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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 19, 1995

The Honorable Glenn F. McConnell
Senator, District No. 41
311 Gressette Building
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator McConnell:

By your letter of June 20, 1995, to Attorney General Condon, you have sought an opinion as to the meaning of certain language in S.C. Code Ann. §44-7-325(A), relating to health care providers charging fees for the search and duplication of medical records. That section provides in relevant part that "no fee may be charged for records copied at the request of a health care provider or for records sent to a health care provider at the request of the patient for the purpose of continuing health care." You advise that this language is causing confusion for physicians and attorneys in determining the purpose of "continuing health care." You have asked whether a physician may charge for the duplication of medical records when a patient chooses to transfer to another physician. In essence, you asked what constitutes "continuing medical care" - the choice of the patient in getting a second opinion or going with another doctor, or a more limited circumstance of where the physician refers somebody to another physician for treatment of the same problem or a different problem.

Following a brief discussion of principles of statutory construction, your questions will be examined in relation to the statute.

Statutory Construction

The primary objective of both the courts and this Office in construing statutes is to determine and effectuate legislative intent if it is at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in a statute

are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). In construing a statute, the court looks to its language as a whole in light of the statute's manifest purpose. Simmons v. City of Columbia, 280 S.C. 163, 311 S.E.2d 732 (1984). A statute may be construed with reference to its title. Crouch v. Benet, 198 S.C. 185, 17 S.E.2d 320 (1941).

Discussion

The statutory language cited above is a part of §44-7-325(A), which provides in its entirety:

> A health care facility, as defined in Section 44-7-130, and a health care provider licensed pursuant to Title 40 may charge a fee for the search and duplication of a medical record, but the fee may not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages, and a clerical fee for searching and handling not to exceed fifteen dollars per request plus actual postage and applicable sales tax. However, no fee may be charged for records copied at the request of a health care provider or for records copied at the request of the patient for the purpose of continuing medical care. The facility or provider may charge a patient or the patient's representative no more than the actual cost of reproduction of an X-ray. Actual cost means the cost of materials and supplies used to duplicate the X-ray and the labor and overhead costs associated with the duplication. [Emphasis added.]

This newly added Code section was adopted as section 3 of Act No. 468 of 1994. Section 1 of that act added several statutes to the Code to provide for the crimes of medical assistance provider fraud and medical assistance recipient fraud and to provide civil and criminal penalties for violations, among other things. Section 2 provides that the offenses created in section 1 are not exclusive and not a limitation on the State's power to prosecute a person for conduct which constitutes a crime under another statute or at common law. Then, sections 4, 5, and 6 are much like section 3, quoted supra, in that fees are established for the duplication of medical records. Section 7 provides for the testing of health care or emergency response workers possibly exposed to bloodborne diseases under the circumstances described in the statute.

Section 4 of the act amends §38-77-341(5) of the Code, which statute declares that certain actions shall be unfair trade practices. Subsection 5 establishes the maximum fees which a health care facility and a health care provider may charge for the reproduction of medical records and X-rays; the monetary amounts are identical to §44-7-325(A). No fee may be charged for "records copied at the request of a health care provider or for

records sent to a health care provider at the request of a patient for the purpose of continuing medical care." Section 5 of the act amends §42-15-95 of the Code, relative to workers' compensation, to establish the maximum fees which a health care facility and a health care provider may charge for the search and duplication of a medical record. That amended Code section does not contain language similar to that emphasized in the above-cited §44-7-325(A). Section 6 of the act amends §44-115-80 of the Code, a portion of the Physicians' Patient Record Act, to make that section identical to §44-7-325(A) as far as fees which may be charged for the search and duplication of medical records of a physician. Amended §44-115-80 contains the emphasized language from the above-cited §44-7-325(A).

Four sections of Act No. 468 of 1994 pertain to the maximum fees which may be charged for the search and duplication of medical records, in a variety of contexts. Three of the four sections provide the limitation emphasized supra in the cited §44-7-325(A). It would appear that the manifest intention of these sections of the act would be to establish the maximum fees that could be charged for the search and duplication of medical records in the different contexts. Indeed, the relevant portion of the title of Act No. 468 of 1994 reflects that the act is to, in part, provide for fees that may be charged with respect to the search and provision of records:

> AN ACT ...TO ADD SECTION 44-7-325 SO AS TO PROVIDE FOR THE FEES THAT A HEALTH CARE FACILITY OR LICENSED HEALTH CARE PROVIDER MAY CHARGE FOR PROVIDING A COPY OF A PATIENT'S MEDICAL RECORD AND FOR PRODUCING AN X-RAY AND TO PROVIDE THE TIME WITHIN WHICH A RECORD MUST BE PROVIDED; TO AMEND SECTION 38-77-341, SECTION 42-15-95, AS AMENDED, AND SECTION 44-115-80, ALL RELATING TO CHARGES FOR COPIES OF A PATIENT'S MEDICAL RECORD, SO AS TO PROVIDE THE FEES THAT A HEALTH CARE FACILITY OR LICENSED HEALTH CARE PROVIDER MAY CHARGE FOR PROVIDING A COPY OF A PATIENT'S MEDICAL RECORD AND FOR PRODUCING AN X-RAY; ... .

I do not identify any attempt by the General Assembly to define the concept of "continuing medical care" so as to further explain the circumstances under which fees may not be charged for the search and duplication of medical records. Thus, it is necessary to look outside the language of the various statutes to try to determine what the General Assembly intended by the phrase "continuing medical care."

To "continue" is '[t]o go on with a particular action or in a particular condition" or to "persist" or to "carry forward; persist in...[;] extend." The American Heritage Dictionary 317 (Second College Ed. 1982). The term "continuing" is defined as "[e]nduring; not terminated by a single act or fact; subsisting for a definite period or intended to cover or apply to successive similar obligations or occurrences." Black's Law Dictionary 291 (5th Ed. 1979). The same definitions of "continuing" are found in judicial decisions such as State v. Johnson, 212 N.C. 566, 194 S.E. 319, 322 (1937) ("enduring, not terminated by a single act or fact; subsisting for a definite period... ."); State v. McLaurin, 159 Miss. 188; 131 So. 89, 90 (1930) (enduring and permanent, not special and transient); and Engmann v. Estate of Immel, 59 Wis. 249, 18 N.W. 182, 185 (1884) ("perpetuating, protracting, or prolonging from one time to another"). The concept of "continuing treatment" was described in Aznel v. Gasso, 154 Ill. App. 3d 785, 107 Ill. Dec. 419, 507 N.E.2d 83, 86 (1987); the court stated that mere "intermittent or occasional treatment at substantial intervals" does not qualify as "continuing treatment" in the context of medical malpractice. I am of the opinion that the phrase "continuing health care" must be interpreted by examining the facts of a particular situation: whether a patient has an on-going health problem for which enduring or sustained medical treatment is being sought, as opposed to a transient or occasional treatment at substantial intervals, would certainly be one consideration to be looked at on a case by case basis.

The broad language of §44-7-325(A) does not appear to limit how or for what purposes "continuing medical care" may be sought. Specifically, the obtaining of a second medical opinion, the physician's referral of a patient to another physician for treatment of the same problem or a different problem, or the patient's choosing to seek medical care from another physician for whatever reason, or other reasons for "continuing medical care" and for which a copy of the physician's records may be needed, are simply not addressed by the statute. The language of the statute does not contain sufficient guidance to address these specific scenarios. All that is required by the statute is that a request be made for records by a health care provider or that the patient request that records be sent to a health care provider for the purpose of "continuing health care." If such an interpretation is broader than the General Assembly intended or appears to be ambiguous or not in keeping with the intent of the General Assembly in adopting the statute, perhaps corrective legislation would be in order.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that the foregoing is satisfactorily responsive and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General