The State of South Carolina

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The Honorable Edwin E. Bowen, Jr.
Executive Director
South Carolina Board of Chiropractic Examiners
1001 Assembly Street
Columbia, South Carolina 29201

Dear Mr. Bowen:

In your capacity as Executive Director of the South Carolina Board of Chiropractic Examiners, you have asked for this office's guidance relative to two questions. First, you ask:

> A patient is treated for an on the job injury that is compensable. At the hearing in front of the Industrial Commission, the Commissioner chooses according to facts and his opinion, the date the patient has reached maximum improvement. He chooses a date of April 1, 1982. (Fictitious) The attending chiropractor has treated the patient until November of 1984. (Fictitious) As of the April 1st date, the Commissioner states that according to his opinions and records in the fact, the patient reaches maximum improvement. The chiropractor testifies at an earlier deposition that, in his opinion, that the treatment through November was necessary and was in conjunction with the Workmen's Compensation injury. Based on the fact that the law of the land has ruled April 1 as the maximum improvement date can the chiropractor now submit the remainder of the bill to a group insurance carrier? Further, can he submit this bill without committing fraud? Keeping in mind that he has already testified that, in his opinion, the treatment until November was necessary as part of the comp injury. Once again, keep in mind that the Commission states the patient reached maximum improvement. Therefore, it would appear that the treatment after April 1 would be toward the chronic manifestations of the injury, but not directly in relation to the injury, at least in his opinion.

In responding to your request, I first advise that this office in the issuance of its opinion does not undertake to determine facts; our response to your inquiry must be based upon the factual assumptions suggested by you. I also caution that any response to your inquiry is dependent upon the precise language of the different group insurance policies, and thus we can reach no definitive conclusion. Nonetheless, we will provide legal guidance wherever possible.

The question presented involves the interplay that often occurs between the Workers' Compensation Law [§ 42-1-10 et. seq. of the South Carolina Code] and the provision of health care benefits through health (or accident) insurance. Ordinarily, in the absence of an express provision in a group health insurance policy, a claimant may recover under both the Compensation Law and the health policy. Nationwide Mutual Insurance Company v. Schilansky, 176 A.2d 786 (Col., 1961); Smith v. Allied Mutual Casualty Company, 339 P.2d (Kan., 1959); Cf., Shealy v. American Health Insurance Company, 220 S.C. 79, 66 S.E.2d 461 (1951). Nonetheless, most modern health policies generally provide for exclusion of benefits if the injuries or disease arise out of the operation of employment if the injuries or diseases are covered by workers' compensation.[1] See, Appleman, Insurance Law and Practice, § 564; 40 A.L.R. 3d, Worker's Compensation - Other Insurance, p. 1015. Importantly, however, where "the insured has received, or has a right to receive, benefits under the workman's compensation laws, his right to recover benefits under an accident, hospital, or medical expense policy generally depends on the applicable provisions of such policy." 40 A.L.R. 3d, id., p. 1016.

In South Carolina, we have the benefit and instruction of several Court decisions which relate to the interplay between workers' compensation and health insurance benefits; however, I again reiterate that the express language of each policy must be examined to determine the application of any exclusion.

The Court in Shealy v. American Health Insurance Company, id., instructs that recovery under the workers' compensation laws does not in and of itself defeat benefit entitlement under a health insurance policy for the same injury in the absence of an

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1/ The following is an example of the workers' compensation or occupation exclusion ordinarily found in group health policies: [I]njuries shall not include injuries for which benefits are provided under workmen's compensation...or injuries occuring while the insured person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit. See, R69-34E(4) and (5), Rules, S.C. Insurance Department.

express exclusion. Moreover, the decision concluded that workers' compensation is not "other insurance" as that term is ordinarily understood and used in health insurance policies.

In Pitts v. Glenfalls Indemnity Company, 222 S.C. 13, S.C.2d 174 (1952), the Court in its review of an exclusion addressing workers' compensation benefits, articulated the longstanding rules of interpretation relating to insurance policies. The Court noted that any ambiguity relating to the exclusion is construed favorable to the insured and exceptions to coverage will be narrowly defined. After finding the particular exclusion ambiguous, the Pitts Court allowed recovery of benefits from the health policy of funeral expenses that exceeded the reimbursement of funeral expenses provided by workers' compensation.

Cooper v. John Hancock Mutual Life Insurance Company, 248 S.C. 34, 151 S.E.2d 68 (1966) instructs that the purpose of the workers' compensation exclusion in a health policy is to prevent double recovery and provide coverage for injuries or diseases that are outside of the workers' compensation law. Significantly, the Court found that the conclusion by the Industrial Commission that plaintiff's health problem was not covered by workers' compensation was conclusive, although, of course, the health carrier was not a participant in that proceeding. Other cases relating to this interplay worth reading are Tobin v. Beneficial Standard Life Insurance Company, 675 F.2d 606 (4th Cir., 1982), and Romanus v. Blue Cross and Blue Shield, 271 S.C. 164, 246 S.E.2d 97 (1978).

I point out that workers' compensation exclusions have often been construed as excluding health insurance benefits for any treatment related to a compensable injury or disease regardless of whether the compensation adequately covers all medical expenses. See, Wenthe v. Hospital Service, Inc., 100 N.W.2d 903 (Ia., 1960); Clevenger v. Westfield Company, 395 N.E.2d 375 (Oh., 1978); Phillips v. Prudential Insurance Company, 232 So.2d 480 (Ala., 1970); Keffer v. Prudential Insurance Company, 172 S.E.2d 714 (W.Va., 1970). But again, the scope of the exclusion depends entirely upon the language used in the policy. [Compare Pitts v. Glenfalls Indemnification Company, id., where the Court permitted recovery of the funeral benefits from the health carrier in addition to the funeral benefits provided by workers' compensation.] And moreover, some policies expressly authorize benefits to supplement workers' compensation. 40 A.L.R. 3d, id., p. 1016.

I additionally point out that again depending upon the express wording of the exclusion, work related injuries or diseases may be excluded regardless of whether workers' compensation is available. See, Brown v. Provident Life & Casualty Company, 241 S.E.2d 87 (N.C., 1978). In Brown, the Court applied a provision that excluded "injuries arising out of or in the

course of employment" although the patient was not covered by workers' compensation. The Court concluded that the exclusion was not dependent upon the existence of any other coverage, including workers' compensation.

As a subpart of your first inquiry, you specifically question whether an award by the Industrial Commission, which includes as a conclusion that the patient has reached maximum recovery, precludes recovery pursuant to a group health policy for additional treatment of the injury or disease. Again, the language of the exclusion is the key; nonetheless, I will attempt to provide some guidance as to the law in this area as well. The Industrial Commission is the forum authorized to determine whether an injury or disease is compensable under the Workers' Compensation Law. See, § 42-1-10 et. seq.. As to the patient (claimant) the Commission's rulings and findings related to workers' compensation ordinarily are conclusive. Pitts v. Glenfalls Indemnity Company, id.; Cf., Liberty Mutual Insurance Company v. Employer's Insurance of Wausau, et. al., ____ S.C. ___, 325 S.E.2d 566 (S.C. Appeals, 1985); Beall v. Doe, ___ S.C. ___, 315 S.E.2d 186 (S.C. Appeals, 1984); Larson's Workers' Compensation Law, § 79.72(a). Assuming that the group health policy excludes benefits for any injury or disease compensable under the workers' compensation laws, the final, unappealed rulings of the Industrial Commission finding that the injury or disease is compensable probably would bar a patient from pursuing a successful claim in litigation against the group health insurer.[2] Of course, the Industrial Commission's award would only preclude the patient from relitigating those issues decided in the compensation case; it would not preclude the litigation of issues related to the coverage provided by the health insurance since those issues would not ordinarily have been heard or decided by the Industrial Commission.

In summary, with regard to your first inquiry, I advise that whether a group health policy would exclude medical benefits for injury or disease for which the patient has been awarded workers' compensation depends entirely upon the express language of the exclusion. Some courts have read workers' compensation exclusions to be applicable to any injury or disease for which compensation is available regardless of the adequacy of the compensation. On the other hand, some courts have read such exclusions as not prohibiting benefits that supplement the workers' compensation if additional treatment is incurred. As long as the patient is candid in his disclosure, his request for coverage presented to the health insurer should not be considered fraudulent. Moreover, whether an award by the Industrial Commis-

2/ We assume in our response that the doctor is forwarding the request for coverage on behalf of the patient and the coverage benefits are the patient's and not the doctor's.

sion would preclude recovery under the health policy again depends upon the express exclusion. Ordinarily, the final award by the Commission would bar the patient from relitigating the findings related to the issues actually decided by the Commission; however, the Commission's final award would generally not preclude a patient from filing a claim under his group health policy.

You pose as a second question the following:

> A patient enters a chiropractor's service for treatment of an alleged on the job injury. After treatment is completed, a hearing in front of the Commission is held. The Commissioner ruled that the accident, in fact, never happened. Therefore, no benefits under the State Workmen's Compensation Act are due and payable. The chiropractor then has an outstanding bill. Under this situation, can he now submit the bill to the group carrier for payment? As in the first example, this is somewhat confusing. The patient alleges an on the job injury. The Commissioner, or essentially the law of the land, states that no injury happened. Once again, in my opinion, I think a bill can be sent to the insurance carrier and should be honored.

Of course, as earlier stated, the scope of the particular exclusion would control. If the exclusion applies only to those injuries or diseases for which compensation under the workers' compensation laws is available, (as compared, for example, with an exclusion for all work related injuries or diseases) the findings by the Commission that the injury or disease is not compensable under the Commission Act would likely be controlling as to the patient on that particular point. See, Pitts v. Glenfalls Indemnity Company, id. Whether the health carrier is bound by the Commission's findings as to the unavailability of workers' compensation benefits is not altogether clear. Pitts certainly suggests that result; however, the health carrier is clearly not a party to workers' compensation proceeding [See, Blue Cross and Blue Shield v. South Carolina Industrial Commission, 274 S.C. 204, 262 S.E.2d 35 (1980)] and thus, ordinarily, the health carrier would not be precluded from contesting findings made by the Industrial Commission since it has not had a full and fair opportunity to litigate the relative issues. CF., State v. Graham, 277 S.C. 389, 287 S.E.2d 495 (1982); Beall v. Doe, id.. I advise that further judicial clarification would be necessary before this uncertainty would be removed. In either event, however, the employee (claimant) is not barred from submitting a request for coverage to his health insurance carrier, and additionally, is not precluded from litigating a claim that his injuries or disease is not compensable under the workers' compensation laws since such a position would be consistent with the prior findings of the Industrial Commission.

Please call on me again if I may be of further assistance.

Very truly yours,

Edwin E. Evans
Deputy Attorney General

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REVIEWED AND APPROVED BY:

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