



GOVERNMENT OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE

December 12, 2007

RULING LETTER NO.: 2007-83-AP

TO ALL SURPLUS LINES BROKERS AUTHORIZED TO TRANSACT INSURANCE IN
PUERTO RICO

PROHIBITION OF THE USE OF NON ELIGIBLE INSURERS TO COVER MEDICAL
AND HOSPITAL PROFESSIONAL LIABILITY RISK

Dear Sirs and Madams:

In accordance with Article 1.060 of the Insurance Code of Puerto Rico, 26 L.P.R.A. sec. 106, in order to transact insurance in Puerto Rico it is necessary to have an authorization from the Commissioner of Insurance to such effect¹. Pursuant to this general rule, Article 10.010 of the Insurance Code of Puerto Rico, 26 L.P.R.A. sec. 1001, prohibits assisting or representing an unauthorized insurer in the transaction of any insurance for risks domiciled, located or to be executed in Puerto Rico. This Article also prohibits assisting or representing a person to obtain insurance from an unauthorized insurer. These prohibitions do not apply, among other insurance, to surplus lines insurance obtained in compliance with the provisions of Chapter 10 of the Insurance Code of Puerto Rico, *supra*.

The term "surplus lines insurance," as it is used in the Insurance Code of Puerto Rico, refers to insurance coverage or portion thereof that cannot be obtained from insurers authorized to do business in Puerto Rico. Article 10.070 of the Insurance Code of Puerto Rico, 26 L.P.R.A. sec. 1007, before it was amended, established that surplus lines insurance could be obtained from unauthorized insurers, provided that the following requirements were fulfilled:

- 1) That the insurance may not be obtained from authorized insurers, or that it has been obtained up to the maximum that said authorized insurers are willing to insure.
- 2) That said insurance is obtained through a surplus lines insurance broker, authorized by the Commissioner of Insurance of Puerto Rico.

¹ Article 3.030 of the Insurance Code, 26 L.P.R.A. sec. 303

3) That the insurance with an unauthorized insurer is not procured or required with the objective of obtaining advantages regarding the premium rate, or regarding the terms of the policy.

4) That the insurance is obtained from unauthorized insurer eligible with regards to Article 10.071 of the Insurance Code of Puerto Rico.

Public Law No. 284 of December 19, 2002, hereinafter called "Law No. 284," made several amendments to the Insurance Code of Puerto Rico for the purpose of broadening availability of medical-hospital professional liability insurance coverage. Particularly, Article 10.070, *supra*, was amended for the purpose of allowing access to the surplus lines insurance market for coverage needed to comply with the requirement of financial solvency required from health care professionals and institutions by Article 41.050 of the Insurance Code of Puerto Rico, 26 L.P.R.A. sec. 4105. This use of the surplus lines insurance market is allowed as an exception and only under the circumstances indicated therein.

In said respect, Section 2 of Public Law No. 284 provided as follows:

"Section 2 - A new paragraph is added to Article 10.070 of Public Law No. 77 of June 19, 1957, as amended, known as the "Insurance Code of Puerto Rico" to read as follows:

"Article 10.070 - Surplus lines insurance.
(1)...

Subsection (1) does not apply if the insurance coverage offered by an authorized insurer to cover the risk of medical-hospital professional malpractice does not constitute the minimum coverage needed to acquire a surplus lines insurance in the surplus line market, in which case, the surplus lines producer could reject the primary coverage offered by the authorized insurer and resort to the surplus lines insurance market to obtain the coverage needed."

For the purpose of clarifying the questions presented by some components of the insurance industry regarding the scope of the aforementioned amendment to Article 10.070 *supra*, with regards to the insurance coverage for medical and hospital professional liability, we hereby issue this Ruling Letter.

Article 41.050, *supra*, requires that every health care services professional or institution who intends to offer services in Puerto Rico must file evidence of professional malpractice financial solvency once a year. This article establishes the amount of financial solvency required and provides that the requirement may be met through the

creation of a guarantee fund, by obtaining a professional liability medical-hospital insurance policy, or a combination of both methods. In the case of an insurance policy, the only insurance admissible as evidence of financial solvency is insurance obtained from an insurer who is active in the free trade market or in the Medical-Hospital Professional Liability Insurers Syndicate for Joint Underwriting Insurance, hereinafter called "SIMED." By virtue of the definition provided by Article 41.020 of the Insurance Code of Puerto Rico, 26 L.P.R.A. sec. 4102, regarding the free trade market, insurance obtained from eligible surplus lines insurers, as well as insurance from other unauthorized insurers is expressly excluded.

However, with the approval of Public Law No. 284, the prohibition that existed until then regarding eligible surplus lines insurers was modified through the aforementioned amendment to Article 10.070, *supra*, to allow health care professionals and institutions, under certain circumstances, to comply with the financial solvency requirement through policies issued by eligible surplus lines insurers.

Taking into consideration the obligation of SIMED to provide coverage for the limits established in Article 41.050, *supra*, the exception established by Public Law No. 284 shall only apply to health care professionals or institutions who seek limits in excess of the limits required by this article, and when the limits required do not constitute the minimum coverage needed for obtaining a policy in the surplus lines market.

Please note that, as a result of the amendment, only the first subsection of Article 10.070, *supra*, is **not** applicable to the situation provided in Public Law No. 284. It is implicit that the rest of the requirements of said article continue to be applicable, namely, that the insurance be obtained through a surplus lines broker, that the insurance is not procured for the purpose of obtaining advantages regarding the premium rates or regarding the terms of the policy; and that the insurance be obtained from an eligible surplus lines insurer. It is also important to emphasize that this alternative must take place within the context of the need of the health care professional or institution to obtain coverage greater than the financial solvency required by Article 41.050, *supra*. On the other hand, the condition established therein that the coverage offered by SIMED or by the free trade market does not constitute the minimum coverage needed to acquire a surplus insurance policy in the surplus lines market, must also be complied with.

Pursuant to the above, all surplus lines insurance broker shall, when placing a medical or hospital professional liability insurance policy, obtain from the eligible surplus lines insurer a certification stating that said policy will not be issued if it is in excess of the primary limits required by Article 41.050, *supra*.

All surplus lines brokers are hereby advised that any medical or hospital professional liability insurance policy obtained from an eligible surplus lines insurer without having complied with the aforementioned conditions or from an unauthorized insurer,

constitutes a violation of the Insurance Code of Puerto Rico, and will not be acceptable as evidence that the health care professional or institution complies with the financial solvency requirement provided in Article 41.050, *supra*.

Strict compliance with the provisions of this Ruling Letter is required.

Very truly yours,

SIGNED

Dorelisse Juarbe Jiménez
Insurance Commissioner