

## TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

**NPM No. 24-2008**

16 September 2008

**ATTY. VALENTIN C. GUANIO**  
*Senior Vice-President, Legal Service Sector*  
**PHILIPPINE HEALTH INSURANCE CORPORATION**  
Citystate Centre, 709 Shaw Boulevard, Pasig City

**Re : Indemnification of BAC Members**

Dear Atty Guanio:

We respond to your letter dated 03 April 2008 requesting for advice relative to the interpretation and application of Sections 72 and 73 of Republic Act (R.A.) No. 9184 vis-à-vis the legal assistance and indemnification accorded to the Bids and Awards Committee (BAC) members and their support staff vis-à-vis a resolution passed by PhilHealth Board allocating premium payments for the Director's Liability Insurance Policy Program.

Issues put forth for resolution are as follows:

*Whether Sec. 72 in relation to Sec. 73 of R.A. 9184 can be legally interpreted to cover other officers, particularly PhilHealth's selected third level officers whose regular functions "occasionally" include direct involvement and participation in procurement activities; and*

*Whether PhilHealth can extend the Directors and Officers Liability Insurance (DOLI) to PhilHealth Insurance Corporation (PHIC) Board of Directors whose functions similarly expose them to the risk of civil and/or criminal actions as a potential incident of the procurement process.*

### **Indemnification of BAC members**

Section 73 of R.A. 9184 provides that an equitable indemnification package for public officials providing services in the BAC shall be made available. Said package may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceeding to which they may be or have been made a party by reason of the performance of their functions or duties.

Notably, said package shall not be made available to those who are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion.

Clearly, the preceding indemnification package extends to the members of the BAC and its support staff, such as the members of the Technical Working Group<sup>1</sup> and the BAC Secretariat<sup>2</sup>, who shall be entitled to medical assistance for injuries incurred in the performance of their functions<sup>3</sup>.

In addition, please be informed that the GPPB, through Resolution No. 21-2005, dated 07 October 2005 has likewise approved the Guidelines for Legal Assistance and Indemnification of BAC Members and its Support Staff, which prescribes the rules and procedure in the grant of legal assistance and indemnification, and establishes the legal parameters for its effective implementation.

Based on the foregoing, should the selected third level officers of PhilHealth assume the role of either a BAC provisional member<sup>4</sup>, or a member of the Technical Working Group or a member of the BAC Secretariat, we find said employees/officers appropriately covered by the abovementioned section providing for the aforementioned benefits relative to their participation in PhilHealth's procurement transactions.

In the same vein, should the PHIC Board of Directors whose functions, as represented, similarly expose them to the risk of civil and/or criminal actions as a potential incident of the procurement process, we find nothing in the provisions of the procurement law which would prohibit extending the same privileges accorded to the procurement officers, to those who are similarly situated. To add, PhilHealth is clearly with mandate to give its employees benefits, whether it be in the form of an indemnification package or liability insurance, which it may deem appropriate and beneficial to its employees, subject, nonetheless, to the availability of funds. This, would apparently fall within the ambit of PhilHealth's management prerogative and not sanctioned under the provisions of R.A. 9184.

This opinion is being rendered on the basis of the facts and particular circumstances as represented.

We trust that this clarifies matters. Should you have any additional questions, please feel free to contact us.

Very truly yours,

  
for **RUBY U. ALVAREZ**  
Executive Director III

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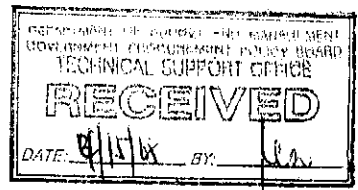
<sup>1</sup> A pool of technical, financial and/or legal experts to assist in the procurement process, particularly in the eligibility screening, evaluation of bids and postqualification (Section 12.1 IRR-A).

<sup>2</sup> Section 14, *ibid*

<sup>3</sup> Section 73.3 of the IRR-A, R.A. 9184

<sup>4</sup> Section 11.2.1, *ibid*.

Karl,  
Please draft reply. Coordi-  
nate w/ Atty. Chelo.



Republic of the Philippines  
**PHILIPPINE HEALTH INSURANCE CORPORATION**  
Citystate Centre, 709 Shaw Boulevard, Pasig City  
Healthline 637-9999 www.philhealth.gov.ph

03 April 2008

**ATTY. RUBY U. ALVAREZ**  
Executive Director  
Government Procurement Policy Board  
Unit 2506 Raffles Corporate Center  
F. Ortigas Jr. Road, Ortigas Center  
1106 Pasig City

*Sumis,  
Pls. handle. You may  
want to consider assigning  
this to Chelo as she'll be  
familiar w/ PHIC'S concerns.  
A/R 4/13/08*

**Dear Atty. Alvarez:**

We write in connection with our request for legal opinion relative to the interpretation and application of Sections 72 and 73 of Republic Act No. 9184 on the provision of liability insurance for BAC Members which reads as follows:

**“Sec. 72. Private Legal Assistance. – All the members of the BAC are hereby authorized to engage the services of private lawyers or extend counsel immediately upon receipt of Court Notice that a civil or criminal action, suit or proceeding filed against them. The lawyer’s fee shall be part of the indemnification package for the BAC members, subject to the provisions of Section 73 hereof.**

*also BAC*

**Sec. 73. Indemnification of BAC Members. – The GPPB shall establish an equitable indemnification package for public officials providing services in the BAC, which may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceeding to which they may be, or have been made, a party by reason of the performance of their functions and duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion. x x x x x (underscoring ours)”**

*is included  
in the indemnification  
package  
(not support staff)*

It is a usual practice in this Corporation that most officers are delegated functions under the BAC considering that R.A. No. 9184 mandates that BAC members be at least a fifth ranking permanent official. Along this line, our PhilHealth Board previously passed a Board Resolution to approve an allocation for premium payments for the Director’s Liability Insurance Policy Program offered by the GSIS. The said coverage is for the “wrongful acts” that were or may have been committed by them in their capacity as directors and/or officers of the Corporation particularly pertaining to their delegated duties in procurement-related activities of the Corporation.

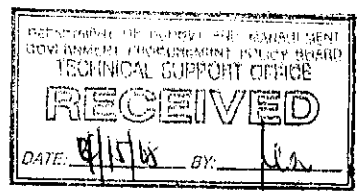
May we be clarified on the following issues:

1. While Sec. 72 appears to have a limited coverage on the provision of legal services to "all members of the BAC", Sec. 73 appears to broaden the same to include "public officials providing services in the BAC". With this in view, can Sec. 72 in relation to Sec. 73 of R.A. 9184 be legally interpreted to cover other officers particularly our selected third level officers whose regular functions occasionally include direct involvement and participation in procurement activities particularly the recommendation and approvals of procurement-related activities of the Corporation? NO
2. Considering that the members of the PHIC Board of Directors occasionally render services beyond their policy-making functions specifically pertaining to selected procurement activities of the Corporation, may we legally extend the Directors and Officers Liability Insurance (DOLI) to them considering that these specialized functions similarly expose them to the risk of civil and/or criminal actions as a potential incident of the procurement process? ?  
don't w/c. RA 9184

For your kind consideration and valuable assistance.

Very truly yours,

  
**ATTY. VALENTIN C. GUANIO**  
Senior Vice President  
Legal Services Sector,  
Philippine Health Insurance Corporation



Republic of the Philippines  
**PHILIPPINE HEALTH INSURANCE CORPORATION**  
Citystate Centre, 709 Shaw Boulevard, Pasig City  
Healthline 637-9999 www.philhealth.gov.ph

03 April 2008

**ATTY. RUBY U. ALVAREZ**  
Executive Director  
Government Procurement Policy Board  
Unit 2506 Raffles Corporate Center  
F. Ortigas Jr. Road, Ortigas Center  
1106 Pasig City

*Summie,  
Pls. handle. You may  
want to consider assigning  
this to Chels as she'll be  
familiar w/ PHIC'S concerns.  
Rf 4/13/08*

**Dear Atty. Alvarez:**

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**Sec. 73. Indemnification of BAC Members. – The GPPB shall establish an equitable indemnification package for public officials providing services in the BAC, which may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceeding to which they may be, or have been made, a party by reason of the performance of their functions and duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion. x x x x x (underscoring ours)”**

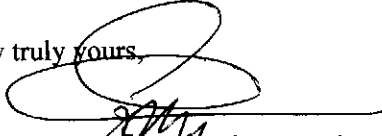
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May we be clarified on the following issues:

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2. Considering that the members of the PHIC Board of Directors occasionally render services beyond their policy-making functions specifically pertaining to selected procurement activities of the Corporation, may we legally extend the Directors and Officers Liability Insurance (DOLI) to them considering that these specialized functions similarly expose them to the risk of civil and/or criminal actions as a potential incident of the procurement process?

For your kind consideration and valuable assistance.

Very truly yours,



**ATTY. VALENTIN C. GUANIO**  
Senior Vice President  
Legal Services Sector,  
Philippine Health Insurance Corporation



Republic of the Philippines  
**PHILIPPINE HEALTH INSURANCE CORPORATION**

Citystate Centre, 709 Shaw Boulevard, Pasig City  
Healthline 637-9999 www.philhealth.gov.ph

June 25, 2008

**MS. EMILUISA PEÑANO**

Deputy Executive Director  
Technical Support Office  
Government Procurement Policy Board  
Unit 2506 Raffles Corporate Center  
F. Ortigas Jr. Road, Ortigas Center  
Pasig City

Dear Ms. Peñano:

Greetings!

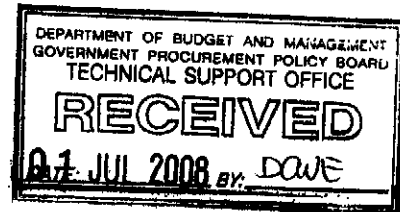
This pertains to our query dated April 9, 2008, which we referred to the Government Procurement Policy Board (GPPB), specifically, to seek guidance on whether Republic Act 9184 and its Implementing Rules and Regulations - A, as amended, covers "Author-Publisher" contracts whereby the "Publisher" prints and sells a publication for free and the "Author" incurs zero expense but receives royalty/commission. For your reference, please find a copy of the query hereto attached.

Your office replied through a letter dated May 6, 2008 stating that further research and/or study was necessary before you could render any opinion on our query. May we follow-up if GPPB has already come up with a resolution on our concern?

We hope to receive your opinion soon so we will be appropriately guided in our endeavors.

Very truly yours,

  
**LORNA O. FAJARDO**  
Acting President and CEO



*Agree.  
Pls. handle. I assume  
this is one of those PHIC  
queries Ennie assigned to  
you.  
JF 7/3/08*



# TECHNICAL SUPPORT OFFICE

Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

06 May 2008

**MS. MADELEINE R. VALERA, M.D., MSCIH**  
*Senior Vice President*  
**HEALTH FINANCE POLICY SECTOR**  
**PHILHEALTH INSURANCE CORPORATION**  
Citystate Centre, 709 Shaw Boulevard, Pasig City

Dear Ma'am:

This is to acknowledge receipt by this office, on 05 May 2008, of your letter- query on the coverage of Republic Act 9184 and its Implementing Rules and Regulations Part A, dated 09 April 2008.

We wish to inform you that, after initial review of the issues raised, we find that before we can render any opinion on the matter, further research and/or study is necessary. Moreover, and as may be determined by this office, said issues may be raised to the Inter-Agency - Technical Working Group (IATWG) and/or to the Government Procurement Policy Board (GPPB) itself for their consideration and resolution.

Thank you.

Very truly yours,

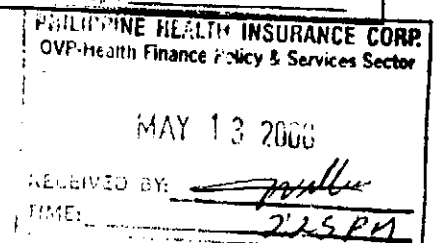
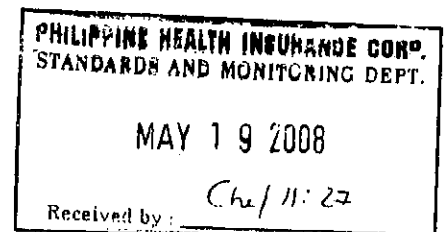
*Emiluisa Peñano*  
**EMILUISA PEÑANO**  
*Deputy Executive Director*

**Received By:**

WILLIAM DUPO  
(Signature above printed name)

5/13/08 2:25 PM  
(Date and Time of receipt)

\*Kindly fax to sender to acknowledge receipt







Republic of the Philippines  
**PHILIPPINE HEALTH INSURANCE CORPORATION**

Citystate Centre, 709 Shaw Boulevard, Pasig City  
Healthline 637-9999 www.philhealth.gov.ph

April 9, 2008

**ATTY. RUBY U. ALVAREZ**

Executive Director  
Technical Support Office  
Government Procurement Policy Board  
Unit 2506 Raffles Corporate Center  
Pasig City

**Dear Atty. Alvarez:**

The Health Finance Policy Sector (HFPS) of PhilHealth would like to request for clarification regarding the coverage of *Republic Act 9184 and its Implementing Rules and Regulations-1*, as amended, specifically as to whether it would cover a proposed business transaction with a publisher and the authorship of PhilHealth on its original works i.e. the PhilHealth Benchbook, Relative Value Scale, ICD-10 Philippine Edition, and other materials.

The said business transaction, via a proposed Memorandum of Agreement between PhilHealth and a Publisher, basically has the following features:

- PhilHealth will serve as "Author" of its original works
- A book distributor will serve as "Publisher" (may include publishing imprint subsidiary to or associated with Publishers, and the Publishers' administrators and assigns or successors in business)
- PhilHealth will grant to the "Publisher" the sole and exclusive and worldwide right and license to produce and publish the works
- The production and publishing of the works will be at Publisher's own risk and expense (zero printing expense for PhilHealth)
- PhilHealth will receive commissions/earnings for copies sold by the Publisher
- The Publisher will give free presentation/complimentary copies of the 1<sup>st</sup> Edition to PhilHealth
- The Publisher will give PhilHealth free copies of any subsequent revised edition
- At the event it will need more copies, PhilHealth can purchase from the Publisher at discounts
- PhilHealth can re-sell purchased copies at agreed suggested retail price

It is our view that in the said transaction, PhilHealth is not trying to "procure" or "purchase" printing services because it would not be spending any amount and the printing of the works will be at the Publisher's risk and expense. On the contrary, PhilHealth is in effect selling the rights to its authored works for which it will receive earnings in the form of commission.

Nevertheless, subjecting the said transaction under the terms of public bidding presents us with some difficulties, as follows:

1. The selection of the winning bidder is problematic because under the proposed transaction we will be choosing the bidder with the highest commission offer most advantageous to PhilHealth. Under the terms, we cannot apply the provisions of RA 9184 on bid evaluation using the Lowest Calculated Responsive Bid (LCRB) nor using the Highest Rated Responsive Bid (HRRB) which is applicable to consulting services.
2. We also find it problematic to follow the proforma Invitation to Apply for Eligibility and to Bid (IAEB) prescribed by the GPPB and in accordance to RA 9184 and its Implementing Rules-A. We find it quite odd to include the approved budget for the contract (ABC), which in this case amounts to zero, and to indicate the highest offer of commission as criteria for award.

PhilHealth is studying the option of engaging business with a Publisher to utilize favorable advantages such as its big market and wide network of bookstores in the Philippines and abroad, its expertise in the industry, its capability and resources to manage the sale, inventory, storage and delivery of publications, and its willingness to publish our materials at its own risk.

We hope for your guidance on how to proceed with the said business transaction.

Very truly yours,



**MADELEINE R. VALERA, MD, MScIH (Heidelberg)**  
Senior Vice President  
Health Finance Policy Sector