

1984 S.C. Op. Atty. Gen. 49 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-16, 1984 WL 159824

Office of the Attorney General

State of South Carolina

Opinion No. 84-16

February 10, 1984

*1 Helen T. Zeigler
Special Assistant for Legal Affairs
Office of the Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Ms. Zeigler:

By your inquiry of November 14, 1983, you have asked for advice as to whether acts of physical contact or violence which do not meet the definition of physical control, or are not within the authorized parameters of physical control, and do not meet the definition of physical injury, should be considered to be abuse and reported under the Client-Patient Protection Act, [Section 43-30-10 et seq., Code of Laws of South Carolina \(1982 Cum. Supp.\)](#).¹

The Client-Patient Protection Act, enacted as Act No. 70, 1979 Acts and Joint Resolutions, was intended to protect client-patients from abuse or injury and to establish a reporting system. Section 3 of Act No. 70 fully states its purpose:

Recognizing that client-patients need protection, it is the purpose of this act to save them from injury and abuse by establishing an effective reporting system and encouraging the reporting of client-patients in need of protection; by establishing fair and equitable procedures compatible with due process of law with due regard to the safety and welfare of all persons and by establishing an effective system of protection of client-patients from injury and abuse while living in public and private residential agencies and institutions.

The Act contains the following definition of the term 'abuse' in Section 43-30-20(C):

'Abuse' to a client-patient's health or welfare may occur when the person responsible for his welfare inflicts or allows to be inflicted upon the client-patient physical or mental injury, except physical control administered by a person in direct and primary contact with the client-patient for the sole purpose of restraining or correcting him for the protection of the person so acting out of fear of bodily harm for his own or the patient's safety or the safety of others. Such physical control shall be reasonable in manner, moderate in degree and shall be administered in such a manner as not to produce permanent or lasting physical or mental injury to the client-patient.

The term 'physical injury' is defined in Section 43-30-20(E) to mean 'death, disfigurement or impairment of any bodily organ.' The term 'mental injury' is defined by Section 43-30-20(F) as generally 'a substantial impairment of the intellectual, psychological or emotional capacity of a client-patient as evidenced by inhumane or unconscionable acts and conduct of a person against a client-patient[.]'

A review of the Act, considering especially its purpose, definitions, and provisions for punishment upon violation of the Act, indicates that the Act was intended to be remedial in nature. Such remedial statutes are to be construed liberally, to effectuate the purpose of the statutes. [Sherbert v. Verner](#), 240 S.C. 286, 125 S.E.2d 737 (1962); [South Carolina Department of Mental Health v. Hanna](#), 270 S.C. 210, 241 S.E.2d 563 (1978). The exact nature of incidents or injuries to be reported under the Act was not discussed in minutes or reports of the Senate Medical Affairs Committee or the House Medical, Military, Public and Municipal Affairs Committee; the only apparent indication of the purpose intended by the legislature is within the definition

of the term ‘abuse.’ The general rule as to the extent of interpretation appears as follows: ‘Broadly speaking, the language of a statute will be extended to include situations which would reasonably have been contemplated by the legislature in light of the background and purposes giving impetus to the legislation.’ 2A [Sutherland Statutory Construction](#) § 54.05. While it is not entirely clear or free from doubt, it would probably be consistent with the purpose of the Act to interpret the term ‘abuse’ liberally and expansively; otherwise, suspected cases of abuse or injury may go unreported, thwarting the purpose of the Act. Legislative clarification, by enlarging the definition of ‘abuse,’ may be helpful.

*2 Section 10 of Act No. 70 is now codified as Section 43–29–10(5), amending a portion of the Developmentally Disabled Act, defining the term ‘abuse,’ as follows:

‘Abuse or neglect’ means actual physical abuse, unreasonable confinement by anyone or, when such person is under the care and control of another, a failure to provide for basic needs such as food, shelter, clothing, medical care or other necessities within the financial capability of the person exercising such care and control. . . .

Statutes which are from the same act are considered *in pari materia* and must be construed together harmoniously, so far as reasonably possible. See 2A [Sutherland Statutory Construction](#) § 51.02; also [Raggio v. Woodman of the World Life Insurance Society](#), 228 S.C. 340, 90 S.E.2d 212 (1955); [Craig v. Bell](#), 211 S.C. 473, 46 S.E.2d 52 (1948). The definition of the term ‘abuse’ contained in Section 10 of the Act would appear to be an expansion of the types of incidents which must be reported, but it cannot be overlooked that Section 10 amended an entirely separate Act codified in a different portion of the [Code, Section 43–29–10 et seq.](#) Again, whether the legislature intended the Section 10 definition of ‘abuse’ to be interpreted liberally and to be read with Section 2 (Section 43–30–20(C)), *in pari materia*, is unclear and might best be clarified by the legislature.

The term ‘threatened abuse’ is defined by [Section 43–30–20\(D\) of the Code](#) to mean an intentional offer of abuse as defined in item (C) to a client-patient by force or force unlawfully directed toward a client-patient under such circumstances as create well-founded fear of imminent peril coupled with apparent present ability to execute the attempt if not prevented.

Incidents of threatened abuse are subject to being reported under [Section 43–30–40 of the Code](#). It would be anomalous indeed to require reporting of acts of threatened abuse and acts which result in physical or mental injury as those terms are defined in [Section 43–30–20 of the Code](#), yet to exclude reporting of acts which actually injure a client-patient but which fall short of, for example, death, disfigurement, or impairment of a bodily organ. Thus, a liberal interpretation of the term ‘abuse’ would be warranted.

In your letter of November 14, 1983, you referred several times to the nursing home ombudsman. The role of the nursing home ombudsman is specified in several sections of the Client-Patient Protection Act, now codified in [Sections 43–30–40, –50, –60, and –70 of the Code](#). This Act may also be considered applicable to children in certain institutions; see the definition of ‘client or patient’ in [Section 43–30–20\(A\) of the Code](#). The intent of this opinion, however, is to focus on nursing home clients or patients and is not to be applied to the standards, agency functions, or reporting procedures specified under the Child Protection Act of 1977, now codified in the South Carolina Children [Code, Section 20–7–10 et seq.](#) of the Code.

*3 In conclusion, I would advise that the term ‘abuse’ as used in the Client-Patient Protection Act be construed liberally and expansively to accomplish the purposes of the Act, namely protection of those client-patients unable to protect themselves; but I suggest that legislative clarification would be useful to remove the doubt created by a literal reading of the definition of the term ‘abuse’ in Section 2.

Sincerely,

T. Travis Medlock
Attorney General

Footnotes

- 1 As the determination to report a suspected incident of abuse or injury would necessarily depend upon the facts of that incident, no attempt will be made here to define types of incidents which should or should not be reported under the Act.
1984 S.C. Op. Atty. Gen. 49 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-16, 1984 WL 159824

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.