



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

D

Released

1013

B-191502

MAR 30 1978

The Honorable Strom Thurmond
United States Senate

Dear Senator Thurmond:

This is in response to your letter of March 17, 1978, on behalf of Lieutenant [redacted], USNR, a medical doctor, forwarding certain papers that he sent to you and requesting our views as to the Navy's authority to end his active duty deferment prior to completion of his residency in a civilian hospital.

According to the papers you forwarded us, Lieutenant [redacted] entered into an Armed Forces Health Professions Scholarship Program Service Agreement with the Navy, prior to his entrance into medical school in 1973. Under such an agreement, the Government pays the educational expenses of a person such as Lieutenant [redacted] and the person in question incurs an active service obligation. (See 10 U.S.C. §§ 2120-2127 (Supp. II, 1972).) In Lieutenant [redacted] case this obligation appears to be 4 years.

Lieutenant [redacted] states that he graduated from medical school in June 1977. He applied for surgical residency training in the Navy but was not selected for it. The Navy did, however, grant him a 1-year deferment from active duty beginning on July 1, 1977, and he commenced a 5-year surgical residency at Spartanburg General Hospital, Spartanburg, South Carolina.

By a letter dated November 23, 1977, the Navy informed Lieutenant [redacted] that he was not being granted a deferment for the year beginning in July 1978, and that due to the Navy's critical need for medical officers he was scheduled to commence active service as a primary care medical officer at that time. Lieutenant [redacted] asked the Navy several times to reconsider its refusal to grant him another deferment, so that he could complete his residency program. The Navy, however, continued to refuse to do so and Lieutenant [redacted] is, apparently, currently scheduled to go on active duty in July 1978.

In the materials Lieutenant [redacted] sent you, which you forwarded to us, he indicates that if he goes on active duty

djb

B-191502

as scheduled, it will cause him significant hardship. He feels that he will probably lose the surgical skills he will have gained in the year of his residency and thus waste 1 year of his career and that he will experience a significant future monetary loss if required to report for duty in the Navy as scheduled.

Lieutenant further states that the agreement he signed with the Navy, which was not among the materials forwarded by him, contains two provisions which he believes permit him to delay his active service until he completes his residency. These provisions, paragraphs (1)(g) and (3) of the agreement, are, according to Lieutenant , as follows.

(1)(g) "That, if I desire intern or residency training, I will apply for such training in the Navy at such time as applications are being accepted from other officers in my category. If selected, I am required to participate in such training programs in an active duty status. If not selected, I may then apply to remain in an inactive status or to be released from active duty to complete such training in a civilian institution. If selected to complete such training in an inactive status, I understand that I will not be entitled to any pay, allowances or educational expenses from the Navy and that I will be entitled to accept the normal stipends and benefits paid to other trainees in my training institution."

(3) "I understand that, should I be accepted for intern or residency or other postgraduate training of six months or more in duration, the period of such training will not reduce my scholarship obligation. At the end of my internship or residency or other postgraduate training, I will serve my scholarship obligation or for a period of two years, whichever is longer. I will not tender my resignation or request release from active duty until I shall have completed the obligated service so acquired, in addition to any other service obligation." (The underlining is Lieutenant .)

B-191502

It is Lieutenant position that the Navy is violating the just-quoted provisions by calling him to active duty in July 1978.

In our view, the provisions of Lieutenant Armed Forces Health Professions Scholarship Program Service Agreement that he cites, do not give him any right to complete his residency before performing his obligated active service. The underlined parts of paragraph (1)(g) of the agreement, which Lieutenant apparently thinks give him such a right, only state that he may apply to complete his residency in a civilian institution and if selected to do so, he will not be entitled to receive any pay, allowances or educational expenses from the Navy while doing so, etc. Lieutenant was not selected to complete his residency, at this time, at a civilian institution. He was originally granted only a 1-year deferment and the Navy was under no obligation to grant him another. Regarding paragraph (3) of the agreement, this paragraph appears to apply only to persons performing their residency training, etc., in the Navy, as indicated by the statement " * * * the period of such training will not reduce my scholarship obligation * * * ". (See 10 U.S.C. § 2123(b) (Supp. II, 1972).)

Not only do the provisions of Lieutenant agreement that he cites not appear to give him the right to postpone his obligated active service until after he completes his residency, but we are aware of no statutory or regulatory provision that does so either. In this regard we have been previously advised by a representative of the Department of Defense that it is the position of the Department that sections 672(d) and 673a of title 10, United States Code (1970) provide sufficient authority for calling deferred medical officers such as Lieutenant to active duty. Under section 672(d), an authority designated by the Secretary of the Navy may, at any time, order to active duty a member of a Reserve component under his jurisdiction, with that member's consent. Lieutenant would be viewed as consenting because of his active service obligation. Under section 673a any member of the Ready Reserve of an armed force who is not assigned to a unit of the Ready Reserve, has not fulfilled his statutory reserve obligation, and has not served on active duty for a total of 24 months, may be ordered to active duty. It appears that Lieutenant may meet these criteria.

B-191502

Accordingly, the Navy's action in calling Lieutenant to active duty in July 1978, appears authorized.

We trust this serves the purpose of your inquiry.

Sincerely yours,

R. F. FULLER

Deputy Comptroller General
of the United States