

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

August 21, 1989

The Honorable Isadore E. Lourie
Senator, District No. 21
P. O. Box 142
Columbia, South Carolina 29202

Re: Section 33-55-210(b)

Dear Senator Lourie:

You have asked the opinion of this Office upon the application of Section 33-55-210, Code of Laws of South Carolina, 1976 (1988 Cum. Supp.), to physicians providing medical services in certain factual situations. This Office has previously concluded that Section 33-55-210 (as last amended by Act 674 of 1988) provides a qualified immunity "when a physician 'renders medical services voluntarily and without compensation, expectation or promise thereof ... [and] [t]he agreement to provide voluntary non-compensated services [is] made before the rendering of the service by the [physician].'" Each of the scenarios presented by you involve the provision of physical evaluations for high school athletes.

1. Athletes are done in a screening physical fashion by multiple physicians at a regional hospital. No fee is charged. The physicians donate their time.

Assuming the physician did not receive any compensation nor had any promise or expectation of compensation for the rendering of the physical, and assuming that the physician entered into an agreement to provide this voluntary medical service prior to the rendering of the physical, then the qualified immunity provided by Section 33-55-210(b) would probably attach to the physician. I again emphasize that the agreement to provide the medical services without any compensation must be entered prior to the rendering of the medical services.

2. The physicals are done at local high schools. A fee is charged and the fee is made payable to the [local] medical society. Expenses are paid out of the fee charged which include nurses' salaries, medical supplies used in the exams. Any funds left over, of which there are some, are then paid on a pro rata basis back to the individual schools who participate in the physical exams based upon the number of athletes who participate. No physician is paid for his donated time for the physicals.

Assuming the execution of the formal agreement to provide the non-compensated services, the payment of a fee to the medical society probably does not remove the qualified immunity of the volunteer physician, provided the volunteer physician does not receive any compensation or promise of compensation for performing the medical services. Of course, the nurses who receive compensation are not entitled to the qualified immunity provided by Section 33-55-210(b).

3. A fee [for the physical] is charged made payable to the local Athletic Medicine Foundation for the physicals. The physician time is all donated. No physician is paid. Nurses, if paid, are paid by the individual physicians for their efforts. Supplies are paid for by the physicians. Monies are maintained in an interest bearing account and are distributed to the schools, upon request, again based upon a pro rata rate of their participation.

1. A licensed nurse constitutes a "licensed health care provider" as that term is used in Section 33-55-210(b); thus, assuming that the nurse rendered medical services voluntarily and without compensation or the expectation or promise of compensation, and the agreement to provide such voluntary non-compensated services was made before the rendering of the service, the nurse would probably be protected by the qualified immunity provided by Section 33-55-210(b). It is doubtful that a local medical society constitutes a "licensed health care provider" as that phrase is used in Section 33-55-210(b); nonetheless, both the compensated nurse and the local medical society may be entitled to the qualified immunity or the limitation upon recovery in a civil action, respectively, provided in Section 33-55-210(a). That question is not addressed herein.

The Honorable Isadore E. Lourie
Page 3
August 21, 1989

Similar to number two, the charging of a fee by the local foundation does not defeat the qualified immunity of the volunteer physician, provided he does not receive any compensation for the provision of the medical services and provided the formal agreement is properly executed. Again, paid medical support personnel are not entitled to the qualified immunity provided by Section 33-55-210(b); but, however, they may be entitled to other statutory immunities. See footnote 1.

4. You also ask for guidance in the drafting of a release or agreement in order to implement Section 33-55-210(b). I suggest the following points be included in any agreement:

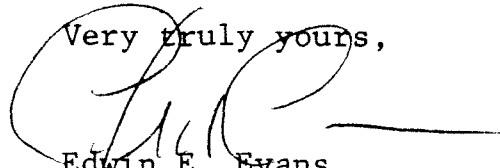
- (1) The agreement should be executed by the patient (and his parent or guardian if he is a minor), the volunteer physician and the organization sponsoring the physical;
- (2) A representation by the volunteer physician that he is not receiving any compensation for the performance of the medical services and that he has no expectation or promise of any compensation from any source;
- (3) An acknowledgement by the patient (or his parent or guardian if appropriate) that he understands that the physician performing the medical services is providing the services voluntarily and without compensation, and, a statement that in accordance with South Carolina law, a voluntary physician cannot be liable for any civil damages unless in the course of the rendering of the voluntary medical services the physician is guilty of gross negligence or willful misconduct;
- (4) A representation by the sponsoring organization that the physician is performing the medical services without compensation and that they will not provide any compensation to the physician for the performance of the services.

I do not suggest that the agreement to provide voluntary non-compensated services must be in writing, since that is not an express requirement of Section 33-55-210(b) or that the agreement would have to contain all of the provisions noted herein; these are simply suggestions. In addition, it may be easier to implement separate agreements between the volunteer physician and the sponsoring organization and between the patient and the voluntary physician.

The Honorable Isadore E. Lourie
Page 4
August 21, 1989

Please let me know if I may provide any further assistance.

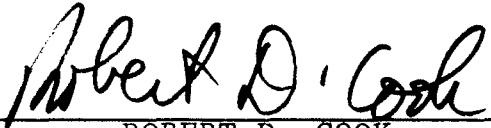
Very truly yours,



Edwin E. Evans
Chief Deputy Attorney General

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REVIEWED AND APPROVED:



ROBERT D. COOK
EXECUTIVE ASSISTANT FOR OPINIONS