

1982 WL 189308 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 28, 1982

\*1 Larry W. Propes  
General Counsel  
South Carolina Department of Mental Health  
Post Office Box 485  
2414 Bull Street  
Columbia, South Carolina 29202

Dear Mr. Propes:

In a letter to this office you questioned whether the Department of Mental Health can purchase tort liability coverage through the South Carolina Patients' Compensation Fund to supplement the coverage procured through the Division of General Services. As you referenced in your letter, this office in an opinion dated December 12, 1977, determined that pursuant to the provisions of Act No. 182 of 1977, now codified as [§ 1-11-140 of the 1976 Code of Laws](#), as amended, the Department of Mental Health was limited to procuring tort liability insurance from the Department of General Services exclusively. However, in your letter you indicated that you had received a letter from Mr. Cal Stewart with the South Carolina Department of Insurance, a copy of which you enclosed, which indicated that the Department of Mental Health could obtain coverage through the Patients' Compensation Fund. Mr. Stewart interprets the Fund as not being tort liability insurance.

Since receiving your letter I have reviewed the statutory provisions establishing the Patients' Compensation Fund, § 38-59-110, et seq. of the 1976 Code of Laws, as amended, and discussed the matter with Mr. Stewart and an attorney with the Department of Insurance, Ms. Sarah Majors. Furthermore, in researching the matter I have located a previous opinion of this office dated April 12, 1978, a copy of which is enclosed, which concerned the question of whether the Department of Health and Environmental Control could purchase coverage from the Patients' Compensation Fund for the physicians employed by the Department to supplement the coverage procured from General Services. Such opinion states that ' . . . the specific language of . . . (Act No. 182 of 1977) . . . clearly indicates an intent for the State to purchase employees' malpractice insurance only through General Services.' Therefore, coverage through the Patients' Compensation Fund was not authorized.

I discussed the matter with Ms. Majors to get her interpretation as to whether the coverage provided by the Patients' Compensation Fund could be interpreted as insurance. After reviewing the matter, she informed me that based upon the manner in which the Fund was established and operates, in her opinion, it could be reasonably interpreted to be insurance. However, I stress that this is not a formal opinion from the Insurance Department.

Based upon the above, it appears that the earlier referenced opinion of this office which indicates that the Department of Health and Environmental Control was not authorized to supplement the coverage procured from General Services with coverage from the Patients' Compensation Fund, must control as to the matter of the Department of Mental Health obtaining such additional coverage. Therefore, such coverage likewise does not appear to be authorized.

\*2 If there is anything further, please advise.  
Sincerely,

Charles H. Richardson  
Assistant Attorney General

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