

The State of South Carolina

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Office of the Attorney General

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August 5, 1988

The Honorable Olin R. Phillips
Member, House of Representatives
309-C Blatt Building
Columbia, South Carolina 29211

Dear Representative Phillips:

As you know, your letter dated May 17, 1988, to Attorney General Medlock has been referred to me for response. By your letter, you inquired:

[W]ho actually owns the [health insurance] policy - the insured or the state, through its administrator Blue Cross/Blue Shield [?]. . . Does the patient have a legal basis to bring a "fraud of contract" suit against the hospital for fraudulently filing and collecting insurance benefits? Is the state or are its employees the owners of fringe benefits? Are fringe benefits considered part of a compensation package?

Your letter sets forth a fact situation involving hospital treatment received by a State employee, which prompts your questions.

S.C. Code Ann. §8-15-10 (1976) provides:

Except as otherwise provided or as prohibited by the Constitution of this State, the compensation of all officers and employees of the State or any political subdivision, department or agency thereof shall be as from time to time provided by the General Assembly or the particular political subdivision, department or agency concerned, as the case may be.

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The 1987-88 appropriations act provided:

16.13. The provision of group health, life, accidental death and dismemberment and disability insurance for active and retired employees of the state and the public school districts of South Carolina and their eligible dependents shall be in accord with such plans as may be determined by the Budget and Control Board to be equitable and of maximum benefit to those covered.

It is the intent of the General Assembly that the amounts appropriated in this Act shall be applicable to a uniform plan of insurance for all persons covered.

16.14. The Budget and Control Board shall set aside in a separate continuing account, appropriately identified, in the State Treasury all funds, State appropriated and other, received for actual health insurance premiums due. These funds may be used to pay the costs of administering the health insurance program. All monies in the Health Insurance Account for state employees and retirees must be used for insurance benefits. These funds must be used to maintain a reserve not less than an average of one and one-half month's claims.

1987 S.C. Acts 170, §§16.13 & 16.14. S.C. Code Ann. §8-11-80 (1976) provides:

The Comptroller General may, upon request of employees of the State, make deductions from the compensation of the employees for the payment of premiums for life, hospital, and other types of insurance plans as are in force and a member of the deduction system on the effective date of this act. The Comptroller General may not make deductions where deductions are made for less than two hundred fifty state employees in any particular plan. The Comptroller General shall pay over to the insurance company, or its agents designated to receive the funds, all amounts so collected or withheld. No part of the cost of the insurance or expenses incidental to the payroll deduction must be

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borne by the State, nor must any liability whatsoever be incurred by the State in connection with the deduction, nor may the State in any way aid insurance companies in the solicitation of policies by expressly or implicitly endorsing any particular insurance plan or company.

By §8-11-80, the South Carolina General Assembly has authorized deductions for group life, hospital, and other specified insurance when requested or authorized by a State employee. Accord, S.C. Att'y Gen. Op. #86-57 (May 14, 1986).

According to 63A Am. Jur. 2d Public Officers and Employees §431, "[t]he term 'compensation' when employed in reference to the remuneration of public officers means pay for doing all that may be required of the official, whether it is in the form of a fixed salary, or fees, or commissions, or perquisites of whatsoever character. [Footnotes omitted.]" In addition,

[t]he term "perquisite" when used in connection with a public office means some emolument or profit beyond the salary payable to him. Fringe benefits, such as the payment of group medical and hospital plans, are valuable perquisites of an office, and are as much a part of the compensation of office as a weekly pay check; such payments for fringe benefits may not constitute "salary," in the strictest sense of the word, but they are compensation. [Footnotes omitted.]

63A Am. Jur. 2d Public Officers and Employees §450. Consequently, in response to your fourth question, fringe benefits are apparently considered part of compensation.

In response to your first and third questions, the State provides a health insurance program for State employees and retirees which is administered, currently, by Blue Cross/Blue Shield. See, e.g., 1987 S.C. Acts 170, §§16.10 - 16.14. Because the State is essentially a self-insurer concerning this health insurance program, the traditional risk insurance policy or contract is not present. Therefore, ownership of such a policy is not at issue. In addition, your letter does not indicate that the State employee had a problem getting Blue Cross/Blue Shield to pay the claim.

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For the State employee to prove fraud in a suit against the hospital, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Florentine Corp., Inc. v. PEDDA I, Inc., 287 S.C. 382, 339 S.E. 2d 112 (1985). Each element must be proved by clear, cogent and convincing evidence. Failure to prove any element is fatal. King v. Oxford, 282 S.C. 307, 318 S.C. 2d 125 (Ct. App. 1984). The scope of an Attorney General's Opinion is to address questions of law rather than investigations of fact. S.C. Att'y Gen. Ops., Nov. 18, 1986; Apr. 5, 1984; Dec. 12, 1983. This Office is not authorized or empowered to make factual determinations. S.C. Att'y Gen. Op., Nov. 18, 1986. Because your second question would require factual determinations, I cannot provide a definitive answer to that question.

Perhaps an appropriate action in the situation you describe is to notify the hospital, the Retirement Systems of the State Budget and Control Board, and Blue Cross/Blue Shield of the discrepancy between the bill and the services received. The Retirement Systems of the State Budget and Control Board and Blue Cross/Blue Shield can then evaluate taking any action to recover any overpayment to the hospital.

If I can be of further assistance, please do not hesitate to contact me.

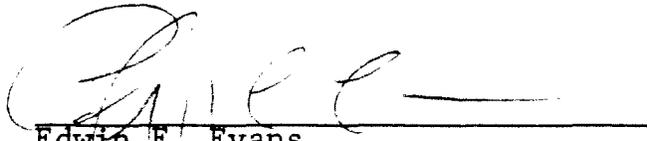
Sincerely,

Samuel L. Wilkins
Samuel L. Wilkins
Assistant Attorney General

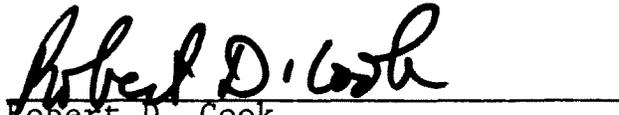
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REVIEWED AND APPROVED BY:

A handwritten signature in cursive script, appearing to read "E. Evans", written over a horizontal line.

Edwin E. Evans
Chief Deputy Attorney General

A handwritten signature in cursive script, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook
Executive Assistant for Opinions