



ALAN WILSON
ATTORNEY GENERAL

March 8, 2013

The Honorable Rusty Clevenger
Coroner, Spartanburg County
366 North Church Street, Ste. 1700
Spartanburg, SC 29303

Dear Coroner Clevenger:

State law requires medical examiners to make an initial inquiry, forming the basis of a medical conclusion, as to the cause and manner of death in certain instances. See S.C. Code Ann. §17-5-530(B) [requiring a coroner or medical examiner, once notified, to “make an immediate inquiry into the cause and manner of death”]. In addition, §17-5-530 provides, in pertinent part:

(A) If a person dies . . .

(8) in a health care facility, as defined in Section 44-7-130(10) other than nursing homes,¹ within twenty-four hours of entering a health care facility or within twenty-four hours after having undergone an invasive surgical procedure at the health care facility;

a person having knowledge of the death immediately shall notify the county coroner's or medical examiner's office. This procedure also must be followed upon discovery of anatomical material suspected of being or determined to be a part of a human body.

You have requested an opinion of this Office concerning the meaning of the term “invasive surgical procedure” inasmuch as it is not defined in the statute.

Several principles of statutory construction are relevant to your inquiry. First and foremost is the cardinal rule of statutory interpretation, which is to ascertain and effectuate the Legislature's intent, whenever possible. State v. Morgan, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002) [citing State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000)]. All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used, and such

¹“Health care facility” is defined as “acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, intermediate care facilities for persons with intellectual disability, narcotic treatment programs, and any other facility for which Certificate of Need review is required by federal law.”

language must be construed in light of the statute's intended purpose. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999). Moreover, a statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979). In construing statutes, the words must be given their plain and ordinary meaning without resort to a subtle or forced construction for the purpose of limiting or expanding their operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984).

In construing a statute, when faced with an undefined statutory term, the court will interpret the term in accordance with its usual and customary meaning. Morgan, 574 S.E.2d at 206. Where the words of a statute are sufficiently broad to encompass objects other than those obviously contemplated, the court will include those additional objects. United States Tire Co. v. Keystone Tire Sales, Co., 153 S.C. 56, 150 S.E. 347 (1929). Dictionary definitions may be consulted. Lee v. Thermal Engineering Corp., 352 S.C. 81, 572 S.E.2d 298, 303-04 (Ct. App. 2002); see also Gulf Oil Corp. v. S.C. Tax Comm., 248 S.C. 267, 149 S.E.2d 642, 643 (1966) [citing Webster's New International Dictionary for definition of a statute's reference to "paid-in surplus"]; State v. Dickinson, 339 S.C. 194, 528 S.E.2d 675, 677 (Ct. App.2000) [citing Black's Law Dictionary for definition of "obtaining" in statute for obtaining property in fraudulent manner]; State v. Estridge, 320 S.C. 288, 465 S.E.2d 91, 93 (Ct. App.1995) [referencing dictionary definition in determining legislative intent].

The Legislature, in amending and enacting a law, is presumed to use words of current, contemporary meaning. Op. S.C. Atty. Gen., August 8, 2005 (2005 WL 1983356) [citing Town Court et al. v. Miller, 83 Misc.2d 118, 373 N.Y.S.2d 312 (1975)]; see Lowcountry Open Land Trust v. State, 347 S.C. 96, 552 S.E.2d 778 (Ct. App. 2001). Where the meaning of words in a statute has evolved, the court will ascribe to the statute the contemporary meaning. Op. S.C. Atty. Gen., August 8, 2005 [citing Koohi v. United States, 976 F.2d 1328 (9th Cir. 1992) (court construed phrase "time of war" not to require Congressional declaration of war; phrase had acquired a broader meaning)]; S.C. Pipeline Corp. v. Lone Star Steel Co., 345 S.C. 151, 546 S.E.2d 654, 656 (2001) [South Carolina Supreme Court applied "contemporary definitions of 'improvement'"]. Of course, the Court will reject a meaning - even though the ordinary meaning - if such meaning would defeat the plain legislative intention. Miller v. Aiken, 364 S.C. 303, 613 S.E.2d 364 (2005).

The Legislature amended §17-5-530 and inserted subsection (A)(8) in 2010. See 2010 S.C. Acts No. 226, §3.² However, no South Carolina case of which we are aware has attempted to define the term "invasive surgical procedure" in context of §17-5-530(A)(8), or in any other statute. See, e.g., §44-43-730 ["If a patient dies in a hospital or a health care facility where invasive surgical procedures are performed, the person authorized to consent, as determined in accordance with Section 44-43-710, has the right to have an autopsy performed. The hospital or health care facility where invasive surgical procedures are performed, in writing, shall inform the person authorized to consent of this right. . ."].³ Therefore, in view of the absence of a specific definition of "invasive surgical procedure" contained in §17-5-530(A)(8), we can identify no reason to apply a meaning of the term other than a plain and ordinary meaning according

²The 2010 Act is also known as the "Ann S. Perdue Independent Autopsy Fairness Act of 2010."

³This statute was added by §2 of the 2010 Act.

to its most current usage. See Op. S.C. Atty. Gen., August 4, 2004 (2004 WL 1879681) [unless otherwise defined, words used in a statute will be interpreted according to their ordinary, contemporary, common meaning].

It is equally apparent to us that since the term “invasive surgical procedure” is referenced to a matter normally medical, the Legislature also intended to use that term in its medical sense. Op. S.C. Atty. Gen., March 26, 1979 (1979 WL 29064) [citing Brewer v. Brewer, 242 S.C. 9, 129 S.E.2d 736, 738 (1963) (“it must be supposed that the legislature, in enacting a statute, intended that the words used therein should be understood in the sense in which they are ordinarily and popularly understood by the people, for whose guidance and government the law was enacted. . . .”)], to wit:

invasive – . . . of or relating to a medical procedure in which a part of the body is entered, as by puncture or incision . . .

Steadman’s Medical Dictionary 423 (2nd ed. 2004); see also Dorland’s Illustrated Medical Dictionary 969 (31st ed. 2007) [defined as “involving puncture or incision of the skin or insertion of an instrument or foreign material into the body”]. We note the Centers for Disease Control (“CDC”) guidelines define an “invasive procedure” as:

surgical entry into tissues, cavities, or organs or repair of major traumatic injuries (1) in an operating or delivery room, emergency department, or outpatient setting, including both physicians' and dentists' offices; (2) cardiac catheterization and angiographic procedures; (3) a vaginal or cesarean delivery or other invasive obstetric procedure during which bleeding may occur; or (4) the manipulation, cutting, or removal of any oral or perioral tissues, including tooth structure, during which bleeding occurs or the potential for bleeding exists.

See CDC, “Recommendations for Prevention of HIV Transmission in Health Care Settings,” 36 Morbidity & Mortality Weekly Report 6S-7S (1987).

In addition, “surgery” is defined in Steadman’s Medical Dictionary 797 as “a surgical operation or procedure, especially one involving the removal or replacement of a diseased organ or tissue.” See also Black’s Law Dictionary 1442 (6th ed. 1990) [defined as “that branch of medical science which treats of mechanical or operative measures for healing diseases, deformities or injuries”]. Further, “operation” is defined in Black’s Law Dictionary 1092 as “an act or succession of acts performed upon the body of a patient for his relief or restoration to normal conditions, by the use of surgical instruments as distinguished from therapeutic treatment by the administration of drugs or other remedial measures.” Cf. Perkins v. Desipio, 736 A.2d 608 (Pa. Super. 1999) [addressing whether a root canal constituted a surgical or operative procedure requiring informed consent under Pennsylvania law]. As further guidance with regard to “surgical procedures,” we refer you to the compilation of procedures provided in the “Surgery” section of the coding system adopted by the American Medical Association’s (“AMA”) Current Procedure Terminology 57-370 (Professional ed. 2013).

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We believe these definitions, as dictated by their plain and ordinary meaning and as commonly accepted in the medical community, are indicative of legislative intent as it pertains to “invasive surgical procedure” in §17-5-530(A)(8). In our research, we did not uncover another meaning. However, we note that other states have addressed invasive procedures consistent with our conclusions, albeit in legislation unrelated to §17-5-530. *See, e.g.*, Del. Code Ann. tit. 16, §714(10) [for purposes of Health and Safety Code, “invasive medical procedure” defined as “any procedure involving surgical entry into tissues, cavities, or organs”]; Tex. Code Ann. §85.202(3) [Health and Safety Code defines “invasive procedure” as “a surgical entry into tissues, cavities, or organs,” or “repair of major traumatic injuries associated with” invasive procedures as established by CDC guidelines]; Tex. Occ. Code Ann. §201.002(4) [statute regulating chiropractors defines “surgical procedure” to include “a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services”].⁴

However, this Office is only issuing a legal opinion. Until a court specifically addresses the issue presented in your letter, this is only an opinion on how this Office believes a court would interpret the statute and rule on the matter. *Op. S.C. Atty. Gen.*, December 5, 2011 (2011 WL 6959371). In addition, we have repeatedly stated that this Office cannot and does not resolve factual disputes or make findings of fact. Therefore, while we are of the opinion the statute speaks for itself, this Office cannot in an opinion determine how a particular set of facts might apply to the law in a particular instance. Only a court of competent jurisdiction can make such a determination. *Op. S.C. Atty. Gen.*, September 12, 2012 (2012 WL 4283913). Finally, the Legislature may also wish to consider legislation to define the term as used in §17-5-530(A)(8). *See* §17-5-5 [providing definitions under Title 17, Chapter 5].

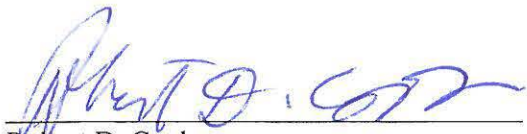
If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

⁴This coding system is very similar to the AMA’s Current Procedure Terminology previously noted.