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Office of the General Counsel

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June 27, 1997

Lieutenant Colonel Gregory C. Dempsey
Chief, Resource Management Division
Headquarters, U. S. Army Medical Department Activity
Fort Knox, Kentucky 40121-5520

Dear Colonel Dempsey:

This is in reply to your May 6, 1997, memorandum (MCXM-RMB-B (37)) to the Comptroller General of the United States requesting a ruling whether appropriated funds may be used to pay for military physicians' state licenses and Drug Enforcement Administration (DEA) certifications.[1]

You state that due to a decrease in manpower and funding, the Medical Department Activity Commander at Fort Knox wishes to utilize an external partnership with a local community hospital. You explain that the Commander considers entering into such a partnership essential to maintain the military physicians' surgical skills, and it would permit patient care and follow-up to eligible beneficiary groups that would otherwise be referred to a private physician.

You state that to enter into this partnership would require the military physicians to obtain Kentucky state licensure and DEA certification at a cost of $250 and $210, respectively. The Commander would like to use appropriated funds to pay these costs since it appears to be in the best interest of the Fort Knox Medical Activity

[1]Accountable officers and heads of agencies are entitled to request a decision of the Comptroller General on a question involving a request for payment from appropriated funds for which they are responsible. 31 U.S.C § 3529. Since we are uncertain as to whether you are an accountable officer, we are not issuing a Comptroller General's decision on your request at this time. However, we are providing information for your assistance.

and the eligible beneficiaries of the medical care. You also state that the Commander plans to institute necessary internal controls to insure that the physicians whose fees are paid from appropriated funds for the purpose of the partnership will not be permitted to use the licensure and certification for personal gain.

We have long held that it is the duty of an officer or employee of the government to qualify himself for the performance of his official duties, and therefore, generally, individuals must bear the cost of obtaining professional licenses and certifications as a personal expense. 22 Comp. Gen. 460 (1922); 46 Comp. Gen. 695 (1967); 61 Comp. Gen. 357 (1982); B-210522, Dec. 15, 1983; and B-260771, Oct. 11, 1995. We did make an exception to this rule and allow reimbursement to military members for the cost of a license or certification necessary to perform environmentally sensitive tasks, such as pesticide application or asbestos removal, where Federal law expressly requires the agency to comply with applicable state and local environmental requirements. 73 Comp. Gen. 171 (1994). However, that decision specifically noted that appropriated funds are not available to cover licensing requirements of professional personnel such as teachers, accountants, engineers, lawyers, doctors, and nurses.

In accordance with these principles, we have held that without specific statutory authority, appropriated funds are not available to pay the costs of additional licensing or certification requirements placed on a professional officer or employee to perform his or her official duties. See, for example, 46 Comp. Gen. 695 (1967), concerning state license fees imposed on Public Health Service medical doctors detailed to state or local health agencies; 47 Comp. Gen. 116 (1967), concerning fees imposed on government attorneys for admission to practice before a particular United States Court of Appeals in representing the government; and 49 Comp. Gen. 450 (1970), concerning a state medical licensure fee paid by an Air Force doctor who, as part of his Air Force residency training, was assigned to a university hospital in Louisiana where he was not licensed.

In the case involving the Air Force officer, 49 Comp. Gen. 450, cited above, we also noted that the Louisiana constitutional provision requiring the license for which the officer was assessed the fee, specifically exempted commissioned physicians and surgeons of the Army, Navy and Public Health Service, practicing in the discharge of their official duties. We stated that this provision was consistent with the principle set forth in a U.S. Supreme Court decision, Johnson v. Maryland, 254 U.S. 51 (1920), that instruments of the United States are immune from state control in the performance of their federal duties. Thus, we stated that if it could be considered that doctors assigned to the university hospital under the Air Force residency program were performing their official duties as active duty military

officers, it would appear that they were exempt from the state licensure requirements. See also 47 Comp. Gen. 577 (1968).

We note that the Kentucky statute requiring physicians to be licensed and the federal regulations requiring DEA certification to administer controlled substances, both exempt commissioned medical officers of the Armed Forces engaged in their official duties. See Ky. Rev. Stat. Ann. § 311.560 (Baldwin 1991); and 21 C.F.R. § 1301.25. Thus, if the military physicians in the situation you present are considered to be performing their official military duties under the proposed partnership, it would appear that they would be exempt from the licensure and certification requirements for which the fees are charged, similar to the situation noted in 49 Comp. Gen. 450, supra.

In any event, based on the limited facts you have furnished, under the precedents cited above, without statutory authority, there appears no basis to use appropriated funds to pay the fees in question.

Sincerely yours,

Gary L. Kepplinger
Associate General Counsel