



ALAN WILSON
ATTORNEY GENERAL

April 28, 2026

Mr. Grayson Lambert, Chief Legal Counsel
Office of the Governor
1100 Gervais Street
Columbia, SC 29201

Dear Mr. Lambert:

Attorney General Alan Wilson referred your letter to the Opinions section for a response. You seek an opinion regarding whether membership on the Board of Directors of the South Carolina Medical Malpractice Association constitutes an “office” for purposes of the dual office holding prohibition of the South Carolina Constitution. *See* S.C. Const. art. VI § 3 and XVII § 1A. While this is an admittedly close case, we think a court would likely conclude that no, membership on the Board of Directors of the South Carolina Medical Malpractice Association does not constitute holding an office.

Law/Analysis

Article VI, Section 3 of the South Carolina Constitution prohibits any person from simultaneously holding “two offices of honor or profit.” The limitation does not apply to notaries, militia officers, constables, constitutional delegates, or members of lawfully and regularly organized fire departments. S.C. Const. art. VI, § 3. “One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer.” *Sanders v. Belue*, 78 S.C. 171, 174, 58 S.E. 762, 763 (1907). A position is considered an office for purposes of dual office holding when “ ‘the power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public.’ ” *Segars-Andrews v. Jud. Merit Selection Comm’n*, 387 S.C. 109, 124, 691 S.E. 2d 453, 461 (2010) (quoting *Willis v. Aiken County*, 203 S.C. 96, 103, 26 S.E.2d 313, 316 (1943)). When determining whether a position is an office under our constitution, relevant considerations include “whether the position was created by the legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond and oath are prescribed or required; [and] whether the one occupying the position is a representative of the sovereign; among others.” *State v. Crenshaw*, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (1980). No single characteristic is conclusive, and it is not necessary that all criteria be met. *Id.*

The South Carolina Medical Malpractice Association (“Association”) was formed on January 1, 2020, through a merger of the Patients’ Compensation Fund (“Fund”) and the Joint

Underwriting Association (“JUA”). *See* S.C. Code Ann. § 38-79-300 (Supp. 2025). The Association serves as a continuation of the JUA and assumes the obligations and responsibilities of the Fund while the Fund was wound down. *Id.* To understand the role and purpose of the Association, a brief review of the history of the Fund and JUA is helpful. The Fund was created by the General Assembly in 1976 to pay medical malpractice claims in excess of statutorily defined amounts on behalf of participating licensed health care providers. *See* Act No. 674 § 2, 1976 S.C. Acts 1773; *see also* S.C. Code Ann. § 38-79-420 (2015), *repealed by* Act. No. 67 § 2, 2019 S.C. Acts 409. Participation in the Fund was optional. *See* S.C. Code Ann. § 38-79-440 (2015), *repealed by* Act. No. 67 § 2, 2019 S.C. Acts 409. In short, the Fund provided optional excess medical malpractice insurance for licensed health care providers who wished to supplement their own medical malpractice coverage. In contrast, the JUA was created by the General Assembly in 1975 to ensure the availability of medical malpractice, and other types of professional liability, insurance. *See* Act No. 306 § 3, 1975 S.C. Acts 823. As amended, the JUA, and now the Association, serves as a market of last resort for medical malpractice insurance. S.C. Code Ann. § 38-79-120(2) (Supp. 2025). Membership in the JUA is mandatory for all insurers writing medical malpractice insurance in the State. *Id.* Thus, the purpose and object of the JUA is distinct from the Fund. The JUA exists to govern insurers and guarantee the availability of medical malpractice insurance for health care providers, while the Fund existed to provide optional excess insurance coverage to health care providers.

The Association, in its current form, was created by the General Assembly. *See* S.C. Code Ann. § 38-79-300 (Supp. 2025). The Association retains the obligations and responsibilities of the JUA, § 38-79-300(B), including the authority to issue medical malpractice insurance, § 38-79-130(1) (Supp. 2025); underwrite medical malpractice insurance, § 38-79-130(2); cede and assume reinsurance, § 38-79-130(3); and adopt a plan of operation which governs its conduct and its members, § 38-79-140 (Supp. 2025). The Association is governed by a Board of Directors. § 38-79-300(C)(4). The Board consists of eleven members, all appointed by the Governor, as follows:

- (a) four medical providers after consultation with the South Carolina Medical Association, the South Carolina Hospital Association, the South Carolina Nurses Association, and the South Carolina Dental Association;
- (b) four representatives from the medical malpractice insurance industry representing member companies of the association after consultation with the three largest members;
- (c) two consumer representatives;
- (d) one independent insurance agent or broker not affiliated with one of the three medical malpractice insurance companies already represented on the board; and
- (e) the Director of the Department of Insurance, who serves ex-officio and does not have any voting privileges.

Mr. Grayson Lambert
Page 3
April 28, 2025

S.C. Code Ann. § 38-79-300(C)(4). Members of the Board serve four-year terms and may be reappointed for two additional four-year terms. § 38-79-300(E). Members of the Board have a fiduciary relationship to the Association. § 38-79-300(F). The Board of Directors, on behalf of the Association, has the authority to select and oversee an administrator which conducts the business of the Association, formerly the JUA. § 38-79-300(D).

Having reviewed the Association and Board of Directors history and authority, we can now consider whether membership on the Board constitutes holding an office. We think it does not. While the Association, and its predecessors, were created by the General Assembly and members of the Board are appointed by the Governor for terms of a length set by the General Assembly, these facts are not dispositive. Members of the Board do not receive compensation for their services, *see* § 38-79-40(A) (2015), and do not, as far as this Office is aware, take an oath or carry a bond.

Beyond gubernatorial appointment of Board members, the Association lacks many of the hallmarks frequently associated with an office. For example, the Association is not authorized to sell debt; the Association does not have any regulatory authority; the Association does not make or enforce laws. Further, many, if not all, of the Association's actions are subject to approval or oversight by the Director of the Department of Insurance. *See e.g.*, S.C. Code Ann. §§ 38-79-130(1) (Supp. 2025), -140(4) (Supp. 2025), -180 (Supp. 2025), -200 (Supp. 2025), -210 (Supp. 2025), -220 (Supp. 2025), -280 (Supp. 2025), -290 (Supp. 2025). This office has consistently opined that a member of a body that possesses purely advisory responsibilities is not an office holder. *See e.g.*, Ops. S.C. Att'y Gen., November 25, 2025 (Health Planning Committee); 2023 WL 6445003 (Sept. 21, 2023) (Palmetto College Board of Visitors); 2023 WL 2358257 (Feb. 23, 2023) (Richland County Conservation Commission); 2021 WL 303801 (Jan. 14, 2021) (Respiratory Care Committee); 2006 WL 1877113 (June 1, 2006) (Regional Education Center Advisory Board); 2004 WL 439320 (Feb. 24, 2004) (Beaufort County Solid Waste and Recycling Board); 2003 WL 21040133 (Jan. 15, 2003) (Town of Hilton Head's Accommodations Tax Advisory Committee); 1977 WL 24461 (April 26, 1977) (Waccamaw Regional Planning and Development Council).

This Office has previously stated that the ability to promulgate regulations signals excising the authority of the sovereign. Op. S.C. Att'y Gen., 2010 WL 1370087 (March 18, 2010) (citing Ops. S.C. Att'y Gen., 2004 WL 885191 (April 20, 2004); 2005 WL 1024608 (April 14, 2005); 2008 WL 5476553 (Dec. 18, 2008)). The Association is not authorized to promulgate regulations. It does have the authority to adopt and amend a plan of operation, but much like the regulations promulgated by the Cherokee Foster Care Review Board and considered in our prior opinion of December 18, 2008, the scope of the plan of operation relates purely to the Association's conduct, not the conduct of other entities. *See Op. S.C. Att'y Gen.*, 2008 WL 5476553 (Dec. 18, 2008) ("However, section 20-7-2379(E) limits the scope of the Board's regulations to procedures relating to the Board's authority given under section 20-7-2379, which consist solely of the authority to review and make recommendations to the Governor or the Legislature regarding foster care

Mr. Grayson Lambert
Page 4
April 28, 2025

policies and procedures. Accordingly, we do not believe the Board's ability to promulgate regulations constitutes an exercise of the sovereign power of the State." As a result, the adoption and amendment of the plan of operation does not constitute the promulgation of regulations or exercising the power of the sovereign.

Additionally, the Association does not appear to directly receive state funds. Instead, it appears to be funded through policy holder premiums and assessments against its membership (insurance providers). Section 38-79-220(7) provides for public funds to be expended to help pay down the accumulated debt of the Fund, but the money for this is routed to the Department of Insurance not directly to the Association. S.C. Code Ann. § 38-79-220(7) (Supp. 2025). This again weighs against membership on the Board constituting an Office.

Finally, according to the South Carolina Secretary of State's Business Entities Search, the South Carolina Medical Malpractice Association, and the South Carolina Medical Malpractice Liability Joint Underwriting Association before it, are registered as nonprofit entities. On numerous occasions we have concluded that membership on the board of directors of a private nonprofit corporation would not constitute an office for purposes of dual office holding. Op. S.C. Att'y Gen., 2005 WL 2415980 (Sept. 14, 2005) (citing Ops. S.C. Att'y Gen., 2005 WL 1983350 (July 5, 2005) (South Carolina Museum Foundation); 1993 WL 720100 (April 12, 1993) (Community Young Men's Christian Association of Rock Hill, S.C.); 1991 WL 634921 (January 11, 1991) (Francis Marion Foundation); 1988 WL 383564 (Oct. 18, 1988) (Children's Trust Fund of South Carolina); 1987 WL 342467 (Sept. 8, 1987) (Horry County Council on Aging); 1983 WL 142750 (Oct. 20, 1983) (York County Council on Aging, Inc.)).


The Association was created to provide a public benefit, namely a market of last resort for medical malpractice insurance, but it is difficult to ascertain any authority of the sovereign exercised by the Association. Exercising the authority of the sovereign is the crucial question when considering dual office holding questions, so a balancing of the facts leads us to conclude that members of the Board do not hold an office as contemplated in the South Carolina Constitution's prohibition on dual office holding.

Conclusion

You asked whether membership on the Board of Directors of the South Carolina Medical Malpractice Association constitutes an office for purposes of the dual office holding prohibition of the South Carolina Constitution. *See* S.C. Const. art. VI § 3 and XVII § 1A. We think a court would likely conclude that no, membership on the Board of Directors of the South Carolina Medical Malpractice Association does not constitute an office.

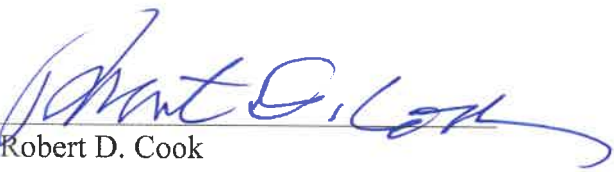
Mr. Grayson Lambert
Page 5
April 28, 2025

Sincerely,



David Leggett
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REVIEWED AND APPROVED BY:



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