1973 S.C. Op. Atty. Gen. 47 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3471, 1973 WL 20935

Office of the Attorney General

State of South Carolina
Opinion No. 3471
February 5, 1973

***1** Trained nurses may also be midwives provided they comply with State Board of Health regulations.

TO: State Board of Nursing

South Carolina statutes tactically acknowledge the role of para-medical midwives and expressly exclude them from both the laws governing physicians, South Carolina Code § 56–1372 (1962), and from the laws governing trained nurses, South Carolina Code § 56–954 (Supp. 1971). The State Board of Health, under the broad rule making powers authorized by South Carolina Code § 32–8 (Supp. 1972), has promulgated regulations providing for registration of midwives and setting forth certain requirements and restrictions on their practice. South Carolina Code, Vol. 17 at 211 (1962). In addition, other health statutes have been enacted to insure that midwives instill the proper prophylactic in infants' eyes. South Carolina Code §§ 56–554 and 555 (1962). However, no general statutory regulation of midwives has been enacted in South Carolina.

The question presented is whether or not a licensed, trained nurse may also legally be a midwife in South Carolina. Inasmuch as no statute defines the practice of midwifery, the duties to be performed are to be viewed as those medical tasks normally associated with antepartal, intrapartal, and postpartal care of normal maternity cases. Such tasks, while otherwise the province of licensed physicians and nurses, may legally be performed by midwives as regulated by the State Board of Health. The laws governing nursing, South Carolina Code §§ 56–951 et seq., plea amounts to a conviction. Further reference is made to Annotations—'Plea of Nolo Contendere,' 152 A.L.R. as 287 (1944), as supplemented by 89 A.L.R. 2d at 606 (1963), and cases cited therein, stating the general rule to be that in statutory proceedings authorizing revocation of licenses upon conviction of some crime, that the judgment or sentence of the court amounts to a conviction even though it be entered upon a Nolo Contendere plea.

It is the opinion of this office that the South Carolina Supreme Court will follow this aforestated majority view on this question and hold a plea of Nolo Contendere sufficient to warrant license revocation or suspension. Such a decision should be readily reached on the basis that the purpose of disabling statutes such as Section 56–1714(d) is to protect the public against unscrupulous persons. Accordingly, it is the substantive act for which a person is punished that will be viewed, and not the technical plea upon which the punishment was entered. See Dantzler v. Callison, 230 S.C. 75, 94 S.E.2d 177 (1956). Cf. Ruis—Rubio v. Immigration and Naturalization Service, 380 F.2d (9th Cir. 1967); Bruno v. Reimer, 98 F.2d 92 (2d Cir. 1938).

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