

December 28, 2000
OPINION NUMBER 00-234

Mr. Robert Hebert
President
McNeese State University
P. O. Box 93300
Lake Charles, LA 70609-3300

8-A-4 CLAIMS AGAINST THE STATE
87 PHYSICIANS & SURGEONS
La. R. S. 40:1299.39; 29 USC 201, et seq

Nurses, faculty members, student nurses and physicians who provide health care services by or on behalf of McNeese State University during the course and scope of their employment are covered under La. R. S. 400:1299.39. These public employees are entitled to overtime compensation.

Mr. Winston G. Decuir, Sr.
Attorney at Law
1961 Government Street
Baton Rouge, LA 70806

Dear Gentlemen:

We received your request for an opinion on behalf of McNeese State University College of Nursing regarding the operation of a Community Health Center and the liability connected therewith. It is our understanding, through your request and further telephone conversations with you, that McNeese State University is building what is to be called the College of Nursing Health Center which will provide health care services to not only the staff and faculty of the university but also to members of the community. The Health Center will generate its own funds through fees. Fees will be based on a sliding scale for the non-insured. Funds will also be generated through grants and donations from government and private entities.

Your request raises numerous issues but I believe the issues can be grouped as liability and overtime. Specifically,

1. What liability will the university have for its employees as per La. R. S. 40:1299.39?
2. May university employees work hours in the Center in addition to their regular workload?

La. R. S. 40:1299.39 pertains to medical malpractice liability for state health care providers. This statute defines, in pertinent part, a state health care provider, so as to be covered under the statute, as the state or any of its universities or clinics which provide any kind of health care services whatsoever and the officers, officials, and employees thereof when acting within the course and scope of their employment with such state entity. A person covered under the statute is defined as anyone acting in a professional capacity and

providing health care services by or on behalf of the state. This includes a physician, registered nurse or a licensed practical nurse who is acting within the course and scope of his employment pursuant to a contract with the state or who is performing voluntary professional services for or on behalf of the state. The statute also includes a resident, intern, or student when he is acting within the course and scope of his training and under the supervision of a state hospital or other health care facility to which he is assigned.

In light of this statute, it is our opinion that any nurse, faculty member, student nurse, or physician who provides health care services by or on behalf of McNeese State University, during the course and scope of their employment, at the College of Nursing Health Center is covered under La. R. S. 40:1299.39. Your request raises the concern that an employee would not be covered under La. R. S. 40:1299.39 if he offers health care services which are unrelated to a student assignment. Again, if the health care services are offered by an employee during the course and scope of his employment with the university, the employee will be covered under La. R. S. 40:1299.39. If the services provided are unrelated to a student assignment or outside the course and scope of the employee's employment, the employee is not covered under La. R.S. 40:1299.39. It is our understanding that the Center will not be used as the private office of any of the physicians.

We next address the issues pertaining to the number of hours worked by your employees at the College of Nursing Health Center. Public employees, pursuant to the Fair Labor Standards Act, 29 USC 201 et seq, are entitled to receive compensation for working overtime. It is our understanding that the employees of the Center will be performing public services. That is, the Center will not be a private office for the individual doctors. Public employees may be paid time and one-half for those hours worked in excess of 40 hours per week, or they may be given compensatory time at the rate of one and one-half hour for each hour worked. Thus, any faculty member, nurse, student nurse and/or physician who works, as a public employee, in excess of 40 hours per week would be entitled to overtime compensation or compensatory time, each at the rate of one and one-half. Please note, however, that if an employee performs private services or services outside of the scope of his employment with the university, he is entitled to overtime compensation at the rate of time and one-half.

In sum, faculty members, nurses, student nurses, and physicians who provide health care services for or on behalf of McNeese State University are covered under La. R. S. 40:1299.39. Please note, however, that La. R. S. 40:1299.39 A(1)(a)(iv)(cc) provides that no person or entity shall be considered a state health care provider or person covered under the statute for any injury to or death of a patient which is the result from any act or omission of gross negligence or from any willful or wanton act or omission. Public employees are entitled to overtime compensation or compensatory time for those hours worked in excess of 40 per week.

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You also ask whether or not overtime can be claimed as an operational expense of the Health Center. We believe this question could be better answered by state budget and fiscal officers. Clearly, overtime compensation is an expense of the university as are salaries of the university's employees. We further recommend that the University specify the duties of, and care to be provided by, each of the employees of the Health Center. This will assist in determining Acourse and scope≡ for liability purposes.

We trust this adequately responds to your request. If you have any questions or need additional information, please contact us. With kindest regards,

Yours very truly,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

BY:

TINA VICARI GRANT
Assistant Attorney General

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TINA VICARI GRANT, ASSISTANT ATTORNEY
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