

## The State of South Carolina



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March 21, 1986

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

Re: S.C. Code Ann. § 56-11-110 (1976 & 1985 Supp.) and  
Op. Atty. Gen. No. 81-33 (April 2, 1981)

Dear Ed:

You recently provided me with a copy of a letter to you dated January 6, 1986, from H. W. Hulteen, D.C., requesting clarification and, perhaps, an amended opinion from this Office concerning S.C. Code Ann. § 56-11-110 (1976 & 1985 Supp.) and Op. Atty. Gen. No. 81-33 (April 2, 1981). Dr. Hulteen suggested that § 56-11-110 "does not prohibit a voluntary assignment of benefits toward obtaining medical care," but "merely prohibits subrogation or assignment to offset recovery of the injured claimant."

The standard employed by this Office for the review of an earlier opinion is that it must be clearly erroneous to be overruled or superseded. E.g., Op. Atty. Gen. (April 9, 1984). An opinion is clearly erroneous when, upon review, the Office is firmly convinced that a mistake has been made. Id.

Upon my review of Op. Atty. Gen. No. 81-33 (April 2, 1981), I find that it contains sound legal reasoning and an accurate interpretation of applicable law. Additionally, my review has uncovered no modifications of the law which would affect the validity of that earlier opinion.

Op. Atty. Gen. No. 81-33 (April 2, 1981) noted: "When the Automobile Reparation Reform Act [S.C. Code Ann. § 56-11-10 et seq. (1976)] was first passed in 1974, the statute provided that PIP [Personal Injury Protection] benefits recovered under § 56-11-110 could be subrogated or assigned, but only as provided in § 56-11-130(b)." [Emphasis added.] In fact, former S.C. Code Ann. § 56-11-110 (1976) provided, in pertinent part: "No benefit

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payable pursuant to this section shall be subject to subrogation or assignment except as provided for in § 56-11-130(b)." [Emphasis added.] Thus, former § 56-11-110 prohibited subrogation or assignment subject to one exception. See Tillotson v. State Farm Mut. Auto. Ins. Co., 268 S.C. 248, 233 S.E.2d 295 (1977). In 1978 by means of Act No. 569 which, among other things, deleted the words "except as provided for in § 56-11-130(b)" from the present S.C. Code Ann. § 56-11-110 (1976 & 1985 Supp.) and repealed § 56-11-130(b) in its entirety, the General Assembly effectively eliminated the sole exception to the general prohibition against subrogation or assignment. Consequently, the voluntary assignment suggested by Dr. Hulteen would have only been permissible under former § 56-11-110 if the voluntary assignment complied with the exception stated in § 56-11-130(b) before its repeal. Under the present § 56-11-110, the voluntary assignment suggested by Dr. Hulteen would be prohibited.

Because it is not clearly erroneous, Op. Atty. Gen. No. 81-33 (April 2, 1981) remains the opinion of this Office. If I can answer any further questions, please do not hesitate to contact me.

Sincerely,

*Samuel L. Wilkins*

Samuel L. Wilkins  
Staff Attorney

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REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions