

*February 1985*

# The State of South Carolina



## Office of the Attorney General

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July 29, 1985

John G. Richards, V, Chairman  
South Carolina Patients' Compensation Fund  
Post Office Box 21875  
Columbia, South Carolina 29221

Dear Mr. Richards:

### Questions:

- I. What constitutes "the first year membership fee" as used in § 38-59-150 of the Code of Laws of South Carolina, 1976, as amended?
- II. According to § 38-59-170(3) of the Code of Laws of South Carolina, 1976, as amended, is the South Carolina Patients' Compensation Fund required to maintain the records of the fund in accordance with generally accepted accounting principles?

Statutes: §§ 38-59-150 and 38-59-170, South Carolina Code of Law, 1976.

### Discussion:

The Board of Governors of the South Carolina Patients' Compensation Fund and the State Auditor have requested an opinion as to the interpretation of §§ 38-59-150 and 38-59-170(3) of the Code of Laws of South Carolina, 1976, as amended. Specifically with respect to § 38-59-150, interpretation of the term "the first year membership fee" is requested. As to § 38-59-170(3), inquiry is made as to whether maintenance of the fund's records, as well as preparation of an audited financial report by the State Auditor, must be in accordance with generally accepted accounting principles.

REQUEST LETTER

I. "The First Year Membership Fee"

Section 38-59-150 provides, in pertinent part:

Membership fees shall be set by the Board of Governors and the first year membership fees shall be not more than the Joint Underwriting Association's basic professional liability insurance premium level. The second year membership fee shall be seventy-five percent of the first year membership fee; the third year membership fee shall be fifty percent of the first year membership fee; and the fourth year membership fee shall be twenty-five percent of the first year membership fee. After payment of membership fees for four years, members shall pay only the assessments required to replenish the fund to the six million dollar level. When the fund is reduced to the five million dollar level, all members who have paid membership fees for four years shall pay annual assessments to be set by the Board of Governors, such assessment to be not more than ten percent of the first year membership fees.

One reading which at first blush is certainly reasonable and which is suggested by the State Auditor is that the first year membership fee for a fund participant is the medical malpractice Joint Underwriting Association's premium in effect at the time that the health care provider begins participation in the fund. Consequently, the participant's second, third, and fourth year fees are computed based upon that static first year fee.

On the other hand, the Board of Governors has considered the first year membership fee to fluctuate based upon changes in the Joint Underwriting Association's premiums. Therefore, the first year membership fee, upon which subsequent fees are based, is the Joint Underwriting Association's premium prevailing at the time that subsequent fees are computed. The Board of Governors has always applied its interpretation in setting membership fees.

Thus, we must determine which of these two interpretations (both of which are reasonable) is more consistent with the legislative intent and purpose and policy expressed by the statute.

It is axiomatic that the cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980).

It is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature. Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972).

The General Assembly amended § 38-59-150 in 1979. 1979 S.C. Acts No. 55. Act No. 55 was captioned as follows:

An Act To Amend Act 674 of 1976, As Amended, Relating To Medical Malpractice And The Patient's Compensation Fund, So As To Establish Standard Membership Fees And Assessments, To Remove The Dollar Limit Of The Fund And Provide For Assessments When The Fund Is Reduced To The Five Million Dollar Level.

The obvious legislative intent by this amendment was to standardize the membership fees and assessments. In effect, the legislature sought stability and conformity of the membership fees and assessments.

Based on this legislative intent, logic would mandate that the measurement of fees and assessments for each year be based on a standard that is uniform for all fund participants. Consequently, the Board of Governors would set "the first year membership fee" each year based on the Joint Underwriting Association's basic professional liability insurance premium level for that year and would compute all fund participants' fees and assessments based on that standard.

A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979).

In construing a statute, it is proper to look to the effects and consequences of the interpretation urged. State v. Patterson, 220 S.C. 269, 66 S.E.2d 875 (1951).

If the interpretation of § 38-59-150 proposed by the State Auditor were adopted, the Board of Governors would be burdened with the cumbersome task of maintaining a list of each fund participant and the membership fee in effect at the time that health care provider began participation in the fund to enable the Board of Governors to set that particular participant's assessment at any time when the fund is reduced to the five million dollar level. For example, if the fund were reduced to five million dollars in 1985, the Board of Governors would need information about each fund participant who was a member from the fund's inception and the amount of membership fees that such a fund participant paid initially to enable the Board of Governors to set that participant's assessment not to exceed ten percent of

the initial membership fee paid by that participant. Maintenance of such records and such individual computation would quickly become unwieldy with the further passage of time.

The construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons. Faile v. South Carolina Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976).

Since the inception of the fund, the Board of Governors has set fees and implemented the fund in a manner consistent with its interpretation. 1/ To now alter that interpretation would impose undue hardship on the Board of Governors to reconstruct the information necessary to set future assessments of the long-standing fund participants.

For the foregoing reasons, the words "the first year membership fee" used in § 38-59-150 are interpreted as the fluctuating fee set each year by the Board of Governors based upon the Joint Underwriting Association's basic professional liability insurance premium level prevailing at that time. This figure will represent the standard by which the Board of Governors will set the appropriate membership fees and assessments for all fund participants. Nevertheless, since there are two interpretations available in the instant matter, it would be advisable to seek legislative clarification.

## II. Method of Record Keeping for Patients' Compensation Fund

Section 38-59-170(3) provides:

On or before December thirty-first of each year the State Auditor shall audit the records of the fund and shall furnish an audited financial report to all fund participants and to the Department of Insurance, to the Legislative Audit Council, and to the Budget and Control Board, such reports shall be prepared in accordance with generally accepted accounting principles.  
[Emphasis added.]

When a statute is plain and unambiguous, it should be applied literally because the legislative design is unmistakable. Duckworth v. Cameron, 270 S.C. 647, 244 S.E.2d 217 (1978).

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1/ Additionally, this office has been advised that the legislative committee which developed this legislation never considered a "permanent" fact membership fee for each member. While this fact is not itself dispositive of the issue, it is perfectly consistent with this Office's interpretation of "first year membership fee" as used in § 38-59-150.

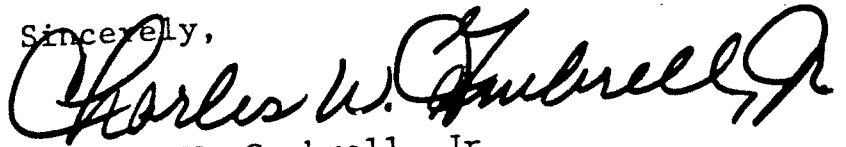
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No ambiguity exists in § 38-59-170(3). The statute clearly states that the audited financial reports furnished by the State Auditor "shall be prepared in accordance with generally accepted accounting principles.

Section 38-59-170(3) does not speak of any method of record keeping required for the Patients' Compensation Fund. Of course by implication, the statute requires that whatever method of record keeping is used must enable the State Auditor to prepare the audited financial report in accordance with generally accepted accounting principles.

Consequently, § 38-59-170(c) allows the Patients' Compensation Fund to maintain its records by any method that enables the State Auditor to prepare the audited financial report in accordance with generally accepted accounting principles.

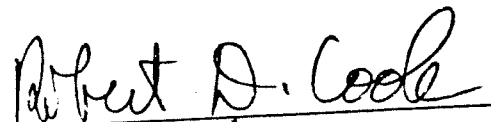
Sincerely,



Charles W. Gambrell, Jr.  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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Robert D. Cook  
Executive Assistant for Opinions