

[B-133972]

Veterans—Medical Services—Private—Military Physicians on Active Duty

Fee-basis medical services rendered to an eligible veteran for disabilities identified on an Outpatient Medical Treatment Identification Card by a military physician on active duty with the Armed Forces who is engaged in limited medical practice after hours with the permission of his commanding officer may not be paid by the Veterans Administration in the absence of statutory authority under the rule that concurrent Federal civilian employment and active duty military service are incompatible.

To the Administrator, Veterans Administration, April 1, 1968:

Further reference is made to your letter of December 26, 1967, requesting a decision whether the Veterans Administration may pay for fee-basis medical services rendered to an eligible veteran by a military physician on active duty with the Armed Forces who is engaged in limited medical practice after duty hours with permission of his commanding officer.

You state that such medical practice apparently includes service in the emergency rooms of private hospitals where the fee may be paid directly to the physician, or may be paid to the hospital which in turn pays the physician. You further state that under Veterans Administration medical programs a veteran may be treated by a licensed non-Veterans Administration physician on a fee basis.

You say that eligible veterans who cannot report to a Veterans Administration medical facility may be authorized to obtain outpatient treatment from any doctor of medicine or osteopathy licensed to practice medicine in the State in which treatment is rendered. It is stated that veterans approved for this type of outpatient fee-basis care are issued Veterans Administration Form 10-1164, Outpatient Medical Treatment Identification Card which lists the disabilities which may be treated at Veterans Administration expense. You report that acceptance of the I.D. card as authorization to provide outpatient medical services at Veterans Administration expense is considered appointment as a fee-basis participant by the Veterans Administration to render fee-basis services. You further state that fees charged by fee-basis participants are paid directly to them by the Veterans Administration in accordance with the State fee schedule. Concern is expressed that the payment of such fees may be within the scope of our decisions viewing concurrent Federal civilian employment and active duty military service as incompatible.

Generally, an officer of the Armed Forces on the active list is precluded from accepting outside employment when such employment interferes with the performance of his military duties. See, for exam-

ple, 10 U.S.C. 973(a) as added by the act of January 2, 1968, Public Law 90-235, 81 Stat. 753, 759. Section X of Department of Defense Directive 5500.7, dated August 8, 1967, sets forth a policy for outside employment of Department of Defense personnel, which includes all military personnel, and provides in subsection A.1 that such personnel shall not engage in outside employment with or without compensation, which interferes with, or is not compatible with, the performance of their Government duties. The conditions under which an Army doctor may engage in private practice are prescribed in paragraph 5e, Army Regulation 40-1, dated June 1, 1965, which states, among other things, that the military doctor must obtain his commanding officer's approval, the practice must be conducted during nonduty hours and outside the Army medical treatment facility. Chapter 2, section D, Air Force Manual 168-4A, governs the outside practice of Air Force doctors.

The question considered in our decision of November 14, 1966, 46 Comp. Gen. 400, cited by you, was whether it was legally objectionable to employ in civilian positions during their off-duty hours officers or enlisted personnel serving on extended active duty in the Armed Forces. The civilian positions there contemplated involved jobs in activities such as commissaries or fire departments located on military installations which are paid from appropriated funds. After considering the Dual Compensation Act of 1964, 5 U.S.C. 3101 note, and its legislative history, we concluded that there was nothing in the 1964 act or elsewhere in the statutes which would justify a modification or reversal of the precedents (there cited) of viewing concurrent Federal civilian employment and active military service as incompatible.

In that decision there were cited several decisions in which the accounting officers of the Government denied pay for duties performed in a Federal civilian capacity by a member of a military service. Those decisions reiterated the long-established rule that in the absence of specific statutory authority therefor, any agreement or arrangement for the rendition of services to the Government in another position or employment is incompatible with the members' military duties, actual or potential. 18 Comp. Gen. 213; 27 *id.* 510; 33 *id.* 368; 37 *id.* 255; 38 *id.* 222. *Cf.* 41 Comp. Gen. 741.

While the military doctors performing the duties described in your letter may not be considered as being employees of the Veterans Administration in the usual sense, that fact does not warrant a conclusion that their performance of the services involved for Federal pay would not be incompatible with their full-time military service and their receipt of full-time military pay and allowances. Accordingly, in the absence of a statute providing otherwise, it is our view that the performance of compensated services for the Government by a member of

one of the military services in a capacity other than the one for which he receives his primary compensation would be incompatible with his military duties and that payment of the fees in question by the Veterans Administration is not authorized.