



ALAN WILSON  
ATTORNEY GENERAL

October 10, 2016

The Honorable Jonathon D. Hill, Member  
South Carolina House of Representatives  
District No. 8  
1031 Double Springs Road  
Townville, SC 29689

The Honorable G. Murrell Smith, Jr., Member  
South Carolina House of Representatives  
District No. 67  
P.O. Box 580  
Sumter, SC 29151

Dear Representative Hill and Representative Smith:

Our Office received your opinion request regarding an interpretation of section 44-89-60(3)<sup>1</sup> of the South Carolina Code of Laws. Specifically, you inquire as to the plain language meaning of section 44-89-60(3) and ask if our interpretation of the statute differs from that of the Department of Health and

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<sup>1</sup> Section 44-89-60 states the following:

[t]he department [South Carolina Department of Health and Environmental Control] shall require reports from, regulate, investigate, and inspect all birthing centers and records of these facilities as necessary and promulgate regulations in accordance with the Administrative Procedures Act to carry out the purposes of this chapter. The regulations must include, but not be limited to, the following requirements:

- (1) Births planned to occur at a birthing center must be restricted to low-risk births following normal, uncomplicated pregnancy.
- (2) Birthing centers shall provide care by physicians, certified nurse-midwives, or licensed lay-midwives to childbearing women during pregnancy, birth, and puerperium.
- (3) A physician must be on call and available to provide medical assistance at the birthing center at all times that it is serving the public.
- (4) A physician shall make a written determination that the planned birth is low risk.

The regulations also must provide that any birthing center which is in operation at the time of promulgation of these regulations is given a reasonable period of time, not to exceed one year from the date of the promulgation, within which to comply with the regulations.

S.C. Code Ann. § 44-89-60 (1976 Code, as amended) (emphasis added).

Environmental Control (“DHEC”) in a memorandum it sent to birthing center administrators on September 6, 2013.

The September 6, 2013 DHEC memorandum that you reference provides:

[t]he Department issues this memorandum as a reminder to the regulated community of the statutory and regulatory requirements for birthing centers with respect to physicians. Please be advised of the following requirements:

- (1) A physician, meaning a doctor of medicine or osteopathy with training in obstetrics or midwifery and licensed by the SC Board of Medical Examiners to practice medicine, must be on call and available to provide medical assistance at the birthing center at all times that it is serving the public. S.C. Code Ann. § 44-89-30(9), -60(3) (2002), & 8 S.C. Code Ann. Regs. 61-102 § D.6.a.1 (2012). The Department interprets this provision to mean that at any given time the birthing center is serving the public, there is an on-call physician who, if called, would be able to come to the birthing center to provide medical assistance. The on-call physician should be located within a reasonable distance of the birthing center while on call. The on-call physician need not be an obstetrician or pediatrician, so long as he or she has training in obstetrics or midwifery. . . .

Memorandum from Gwen C. Thompson, Chief, Bureau of Health Facilities Licensing, South Carolina Department of Health and Environmental Control to Administrators of Birthing Centers (September 6, 2013).

#### **LAW/ANALYSIS:**

To answer your question, we must review the rules of statutory interpretation. In a prior opinion, we discussed some principles of statutory construction:

“[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). “[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation.” Harris v. Anderson County Sheriffs Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). “If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a

court has no right to impose another meaning.” Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). “[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable.” State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). “[C]ourts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat plain legislative intention.” State v. Johnson, 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct.App. 2011).

Op. S.C. Atty. Gen., September 18, 2013 (2013 WL 5494616).

As stated above, section 44-89-60(3) provides that “[a] physician must be on call and available to provide medical assistance at the birthing center at all times that it is serving the public.” It appears that we must focus on the meaning of “on call” and “available” to determine the intent of the Legislature. Since these terms are not defined by the South Carolina Code, we will review other resources. “On-call” has been defined as “referring to a status in which a physician can be reached and arrive at the hospital within 30 minutes of being paged.” See McGraw-Hill Concise Dictionary of Modern Medicine, 2002, The McGraw-Hill Companies, Inc. (quoted by The Free Dictionary at <http://medical-dictionary.thefreedictionary.com/on-call>). According to Merriam-Webster, “on call” means “available to be called when needed, ready to come when needed.” See Merriam-Webster at [www.merriamwebster.com/dictionary/on-call](http://www.merriamwebster.com/dictionary/on-call).

The meaning of the term “available” appears in more reference books. “Available” has been defined as “present or ready for use, present and able or willing to talk to someone” (Merriam-Webster at <http://www.merriam-webster.com/dictionary/available>; Learner’s Dictionary at <http://www.learnersdictionary.com/definition/available>); “present and ready for use, at hand<sup>2</sup>, accessible” (The Free Dictionary at <http://www.thefreedictionary.com/available>); “suitable or ready for use, of use or service, at hand” (Dictionary.com at <http://www.dictionary.com/browse/available>); and “obtainable or accessible and ready for use or service” (Vocabulary.com at <https://www.vocabulary.com/dictionary/available>).

Looking at these definitions, our opinion is that the plain and ordinary meaning of the language of section 44-89-60(3) is that a physician must have the ability to be physically present at a birthing center to provide medical assistance. Accordingly, we agree with DHEC’s interpretation of the statute in its September 6, 2013 memorandum.

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<sup>2</sup> “At hand” means “within reach, nearby, close by, near in time, soon, ready for use” (Dictionary.com at <http://www.dictionary.com/browse/at-hand>); “close by in time or space, happening or present at this time, close by, near” (The Free Dictionary at <http://idioms.thefreedictionary.com/at+hand>); “near in time or place, within reach, currently receiving or deserving attention” (Merriam-Webster at <http://www.merriam-webster.com/dictionary/hand>); “accessible and ready for use or service” (Vocabulary.com at <https://www.vocabulary.com/dictionary/available>).

CONCLUSION:

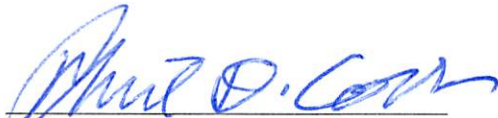
Based upon the plain and ordinary meaning of the terms “on call” and “available” in section 44-89-60(3), it is our opinion that DHEC’s interpretation of section 44-89-60(3) in its September 6, 2013 memorandum is correct.<sup>3</sup> However, the Legislature may wish to provide clarification of this issue.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General

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<sup>3</sup> Please be aware that we normally defer to decisions of administrative agencies, as shown by our March 28, 2001 opinion which states the following:

[a]t the outset, this Office, as a matter of policy, typically defers to the administrative interpretation of the agency charged with the enforcement of the statute in question. See OPS. ATTY. GEN. Mar. 9, 2000; Nov. 25, 1998. As we have emphasized in earlier opinions “construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons.” OP. ATTY. GEN. Oct. 20, 1997 (quoting Logan v. Leatherman, 290 S.C. 400, 351 S.E.2d 146 (1986)). If the administrative interpretation is reasonable, courts will defer to that construction even if it is not the only reasonable one or the one the court would have adopted in the first instance. See OP. ATTY. GEN. Mar. 12, 1997.