

The State of South Carolina



Office of the Attorney General

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April 20, 1989

Stephen S. Seeling
Executive Director
State Board of Medical Examiners
for South Carolina
Post Office Box 12245
Columbia, South Carolina 29211

Dear Steve:

You have requested the advice of this Office as to whether either in-state or out-of-state physicians performing "Utilization Reviews" (Review) must be licensed to practice medicine in South Carolina if the matter involves a patient located in South Carolina. According to the information that you have attached to your letter, these Reviews involve a number of situations in which health insurance carriers review medical treatment decisions made by the insured's physician including, but not limited to, review of decisions to admit insureds to a hospital prior to the insured's hospitalization. The information further indicates that these Reviews are a relatively recent development in the health care area.

Your question appears to present factual issues that are beyond the scope of opinions of this Office (Ops. Atty. Gen., December 12, 1983; see also, Ops. Atty. Gen., October 23, 1979). In particular, whether a particular Review procedure might come within the definition of the "practice of medicine" under section 40-47-40 of the Code of Laws of South Carolina (1976) might be determined, in part, by how the Review was conducted and under what circumstances. As noted above, the information attached to your request indicates that the Review procedures may be applied to a number of different activities including testing and hospitalization.

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A previous opinion of this Office recognized that a declaratory judgment action pursuant to section 15-53-10, et seq. of the Code, would be the only definitive means by which to resolve the question of whether certain activities constituted the practice of medicine. Ops. Atty. Gen., October 23, 1979; section 15-53-10, et seq. of the Code. Such an action could also be brought with respect to Utilization Reviews; however, because of the different types of Reviews and because the Reviews are a relatively recent development in the health care area, legislative consideration of how "Utilization Reviews" should be applied to this state's medical practice laws might be a more comprehensive way in which to address this area.

In conclusion, the question of whether "Utilization Reviews" constitute the practice of medicine under section 40-47-40 of the Code involves factual questions which cannot be addressed within the scope of opinions of this Office. Although a declaratory judgment action could be brought to resolve certain questions concerning these Reviews, legislative clarification of the applicability of South Carolina's medical practice laws to these Reviews would be a more comprehensive way to address the matter.

If you have any questions, please let me know.

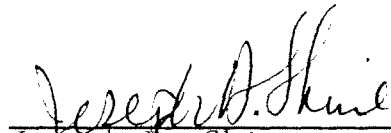
Yours very truly,



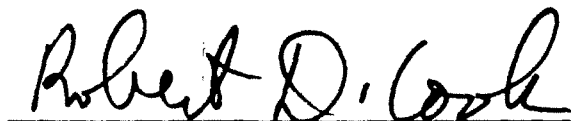
J. Emory Smith, Jr.
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