The State of South Carolina

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Stephen S. Seeling, Director
State Board of Medical Examiners
1220 Pickens Street
Columbia, South Carolina 29201

Dear Mr. Seeling:

You have asked for an interpretation of Section 40-47-200(2) in the following context. You wish to know whether this Section legally requires the State Board of Medical Examiners to take disciplinary action against a physician because he has been convicted of a crime by a court in a foreign country.

Section 40-47-200(2) provides that the Board of Medical Examiners may revoke, suspend or take other disciplinary action against a physician upon a showing before the Board of "misconduct". This provision provides in pertinent part as follows:

> "Misconduct" which constitutes grounds for revocation, suspension, or other restriction of a license or limitation on or other discipline of a licenseee is a satisfactory showing to the board of any of the following:
>
> (2) That the holder of a license has been convicted of, has pled guilty to, or has pled nolo contendere to, a felony or any other crime involving moral turpitude or drugs. For purposes of this provision, "drugs shall include any substances whose possession, use, or distribution is governed by § 44-53-110 through §44-53-580 ... or which is listed in the current edition of the Physician's Desk Reference.

Your question concerns whether conviction by a court in a foreign country would constitute a "conviction" pursuant to this Section. It is our conclusion that the better reasoned and more prudent view would be that the General Assembly, in enacting Section 40-47-200(2), did not intend to mandate that a conviction by a court in a foreign country constitutes "misconduct" within the meaning of § 40-47-200.

It is well recognized that disciplinary proceedings such as revocation or suspension of a license have a punitive aspect and therefore the authority to invoke such disciplinary sanctions is to be strictly construed. McDonnell v. Commission on Medical Discipline, 483 A.2d 76. It is also well recognized that as a general proposition the penal laws of a particular sovereignty have no extraterritorial effect. 22 C.J.S. Criminal Law, § 133. Broadly speaking, a state's criminal law is of no force beyond its territorial limits and local criminal statutes have no extraterritorial operation. 21 Am.Jur.2d Criminal Law, § 345. A particular jurisdiction's criminal laws are local in nature. State v. Nesmith, 185 S.C. 341, 194 S.E. 160 (1937). The courts of one state will not enforce the penal laws of another state or a foreign country. 21 C.J.S. Courts § 71.

The law with regard to your specific question is admittedly sparse. However, an analogous case in this area appears to best state the most prudent approach by the courts in this area. In People v. Enlow, 310 P.2d 539 (Colo. 1957) the Supreme Court of Colorado reviewed a statute which required that a public officer vacate his office in certain situations where he has been convicted of a crime. The Court addressed the question of what is meant by the term "conviction" as used in the pertinent statute and held that convictions in other jurisdictions were not intended to be included within that term. The Court noted:

> Conviction under the statute of an infamous crime, or of an offense involving the violation of the oath of office operates as a disqualification so as to create a vacancy forthwith in the office. Since the statute, providing for vacancies in county offices in certain contingencies, is a disqualifying statute, it is our opinion that People ex rel. Attorney General v. Laska, supra, [72 P.2d 694] involving a statute disqualifying lawyers from the practise of law in this state upon being convicted of a felony, is authority on the question of whether Enlow was convicted under such circumstances as to effect an immediate vacancy in his office. In so

> holding, we apply the doctrine that in the absence of an express statute giving effect, within the state which enacts it, to a conviction and sentence in another jurisdiction, such conviction and sentence can have no effect, by way of penalty, or of personal disability or disqualification, beyond the jurisdiction of the court rendering such judgment. (emphasis added) ... In applying this doctrine courts have held that federal and state jurisdictions are foreign to each other. ... From these authorities it appears that a conviction in the federal court for this state is not conclusive on a question of disqualification to hold an office of honor, trust or profit under the laws of Colorado, or to practise as an attorney in any of the courts of this state, in the absence of express statutory language providing for such disqualification. (emphasis added)

The Court went on to note that the legislature in enacting the provision in question could have very well expressly stated that it intended to include convictions in foreign countries or jurisdictions within the pertinent statute if it had so desired. Observed the Court,

> We attach significance to the failure of the legislature to provide in C.R.S. '53, 35-1-5, for effect to be given to convictions in other jurisdictions. The fact that the legislature has provided in certain statutes that convictions in other jurisdictions shall operate disadvantageously in this state to the convicted person, and did not so provide in C.R.S. '53, 35-1-5, requires us to hold that, as to the latter, the legislature purposely omitted words which would have given effect to foreign convictions. To ascertain the intent of the legislature in enacting a particular statute, resort may be had to a comparison in language of the statute under study with analagous but unrelated legislation, noting the inclusion of certain persons, things, situations, or relationships in the latter not found in the former, and deducing therefrom the intentional exclusion of such persons, things, situations, or relationships from the former.

310 P.2d at 544, 545.

In Logan v. United States, 144 U.S. 263 (1892), the United States Supreme Court stated as follows:

> [a]t common law, and on general principles of jurisprudence, when not controlled by express statute giving effect within the State which enacts it to a conviction and sentence in another State, such conviction and sentence can have no effect, by way of penalty, or of personal disability or disqualification beyond the limits of the State in which the judgment is rendered. (emphasis added)

And in Wisconsin v. Pelican Insurance Company of New Orleans, 127 U.S 265 (1888) the United States Supreme Court stated:

> [t]he rule that the courts of no country execute the penal laws of another applies not only to prosecutions and sentences for crimes and misdemeanors, but to all suits in favor of the State for the recovery of pecuniary penalties for any violation of statutes for the protection of its revenue, or other municipal laws, and to all judgments for such penalties.

We believe the reasoning of the foregoing cases is persuasive in interpreting Section 40-47-200(2). It is difficult to imagine that the General Assembly in enacting this provision contemplated that a criminal conviction in any foreign country 1/ would be contained within the parameters of the statute in light of the well recognized rule that foreign convictions are not enforceable in this jurisdiction and in view of the fact that an express statute is necessary to include such convictions within the general term "conviction". This is particularly the case when we note that, just as in the Enlow case cited above, our General Assembly, has expressly recognized the necessity for specific statutory enactment in order to include foreign convictions within a particular statute. Section 40-1-290 of the Code, which provides for the revocation or suspension of an accountant's license, expressly provides that convictions should include those in other countries. Such provision states

> Any person having a certificate of registration as a certified public accountant or licensed as a public accountant, as provided for in this

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1/ One could speculate as to the difficulties or problems created by requiring that a conviction obtained in Iran or the Soviet Union would operate as the sole basis for disqualification to practice a particular profession.

> article, may have his certificate or license revoked or suspended by the Board after a proper hearing ... for any of the following causes:
>
> (a) Conviction of a crime involving moral turpitude under the law of any state or of the United States or of any other country, in which case the record of conviction, or a copy thereof, certified by the clerk of court or by the judge in whose court the conviction is had, shall be conclusive evidence thereof .... (emphasis added)

The controlling rule in this instance was well stated in Enlow, supra:

> [t]he fact that the legislature has provided in certain statutes that convictions in other jurisdictions shall operate disadvantageously in this state to the convicted person, and did not so require in ... [others], requires us to hold that, as to the latter, the legislature purposely omitted words which would have given effect to foreign convictions.

In conclusion, it is our opinion that the General Assembly did not intend to mandate that a conviction by a court in a foreign country constitutes "misconduct" within the meaning of § 40-47-200. This conclusion is consistent with the general law that, absent express statutory enactment which specifically includes such convictions within the meaning of the particular statute involved, the legislature did not intend to include foreign convictions within that statute. Moreover, our conclusion is further supported by the fact that our own legislature, when choosing to include foreign convictions within a particular statute, has expressly done so. 2/

2/ Of course, it is not necessary in this opinion to reach any conclusion regarding whether Section 40-47-200(2) was intended to include convictions by courts in other states in this country or by a federal court. Since your question specifically involves convictions in foreign countries, we express no opinion as to any other issue.

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With kindest regards, I remain

Very truly yours,

Edwin E. Evans
Chief Deputy Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions

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We understand that the State Board of Medical Examiners does not routinely inquire whether an applicant for licensure to practice medicine in this State has been convicted of a crime in a foreign country; instead, the standard inquiry is whether the applicant has been convicted of violating any "Federal, State or Local statute?" [see, standard Application for Medical License Form] To the extent that this longstanding administrative practice is indicative of the Board's interpretation of the meaning of "conviction" as that term is used in § 40-47-220(2), and we believe that it is, we confirm this prior administrative practice. Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987). Moreover, we are advised that the Board has, on at least one occasion, determined that an individual with a conviction in a foreign country was not precluded from licensure in South Carolina.