



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

July 13, 2021

Mr. Chris L. Hutchinson
Executive Director
Mississippi State Board of Dental Examiners
600 East Amite Street, Suite 100
Jackson, Mississippi 39201-2801

Re: Mississippi Anesthesia Advisory Panel - Tort Claims Act

Dear Mr. Hutchinson:

The Office of the Attorney General has received your request for an official opinion.

Background

Mississippi Code Annotated Section 73-9-13(q) grants authority to the Mississippi State Board of Dental Examiners (“Board”) to employ technical and professional personnel to conduct dental office sedation site visits to assist the Board in its determinations on whether to issue permits enabling applicants to administer anesthesia pursuant to Board regulations. You state that members of the Mississippi Anesthesia Advisory Panel have been appointed by the Board to assist in implementing Board regulations governing the administration of anesthesia by Mississippi licensed dentists. Members of the Advisory Panel are volunteers and do not receive compensation for their time.

Question Presented

Does the Mississippi Tort Claims Act (“MTCA”) extend protection to members of the Mississippi Anesthesia Advisory Panel (“Advisory Panel”) duly appointed by the Board?

Brief Response

Members of the Advisory Panel fit within the broad definition of “employees of the state of Mississippi” as set forth in Section 11-46-1(f) and, when acting within the course and scope of their duties, are entitled to the protection of the MTCA.

Applicable Law and Discussion

At the outset, we must note that whether the MTCA applies to a particular claim depends on questions of fact. MS AG Op., *Sutton* at *3 (Apr. 22, 2016) (“Whether a claim is subject to defenses, including the applicability of the Tort Claims Act, is a determination that must be made by the local government based on the facts of the claim.”). This office cannot address questions of fact by way of an official opinion. *See* Miss. Code Ann. § 7-5-25.

Section 73-9-13 sets forth the powers and duties of the Board. It provides, in part:

The board shall have the following powers and duties:

...

(q) To employ, in its discretion, technical and professional personnel to conduct dental office sedation site visits, administer and monitor state board examinations and carry out the powers and duties of the board.

The MTCA “provides a limited waiver of sovereign immunity by the State and its political subdivisions for claims for money damages arising from certain torts of these governmental entities and torts of their employees while acting within the course and scope of their employment.” MS AG Op., *Lucas* at *2 (July 24, 2009). Section 11-46-1(f) defines the term “employee” applicable to the MTCA:

(f) “Employee” means any officer, employee or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and *persons acting on behalf of the state* or a political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision *whether with or without compensation*, including firefighters who are members of a volunteer fire department that is a political subdivision. The term “employee” shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the state or a political subdivision;

Miss. Code Ann. § 11-46-1(f) (emphasis added). This definition is “very broad.” MS AG Op., *Howell* at *3 (Mar. 8, 1996).

As noted in your request, we have previously opined that a part-time investigator of the Board is deemed an “employee” as defined in Section 11-46-1(f), *id.* at *4, and that an unpaid volunteer faculty member at UMMC performing teaching duties is afforded coverage under the MTCA. MS AG Op., *Conerly* at *2 (Mar. 29, 2002); *see also* MS AG Op., *Hyde-Smith* at *1 (Dec. 21, 2012) (“Therefore, it is the opinion of this office that if a volunteer, acting with the authorization and knowledge of the agency and acting within the course and scope of their volunteer duties, injures a visitor, the agency and volunteer would be afforded coverage under the Mississippi Tort Claims Act for any claims made by the injured visitor.”).

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It is the opinion of this office that members of the Advisory Panel fit within the broad definition of “employees of the state of Mississippi” as set forth in Section 11-46-1(f) and, therefore, when acting in the course and scope of their duties, are entitled to the protection of the MTCA.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Phil Carter*

Phil Carter
Special Assistant Attorney General

OFFICIAL OPINION