



GOVERNMENT OF PUERTO RICO
OFFICE OF THE COMMISSIONER OF INSURANCE

August 17, 2010

RULING LETTER NO. 2010-116-AP

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

**OBTAINING SURPLUS OVERAGE FOR MEDICAL AND HOSPITAL
PROFESSIONAL LIABILITY IN THE SURPLUS LINES MARKET**

We are hereby repealing Ruling Letter No. 2007-83-AP, dated December 12, 2007, hereinafter "the Ruling Letter." In said Ruling Letter, the Office of the Commissioner of Insurance attempted to clarify amendments introduced to the Puerto Rico Insurance Code with the approval of Public Act No. 284, enacted on December 19, 2002. This law, among other things, amended Section 10.070 of the Puerto Rico Insurance Code, 26 L.P.R.A. Sec. 10.070, to provide as follows:

"Section 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."

This amendment to Section 10.070 was intended to remediate for the lack of availability of professional liability insurance for medical and hospital services for limits in excess of the financial minimums required in Section 41.050 of the Puerto Rico Insurance Code,

26 L.P.R.A. Sec. 4105, for health care professionals and organizations that are universally available through SIMED.¹

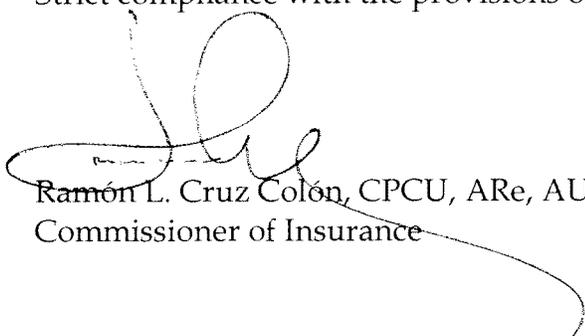
The minimum requirements set forth in the Puerto Rico Insurance Code for all health care professionals and institutions are: one hundred thousand dollars (\$100,000) per incident up to an aggregate amount of three hundred thousand dollars (\$300,000) a year, and where the Commissioner of Insurance may so require, limits of five hundred thousand dollars (\$500,000) per medical incident and an aggregate amount of one million dollars (\$1,000,000) for high-risk health care institutions or professionals. The Commissioner at present has not required increased limits as those described.

It must be emphasized that seeking surplus coverage in the surplus lines market by a surplus lines broker is only permissible when there is not an authorized market in Puerto Rico that is willing to provide such surplus coverage.

The above is pursuant to the provisions of Chapter 10 of the Puerto Rico Insurance Code that were unchanged, even after the approval of the aforementioned Public Law No. 284. We are referring specifically to the following requirements:

1. The prohibition against representing unauthorized insurers set forth in Section 10.010 of the Puerto Rico Insurance Code.
2. The basic requirement of a lack of availability of coverage from authorized insurers in order for access to the surplus lines market be permissible, as provided in Section 10.070 of the Puerto Rico Insurance Code. In the present case, this basic element is the lack of availability of surplus lines insurance for medical malpractice above the basic limits required under the law, which SIMED is already obligated to provide.
3. Circulation of risks shall be complied with as required by regulation.

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



Ramón L. Cruz Colón, CPCU, ARe, AU
Commissioner of Insurance

¹ SIMED- Sindicato de Aseguradores para la Suscripción Conjunta de Seguros de Responsabilidad Médico-Hospitalaria (Insurer Syndicate for Joint Underwriting of Medical and Hospital Liability Insurance).