THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301-1200

HEALTH AFFAIRS

MAY 14 1999

MEMORANDUM FOR SURGEON GENERAL OF THE ARMY
SURGEON GENERAL OF THE NAVY
SURGEON GENERAL OF THE AIR FORCE

SUBJECT: Permissible Waivers of State Physician Licensure due to Administrative or Financial Requirements Inharmonious with Federal Policy

This memorandum issues determinations made to date concerning the first step of the waiver process and authorizes the Surgeons General to grant individual waivers to requesting physicians based on those determinations.

By memorandum of January 29, 1999 (HA Policy 9900007) attached, DoD policy was established for implementing the physician licensure requirement of 10 U.S.C. 1094, as amended by section 734 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. The amended statute disallows, effective October 1, 1999, independent medical practice by military physicians who do not hold "an unrestricted license that is not subject to limitation on the scope of practice ordinarily granted" by the State involved, unless a waiver is granted based on "unusual circumstances." DoD policy does not permit a waiver of any requirements pertaining to clinical competency or requirement for payment of standard license fees. DoD policy will permit a waiver in cases in which administrative or financial requirements applicable to a State's full scope license, not applicable to its limited scope license, are substantial and seek to achieve a State purpose clearly inapplicable to military physicians based on federal policy. Finally, the January 29 memorandum outlined a two-step process for: (1) identification of State requirements that may be considered for a waiver and (2) requests for waiver to the Surgeon General concerned from individual physicians who do not hold a full scope license in any State but who hold a limited scope license in a State for which a waiver may be considered.

This memorandum also clarifies DoD policy in the case of any physician who holds more than one restricted license (and no unrestricted license). The policy is that in any case in which a physician holds a restricted license in more than one state and a waiver is <u>not</u> authorized for at least one of the restricted licenses (even if a waiver <u>is</u> authorized for at least one of the licenses), the physician is <u>not</u> eligible for a waiver. For example, if a physician has two State licenses, one with restrictions that would be removed through the payment of the standard license renewal fee, and one in a State listed below for which a waiver is authorized, the physician must obtain an unrestricted license in the first state by paying the standard license renewal fee. There are no "unusual circumstances" justifying use of the waiver authority for this physician to meet the new Federal requirement.

The requirement for an "unrestricted license that is not subject to limitation on the scope of practice ordinarily granted" by the State may be waived for individual

physicians who do not hold a full scope license but who hold one of the following licenses:

Florida. Florida Statutes, § 458.320 requires that most physicians as a condition of licensure maintain a certain level of professional liability coverage and that all physicians contribute to the birth-related Neurological Injury Compensation Association (NICA) but exempt from this requirement physicians who practice "exclusively" as an officer or employee of the Federal government. Although the exclusive practice provision is a limitation on the scope of practice, the requirement for an unrestricted license may be waived for a physician who obtains a Florida license in a licensure category which exempts the physician from the professional liability coverage and payment into the NICA risk pool requirement. This requirement is unrelated to clinical competency and is inharmonious with Federal policy, under which professional liability is managed under the Federal Tort Claims Act.

Kansas. Kansas Statutes Annotated, § 65-2809, establish a physician licensure category called a "federally active license," which requires compliance with all generally applicable State licensing requirements, except requirements for professional liability insurance and contributions to the State health care stabilization fund, and which limits licensees to practice in connection with official duties. Although this licensure category includes limits on the scope of practice, the requirement for an unrestricted license may be waived for a physician who obtains a Kansas "federally active license." This licensure category deviates from no standards pertaining to clinical competency and merely recognizes that the liability requirements are inharmonious with Federal policy, under which professional liability is managed under the Federal Tort Claims Act.

Massachusetts. Volume 243, Code of Massachusetts Regulations, Section 2.07(16) requires Massachusetts licensees who render any direct or indirect patient care in Massachusetts to maintain a certain level of professional malpractice liability insurance coverage, but exempts categories of licensees who do not provide direct or indirect patient care in Massachusetts or who do so only on behalf of federal health care facilities. Although these licensure categories include limits on the scope of practice, the requirement for an unrestricted license may be waived for a physician who obtains a Massachusetts license in such licensure categories. These licensure categories deviate from no standards pertaining to clinical competency. The Massachusetts policy of exempting military physicians from the malpractice insurance requirement recognizes that the requirement is inharmonious with Federal policy, under which professional liability is managed under the Federal Tort Claims Act.

Oregon. Oregon Administrative Rules, § 847-008-0015 includes a licensure category called an "active military license," which is comparable to the generally issued "active" license, except that a military physician is exempt from the requirement to maintain an actual physician presence and medical practice in Oregon. The "active military license," however, limits the licensee to practice in connection with military duties. Although this licensure category places limits on the scope of practice, the requirement for an unrestricted license may be waived for a physician who obtains an Oregon "active military license." This licensure category deviates from no standards pertaining to clinical competency and merely recognizes that Oregon's generally applicable physical

presence requirement is inharmonious with Federal policy, which requires of military physicians worldwide assignments.

Pennsylvania. Title 40, Pennsylvania Statutes, § 1301.701 requires that in order to practice medicine "in the Commonwealth" of Pennsylvania, a physician must maintain, at the risk of revocation of license, particular levels of professional liability coverage and participate in a State liability contingency fund, Medical Professional Liability Catastrophe Loss Fund (CAT). These requirements are inapplicable to federal medical personnel discharging official duties. To the extent that these requirements must be met before a physician may practice medicine other than in connection with official duties without risking licensure revocation, they reflect a limitation on scope of practice. This limitation may be waived. The requirements for professional liability coverage and participation in the State liability contingency fund are unrelated to clinical competency and inharmonious with Federal policy, under which professional liability is managed under the Federal Tort Claims Act.

Although an ad hoc subcommittee of the Risk Management Committee has undertaken a substantial review of State licensing requirements, it is possible that similar provisions in other State licensing statutes and regulations have not yet been identified. I request that in disseminating information about the new statutory requirement and our implementation of it, you solicit input as to any other State requirements that would meet the limited waiver standard of the January 29 memorandum. This input, with specific citations and documentation, should be provided as soon a possible to permit appropriate actions to be completed before the October 1 deadline.

My point of contact for questions related to this document is LtCol Jim Williamson who can be reached at COM (703) 681-3628 or email address: James.Williamson@tma.osd.mil.

Dr. Sue Bailey

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Attachment:
As stated