

1979 WL 42920 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 11, 1979

*1 Honorable Heyward McDonald
Senator
District No. 7
604 Gressette Senate Office Building
Columbia, South Carolina 29202

Dear Senator McDonald:

In response to your request for an opinion from this Office as to whether or not the provisions of two bills, S-25 and S-327, are redundant of already enacted legislation, my opinion is that they are not.

S-25 amends Chapter 47 of Title 40 of the 1976 Code of Laws of South Carolina by adding Section 40-47-213 thereto, making confidential and private all documents and proceedings relating to disciplinary actions initiated by the State Board of Medicinal Examiners. While it is true that [Section 40-47-212 of the Code](#) presently provides that all communications relating to the discipline of physicians are 'privileged,' there have been serious and repeated questions raised as to the meaning of that word, i.e., whether it means that such communications are confidential, or whether it means not actionable. The Research and Practice References and the Annotations which appear under [Section 40-47-212](#) indicate that at least the Code editors think the intent was to make such communications not actionable. Although the question has not as yet reached the State Supreme Court, at least one Circuit Court judge, the Honorable David A. Harwell, has declared that the word 'privileged' means 'confidential.' (I am enclosing a copy of his order, which was not appealed from inasmuch as it was not a final order.) Nevertheless, in order to clarify the question and in order to forestall future litigation, the language contained in S-25 was proposed. For these reasons, I do not believe that its provisions are redundant of the provisions of [Section 40-47-212 of the 1976 Code](#).

S-317 amends Act No. 524 of 1978 [60 STAT. 1548 (1978)] by making all proceedings and documents relating to hearings conducted by medical staff peer review committees confidential unless the physician who is the subject of such a hearing requests that they be made public. S-327 would not be redundant of Act No. 524 of 1978, or of any other legislation of which I am aware, because the 1978 Act presently contains no provision with respect to the confidentiality of peer review committee hearings. That part of S-327 which refers to 'any professional examining board,' however, would be redundant of the provisions of S-25 since S-25 already provides for the confidentiality of disciplinary hearings conducted by the State Board of Medical Examiners, the only professional examining board for physicians and surgeons in South Carolina. In addition, the term 'respondent' as used in S-327 should, perhaps, be defined since it does not appear from the provisions of S-327 that the respondent is the investigated physician.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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