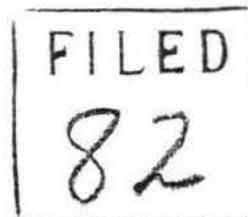


PHYSICIANS: Physicians who accept professional staff appointments  
HOSPITALS: in Missouri hospitals and regularly practice medicine  
and surgery in those hospitals are maintaining an  
"appointed place to meet patients or receive calls  
within the limits of this state." Such physicians  
are required to have a Missouri license.

Opinion No. 82

March 1, 1965



Dr. H. M. Hardwicke, M.D.  
Acting Director  
Division of Health  
Jefferson City, Missouri

Dear Dr. Hardwicke:

Your request for an official opinion dated January 21, 1965,  
reads as follows:

"When physicians who are not licensed in Missouri are given professional staff appointments in Missouri hospitals and regularly practice medicine and surgery in these hospitals, does this constitute 'an appointed place to meet patients or receive calls within the limits of this state,' and is a license to practice medicine and surgery in Missouri required under these circumstances?"

We believe that Sections 334.010, 334.150, RSMo 1959, are applicable to the question which you have submitted. They read as follows:

"334.010. . . It shall be unlawful for any person not now a registered physician within the meaning of the law to practice medicine or surgery in any of its departments, or to profess to cure and attempt to treat the sick and others afflicted with bodily or mental infirmities, or engage in the practice of midwifery in this state, except as herein provided.

"334.150. . . It is not intended by sections 334.010 and 334.140 to prohibit isolated or occasional gratuitous service to and treatment of the afflicted, and sections 334.010 to 334.140 shall not apply to physicians and surgeons commissioned as officers of the Armed Forces of the

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United States or of the Public Health Services of the United States while in the performance of their official duties, nor to any licensed practitioner of medicine and surgery in a border state attending the sick in this state, if he does not maintain an office or appointed place to meet patients or receive calls within the limits of this state, and if he complies with the statutes of Missouri and the rules and regulations of the department of public health and welfare relating to the reports of births, deaths and contagious diseases; and sections 334.010 to 334.140 shall not apply to Christian Science practitioners who endeavor to cure or prevent disease or suffering exclusively by spiritual means or prayer, so long as quarantine regulations relating to contagious diseases are not infringed upon; but no provision of this section shall be construed or held in any way to interfere with the enforcement of the rules and regulations adopted and approved by the division of health of the state department of public health and welfare or any municipality under the laws of this state for the control of communicable or contagious diseases. [Emphasis supplied]

As related to the facts submitted in your inquiry these sections prohibit the practice of medicine in Missouri by unregistered physicians except that a border state physician may do so, "provided he does not maintain an office or appointed place to meet patients or receive calls within the limits of this state." We note that the statute uses the two terms "office or appointed place" in the disjunctive sense. We believe that both of these terms must be construed as serving some effective purpose under the general principle that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. (See Sec. 4705, Sutherland Statutory Construction, by Horack.)

If we hold that the term "appointed place to meet patients" must be given full effect and is not mere surplusage, then we are confronted with the question of whether the routine practice of medicine and surgery in a hospital by a staff member constitutes practice at an "appointed place." The appellate courts of at least one state have construed the term "appointed" and have held that it is the equivalent of the term "designated." (See Santa Barbara County vs. Janssens, 169 P. 1025, 1027; 177 Cal. 114.) We believe that the legislature in using the term "appointed place" had in mind this accepted meaning of the term and that it intended to require a license if the physician

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utilized the hospital as a designated or arranged place for meeting patients.

We believe that the above conclusions are strengthened and supported by the fact that the State Division of Health has apparently given precisely this interpretation to this passage for a considerable period of time. We note that Section IV, Regulation No. 1, of the Missouri Hospital Regulations was promulgated and filed in February of 1960, and has remained in force since that time. It provides as follows:

"REGULATION NUMBER 1, PHYSICIANS AND DENTISTS

"The governing body shall state in its bylaws that every physician and/or dentist requesting permission to practice in a hospital shall submit an application for staff membership in writing to the governing body of the hospital upon forms approved by the governing body. Each physician so applying shall specifically state in his application: his training and qualifications; his acceptance of the governing body as the supreme legal authority in the hospital; his willingness to abide by the bylaws of the staff in all respects; and his determination to practice his profession in a manner which is legal, moral and ethical. The professional staff of the hospital shall be an organized group who shall initiate, and with the approval of the governing body of the hospital, adopt bylaws, rules, regulations and policies governing their professional activities in the hospital. General practitioners shall be permitted to practice in the hospital in accordance with their competence as recommended by the professional staff and authorized by the governing body.

"Code: Satisfactory Compliance - This item shall be deemed to have been satisfied if:

"1. Each member of the staff is a physician and/or dentist who is a graduate of an approved school of medicine, osteopathy or dentistry legally licensed to practice medicine, osteopathy or dentistry in the State of Missouri, and who is competent in his respective field and is a worthy character and is schooled in matters of professional ethics. Each member is reappointed annually to the staff at the discretion of the governing body. [Emphasis supplied]

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We have not located any Missouri case specifically interpreting Section 334.150. However, we believe that State v. Davis, 92 SW 484, 194 Mo. 485, is quite consistent with the principles enunciated herein, both from the standpoint of interpreting the Missouri Medical Practice Act (Chapter 334) and from the standpoint of indicating the public policy involved. In that case the Court (under a previous statute not using the term "appointed place") held that where the defendant physician (registered in Illinois, but not registered in Missouri), regularly and routinely came to a room at a hotel in Missouri and there held himself out as a physician, diagnosed the ailment of a patient and sent medicine to the patient from Illinois, and charged the patient for same, was guilty of violating the practice act.

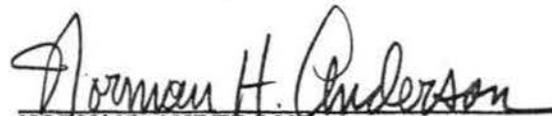
We are enclosing a copy of two previous opinions of this office relative to the practice of medicine, which we believe may be of interest to you. One of these opinions was issued to Dr. E.T. McGaugh on September 4, 1934, and the other opinion was issued to Mr. John A. Hailey on March 29, 1955. The first named opinion discusses the legal remedies available where individuals engage in the practice of medicine without a license and the second opinion holds that unlicensed physicians may not engage in the practice of medicine regardless of the nature of the employer or the character of the supervision.

#### CONCLUSION

Therefore, it is the opinion of this office that physicians who accept professional staff appointments in Missouri hospitals and regularly practice medicine and surgery in those hospitals are maintaining an "appointed place to meet patients or receive calls within the limits of this state". Such physicians are required to have a Missouri license.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Clyde Burch

Yours very truly,

  
NORMAN ANDERSON  
Attorney General

Enclosures (2)