

1976 S.C. Op. Atty. Gen. 108 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4291, 1976 WL 22911

Office of the Attorney General

State of South Carolina

Opinion No. 4291

March 11, 1976

***1 A LEGITIMATE PROVIDER OF HEALTH SERVICES MAY PROVIDE ANY HEALTH SERVICES (INCLUDING FAMILY PLANNING SERVICES) NOT INVOLVING AN OPERATION, TO A MINOR UNDER SIXTEEN YEARS OF AGE WITHOUT THAT MINOR'S PARENTS' OR GUARDIAN'S CONSENT, IF, IN THE JUDGMENT OF THAT PROVIDER, THE SERVICES ARE NECESSARY TO MAINTAIN THE WELL-BEING OF THAT CHILD. THE TYPES OF SERVICES INVOLVED MUST BE THE PROFESSIONAL DECISION OF THE PROVIDER INVOLVED.**

TO: Dee C. Breeden, M. D.
M.P.H., Chief
Bureau of Maternal and Child Care
South Carolina Department of Health and Environmental Control

QUESTIONS PRESENTED:

Your first question was whether or not health services (particularly family planning) could be offered to minors under the age of sixteen (16) without parental consent.

Your second question was what the word 'necessary' implies as it is used in the Consent of Minors to Health Services Law.

STATUTES, CASES, ETC., INVOLVED:

Sections 32-565, 32-566, and 32-693(b) of the 1962 Code of Laws, as amended. Attorney General's Opinions 1971-72, Op. Atty. Gen. No. 3364, p. 213.

DISCUSSION OF ISSUES:

In answering your first question, recourse must be made to Section 32-565 of the 1962 South Carolina Code, as amended. This Section of the Consent of Minors to Health Services Law states as to minors sixteen years or older:

Any minor who has reached the age of sixteen years may consent to any health services from a person authorized by law to render the particular health service for himself and the consent of no other person shall be necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available. (Emphasis added)

Construing these words in their most natural meaning, it appears that a minor who has reached sixteen years of age can consent to all non-operation, non-emergency type, medical services. This includes birth control pills as determined in 1971-72 Op. Atty. Gen. No. 3364, p. 213. There appears to be one exception to the restrictions on operations. Section 32-683(b) of the 1962 Code, as amended, provides that an unmarried woman sixteen years or older may consent to an abortion without obtaining the consent of her parents or guardian.

These two sections taken in conjunction with the above-cited Attorney General's opinion delineate what a sixteen-year old minor may consent to without consulting such minor's parents or guardian. Section 32–656 deals exclusively with the minor who has reached his or her sixteenth birthday.

A different situation arises when health services are made available to the minor who has not reached his or her sixteenth birthday. Generally, minors under sixteen are not entitled to any health services without the consent of their parents or guardian. It is important to note that this is a general statement and is modified by Section 32–566 of the 1962 Code, as amended.

*2 Section 32–566 provides as follows:

Health services of any kind may be rendered to minors of any age without the consent of a parent or legal guardian where, in the judgment of a person authorized by law to render a particular health service, such services are deemed necessary unless such involves an operation which shall be performed only if such is essential to the health or life of such child in the opinion of the performing physician and a consultant physician if one is available. (Emphasis added)

This statute authorizes a legitimate provider of health services to render such services to a minor of any age without the consent of said minor's parent or guardian when in the opinion of the provider the services are necessary. (A discussion of the term 'necessary' as applied in this act is given below.) This is, of course, limited to non-operation type health services.

It is important to note the wording used in Section 32–566. The discretionary phrases ' . . . may be rendered . . . ' and ' . . . in the judgment of . . . ' strongly imply that before such health services may be rendered, the person providing such services must first be of the opinion that these services are necessary and then decide whether or not to render such services.

Section 32–566 specifies that when both of the above criteria have been met, then any health services (with the exception of an operation) may be rendered to any minor without the consent of another person. This would appear to include family planning services if they fall within the category of necessary services.

The most difficult part of this interpretation is concerned specifically with your second question as to what is intended by 'necessary' services.

Because Section 32–566 requires that before any services may be rendered to a minor without his parent's consent, the person authorized to render the services must exercise his judgment and decide that these services are necessary; because Section 32–565 allows any minor sixteen and older to consent to any treatment less than an operation; and because Section 32–566 applies to other minors of any age and thus does not grant these minors the same rights as sixteen year olds, it can be fairly implied that the services deemed necessary in Section 32–566 are not ordinary services. Something above the ordinary would appear to be intended.

If a service is deemed necessary, then it can be rendered, ' . . . unless such involves an operation which shall be performed only if such is essential to the health or life of such child . . . ' (Section 32–566 of the 1962 Code, as amended). Because any services deemed necessary may be rendered except an operation, then the services contemplated as being necessary are something less than an operation essential to the health or life of such child.

The preceding two paragraphs bracket the term 'necessary' as applied to health services with about as much specificity as a layman can define a medical decision. It appears that this term was intended to mean those services which would maintain the well-being of the child seeking them. In determining whether or not to render the services, the provider must consider all the facts concerning the minor and then make a judgment as to whether or not the services requested are necessary for the well-being of the child. This is a decision that he, as a professional, must make and assume responsibility for.

CONCLUSION:

*3 Considering the questions asked and the above discussion, it is my opinion that a legitimate provider of health services may provide any health services (including family planning services), not involving an operation, to a minor under sixteen years of age without the minor's parents' or guardian's consent, if, in the judgment of that provider, the services are necessary to maintain the well-being of that child. The types of services involved must be the professional decision of the provider involved. To define the term 'necessary' with more specificity should be a legislative responsibility.

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