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**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

September 8, 2000

Ernest J. Nauful, Jr., Esquire  
Post Office Box 11866  
Columbia, South Carolina 29211

**RE: Informal Opinion**

Dear Mr. Nauful,

Thank you for your letter requesting an opinion of the Attorney General's Office. As the attorney for The Regional Medical Center of Orangeburg and Calhoun Counties (TRMC), you have some questions about the Patients' Compensation Fund (PCF). I will answer each question in turn.

1) "Under the provisions of Section 38-79-410 through 38-79-470, the TRMC, having withdrawn from the PCF in good standing, is it subject in the future to assessments for claims arising from occurrences which took place while it was a member?"

The Patients' Compensation Fund was established pursuant to S.C. Code Ann. § 38-79-410 et seq., for the purpose of paying medical malpractice claims for licensed health care providers in South Carolina. The Board of Governors was created to manage the fund and promulgate regulations necessary to operate the fund. See S.C. Code Ann. § 38-79-430. Although we are advised that no written regulation or policy exists that addresses this question, it is our understanding that the Board of Governors, the entity charged with enforcing this statute, is highly unlikely to attempt to assess former members of the Fund. The plain and ordinary meaning of the language of § 38-79-450 (emphasis added), which states that "all fund *members*" shall pay "membership fees and deficit assessments," suggests that only current members of the PCF are subject to the assessment. We are advised, however, that regardless of legal concerns, for purely practical purposes assessing former members of the PCF would be impossible, as some members are deceased or have relocated out of the state. As a matter of policy, this Office typically defers to the administrative interpretation of the agency charged with enforcement of the statute in question. The agency's interpretation is entitled to respectful consideration and should not be disregarded absent cogent reasons. In this instance, the Board's conclusion and the tenants of statutory construction concur, and we defer to their opinion.

*Nauful Letter*

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2) "Is expulsion from the Fund under Section 38-79-450 the sole remedy upon failure to pay an assessment?"

Given the answer to question 1 above and the position of TRMC as having withdrawn from the PCF, this question may be moot. Nevertheless, § 38-79-450 only provides that "membership in the Fund is contingent upon the Fund member making timely payment of all membership fees and deficit assessments." Only a court can decide any other available remedy to the PCF for failure to pay, and this Office cannot speculate on how a court would rule on such a question, but it does appear that expulsion from the Fund is the only remedy contemplated by the statute.

3) "Since TMRC left the PCF in good standing, does it have coverage with the PCF for incidents which occurred while it was a member, even if the claim is not made [until] after membership terminated?"

As you have indicated, the position of the Board of Governors in a correspondence from the Executive Director of the Fund is that the former member would be covered for a claim arising from an incident occurring while it was a member, assuming the member had appropriate coverage in place when it was a member of the PCF. We have again contacted the acting Executive Director of the Fund and are advised that this conclusion remains accurate. As we have noted in question 1, this Office will typically defer to the interpretation of the entity charged with enforcement of the statute. As such, we would advise that, in accordance with the position of the Board of Governors, the former member would be covered in these circumstances.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General