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**T. TRAVIS MEDLOCK**  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3680

March 24, 1989

The Honorable G. Ralph Davenport, Jr.  
Member, House of Representatives  
326-B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Davenport:

As you are aware, your letter dated February 13, 1989, to Attorney General Medlock was referred to me for response. By that letter, you ask: "does the South Carolina CODE permit chiropractors to use phlebotomy, that is, the practice of using a needle and syringe to draw blood out of a patient's vein?"

Of course, statutory construction is, ultimately, the province of the courts. Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942).

In interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, 292 S.C. 411, 357 S.E.2d 6 (1987). When interpreting a statute, the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the statutes. Gambrell v. Travelers Ins. Cos., 280 S.C. 69, 310 S.E.2d 814 (1983).

Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Comm'n, 292 S.C. 64, 354 S.E.2d 902 (1987). In interpreting a statute, the language of the statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. South Carolina Tax Comm'n, *supra*. In determining the meaning of a statute, it is the duty of the

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court to give force and effect to all parts of the statute. State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979). In construing a statute, words must be given their plain and ordinary meaning, without resort to subtle or forced construction for the purpose of limiting or expanding its operation. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The legislature is presumed to have fully understood the import of words used in a statute and intended to use them in their ordinary and common meaning, unless that meaning is vague and indefinite, or in their well-defined legal sense, if any. Powers v. Fidelity & Deposit Co. of Maryland, 180 S.C. 501, 186 S.E. 523 (1936).

A clerical error in the statute can be corrected by a court in order to give effect to the legislative intention. Ashley v. Ware Shoals Mfg. Co., 210 S.C. 273, 42 S.E.2d 390 (1947).

Statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). In construing a statute, it is proper to consider legislation dealing with the same subject matter. Fidelity and Casualty Ins. Co. of New York v. Nationwide Ins. Co., 278 S.C. 332, 295 S.E.2d 783 (1982).

Construction of a statute by the agency charged with executing it is entitled to the most respectful consideration and should not be overruled without cogent reasons. Dunton v. South Carolina Bd. of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987).

A regulation which is a "legislative rule" is one which, generally, has the force of law and becomes an integral part of the statute. Faile v. South Carolina Employment Sec. Comm'n, 267 S.C. 536, 230 S.E.2d 219 (1976).

According to 2 Am. Jur. 2d Administrative Law §307:

Perhaps the first rule of construction as to administrative rules and regulations is that rules made in the exercise of a power delegated by statute should be construed together with the statute to make, if possible, an effectual piece of legislation in harmony with common sense and sound reason.

The second rule is that generally the same rules of construction and interpretation

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govern the construction and interpretation of rules and regulations of administrative agencies as apply to statutes in the same field. Thus, there have been applied to administrative regulations the rules applicable to statutes in regard to construction to uphold the validity of the regulation; construction in accordance with the legislative intent and purpose; construction to harmonize two or more provisions on the same subject, giving effect, if possible to all the provisions of the regulations; general provisions as limited in their application by specific ones on the same subject; the natural and plain meaning of words; penal character; liberal construction of remedial provisions; the strict construction of exemptions or provisions defining conduct for which criminal or penal sanctions are imposed; retrospective operation, and repeal by implication.

The court in the interpretation of administrative rules and regulations also applies the doctrine applicable in the interpretation of statutes that great weight will be given to an administrative construction, especially when long continued and uniform, and the limitations of that doctrine are also applied in the construction of rules and regulations. An administrative construction of the agency's own regulations is controlling in determining their meaning unless plainly erroneous or inconsistent with the regulations. Where a regulation has received a particular construction with substantial consistency and the statute, with the meaning thus settled, has been reenacted by Congress, the construction should be followed until Congress sees fit to change it. [Footnotes omitted.]

Accord 73 C.J.S. Public Administrative Law and Procedure §94  
("Construction and Operation"); Sutherland Stat. Constr. §31.06  
(4th ed. 1985)(Interpretation of administrative regulations).

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The practice of chiropractic in South Carolina is regulated by S.C. Code Ann. §§40-9-10 through -110 (1976) ("Chiropractors and Chiropractic"). Section 40-9-10 provides:

As used in this chapter:

- (a) "Chiropractic" is defined as that science and art which utilizes the inherent recuperative powers of the body and deals with the relationship between the nervous system and the spinal column, including its immediate articulations and the role of this relationship in the restoration and maintenance of health.
- (b) "Chiropractic practice" is defined as the spinal analysis of any interference with normal nerve transmission and expression, and by adjustment to the articulations for the restoration and maintenance of health and the normal regimen and rehabilitation of the patient without the use of drugs or surgery.
- (c) "Analysis" is defined as physical examination, the use of x-ray and procedures generally used in the practice of chiropractic.
- (d) Any machine used in "chiropractic practice" or "analysis" must first be approved by the South Carolina Board of Chiropractic Examiners.

S.C. Code Ann. §40-9-10 (1976). Section 40-9-30 empowers the South Carolina Board of Chiropractic Examiners, inter alia, to

adopt, and from time to time, revise regulations not inconsistent with the law, as may be necessary to carry out the provisions of this chapter, including but not limited to regulations concerning patient care and treatment, solicitation of patients and advertising; provided, that the Board shall not prohibit or discriminate as to advertising in any particular media. . . .

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S.C. Code Ann. §40-9-30(3) (1976). Pursuant to §40-9-30, the South Carolina Board of Chiropractic Examiners promulgated the following regulation:

Persons licensed by the Board shall be limited in their practice to the care and performance of therapeutic treatment of patients, the performance of such procedures as are normally followed in giving physical examinations, the X-Ray of patients and such other procedures as are generally used in the practice of Chiropractic. Such other procedures as are generally used in the practice of Chiropractic shall be limited, however, to the use of diagnostic and therapeutic procedures, the adjustment and manipulation of articulations and treatment of inter-segmental disorders for alleviation of related neurological aberrations. Patient care shall be conducted with due regard for environmental, hygiene, sanitation, rehabilitation and physiological therapeutic procedures designed to assist in the restoration and maintenance of neurological integrity of the nervous system. None of these diagnostic or therapeutic procedures shall include the use of drugs, surgery, cauterization, desiccation or coagulation of tissues, rectal examinations, gynecological examinations, obstetrics, catherization [sic] with a needle, injection of dyes for radiological procedures, lumbar puncture to obtain spinal fluid, treatment of cancer or X-Ray therapy. [Emphasis added.]

S.C. Code Ann. R 25-8 (vol. 23A 1976).<sup>1</sup>

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<sup>1</sup> For purposes of this analysis, S.C. Code Ann. R 25-8 (vol. 23A 1976) is presumed to be constitutional. See Sutherland Stat. Constr. §31.02 (4th ed. 1985) ("Since the presumption of validity which runs in favor of statutes appears to be a function of judicial review, where judges are asked to rule on positions already taken by other officials of the government, a similar presumption logically runs in favor of administrative regulations. [Footnotes omitted.]"). Compare Richland County v. Campbell, 294 S.C. 346, 364 S.E.2d 470 (1988) (When the validity

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The exact word "phlebotomy" is not found in either these statutes or regulation. "Phlebotomy" has been defined as "[t]he surgical cutting into a vein, usually for the purpose of removing blood. . . ." Schmidt's Attorneys' Dictionary of Medicine P-169 (vol. 3 1988). According to the emphasized language above, R 25-8 proscribes surgery. Although R 25-8 uses the phrase "catherization [sic] with a needle," no such word as "catherization" appears to exist; therefore, the phrase probably is a typographical error or clerical mistake and should be "catheterization with a needle." See Ashley v. Ware Shoals Mtg. Co., *supra*. The word "catheterization" has been defined as "[t]he procedure of introducing a catheter into a body passage or duct. . . ." Schmidt's Attorneys' Dictionary of Medicine C-76 (vol. 1 1986). See also Howes v. Medical Components, Inc., 623 F. Supp. 164, 165 (D. Pa. 1985) (A "catheter" is basically a tube which is inserted into the body for one or more purposes, such as draining fluids, injecting drugs or nutrients, or measuring blood pressure within veins or arteries.). The remaining language, which is emphasized above, prohibits "injection" or "puncture" by chiropractors in South Carolina. Thus, the intent of R 25-8 appears to be the prohibition of procedures such as phlebotomy.<sup>2</sup>

(continuation of footnote 1)

of a legislative act is questioned, the court will presume the legislative act to be constitutionally valid, and every intendment will be indulged in favor of the act's validity by the court.) with 2 Am. Jur. 2d Administrative Law §298 ("An act of an administrative agency which is legislative in character and has the force of a statute is subject to the same tests as to its validity as an act of the legislature intended to accomplish the same purpose....") and 73 C.J.S. Public Administrative Law and Procedure §92 ("An administrative rule which is legislative in character is subject to the sam tests with reference to its validity as an act of legislature, that is, the same principles governing statutes apply to the rules. [Footnote omitted.]").

<sup>2</sup> The South Carolina Board of Chiropractic Examiners, interpreting S.C. Code Ann. R 25-8 (1976), has previously determined that the practice of acupuncture which involves the insertion of thin needles into the tissues at various points of the body, see, Schmidt's Attorneys' Dictionary of Medicine A-73 (vol. 1 1986) (definition of the word "acupuncture"), is not within the scope of chiropractic in South Carolina. (Minutes of South Carolina Board of Chiropractic Examiners, dated August 29,

(Footnote continues on page seven.)

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If I can be of any further assistance, please advise me.

Sincerely,

*Samuel L. Wilkins*

Samuel L. Wilkins  
Assistant Attorney General

SLW/fg

REVIEWED AND APPROVED BY:

*Edwin E. Evans*

Edwin E. Evans  
Chief Deputy Attorney General

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions

(continuation of footnote 2)

1981.) That interpretation is consistent with a conclusion that R 25-8 prohibits procedures such as phlebotomy. Such an interpretation by the South Carolina Board of Chiropractic Examiners is entitled to the most respectful consideration and should not be overruled without cogent reasons. See Dunton v. South Carolina Bd. of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987).