



HENRY McMASTER  
ATTORNEY GENERAL

August 19, 2009

Ladson F. Howell, Esquire  
Beaufort County Attorney  
Post Office Drawer 1228  
Beaufort, South Carolina 29901-1228

Dear Mr. Howell:

In a letter to this office you requested an opinion regarding the breadth of the confidentiality of data collected which is related to the operation of the emergency services system in Beaufort County. You specifically referenced the provisions of S.C. Code Ann. § 44-61-160(a) which state that

(a) [t]he identities of patients, emergency, and critical care medical services personnel and emergency and critical care medical services mentioned, referenced, or otherwise appearing in information and data collected or prepared by or in connection with emergency medical services must be treated as strictly confidential. The identities of these persons or entities are not available to the public under the Freedom of Information Act nor are they subject to subpoena in any administrative, civil, or criminal proceeding, and they are not otherwise available except pursuant to court order. An individual's attendance at a proceeding must not be required to testify as to the identity of a person or entity except pursuant to court order. A person, medical facility, or other organization providing or releasing information in accordance with this article must not be held liable in a civil or criminal action for divulging confidential information unless the individual or organization acted in bad faith or with malicious purpose.

(b) The identity of a patient, physician, or hospital is confidential and must not be released except that the identity of a patient may be released upon written consent of the patient or the patient's legal representative; the identity of a physician may be released upon written consent of the physician; and the identity of a hospital may be released upon written consent of the hospital.

(c) The contents of an official investigation or inquiry conducted by the Emergency Medical Services Section within the Department of Health and Environmental Control must be treated as confidential and only may be released in a legal proceeding involving the question of licensing, certification, or revocation of a

license or certificate. The proceedings, records, and information acquired or produced by the emergency practices review committee is confidential pursuant to Section 40-71-20. The emergency practices review committee is a professional committee that reviews the information on official investigations into the actions of a certified EMT at any level or a licensed emergency medical service.

(d) Information must not be released except to:

- (1) appropriate staff of the Emergency Medical Services Section within the Department of Health and Environmental Control, South Carolina Data Oversight Council, and State Budget and Control Board, Office of Research and Statistics;
- (2) submitting hospitals or their designees;
- (3) a person engaged in an approved research project, except that information identifying a subject of a report or a reporter must not be made available to a researcher unless consent is obtained pursuant to this section.

(e) For purposes of maintaining the data base collected pursuant to this article, the department and the Office of Research and Statistics may access and provide access to appropriate confidential data reported in accordance with Section 44-61-160.

(f) A person subject to this article who intentionally fails to comply with reporting, confidentiality, or disclosure requirements of this article is subject to a civil penalty of not more than one hundred dollars for a violation the first time a person fails to comply and not more than five thousand dollars for a subsequent violation.

(g) This section supersedes any other provision of law, with the exception of federal law, which may be contrary to requirements set forth in this section. (emphasis added).

You have specifically questioned "...whether or not the words in the statute which provide 'in connection with emergency medical services' protects all data, including response times, trip numbers, requests for helicopter transport by numbers and dates and other general raw data compiled from day to day operations of our Emergency Services Department." You further stated "[p]lease confirm that the statute not only protects patient identity and medical information, but also protects identification of emergency medical personnel and perhaps any data that would ordinarily lead one to discover the identity of emergency medical personnel."

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v.

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Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).


As set forth, Section 44-61-160(a) states that “(a) [t]he identities of patients, emergency, and critical care medical services personnel and emergency and critical care medical services mentioned, referenced, or otherwise appearing in information and data collected or prepared by or in connection with emergency medical services must be treated as strictly confidential. It is specifically provided that the identities of such patients, emergency and critical care medical services personnel, and identification of emergency and critical care medical services are not available under this State’s Freedom of Information Act or subject to subpoena except pursuant to court order. Furthermore, subsection (g) states that this provision “...supersedes any other provision of law, with the exception of federal law, which may be contrary to the requirements set forth in this section.”

In the opinion of this office, the words in the statute “data collected or prepared by or in connection with emergency medical services” protects all data, including response times, trip numbers, requests for helicopter transport by numbers and dates and other general raw data compiled from day to day operations of our Emergency Services Department. Furthermore, it is the opinion of this office that the statute not only protects patient identity and medical information, but also protects identification of emergency medical personnel and any other data that would ordinarily lead one to discover the identity of emergency medical personnel.

With kind regards, I am,

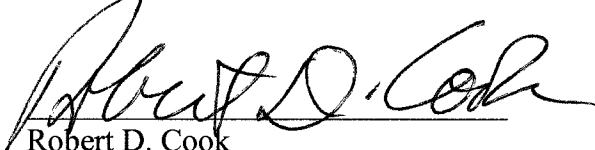
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General