

7047 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

March 13, 2001

Ms. Mary Ann West
Interim Executive Director
Patients' Compensation Fund
P.O. Box 210738
Columbia, SC 29221-0738

Dear Ms. West:

On behalf of the Patients' Compensation Fund, you have requested the advice of this Office as to whether the PCF as two matters. They are addressed separately below.

Your first question is whether the Fund can contract for claims or other services and use the funds in its "restricted account" for that purpose. Under S.C. Code Ann. § 38-79-460 (1989), the "Fund" is to be held in trust, but "expenses of . . . administering the Fund must be paid from the Fund." A claims service would appear to be an administrative expense, but other services not related to administration would not be payable from the Fund. I also suggest that the PCF seek input as to this question from the Insurance Department and the State Treasurer, who holds the Fund (§38-79-460).

Your next question is whether the Fund must provide unlimited liability coverage to licensed health care providers who consent to limited coverage. The statutory purpose of the PCF is to pay the portion of a claim or judgment "which is in excess of" the specified amounts. §38-79-420 (Supp. 2000). Section 38-79-480 (Supp. 2000) provides that a person who has a judgment against a covered provider may file a claim with the PCF to recover the amount in excess of the specified sums under the terms of this statute. No cap is set by these provisions on the maximum payment that may be made. Although participation in the Fund is not mandatory for providers (§38-79-440

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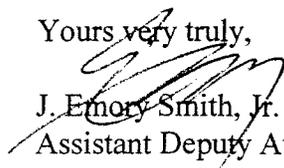
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(1989)), these provisions indicate a legislative intent¹ that excess coverage must be unlimited for covered physicians in order to comply with the provisions for payment of claims. If the PCF wants the option of providing limited coverage, it may wish to seek legislative authorization to do so.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.

Assistant Deputy Attorney General

¹The "...primary function in interpreting a statute is to ascertain the intention of the legislature." *South Carolina Department of Highways and Public Transportation v. Dickinson*, 288 S.C. 134, 341 S.E. 2d 134 (1986).