility or the patients treated are civilian patients, without first complying with the certification requirements contained in Chapter R.C. 4730.

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
JIM PETRO, ATTORNEY GENERAL

30 E. Broad St.
Columbus, OH 43215-3428
Telephone: (614) 752-6417
Facsimile: (614) 466-0013
www.ag.state.oh.us

May 13, 2004

OPINION NO. 2004-018

Anquenette Sloan, President
State Medical Board of Ohio
77 South High Street, 17th Floor
Columbus, Ohio 43215-6127

Dear President Sloan:

Your predecessor requested an opinion of the Attorney General concerning the authority of members of the United States Armed Forces who are medical professionals to receive clinical training at civilian facilities in Ohio without first obtaining a license from the State Medical Board. The specific questions asked are as follows:

1. Can a military medical professional receive civilian training in a civilian facility and, in the course of doing so, treat civilian patients, all without first obtaining Ohio licensure?

2. If so, can civilian employees of civilian institutions, whose state-mandated scope of practice requires that they take orders only from duly licensed medical practitioners, legally carry out the orders of a military medical professional given in a civilian institution when that professional does not also hold an Ohio license?

As a preliminary matter, we note that the Board's questions concern the licensure of those referred to as "military medical professionals." In light of the authority of the State Medical Board to oversee the licensure and practice of only certain medical professions, this opinion will discuss the practice of only those medical professions overseen by the Board, *i.e.*, the practice of medicine and surgery or osteopathic medicine and surgery[1] and practice as physician assistants.

By way of background, the opinion request describes the circumstances giving rise to these questions, in part, as follows:

---

[1] For ease of discussion, this opinion use the term "practice of medicine" to refer to the practice of medicine and surgery or osteopathic medicine and surgery.

> The military argues that the military medical professionals participating in these civilian training programs are doing so solely because they have been ordered to do so by their military command as part of their military duties. Assigned to civilian institutions, it is argued, the trainees are nonetheless employees of the United States performing duties within the course and scope of their federal employment.

Part of the Board's concern is whether the military medical professionals' treatment of civilians in civilian facilities is, in fact, part of their military duties. In this regard, we note that Congress has authorized the Secretaries of the Armed Forces to undertake medical training of military personnel in non-governmental facilities. *See generally, e.g.*, 10 U.S.C.A. § 2013(a) (1998) (authorizing Secretaries of the Armed Forces to enter into agreements for the "training of members of the uniformed services under the jurisdiction of that Secretary by, in, or through non-Government facilities," including a "medical, scientific, technical, educational, research, or professional institution, foundation, or organization"). Thus, it is possible that military personnel may engage in medical training in a civilian facility as part of their military training. Whether medical training given to military personnel in a particular instance is part of the military duties of the trainees, however, is a question of fact that cannot be resolved by means of an opinion of the Attorney General. Accordingly, this opinion will advise you generally as to the scope of the State Medical Board's authority to oversee the practice of medicine in Ohio, the pertinent statutory exceptions to the Board's authority, and the federal licensure requirements for medical professionals who practice while serving in the Armed Forces.

Let us begin with a brief description of the statutory framework governing licensure to practice medicine and surgery in Ohio. R.C. Chapter 4731 establishes various requirements with which an individual must comply in order to engage in the practice of medicine within this state. *See, e.g.*, R.C. 4731.08 (with certain exceptions, requiring anyone who wishes to practice medicine in Ohio to apply to take the examination administered by the State Medical Board under R.C. 4731.13); R.C. 4731.14(D) (display of certificate to practice); R.C. 4731.281 (continuing medical education requirements). In addition, R.C. 4731.41 expressly prohibits anyone from engaging in the practice of medicine in this state "without the appropriate certificate from the state medical board to engage in the practice."[2]

---

[2] R.C. 4731.41 states, in pertinent part:

> No person shall practice medicine and surgery, or any of its branches, without the appropriate certificate from the state medical board to engage in the practice. No person shall advertise or claim to the public to be a practitioner of medicine and surgery, or any of its branches, without a certificate from the board. No person shall open or conduct an office or other place for such practice without a certificate from the board. No person shall conduct an office in the name of some person who has a certificate to practice medicine and surgery, or any of its

The State Medical Board possesses certain duties with respect to the issuance of certificates to practice medicine in Ohio. *See, e.g.*, R.C. 4731.13 (examination for certificate to practice); R.C. 4731.14 (issuance of certificate to practice); R.C. 4731.22 (refusal to issue, limitation, revocation, suspension, reinstatement of certificate to practice); R.C. 4731.221 (procedure for suspension of certificate of incompetent practitioners). Enforcement of the certification requirements of R.C. Chapter 4731 is the duty of the Secretary of the State Medical Board. R.C. 4731.39 (stating, in part, "[t]he secretary of the state medical board shall enforce the laws relating to the practice of medicine and surgery. If he has knowledge or notice of a violation, he shall investigate the matter, and, upon probable cause appearing, file a complaint and prosecute the offender").

With this background in mind, let us now consider the specific question asked, whether a military medical professional may receive civilian training in a civilian facility [in Ohio] and, in the course of doing so, treat civilian patients without first obtaining Ohio licensure. As part of R.C. Chapter 4731, the General Assembly has described persons and situations to which the provisions of R.C. 4731.01-.47 do not apply. For example, R.C. 4731.36 states, in pertinent part:

> (A) [R.C. 4731.01-.47] shall not prohibit service in case of emergency, domestic administration of family remedies, or provision of assistance to another individual who is self-administering drugs.
>
> [R.C. 4731.01-.47] shall *not apply* to any of the following:
>
> (1) A *commissioned medical officer of the United States armed forces*, as defined in [R.C. 5903.11],[3] or an employee of the veterans administration of the United States or the United States public health service in the discharge of the officer's or employee's professional duties. (Emphasis and footnote added.)

Thus, neither the prohibitions nor the requirements contained in R.C. 4731.01-.47 apply to a commissioned medical officer of the United States Armed Forces in the discharge of the officer's professional duties within Ohio.

The term "commissioned medical officer of the United States armed forces," as used in R.C. 4731.36(A)(1), is not defined by statute. We must, therefore, examine the common meaning of those words. *See generally* R.C. 1.42 (stating, in part, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). As

---

> branches. No person shall practice medicine and surgery, or any of its branches, after the person's certificate has been revoked, or, if suspended, during the time of such suspension.

See R.C. 4731.34 (describing actions that constitute the unauthorized practice of medicine).

[3] R.C. 5903.11(E)(7) defines the term "armed forces of the United States" as meaning, "the army, air force, navy, marine corps, coast guard, and any other military service branch that is designated by congress as a part of the armed forces of the United States."

defined in *Webster's New World Dictionary* 286 (2d college ed. 1978), "commissioned officer" means "an officer in the armed forces holding rank by a commission." *See generally* 10 U.S.C.A. § 531 (1998) (original appointments as commissioned officers); 10 U.S.C.A. § 12203 (1998 & Supp. 2003) (appointment of reserve officers in commissioned grades). R.C. 4731.36(A)(1) thus refers to those officers in the Armed Forces who hold their ranks by commission.

The General Assembly's use of the word "medical" in describing the commissioned officers exempted by R.C. 4731.36(A)(1) must be read as part of the statutory scheme from which such commissioned officers are exempt. *See generally Commerce & Industry Insurance Co. v. City of Toledo*, 45 Ohio St. 3d 96, 102, 543 N.E.2d 1188 (1989) ("words and phrases in a statute must be read in context of the whole statute"). Because R.C. 4731.01-.47 govern the practice of medicine in this state, it follows that the commissioned medical officers referred to in R.C. 4731.36(A)(1) are those commissioned officers who are engaged in the practice of medicine within Ohio.

R.C. 4731.36(A)(1) defines the activities performed by a commissioned medical officer that are exempt from R.C. 4731.01-.47 as those activities performed "in the discharge of the officer's ... professional duties." The opinion request expressed concern whether the exemption established by R.C. 4731.36(A)(1) encompasses the treatment of civilian patients in a civilian facility. Nothing in the language of R.C. 4731.36(A)(1) suggests that the "discharge of the officer's ... professional duties" is limited to those duties performed in military facilities for military personnel. We have no basis, therefore, for reading into R.C. 4731.36(A)(1) any such limitation. Rather, as stated in *State ex rel. Moore Oil Co. v. Dauben*, 99 Ohio St. 406, 124 N.E. 232 (1919) (syllabus, paragraph one):

> *Statutes* or ordinances *of a penal nature, or which restrain the exercise of any* trade or *occupation* or the conduct of any lawful business, or which impose restrictions upon the use, management, control or alienation of private property, will be *strictly construed* and their scope cannot be extended to include limitations not therein clearly prescribed; *exemptions from such restrictive provisions are for like reasons liberally construed*. (Emphasis added.)

Accordingly, we cannot read into the exemption created by R.C. 4731.36(A)(1) restrictions that would limit its application to only those professional duties performed in a military facility or only for military personnel. Instead, so long as the commissioned medical officer is practicing medicine "in the discharge of the officer's ... professional duties," R.C. 4731.36(A)(1) exempts the officer from the requirements and prohibitions contained in R.C. 4731.01-.47.

We conclude, therefore, that pursuant to R.C. 4731.36(A)(1), R.C. 4731.01-.47, including the various certification requirements contained therein, do not apply to commissioned officers in the Armed Forces of the United States who practice medicine in Ohio as part of their professional duties as such officers, whether or not those duties include participation in civilian clinical training in a civilian facility and the treatment of civilian patients.

In addition, we must consider the provisions of 10 U.S.C.A. § 1094 (1998), which establishes licensure requirements for health care professionals in the United States Armed Services, in pertinent part, as follows:

> (a)(1) A person under the jurisdiction of the Secretary of a military department may not provide health care independently as a *health-care professional* under this chapter unless the person has a *current license* to provide such care. In the case of a physician, the physician may not provide health care as a physician under this chapter unless the current license is an *unrestricted* license that is not subject to limitation on the scope of practice ordinarily granted to other physicians for a similar specialty by the jurisdiction that granted the license.
>
> (2) The Secretary of Defense may waive paragraph (1) with respect to any person in unusual circumstances. The Secretary shall prescribe by regulation the circumstances under which such a waiver may be granted.
>
> ....
>
> (d)(1) *Notwithstanding any law regarding the licensure of health care providers*, a health-care professional described in paragraph (2) *may practice* the health profession or professions of the health-care professional *in any State,* the District of Columbia, or a Commonwealth, territory, or possession of the United States, regardless of whether the practice occurs in a health care facility of the Department of Defense, a civilian facility affiliated with the Department of Defense, or *any other location* authorized by the Secretary of Defense.
>
> (2) A health-care professional referred to in paragraph (1) is a member of the armed forces who--
>
> (A) has a current license to practice medicine, osteopathic medicine, dentistry, or another health profession; *and*
>
> (B) is *performing authorized duties for the Department of Defense*.
>
> (Emphasis added.)

With limited exceptions, 10 U.S.C.A. § 1094(a) thus prohibits a physician under the jurisdiction of the Secretary of a military department from practicing medicine independently unless he possesses a current license to practice medicine that does not restrict the scope of his practice beyond that ordinarily authorized by that licensing authority.

Division (d) of 10 U.S.C.A. § 1094 describes the scope of authority of a physician who possesses a license as described in 10 U.S.C.A. § 1094(a). In accordance with 10 U.S.C.A. § 1094(d), a physician may, in the performance of his authorized duties for the Department of Defense, practice medicine within any state, not only in a health care facility of the Department of Defense or a civilian facility affiliated with the Department of Defense, but in any location authorized by the Secretary of Defense, regardless of the provisions of any other law concerning the licensure of physicians. The introductory language of 10 U.S.C.A. § 1094(d)(1) clearly expresses the legislative intent that a physician under the jurisdiction of the Secretary of a military department need not be licensed as a physician by each state in which he might be called upon to practice medicine for the Department of Defense, so long as the physician possesses a

license as described in 10 U.S.C.A. § 1094(a) and so long as the physician engages in such practice in a facility described in 10 U.S.C.A. § 1094(d)(1). *See Sperry v. Florida*, 373 U.S. 379, 385 (1963) ("[a] State may not enforce licensing requirements which, though valid in the absence of federal regulation, give 'the State's licensing board a virtual power of review over the federal determination' that a certain person or agency is qualified and entitled to perform certain functions, or which impose upon the performance of activity sanctioned by federal license additional conditions not contemplated by Congress" (footnotes omitted)). *See also Rittenhouse v. Delta Home Improvement, Inc.*, 291 F.3d 925 (6th Cir. 2002) (finding that admission to practice law in a state's courts is a matter traditionally regulated by the states, but is a privilege separate and independent from the admission to practice law in federal courts in that state).

We recognize that the practice of medicine and other professions is traditionally a matter left to state regulation. *See Barsky v. Board of Regents*, 347 U.S. 442 (1954); *Graves v. Minnesota*, 272 U.S. 425, 427 (1926). With respect to the practice of medicine as authorized by 10 U.S.C.A. § 1094, however, the right of a state to further regulate such practice has been expressly displaced by the language of 10 U.S.C.A. § 1094(d). *See generally Chappell v. Wallace*, 462 U.S. 296, 301 (1983) ("[i]t is clear that the Constitution contemplated that the Legislative Branch have plenary control over rights, duties, and responsibilities in the framework of the Military Establishment"); *Gilligan v. Morgan*, 413 U.S. 1 (1973) (finding that the training, weaponry, and orders of the Armed Forces are matters vested by the United States Constitution in the Congress and in the President).[4]

We conclude, therefore, that pursuant to 10 U.S.C.A. § 1094(d), a physician who possesses a current, unrestricted license to practice medicine may, in the performance of authorized duties for the Department of Defense, practice medicine within the state of Ohio in a facility described in 10 U.S.C.A. § 1094(d)(1), whether or not the facility is a civilian facility or

---

[4] The Department of Defense (DoD) issued Instruction No. 6025.16 (Aug. 31, 2000) in order to implement the policy of 10 U.S.C.A. § 1094(d) and to establish procedures "to permit licensed physicians and other healthcare professionals of the Military Health System (MHS) who are members of the Armed Forces to perform authorized duties for the Department of Defense in any authorized location." DoD Instruction No. 6025.16 (Aug. 31, 2000), Part 1. The Instruction also establishes qualifications a healthcare professional must possess in order to be assigned to off-base duties, which are defined, in part, as "[o]fficially assigned professional duties performed at an authorized location outside a military medical treatment facility and any military installation. Off-base duties include, but are not limited to, training or skill maintenance duties in non-DoD healthcare facilities.... Off-base duties do not include participation in approved post-graduate training of physicians." DoD Instruction No. 6025.16 (Aug. 31, 2000), Part 3.5. Additional conditions upon participation in such off-base duties include the requirement that the healthcare professional "have current clinical competence to perform the professional duties assigned," Part 6.1.3, and "[i]n all cases in which the off-base duty will be performed in a non-DoD healthcare facility, the healthcare professional shall follow the rules and by-laws of such facility, to the extent they are applicable to the professional," Part 6.1.6.

the patients treated are civilian patients, without first complying with the certification requirements contained in R.C. 4731.01-.47.[5]

Because the State Medical Board also regulates the practice of physician assistant,[6] we will now consider whether a member of the military who is a physician assistant may receive training at a civilian facility in Ohio and treat civilian patients without first obtaining authority to act as a physician assistant in accordance with R.C. Chapter 4730.

Briefly, R.C. Chapter 4730 imposes various requirements upon those who wish to practice as physician assistants and upon the physicians[7] with whom the assistants will practice. *See, e.g.*, R.C. 4730.02(A) (prohibiting practice as a physician assistant without appropriate registration with the State Medical Board); R.C. 4730.02(B) (prohibiting acting as a physician assistant unless under the direction and supervision of a physician); R.C. 4730.02(C) ("[n]o physician shall act as the supervising physician of a physician assistant without having received the state medical board's approval of a physician assistant utilization plan and approval of a supervision agreement entered into with the physician assistant").

The General Assembly has provided various exceptions to the prohibitions contained in R.C. 4730.02. Particularly relevant to the State Medical Board's concern is R.C. 4730.03, which states, in pertinent part: "*Nothing* in this chapter shall: (A) Be construed to *affect or interfere with* the performance of duties of *any medical personnel* in active service in the army, navy, coast guard, marine corps, air force, public health service, or marine hospital service of the United States while so serving," (emphasis added). Because R.C. 4730.03 is contained in the

---

[5] Despite the provisions of 10 U.S.C.A. § 1094, the Department of Defense is attempting to work in cooperation with medical licensing authorities in each state. *See* DoD Instruction No. 6025.16 (Aug. 31, 2000), Parts 6.2 and 6.3 (calling for the cooperation of the Military Health Services (MHS) with state licensing boards by requiring the MHS responsible for a military healthcare professional's performance of off-base duties to notify the licensing board of the state in which the off-base duties will be performed; such notice shall include, among other things, the name of the healthcare professional, the State in which the healthcare professional is licensed, the location and dates of the off-base assignment, the scope of duties, and the name of the professional's commanding officer; calling for MHS personnel to cooperate with civilian authorities in the investigation of any allegation of misconduct against the military healthcare professional in the performance of the off-base duty assignment)

[6] R.C. 4730.01(A) defines the term "physician assistant" as meaning, "a skilled person qualified by academic and clinical training to provide services to patients as a physician assistant under the supervision and direction of one or more physicians who are responsible for the physician assistant's performance."

[7] As used in R.C. Chapter 4730, the term "physician" means "an individual who is authorized under [R.C. Chapter 4731] to practice medicine and surgery, osteopathic medicine and surgery, or podiatry."

chapter of the Revised Code regulating practice by physician assistants and their supervising physicians, it follows that the exception described in R.C. 4730.03(A) applicable to "medical personnel" applies to a physician assistant, as well as to the supervising physician of such assistant. *See generally D.A.B.E., Inc. v. Toledo-Lucas County Bd. of Health*, 96 Ohio St. 3d 250, 2002-Ohio-4172, 773 N.E.2d 536, at ¶ 20 (statutes relating to the same subject matter must be read together in an attempt to "arrive at a reasonable construction giving the proper force and effect, if possible, to each statute").

As with the exception established by R.C. 4731.36, R.C. 4730.03(A) does not exempt the activities of physician assistants or their supervising physicians in the performance of their duties in active service in the Armed Forces only while treating military personnel in a military facility. Again, we cannot read into R.C. 4730.03(A) limitations not expressed therein. *See State ex rel. Moore Oil Co. v. Dauben*, (syllabus, paragraph one). We conclude, therefore, that pursuant to R.C. 4730.03(A), the provisions of R.C. Chapter 4730 do not apply to physician assistants or their supervising physicians while performing their duties in active service in the Armed Forces within the state of Ohio, whether or not those duties are performed in a military facility or the patients treated are civilians.

We also note that, pursuant to DoD Instruction 6025.16 (Aug. 31, 2000), Part 3.2, physician assistants are included as healthcare professionals to whom the provisions of 10 U.S.C.A. § 1094 apply. Thus, pursuant to 10 U.S.C.A. § 1094(d), a physician assistant who possesses a current license to practice as a physician assistant may, in the performance of authorized duties for the Department of Defense, practice as a physician assistant within the state of Ohio in a facility described in 10 U.S.C.A. § 1094(d)(1), whether or not the facility is a civilian facility or the patients treated are civilian patients, without first complying with the certification requirements contained in R.C. Chapter 4730.

In addition, we believe that R.C. 4730.03(A) also addresses the concern expressed in the second question regarding the authority of a civilian physician assistant to act under the supervision of a military physician who is not licensed to practice medicine in Ohio. R.C. 4730.03(A) provides that nothing in R.C. Chapter 4730 affects or interferes with the performance of the duties of any medical personnel while in active service in, *inter alia*, the Armed Forces. Therefore, should a military physician who is exempt from licensure under R.C. Chapter 4731 be in a position to direct and supervise a civilian physician assistant in the course of the physician's performance of his duties in the active service of the Armed Forces, nothing in R.C. Chapter 4730 affects or interferes with the physician assistant's ability to act in accordance with the direction and supervision of such military physician.

As a final matter, we understand the State Medical Board's concern that military physicians and physician assistants licensed by other states may not possess the same qualifications as physicians and physician assistants who are licensed in Ohio, and that the restrictions under which Ohio licensees practice may differ from those under which licensees in other states practice those professions. This concern reflects the Board's interest in safeguarding the health and welfare of each Ohio resident by assuring patients in this state that the treatment

and care they receive will be consistent with standards applicable to physicians and physician assistants licensed by the state of Ohio. Absent a change in law by our state's legislators and the United States Congress, however, we are constrained to read and apply the laws as they are written. In the interim, we note that there are several ways in which these concerns may be addressed by the hospitals in which the military medical personnel are receiving training. Because military healthcare professionals performing duties in non-DoD healthcare facilities must comply with the rules and by-laws of any such facility, DoD Instruction No. 6025.16 (Aug. 31, 2000), Part 6.1.6, a hospital that is training military healthcare personnel may wish to amend its rules or bylaws to address the concerns you mention. It is also possible for a hospital conducting training of military healthcare professionals to address these concerns in a memorandum of understanding between the hospital and the Department of Defense as to the duties the trainees may perform within the course of such training.

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 4731.36(A)(1), R.C. 4731.01-.47, including the various certification requirements contained therein, do not apply to commissioned officers in the Armed Forces of the United States who practice medicine within the state of Ohio as part of their professional duties as such officers, whether or not those duties include participation in civilian clinical training in a civilian facility and the treatment of civilian patients.

2. Pursuant to 10 U.S.C.A. § 1094(d) (1998), a physician who possesses a current, unrestricted license to practice medicine may, in the performance of authorized duties for the Department of Defense, practice medicine within the state of Ohio in a facility described in 10 U.S.C.A. § 1094(d)(1), whether or not the facility is a civilian facility or the patients treated are civilian patients, without first complying with the certification requirements contained in R.C. 4731.01-.47.

3. Pursuant to 4730.03(A), the provisions of R.C. Chapter 4730 do not apply to physician assistants or their supervising physicians while performing their duties in active service in the Armed Forces within the state of Ohio, whether or not those duties are performed in a civilian facility or the patients treated are civilians.

4. Pursuant to 10 U.S.C.A. § 1094(d) (1998), a physician assistant who possesses a current license to practice as a physician assistant may, in the performance of authorized duties for the Department of Defense, practice as a physician assistant within the state of Ohio in a facility described in 10 U.S.C.A. § 1094(d)(1), whether or not the facility is a civilian facility or the patients treated are civilian patients, without first complying with the certification requirements contained in Chapter R.C. 4730.

Respectfully,

JIM PETRO
Attorney General