

January 29, 1999

MEMORANDUM FOR SECRETARY OF THE ARMY  
SECRETARY OF THE NAVY  
SECRETARY OF THE AIR FORCE

SUBJECT: DoD Policy on Physician Licensure

Since 1988, under 10 USC 1094 (and currently DoD Directive 6025.13, "Clinical Quality Management Program in the Military Health Services System," July 20, 1995), the Department of Defense (DoD) has required all physicians to have a medical license to practice. However, some States have permitted military physicians to be licensed in special licensure categories that waive certain requirements (such as standard license fees) and include restrictions on the scope of practice (such as limited to federal facilities). Section 1094 was amended by section 734 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Pub. L. 104-261. The amendment takes effect October 1, 1999. The law now provides (with the amendment shown in italics):

(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 a 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.

In implementing this law, DoD policy is guided by a commitment to achieve, and assure the public that we achieve, an unsurpassed standard of quality medical care. Implementation shall adhere to the following policies:

1. Unrestricted license. Any physician license in a licensure category that restricts the physician to practice in a federal facility or within some other confined limits does not comply with the requirement for an "unrestricted license." Unless waived, all physicians must have at least one current, unrestricted license. Physicians may hold additional licenses from States in licensure categories that have practice restrictions associated with military exemptions from certain fees or other requirements as long as the physician also holds at least one license for which there are no limitations on the scope of practice. Effective October 1, 1999, a physician without a full-scope license may not provide health care as a physician, unless a waiver is granted under this policy.

2. No waiver of clinical competency standards. A licensure category that includes limitations on scope of practice shall not be considered for a waiver of the unrestricted license requirement unless it includes all the same requirements pertaining to clinical competency (e.g., education, training, tests, continuing medical education, investigation and sanction authority of the licensure board) as the full scope category and has no restrictions pertaining to clinical competency (e.g., practice under supervision). A waiver shall be considered only if the differences between the full scope license and limited scope license are solely of an administrative or financial nature.

3. Waiver possible for administrative or financial requirement inharmonious with federal policy. The statute permits a waiver of the unrestricted scope requirement only in "unusual circumstances." A requirement to pay the standard license fee associated with an unrestricted license is not an unusual circumstance and is not a basis for use of the waiver authority. A waiver may be considered in cases in which the administrative or financial requirements applicable to the full scope license that are not applicable to the limited scope license are substantial and seek to achieve a State purpose clearly inapplicable to military physicians based on federal policy. Examples of this would be a requirement that the physician reside in the State (federal policy calling for world-wide service), pay a substantial amount into a medical injury compensation fund (federal policy provides for medical injury compensation under federal statutes), or maintain private malpractice liability insurance (federal policy provides for malpractice liability through the U.S. treasury).<sup>Encl 3</sup>

4. Careful review process to facilitate implementation consistency. Waiver consideration shall be based on a two-step process. First, the Assistant Secretary of Defense (Health Affairs) shall determine based on a review of a State's licensure requirements that the standards outlined in paragraphs 2 and 3 above are met and identify the particular State administrative or financial requirements that may be considered for waiver. Requests for this determination may be made by a Surgeon General. The Risk Management Committee shall consider such requests and make recommendations to the ASD(HA). Step two of the process shall be that 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 based on the step one determination may request a waiver from the Surgeon General of the Service involved. The request must include a justification for the waiver in the case of the individual physician. A waiver would not be granted for longer than the applicable time period of licensure; a subsequent licensure renewal would require a new waiver. The Surgeons General shall submit to the ASD(HA) an annual account of the waivers granted and the applicable justifications.

My point of contact for questions is Captain Peg Orcutt who may be reached at (703) 681-1703 or by e-mail: [Margaret.Orcutt@ha.osd.mil](mailto:Margaret.Orcutt@ha.osd.mil).

////SIGNED\\  
Dr. Sue Bailey

HA POLICY 9900007

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 not authorized for at least one of the restricted licenses (even if a waiver is authorized for at least one of the licenses), the physician is not 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 licenses 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 requirements 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 requirements 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 requirements 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 as 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](mailto:James.Williamson@tma.osd.mil).

>>SIGNED 14 May 99>>

Dr. Sue Bailey

Attachment:  
As Stated

MCHO-Q (40-68)

MEMORANDUM FOR Commanders, MEDCOM RMCs/MEDCENs/MEDDACs

SUBJECT: Implementing Guidance for Permissible Waivers of State Physician Licensure When Administrative or Financial Requirements are Inharmonious with Federal Policy (ASD[HA] Memo, 14 May 99) (Encl 1)

1. The purpose of this memo is to offer further implementation guidance to the DoD Policy on Physician Licensure Policy, which can be reviewed at the following web-site: [www.tricare.osd.mil/policy/ha99poli/clin9907.html](http://www.tricare.osd.mil/policy/ha99poli/clin9907.html). This policy requires implementation of legislation passed in the National Defense Authorization Act of FY99 amended 10 USC 1094 to require that physicians have an unrestricted medical license by 1 October 1999. The statute requires that physicians, practicing medicine independently, have a license that permits practice in the state of licensure immediately, without first taking any action on that license. A military physician's medical license must meet all clinical and administrative requirements and be no different than his/her civilian counterpart's license. Renewal fees are not subject to waiver. If physicians have two or more licenses with state exempted administrative requirements and the new licensure requirement could be met by paying renewal fees (vs. applying for waiver as described below), they are not eligible for waiver of DoD Licensure Policy.

2. The Assistant Secretary of Defense for Health Affairs (ASD[HA]) reviewed all state medical board requirements and identified the following five states as having administrative licensure requirements that are eligible for a request for waiver:

- a. **Florida:** Malpractice insurance and Neurological Injury Compensation Association (NICA) = risk pool.
- b. **Kansas:** Malpractice insurance and Healthcare Stabilization Fund (risk pool).
- c. **Massachusetts:** Malpractice insurance.
- d. **Oregon:** Actual practice within the state.
- e. **Pennsylvania:** Malpractice insurance and Medical Professional Liability Catastrophe Loss Fund (CAT Fund) = risk pool.

MCHO-Q (40-68)

SUBJECT: Implementing Guidance for Permissible Waivers of State Physician Licensure When Administrative or Financial Requirements are Inharmonious with Federal Policy (ASD[HA] Memo, 14 May 99)

f. Any state with mandated residencies or instate patient practice requirements.  
\*Must submit support documents to Headquarters, US Army Medical Command (USAMEDCOM).

3. Waiver of administrative licensure requirements is not automatic. Physicians who possess a single license from any of the states listed on page one must submit an application for waiver of his/her state's administrative requirement (Encl 2). This must be done for each licensure renewal period. The Surgeon General of the Army (TSG) delegated waiver authority to the Regional Medical Commands (RMCs) who in turn may delegate this authority to Medical Treatment Facility (MTF) commanders. Those with waiver authority are reminded that there is no independent judgement or decision-making in this activity. In order to approve a waiver request, ASD (HA) must first have identified the specific requirement is eligible for waiver. Annually, TSG must submit an account of the number and types of waivers granted. Therefore, this information must be documented monthly in CCQAS and reported quarterly to Quality Management Directorate (We will send instructions on how to document CCQAS to the credential coordinators). A final total for the FY will be included in the annual quality report.

4. It is possible that some states may have unusual and substantial administrative requirements that are not yet identified or processes that make it difficult to meet the 1 October 1999 deadline. As such occurrences are identified, please submit them and supporting documentation using the waiver application (Encl 2). This request for waiver consideration will be forwarded to USAMEDCOM Quality Management Directorate, ATTN: LTC Cannon via the RMC for review. Any reasonable exception to the states/conditions identified in paragraph 2 will be submitted to ASD (HA) for consideration. ASD(HA)'s decision will be forwarded to MEDCOM for dissemination through the RMC to the MTF.

5. Each physician must sign acknowledgement of this new licensure requirement and re-endorse (by signing and dating the form) at each biennial renewal of privileges (Encl 3). A copy of the acknowledgment will be placed in the Provider Credentials File. Upon PCS, the gaining MTF must primary source verify licensure. Further monitoring of request for waivers may be done at the direction of TSG, MEDCOM, and/or MTF.

6. The definition of restricted license may vary from one state medical board to another. It may not be sufficient to ask if the license is restricted when contacting the state medical board. Most boards define a restricted license as one with clinical limitations. DoD defines a restricted license as one which either clinical and/or

MCHO-Q (40-68)

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administrative requirements have not been met. Therefore, it is recommended that credentials coordinators ask the following question, "Can this physician begin practicing in the state today, seeing non-DoD beneficiaries, with his/her current license as it is today?" If the answer is "No, the physician must first pay renewal fees," then DoD license requirement is not met. The renewal must be paid. If the answer is "No, not until the physician has malpractice insurance, pays into a risk pool, or has a currently established practice in the state," then physician meets the criteria for a request for waiver. A request for waiver must be submitted and approved in order to meet the requirements for an acceptable license.

7. Physicians in residency training programs are not exempt from the licensure requirements described above. While it is recognized they will not provide independent medical care, it is mission essential that they comply with the licensure milestones as established.

8. A decision is pending at ASD(HA) on the necessary course of action where a physician sought compliance to the licensure requirement but encountered administrative delays with the medical board that precluded meeting the 1 October 1999 deadline. We will inform you of that decision when published. MEDCOM, in any event, should be notified of such occurrence.

9. Failure to initiate the process, as described above, needed to satisfy the requirement for obtaining/maintaining a current, valid and unrestricted license will be grounds for administrative, disciplinary, or personnel action. We are sensitive to the short suspense and are working to facilitate a smooth implementation of this challenging policy. Your feedback on issues and obstacles is essential.

10. Direct questions regarding this issue to LTC Deborah J. Cannon, Chief, Risk Management, Credentials and Licensure, Quality Management Directorate, Headquarters, US Army Medical Command. DSN 471-6195 or Commercial (210) 221-6195.

//Original Signed//

Encl

1. ASD(HA) Memo, 14 May 99
2. Physician Request for Waiver Form
3. Physician Licensure Policy

KEVIN C. KILEY  
Brigadier General, MC  
Deputy Chief of Staff for  
Operations, Health Policy and Services

4. Acknowledgement Form

**APPLICATION FOR REQUEST FOR WAIVER OF  
ADMINISTRATIVE LICENSURE REQUIREMENTS**

NAME \_\_\_\_\_ RANK \_\_\_\_\_  
(Last) (First) (MI)

SSN \_\_\_\_\_

—

MTF \_\_\_\_\_ Department/Service \_\_\_\_\_

RMC \_\_\_\_\_

**INSTRUCTIONS:** Check ONE of the following 2 paragraphs to identify your request:

A. \_\_\_ I am applying for a waiver of the following administrative licensure requirement (**CHECK ONE**). I understand that these have already been considered by ASD(HA) and are eligible for waiver if requested. Upon renewal of this license, I must submitted another request for waiver.

\_\_\_ Florida: Malpractice insurance and Neurological Injury Compensation Association (NICA) = risk pool

\_\_\_ Kansas: Malpractice insurance and Healthcare Stabilization Fund (risk pool)

\_\_\_ Massachusetts: Malpractice insurance

\_\_\_ Oregon: Actual practice within the state

\_\_\_ Pennsylvania: Malpractice insurance and Medical Professional Liability Catastrophe Loss Fund (CAT Fund) = risk pool

\_\_\_ Colorado: Malpractice Insurance

\_\_\_ Any state with mandated residencies or instate patient practice requirements.

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B. \_\_\_ I am licensed in a state that has an administrative requirement that is unusual, substantial, or inharmonious with federal policy not included on the above list. I am submitting a request for waiver of the following licensure requirement (**DESCRIBE IN SPACE PROVIDED BELOW and submit supporting documentation**). I understand that reasonable exceptions to the state/conditions as identified in A will be forwarded to the Office of the Surgeon General, USAMEDCOM for review. If it is determined the request for exception has merit, it will be submitted to Assistant Secretary of Defense for Health Affairs (ASD[HA]) for consideration. If approved, a waiver will be granted. I understand that I must resubmit my request for waiver with the renewal of the license.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Signature of Applicant: \_\_\_\_\_ Date: \_\_\_\_\_



January 29, 1999

MEMORANDUM FOR SECRETARY OF THE ARMY  
SECRETARY OF THE NAVY  
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My point of contact for questions is Captain Peg Orcutt who may be reached at (703) 681-1703 or by e-mail: [Margaret.Orcutt@ha.osd.mil](mailto:Margaret.Orcutt@ha.osd.mil).

////SIGNED\\\\\n  
Dr. Sue Bailey

HA POLICY 9900007

My signature below indicates acknowledgement and compliance with the licensure policy.

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Printed Name (Last, First, MI)      (Rank/Status)      (Signature)      (Date)

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Printed Name (Last, First, MI)      (Rank/Status)      (Signature)      (Date)

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Printed Name (Last, First, MI)      (Rank/Status)      (Signature)      (Date)

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Printed Name (Last, First, MI)      (Rank/Status)      (Signature)      (Date)

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Printed Name (Last, First, MI)      (Rank/Status)      (Signature)      (Date)