



ALAN WILSON  
ATTORNEY GENERAL

April 18, 2011

The Honorable T. Scott Beck  
Chairman, Workers' Compensation Commission  
Post Office Box 1715  
Columbia, SC 29202-1715

Dear Chairman Beck:

We are in receipt of your letter requesting an opinion of this Office regarding a "perceived contradiction" in Title 42 (Worker's Compensation) of the South Carolina Code. Specifically, you note that section 42-3-220 permits the Workers' Compensation Commission to enforce the collection of any fines or penalties provided by this **Title** (emphasis yours) and further that any such fines and penalties shall be used for the purpose of paying salaries and expenses of the Commission. However, section 42-3-175 specifically provides that fines collected pursuant to this **section** (emphasis yours) must be submitted to the General Fund. You state that it is the Commission's position that section 42-3-220 is the controlling statute for all fines and penalties collected by the Commission and that those revenues are to be used for salaries and expenses. You further note that you believe section 42-3-175(B)(3) is applicable only to Department of Insurance sanctions. However, as you acknowledge that there is room for interpretation, you request an opinion from this Office regarding the same. This opinion is based on prior opinions, case law, as well as statutory construction.

#### **Law/Analysis**

S.C. CODE ANN. § 42-3-220 provides: "The Commission may, by civil action brought in its own name, enforce the collection of any fines or penalties provided by this Title and such fines and penalties shall be used for the purpose of paying salaries and expenses of the Commission." S.C. CODE ANN. § 42-3-175(A)(1), which addresses an insurer's<sup>1</sup> failure, without good cause, to authorize medical treatment and/or pay benefits in violation of an order of the Commission, authorizes the Commission to "impose sanctions for willful disobedience of an order, including, but not limited to, a fine of up to five hundred dollars for each day of the violation." Subsection (A)(2) mandates notification to the Department of Insurance in said situations and provides that, should the Director of the Department of Insurance determine that there has been a violation of Title 38 (Insurance), he may impose penalties. Thereafter, subsection (B)(1) provides for the notification of the Director of

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<sup>1</sup> In addition to insurers, this section includes self-insured employers, self-insured funds, and adjusters.

the Department of Insurance and the possible revocation of an insurer's license should the Director of the Department of Insurance find nonpayment was intentional three or more times in a two year period. Subsection (B)(2) begins, "[f]or purposes of this **section**," and then defines what constitutes a "pattern" with regard to an insurer's failure to pay awards. (emphasis added). Finally, subsection (B)(3) mandates that "[a]ll fines collected pursuant to this **section** must be submitted to the general fund." (emphasis added).

As we stated in a prior opinion of this Office:

"All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." In re Hosp. Pricing Litig., King v. AnMed Health, 377 S.C. 48, 54, 659 S.E.2d 131, 134 (2008)). Furthermore, "[s]ections which are part of the same statutory law of the State must be construed together. In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. Statutes pertaining to the same subject matter must be harmonized if at all possible." In Interest of Doe, 318 S.C. 527, 531-32, 458 S.E.2d 556, 559 (Ct. App. 1995) (citations omitted).

Op. S.C. Att'y Gen. (July 11, 2008).

It appears, based on the rules of statutory construction stated above, that § 42-3-175(B)(3) applies only to fines collected by the Department of Insurance. The placement of section B(3) under section B, as opposed to labeling it section "C," indicates legislative intent for it to apply to the subject matter addressed in section B (i.e. the repercussions from the Department of Insurance to an insurer for repeated failure to pay benefits). Although the language in § 42-3-175(B)(3) stating that it applies to "[a]ll fines collected pursuant to this **section** . . ." may appear ambiguous as to whether it applies to § 42-3-175 as a whole or to only to section B, the legislature also chose the word "section" in § 42-3-175(B)(2) to refer only to section B of the statute, as opposed to the statute as a whole.<sup>2</sup> Accordingly, reading the statute as a whole, it is logical that the legislature intended § 42-3-175(B)(3) to apply only to section B of the statute, which addresses actions to be taken by the Department of Insurance.

Furthermore, § 42-3-175(A)(2) provides that after the Workers' Compensation Commission has notified the Department of Insurance of an insurer's failure to authorize and pay benefits for medical treatment, if the Director of the Department of Insurance determines that there has been a violation of

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<sup>2</sup> §42-3-175(B)(2) states: "For purposes of this **section**, a pattern is established upon an insurer's failure to pay an award at least three times within a two-year period by failing to pay: . . ." (emphasis added) It is plain that the term "section" refers to Section B of the statute because §42-3-175(B)(1) addresses the discovery of a pattern of an insurer failing to pay benefits pursuant to an award. Section A of § 42-3-175 does not address said "pattern" of conduct.

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Title 38, he may impose penalties, including, but not limited to, penalties pursuant to § 38-2-10. As §42-3-175(B) simply addresses a pattern of the same behavior (an insurer failing to pay benefits pursuant to an award), clearly the Department of Insurance has the authority to impose penalties for this even more egregious conduct. Thus, the “fines” provided for in §42-3-175(B)(3) logically appear to pertain to section B for this reason as well.

Moreover, as you stated in our phone conversation and in your letter, the Workers’ Compensation Commission has a longstanding practice of adhering to § 42-3-220 as the controlling statute for all fines and penalties collected by the Commission and uses the revenue from said fines and penalties for the purpose of paying salaries and expenses of the Commission, as mandated by the statute. Significantly, the comparable statute in Title 38 (Insurance) provides: “All fees, taxes, penalties, and interest collected by the director or his designee under this title, unless specifically provided otherwise, must be deposited by the director or his designee in the **general fund** of the State.” S.C. CODE ANN. § 38-7-170 (emphasis added). As the Legislature mandated that the fines provided for in § 42-3-175(B)(3) be submitted to the general fund, this is further evidence that the Legislature intended § 42-3-175 to apply to fines collected by the Department of Insurance.

#### Conclusion

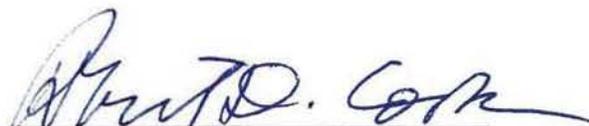
Based on the rules of statutory construction and particularly (1) the placement of the section within the statute, (2) the legislature’s use of the word “section” to indicate the subsection in the statute, (3) the Department of Insurance’s authority to impose fines pursuant to the statute, and (4) the language directing the fines to go to the general fund, it is the opinion of this Office that § 42-3-175(B)(3) applies only to section B of the statute. Accordingly, sanctions imposed by the Workers’ Compensation Commission pursuant to § 42-3-175(A)(1) fall under § 42-3-220, and the revenue from said fines and penalties is to be used for paying the salaries and expenses of the Commission, as mandated by said statute.

Sincerely,



Elizabeth Ann L. Felder  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General