

MAINE STATE LEGISLATURE

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Physicians: Out of State Physicians in Clinics
32 MRSA §3270

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 10, 1978

William S. Nersesian, M.D.
State Epidemiologist
Department of Human Services
Bureau of Health
Augusta, Maine 04333

RE: Use of out-of-state and foreign physicians in clinics

QUESTION:

You have asked what legal problems may result from the fact that we are using Canadian and New Hampshire licensed physicians in boarder areas of the State of Maine where they staff various medical clinics under various programs operated by this Department. You have asked if it is legal to use them, and what liability accrues to the State if it is not.

ANSWER:

It is generally not legal for physicians to practice in the State of Maine unless they are licensed to practice here. Therefore these physicians are in contravention of Maine laws regulating the practice of medicine when they practice in this State. See 32 MRSA §3270.

For those programs funded under the Social Security Act, e.g. the Medicaid Program, the term physician has been set out in section 1861(4) of the Social Security Act, 42 USCA 1395X(r)(1). That definition reads as follows:

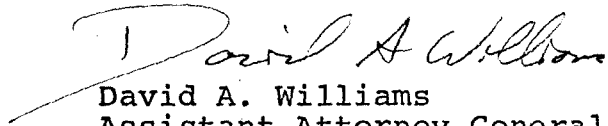
(r) The term "physician" when used in connection with the performance of any function or action, means, (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action....

This definition is repeated in similar terms for doctors of optometry and chiropractors. Thus according to the Social Security Act the doctor must be licensed to practice by the State in which he performs such function. Therefore reimbursement under the Medicaid Act, and presumably other sections of the Social Security Act which I would research at your request, would be in contravention of the Social Security Act.

If the funding is entirely State funding, then issues of malpractice liability may arise. Normally we have a provider agreement with each of our clinics which requires that these clinics carry insurance to hold the State harmless from any law suit whether resulting from malpractice liability or not. It is to that protection which we normally look and not to any provision of law.

A criminal prosecution for violation of medical practice laws would depend on the facts of each particular case. The State of Maine itself would not be criminally liable in such circumstances. However, there might be potential liability, under some facts, for State employees who assisted medical practice of a non-licensed physician, knowing the person was non-licensed.

DAW:bjw


David A. Williams
Assistant Attorney General