

The State of South Carolina



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March 16, 1990

Joseph C. Good, Jr.
General Counsel
Medical University of South Carolina
171 Ashley Avenue
Charleston, South Carolina 29425-1010

Dear Joe:

You have requested an opinion on whether Section 38-77-341(5) of the South Carolina Code applies to the reproduction of all medical records or is limited to only those medical records arising out of an automobile insurance claim.

South Carolina Code Ann. Section 38-77-341(5) (Law Co-op. Cum. Supp. 1989) provides as follows:

It is an unfair trade practice as defined in Section 39-5-20 to:

"(5) charge for copies of medical records or other records provided more than fifty cents per page, except that a minimum charge of ten dollars for furnishing copies of these records is authorized to be charged by insurers or health care providers."

Section 38-77-341 was enacted as a part of the Automobile Insurance Reform Act of 1989. 1989 S.C. Acts 148, Section 18. The title for Section 18 of 1989 Act Number 148 provides as follows:

"[An Act]....[t]o amend the 1976 Code by Adding Section 38-77-341 so as to Define Unfair Trade Practices in the Operation of Automobile Insurance Businesses...."

1989 S.C. Acts 148, Page 431.

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The cardinal rule of statutory construction is that the court must ascertain and effectuate the actual intent of the legislature. Burns v. State Farm Mut. Auto Ins., Co., 297 S.C. 520, 377 S.E. 2d 569 (1989). The South Carolina courts consider the title or caption of an act in aid of construction to show the intent of the legislature. Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972), University of S.C. v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). When the title of an Act definitely and specifically limits its subject, the operation of the Act must be limited to the subject expressed in its title. See, State v. Blease, 95 S.C. 403, 414, 79 S.E. 247, 252 (1913) and 1935-36 Op. Atty. Gen. 217. See also, S.C. Const. Art. III, Section 17 (requires every Act to relate to one subject that must be expressed in the Act's title). Here, as shown above, the title of Section 18 of Act No. 148 definitely and specifically limits its subject to "Un-fair Trade Practices in the Operation of Automobile Insurance Business..."

Additionally, one tool the Courts use to ascertain the intent of the legislature is to review a statute's preamble. The preamble of 1989 S.C. Acts 148 states: "[I]t is the purpose and intent of the General Assembly in enacting this legislation to reduce insurance losses ... and ... the cost of mandatory automobile insurance." 1989 S.C. Acts 148, Page 440. This evidences a clear legislative intent that Section 38-77-341(5) is limited to matters involving automobile insurance.

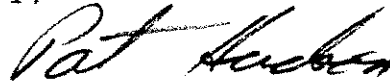
With this preamble and the above-stated rules of statutory construction in mind, it is doubtful that the legislature intended for Section 38-77-341(5) to apply to all medical records. The better reading of Section 38-77-341(5) is that it applies only to those medical records arising out of automobile insurance claims.

In conclusion, it is my opinion that Section 38-77-341(5) is applicable only to those medical records arising out of an auto-

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mobile insurance claim. If I can provide further assistance,
please let me know.

Sincerely,



James Patrick Hudson
Deputy Attorney General

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REVIEWED AND APPROVED BY:



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Chief Deputy Attorney General



Robert D. Cook
Executive Assistant Opinions