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The State of South Carolina



Office of the Attorney General

Opinion 87-19

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T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

February 24, 1987

The Honorable Warren K. Giese
Member, South Carolina Senate
P. O. Box 142
Gressette Senate Office Building
Columbia, SC 29202

Dear Senator Giese:

Your letter of February 5, 1987, to the Attorney General has been referred to me for handling and reply. Please address any future correspondence in this matter directly to me.

You have requested our opinion as to whether or not it is illegal for an out-of-state physician, who does not have a license or credentials from our State, to enter our State and remove organs from patients.

Section 40-47-240 of the 1976 Code of Laws of South Carolina, as amended, provides exceptions to the Medical Practice Act (Section 40-47-5, et seq.), and provides, in pertinent part, that the Act shall not apply ... "to physicians or surgeons of other states or territories in actual consultation with a licensed physician or surgeon of this State...." As I understand the normal situation, the out-of-state physician enters South Carolina as part of a team assembled to procure and preserve particular organs for transplant to living patients usually out-of-state. The transplant physician is normally not licensed in South Carolina. Nevertheless, it is assumed that the donor's attending physician has been involved in the decision to declare him dead and to allow the removal of healthy organs for use by other patients. Since the attending physician and the procurement team's physician would necessarily be in consultation concerning the specific details involving the donation, it appears that the out-of-state physician from the procurement team would be exempted from the general requirement in this State of medical licensure. Additionally, we are aware of no distinction to be made based upon the location of the medical facility at which the donated organs are used.

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Therefore, it is our opinion that physicians who are not licensed in this State who enter South Carolina in order to procure organs for use in other patients elsewhere are exempted from the provisions of the Medical Practice Act, provided that they perform their duties in actual consultation with a licensed physician or surgeon of this State.

I trust the preceding discussion adequately answers your question, however, if any further assistance or explanation is required, please do not hesitate to contact me.

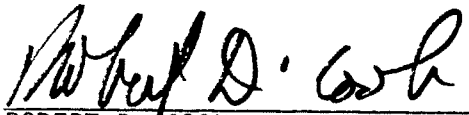
Very truly yours,



Richard P. Wilson
Assistant Attorney General

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REVIEWED AND APPROVED:



ROBERT D. COOK
Executive Assistant for Opinions