GEORGIA DEPARTMENT OF LAW
40 CAPITOL SQUARE SW
ATLANTA, GEORGIA 30334-1300

SAMUEL S. OLENS
ATTORNEY GENERAL

www.law.ga.gov
(404) 656-3300

OFFICIAL OPINION

Robert Jeffery
Executive Director
Georgia Composite Medical Board
2 Peachtree Street, N.W., 36th Floor
Atlanta, Georgia 30303

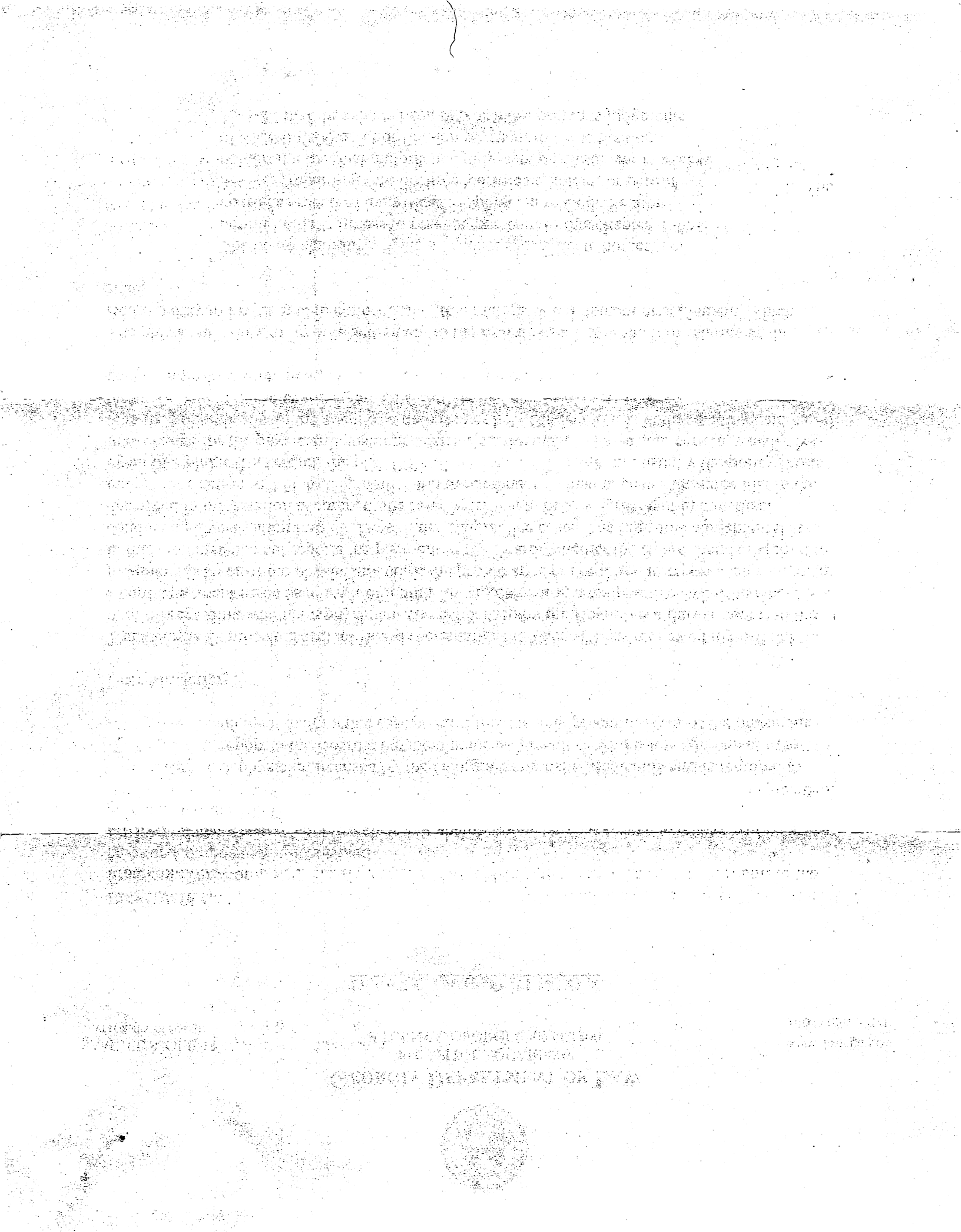
Re: A physician licensed by the Georgia Composite Medical Board is required to report to the Board a payment made as a result of a high-low agreement in a medical malpractice case, even if there is a judgment in favor of the physician.

Dear Mr. Jeffery:

The Georgia Composite Medical Board (hereinafter the "Board") has requested my official opinion regarding whether a physician who is licensed by the Board has a duty to report to the Board a payment made as a result of a high-low agreement in a malpractice case when there is a judgment in favor of the physician, and, if the physician is not required to report such a payment in this circumstance but reports the payment to the Board, whether the Board then is required to conduct an investigation into the facts of the malpractice case. The high-low agreement that is described in information accompanying your letter is a high-low agreement in a medical malpractice action in which the plaintiff and the defendant's insurance carrier agree that in the event of a plaintiff's verdict, the plaintiff will accept a certain amount, usually the policy limits, in exchange for the physician's insurance carrier's agreement to pay a sum certain, usually less than the policy limits, in the event of a defense verdict. Subject to this understanding, and based on my review of the relevant statutes, I conclude that a physician is required to report a payment under a high-low agreement, even in the case of a defense verdict.

The physician's duty to report a settlement to the Board is set out in the same statute as the Board's duty to investigate in connection with a malpractice judgment or settlement, which states:

> The board shall investigate a licensee's, certificate holder's, or permit holder's fitness to practice pursuant to this chapter if the board has received a notification, pursuant to Code Section 33-3-27, regarding that licensee, certificate holder, or permit holder of a medical malpractice judgment or settlement in excess of $100,000.00 or a notification pursuant to Code Section 33-3-27 that there have been two or more previous judgments



> against or settlements with the licensee, certificate holder, or permit holder relating to practice pursuant to this chapter involving an action for medical malpractice. *Every licensee, certificate holder, or permit holder shall notify the board of any settlement or judgment involving the licensee, certificate holder, or permit holder involving an action for medical malpractice.*

O.C.G.A. § 43-34-8(j) (2016) (emphasis added). The plain language of the last sentence of the aforementioned paragraph clearly provides that a physician licensee has a duty to report to the Board "any settlement." O.C.G.A. § 43-34-8(j). *See McKinney v. Fuciarelli,* 298 Ga. 873, 874 (2016) ("When a statute contains clear and unambiguous language, such language will be given its plain meaning and will be applied accordingly.") Although the term "settlement" is not defined in these statutes, the meaning of "settlement," in a legal context, includes "an agreement ending a dispute or lawsuit." BLACK'S LAW DICTIONARY 1405 (8th ed. 2004). Furthermore, a "high-low agreement" is defined as "a *settlement* in which a defendant agrees to pay the plaintiff a minimum recovery in return for the plaintiff's agreement to accept a maximum amount regardless of the outcome of the trial." BLACK'S LAW DICTIONARY 747 (8th ed. 2004) (emphasis added). Consequently, the answer to the question whether a high-low agreement is a "settlement" is yes. While litigation may continue after a high-low agreement is entered, it continues within the confines of the agreement and is sure to terminate at the conclusion of the trial on the agreed upon terms. Thus, a physician is required to report a high-low agreement in a malpractice action to the Board because it is an agreement to pay money on behalf of the physician that ends a dispute or lawsuit involving a claim for medical malpractice.

This interpretation is reinforced by the language found in subsection (b) of O.C.G.A. § 33-3-27 (2016), which is referenced in O.C.G.A. § 43-34-8(j). Subsection (b), which identifies and describes the insurer's duty to notify the Board with respect to medical malpractice cases, states:

> Every insurer providing medical malpractice insurance coverage in this state shall notify in writing the Georgia Composite Medical Board when it pays a judgment or enters into *an agreement to pay* an amount to settle a medical malpractice claim against a person authorized by law to practice medicine in this state. Such judgments or agreements shall be reported to the board regardless of the dollar amount. *Such notice shall be sent within 30 days after the judgment has been paid or the agreement has been entered into by the parties involved in the claim.*

O.C.G.A § 33-3-27(b) (2016) (emphasis added). As provided above, an insurer has a duty to report to the Board when the insurer "pays a judgment or enters into an agreement to pay an amount to settle a medical malpractice claim" against a physician. O.C.G.A. § 33-3-27(b). The insurer's duty to report is triggered by the payment made or entering an agreement to pay in order to settle or resolve a medical malpractice claim.

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Additionally, when O.C.G.A. § 33-3-27(b) is construed with O.C.G.A. § 43-34-8(j), it is clear that they are intended to establish a system of information referral to the Board concerning malpractice actions to enable the Board to identify cases where an investigation is warranted or may be required. Under O.C.G.A. § 43-34-8(j), the physician must report any settlement or any agreement ending a dispute or lawsuit involving an action for medical malpractice, and, under O.C.G.A. § 33-3-27(b), the physician's malpractice carrier must report any agreement to pay any amount to settle a medical malpractice claim. Thus, the two statutes establish a system of dual reporting to insure that the Board receives information regarding the payment of money on behalf of a physician or the existence of an agreement involving the payment of money on behalf of the physician in a medical malpractice case.

Because I have answered the first question in the affirmative, it is unnecessary to address the second question.

Therefore, it is my official opinion that, pursuant to O.C.G.A. § 43-34-8(j), a physician is required to report to the Board a payment made as a result of a high-low agreement in a medical malpractice case, even if there is a judgment in favor of the physician.

Issued this 7th day of October, 2016.

Sincerely,

SAMUEL S. OLENS
Attorney General

Prepared by:

Wylencia Hood Monroe
Senior Assistant Attorney General

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