1977 WL 37024 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 9, 1977

***1** Ruth Q. Seigler, R.N.
Executive Director
State Board of Nursing
for South Carolina

QUESTION

Is the last paragraph of Act 238, South Carolina Acts and Joint Resolutions, 1969, which relates to unlicensed personnel performing certain acts of nursing, in effect even though it was omitted from the 1976 Code?

STATUTES, LAWS AND CASES

Act. No. 238, South Carolina Acts and Joint Resolutions, 1969;

Section 56–951, Code of Laws of South Carolina, 1962;

Code of Laws of South Carolina, 1962, as amended (1975);

Section 40–33–10, Code of Laws of South Carolina, 1976;

Independence Insurance Co. v. Independent Life and Accident Insurance Co., 218 S.C. 22, 61 S.E. 2d 399 (1950).

DISCUSSION

The last paragraph of Act No. 238, South Carolina Acts and Joint Resolutions, 1969, reads as follows:
Nothing contained in this section shall be deemed to prevent an unlicensed person from performing selected acts of nursing pursuant to the instruction and under the direction of a licensed physician, dentist, registered nurse or practical nurse within their respective areas of responsibility. After January 1, 1970, persons performing such acts shall not be designated by the word 'nurse' but may use the term 'nursing' in connection with a word to distinguish the occupation of the user, including but not limited to 'nursing aide' and 'nursing assistant'.

This paragraph was omitted from the 1975 Supplement to the 1962 Code, as well as from the 1976 Code. The question of the validity of an omission from the Code was answered by the South Carolina Supreme Court in the case of Independence Insurance Co. v. Independent Life and Accident Insurance Co., 218 S.C. 22, 61 S.E. 2d 399 (1950), where the court reaffirmed its prior decisions to the effect that omissions from the Code are lost:
. . . it is well settled by our decisions that the code as adopted is the general law and the omissions are lost. State v. Meares, 148 S.C. 118, 145 S.E. 695 (1928). Rutledge v. City of Greenville, 155 S.E. 520, 152 S.E. 700 (1930). City of Greenville v. Pridmore, 162 S.C. 52, 160 S.E. 144 (1931). This accords with the practically uniform rule in other jurisdictions, both with respect to general codes and general revisions upon any one subject . . . 50 Am. Jur., 599, 560, Statutes, See. 556, succinctly states the law, as follows: 'As a general rule, the enactment of revisions and codes manifestly designed to embrace an entire

subject of legislation, operates to repeal former acts dealing with the same subject, although there is no repealing clause to that effect. Under this rule, all parts and provisions of the former acts, that are omitted from the revised act, are repealed, even though the omission may have been the result of inadvertance. The application of the rule is not dependent on the inconsistency or repugnancy of the new legislation and the old; for the old legislation will be impliedly repealed by the new even though there is no repugnancy between them.' 218 S.C. 22 at 31; 61 S.C. 2d 399, 403–404 (1950).

CONCLUSION

***2** It is therefore the opinion of this office that the failure of the Legislature to include the unlicensed practice paragraph in the 1976 Code acted to repeal that paragraph.

Carol Connor Murphy
Staff Attorney

1977 WL 37024 (S.C.A.G.)

End of Document