

November 27, 2007

The Honorable Kristopher R. Crawford, M.D.
Member, South Carolina House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Crawford:

We received your letter requesting an opinion of this Office. We understand that you wish to know if there is “any portion of the South Carolina law that prohibits a person with a doctoral degree who is not a physician from describing themselves as being a doctor in a healthcare setting?” Further, you add: “This assumes the person does not further clarify that they are not a physician rendering medical services to the patient. It also assumes the person rendering services is doing so legally under another South Carolina licensing authority; however, the patient leaves the encounter believing that they were seen by a physician.”

Law/Analysis

Chapter 47 of title 40 of the South Carolina Code governs the practice of medicine in South Carolina. Section 40-47-30 of the South Carolina Code (Supp. 2006) requires a person to have a license in order to practice medicine in the state of South Carolina. Furthermore, section 40-47-200 of the South Carolina Code (Supp. 2006) states:

A person who practices or offers to practice medicine in this State in violation of this chapter or who knowingly submits false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than fifty thousand dollars. Each violation constitutes a separate offense. The provisions of this chapter apply to a person or entity aiding and abetting in a violation of this chapter.

Section 40-47-20(36) of the South Carolina Code (Supp. 2006) defines “practice of medicine” to include the following:

- (a) advertising, holding out to the public or representing in any manner that one is authorized to practice medicine in this State;
- (b) offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other person;
- (c) offering or undertaking to prevent or to diagnose, correct or treat in any manner, or by any means, methods, or devices, disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of a person, including the management or pregnancy and parturition;
- (d) offering or undertaking to perform any surgical operation upon a person;
- (e) rendering a written or otherwise documented medical opinion concerning the diagnosis or treatment of a patient or the actual rendering of treatment to a patient within this State by a physician located outside the State as a result of transmission of individual patient data by electronic or other means from within a state to such physician or his or her agent;
- (f) rendering a determination of medical necessity or a decision affecting the diagnosis and/or treatment of a patient;
- (g) using the designation Doctor, Doctor of Medicine, Doctor of Osteopathic Medicine, Physician, Surgeon, Physician and Surgeon, Dr., M.D., D.O., or any combination of these in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition unless such a designation additionally contains the description of another branch of the healing arts for which one holds a valid license in this State that is applicable to the clinical setting; and
- (h) testifying as a physician in an administrative, civil, or criminal proceeding in this State by expressing an expert medical opinion.

(emphasis added).

The Honorable Kristopher R. Crawford, M.D.
Page 3
November 27, 2007

In 2006, the Legislature made many significant amendments to the provisions in chapter 47 of title 40. To date, we are not aware of a court decision or an opinion of this Office interpreting these provisions with respect to whether use of the term “doctor” by a non-physician in a healthcare setting. However, for purposes of this opinion we will employ the rules of statutory interpretation in order to provide you guidance on your question. As our Supreme Court recently explained in Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519, 525-26, 642 S.E.2d 751, 754 (2007):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Burns v. State Farm Mut. Auto. Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). If a statute’s language is plain, unambiguous, and conveys a clear meaning, then “the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute’s operation. Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992).

According to the plain and ordinary meaning of the language used in section 40-47-20(36)(g), a person who uses the designation “doctor” while conducting “any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition” is by definition practicing medicine. Thus, if the person in question is not licensed as required by section 40-47-30, the individual may be subject to criminal liability under section 40-47-200.

In our research, we did not uncover a provision of law specifically limiting the use of the designation doctor by those working in a healthcare setting. Furthermore, as we noted in a 1976 opinion, “[t]he term ‘Doctor’ is broad and is not limited to physicians.” Op. S.C. Atty. Gen., June 17, 1976 (citing 13 Words and Phrases 172). However, according to provisions contained in chapter 47 of title 40, if the individual to which you refer employs the doctor designation while performing activities such as diagnosing and treating human conditions or diseases, that individual may be held responsible for practicing medicine without a license.

As we stated on numerous occasions, “only a court, as the finder of fact, may ultimately resolve factual issues.” Op. S.C. Atty. Gen., October 26, 2007. The determination of whether a particular individual is practicing medicine under section 40-47-20(36)(g) is factually based and because this Office does not have jurisdiction to resolve questions of fact, we cannot opine as to whether a particular individual is practicing medicine pursuant to this provision. Thus, such a determination must be left to a court to decide.

Very truly yours,

The Honorable Kristopher R. Crawford, M.D.

Page 4

November 27, 2007

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