

**STATE OF CONNECTICUT  
CONNECTICUT BOARD OF EXAMINERS IN PODIATRY**

IN RE: MALPRACTICE INSURANCE FOR PODIATRISTS  
PRACTICING IN FEDERAL FACILITIES

**DECLARATORY RULING**

By letter dated October 24, 1994, the Connecticut Board of Examiners in Podiatry received a letter from Joan M. Lebovitz, District Council for the Department of Veterans Affairs, inquiring as to whether three podiatrists employed at VA Medical Centers in Connecticut would be required to maintain professional malpractice insurance as required by Public Act 94-71. By letter dated October 28, 1994, the Board received a second letter regarding the same issue from Attorney Susan C. Freedman of Shipman and Goodwin on behalf of her client, Dr. Irving Freedman. At a meeting on November 9, 1994, the Board voted to issue a declaratory ruling on this matter, since the Board's determination on this issue affects not only those podiatrists who have inquired about this issue, but any podiatrist who practices in Connecticut in a federal facility where the podiatrist is covered by the Federal Tort Claims Act. Section 5 of Public Act 94-71 became effective on October 1, 1994, and requires that:

[E]ach person licensed to practice podiatric medicine under the provisions of section 20-54 or 20-57 of the general statutes, as amended by section 9 of public act 93-381, who provides direct patient care services shall maintain professional liability insurance or other indemnity against liability for professional malpractice. The amount of insurance which each such person shall carry as insurance or indemnity against claims for injury or death for professional malpractice shall not be less than five hundred thousand dollars for one person, per occurrence, with an aggregate of not less than one million five hundred thousand dollars.

Podiatrists who work exclusively in facilities run by the Veterans Health Administration (VA medical centers), are covered by Title 38 United States Code section 7316: Malpractice and Negligence Suits: Defense by the United States, and will not be required to additionally meet the requirements of P.A. 94-71. This federal law provides medical care employees of the Veterans'

Health Administration, including podiatrists, with a defense by the United States:

The remedy ... for damages for personal injury, including death, allegedly arising from malpractice or negligence of a medical care employee of the Administration in furnishing medical care or treatment while in the exercise of that employee's duties in or for the Administration shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the medical care employee (or employee's estate) whose act or omission gave rise to such claim.

38 U.S.C. § 7316(a)(1).

Podiatrists should be aware that the federal law covers personal injury arising from malpractice or negligence, but does not cover activities which are not within the scope of the podiatrist's office or employment. The question of what activities are within the scope of employment is analyzed by determining whether the employee's motive was for personal gain or for service to the employer. Avery v. United States, 434 F. Supp 937, 942 (1977). It should also be noted that if any employee of a Veterans Medical Center does any podiatric work outside of the federal facility, the individual would need insurance pursuant to P.A. 94-71 to cover that portion of the person's practice.

Podiatrists who work in federal facilities other than those run by the Veterans Administration are covered by the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq., and to the extent of this coverage, would not need insurance pursuant to P.A. 94-71 for activities within the scope of their employment. These podiatrists would also need insurance pursuant to P.A. 94-100 for any employment outside of the federal facility.

Date

3-22-95



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Chairman  
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