

STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

OPINION NO. 86- _____

October 3, 1986

SYLLABUS: Physical therapists may accept patient referrals from physicians and dentists who are licensed in and practicing in states other than South Carolina; due to strict interpretation of language similar to the South Carolina statute by courts in some jurisdictions, however, this conclusion cannot be free from doubt.

TO: President
South Carolina State Board
of Physical Therapy Examiners

FROM: Carolyn M. Adams
Assistant Attorney General

DISCUSSION:

You have requested an opinion regarding whether physical therapists licensed and practicing in South Carolina may accept for treatment patients who are referred to them by physicians and dentists licensed by and practicing in states other than South Carolina.

OPINION:

It is the opinion of this Office that physical therapists licensed in and practicing in South Carolina may accept patients who are referred to them by physicians and dentists who are licensed in and practicing in states other than South Carolina.

Under the Physical Therapy Practice Act [Section 40-45-10, et seq. of the 1976 South Carolina Code Annot.] Section 40-45-20 (1) defines "physical therapy" as:

The evaluation and treatment of any bodily or mental condition of any person by the use of physical, chemical, or mechanical agent, the properties of heat, light, water, electricity, massage, sound, and therapeutic exercise, including rehabilitation procedures all under the prescription of a licensed doctor of medicine or dentistry. [Emphasis added].

Subsection (4) of Section 40-45-20 of the Code defines "prescription" as referred to in Section 40-45-20 (1) as:

The written or oral designation of physical therapy treatment by a licensed doctor of medicine or dentistry....

Thus, the practice of physical therapy is confined to evaluating and treating patients who have been referred to the physical therapist by a licensed doctor of medicine or dentistry. Section 40-45-20 (4) of the Code provides that the referring doctor's instructions to the physical therapist may be very general or very detailed, as the referring physician in his discretion deems necessary.

To further emphasize the necessity of physical therapists practicing only under the prescription of a physician or dentist, Section 40-45-220 makes it a misdemeanor for a physical therapist to "undertake to practice independent of the prescription of a licensed doctor of medicine or dentistry." Physician, as defined in Section 40-47-5 of the Code is "a doctor of medicine." It is unlawful to practice medicine in South Carolina without a license. Section 40-47-260; State v. Deadwyler, 133 S.C. 75, 130 S.E. 332 (1925). Similarly, it is unlawful to practice dentistry without a license from the South Carolina State Board of Dentistry. Section 40-15-100. However, each of those professions recognizes that physicians and dentists who are not licensed in South Carolina may practice medicine or dentistry in South Carolina in limited capacities if they are duly licensed by another state and are employed by the armed services, public health services, or involved in teaching within the State of South Carolina. [Section 40-47-240; Section 40-15-110; see 70 C.J.S., Physicians and Surgeons, Section 9, p. 831].

The Attorney General has issued an opinion stating that a licensed physician from another state who is associated by and in consultation with a licensed physician in South Carolina may lawfully treat a patient in a South Carolina hospital. 1970-71 Opinions, Atty. Gen., No. 3205, p. 186. The South Carolina Supreme Court has held that the right to practice medicine is a qualified one which is subordinate to the State's duty to protect the public health and the exercise of its police powers. Dantzler v. Callison, 94 S.E.2d 177, 187 (1956). As the Court stated therein:

The granting of a license to practice certain professions is the method taken by the State, in the exercise of its police power, to regulate and restrict

the activity of the licensee. He takes the same, subject to the right of the State, at any time, for the public good to make further restrictions and regulations. Dantzler v. Callison, supra, 94 S.E.2d 177, 188 (1956).

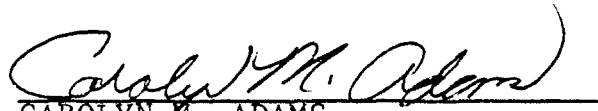
South Carolina statutes do not define physician as "a person who is licensed to practice medicine in this State." No such limiting phrase appears in the Physical Therapy Practice Act. The Florida Court of Appeals has held that when a Florida statute did not use the specific word "licensed" in front of the word physician, a first-year resident physician who was not then registered to become licensed in the State of Florida could perform a blood test for purposes of determining if the driver was intoxicated. State v. Counts, 457 So.2d. 568 (Ct. of App. of Fla. 1984).

In further construing the meaning of the word "physician," the Court of Appeals of Florida has also held that the word "physician" should be construed in its plain and ordinary meaning to denominate a physician duly licensed under the laws of any state, not just those of the State of Florida. The Court therein held:

By adding the requirement that the physician be a Florida physician, the rule is an invalid exercise of delegated legislative authority because it modifies the statute by adding a criterion to be met by the applicant. State Department of Transportation v. Pan American Construction Co., 338 So.2d 1291 (Fla. 1st D.C.A. 1976). We find no indication from the statute that the supervising physician furnishing the written statement [for one to become licensed as a midwife] must be licensed in Florida. This requirement could easily have been imposed by simply adding the word "Florida" had the Legislature so intended. State Department of Health, etc. v. McTigue, Fla. App., 387 So.2d 454, 456 (1980).

It must be noted, however, that in some states whose statutes are as broad as in South Carolina, the courts have construed language such as "licensed doctor of medicine" to mean licensed in that particular state to practice medicine. See, for example, State v. Karunsky, 197 Wash. 87, 84 P.2d 390 (1938); State v. Kellogg, 98 Idaho 541, 568 P.2d 514 (1977); Jones v. LaBarbera, 342 So.2d 1125 (La. Ct. App. 1977). Thus, there is no uniformity of interpretation among the states and our conclusion herein cannot free from doubt.

Because the Legislature of South Carolina did not explicitly require that referrals to physical therapists be made only by physicians licensed in the State of South Carolina, and because there appears to be no strong public policy reason for prohibiting duly licensed out-of-state physicians and dentists from prescribing physical therapy for in-state patients, it is the opinion of this Office that physical therapists may accept for treatment patients who are referred to them by physicians and dentists who are licensed in and practicing in states other than South Carolina. Due to the strict interpretation given the same language by courts in other jurisdictions, however, this conclusion cannot be free from doubt.



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Approved by:



ROBERT D. COOK

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