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New Hampshire governor fights subpoena over efforts to dip into malpractice fund to reduce budget deficit

The governor and attorney general of New Hampshire are fighting a subpoena to testify about state efforts to take \$110 million from a malpractice fund to plug a budget hole. Policyholders of the medical malpractice Joint Underwriting Association are suing its board for breach of financial responsibility. Health care providers have paid into the fund for years. The lawsuit claims that Gov. John Lynch and Attorney General Michael Delaney 's Office instructed the board not to fight efforts to take the money “and also ordered them to fire their lawyer and to conceal the opinion that that private lawyer gave the

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JUA board, which expressed concern about the legality of the proposed taking," the attorney representing the policyholders said.

Lynch and Delaney strongly deny the allegations. Delaney's office took a position that the JUA is a state entity and continues to take that position today, despite a superior court decision stating otherwise.

The contrary legal opinion — obtained by the JUA board of directors, who were also concerned at the outset that Lynch's plan was possibly illegal — was kept confidential because it was protected as attorney/client communication, Delaney said.

While hiding the contrary legal opinion, Lynch and Delaney publicly touted a legal opinion by Senior Assistant Attorney General Glenn Perlow saying the state had a right to the JUA money, according to a right-to-know lawsuit JUA policyholders filed against the state last October.

The state Supreme Court ultimately backed a lower court ruling and said it was unconstitutional for the state to take JUA reserves. A second attempt to seize the reserves by legislatively changing Insurance Department rules also failed.

The JUA was formed by the Insurance Department in 1975 to insure health care providers who were having trouble at the time finding affordable malpractice insurance. It insures about 900 doctors, hospitals, nursing homes and other allied providers in New Hampshire.

Source: [Manchester Union Leader](#)

You can read the complete Union Leader article [here](#).

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