1974 WL 27508 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 18, 1974

***1** Honorable Henry F. Floyd
Member of House of Representatives
Pickens County
Box 978
Pickens, SC 29671

Dear Henry:
Your letters concerning a doctor's liability relative to the drawing of blood from a person who has requested a blood-alcohol analysis and what can or should be done in the way of legislation in regard to this possible problem has been referred to me for answer. This Office is of the opinion that at this point in time no such legislation is needed.

Granted that in the past few years the number of malpractice suits brought against doctors has greatly increased. However, recovery in malpractice suits are based upon a showing of negligence. In order for a plaintiff to succeed in his cause of action, he must show that the lack of skill or due care on the part of the attending physician was the proximate cause of the injury. Therefore as long as a physician exercises the required degree of skill and care in withdrawing blood from a patient requesting the same, no liability can attach.

Even if an inebriated person jerks his arm causing the needle to break off in it, the doctor is not liable. It has been held that negligence is not shown merely by the fact that a surgical instrument broke while being used by a doctor. Habuda v. Trustees of Rex Hospital, Inc. 164 S E 2d 17 (1968).

This standard of skill and due care seems to be sufficient to protect both the public and physicians. Any attempt to lower the standard may prove injurious to the public, and since the standard of ordinary skill and due care is already extant, there seems to be no reason for enacting such a statute.
Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

1974 WL 27508 (S.C.A.G.)