Retway 166 ✓ Library 1002

The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970

March 12, 1985

The Honorable Joyce C. Hearn
Member, House of Representatives
432A Blatt Building
Columbia, South Carolina 29211

Dear Representative Hearn:

You have asked our opinion as to the potential effect of H.2319, a bill presently in the Labor, Commerce and Industry Committee of the House of Representatives. Your concern is whether the bill with the proposed amendment would expand the scope of activities presently permitted under the chiropractic licensing statutes.

Our own interpretation of the bill is that it would not expand the practice of chiropractic beyond the activities already statutorily authorized. You are correct, however, that the bill as drafted could also be subject to an expansive reading; thus, in its present form, it is subject to misinterpretation of legislative intent as we perceive that intent to be. For that reason, we suggest clarification to avoid potential difficulties in this regard. We will outline potential difficulties in greater detail below.

House Bill 2319 would amend Section 38-35-90, Code of Laws of South Carolina (1976), so that the Code section after amendment would read in pertinent part:

> ... Whenever any policy of insurance governed by this chapter provides for payment or reimbursement for any service which is within the scope of practice of a

> duly licensed podiatrist, oral surgeon, or chiropractor, the insured or other person entitled to benefits under the policy is entitled to payment of or reimbursement in accordance with the usual and customary fee for the services whether the services are performed by a duly licensed physician or a duly licensed podiatrist, oral surgeon, or chiropractor, notwithstanding any provision contained in the policy; and the policyholder, insured, or beneficiary has the right to choose the provider of the services, notwithstanding any provision to the contrary in any other statute. [Emphasis added.]

An amendment to the bill, adopted March 5, 1985 by the subcommittee on insurance, would insert after the word "chiropractor," the phrase "practicing pursuant to Section 40-47-40" in two places as noted above. You correctly note that Section 40-47-40 of the Code refers to the practice of medicine under the licensing provisions for physicians and osteopaths and have asked this Office to interpret the amendment in light of Section 40-47-40.

It has been recognized by the South Carolina Supreme Court that the practice of chiropractic is the practice of medicine, albeit in a very narrow field of medicine. See State v. Barnes, 119 S.C. 213, 112 S.E. 62 (1922); Williams v. Capital Life & Health Insurance Company, 209 S.C. 512, 41 S.E.2d 208 (1947); Bauer v. State, 267 S.C. 224, 227 S.E.2d 195 (1976); Daniels v. Bernard, 270 S.C. 51, 240 S.E.2d 518 (1978). It must be noted that at the time Barnes was decided, there were no separate licensing provisions for chiropractic practitioners; they were required to be licensed under the statutes for licensing physicians until 1932, when a separate chiropractic licensing act was passed. Act No. 892, 1932 Acts and Joint Resolutions.

In an opinion of this Office dated November 14, 1979, it was stated, after reviewing legislative history of the licensure of physicians and chiropractors:

> If chiropractors were still to be included in § 40-47-40, id., then it would follow that they would still be licensed by the Board of Medical Examiners. However,

> the Board of Medical Examiners has not licensed or regulated chiropractors since the enactment of the 1932 Act. Therefore it seem clear ... that the General Assembly intended that the inclusion of chiropractors in § 40-47-40, id., was repealed.
>
> For these reasons, it is most likely that chiropractors are not now included in § 40-47-40, id. ...

Because the General Assembly is presumed to have knowledge of the interpretation given by the Attorney General to a statute, and further, since several years have lapsed since the interpretation without further action by the legislature, such interpretation is presumed to be correct. Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977). It is certainly consistent with the fact that chiropractors have long been licensed by an entirely separate provision of law from that authorizing the practice of medicine.

Based upon our earlier interpretation of Section 40-47-40, we do not read the amendment to H.2319, which adds the phrase "practicing pursuant to Section 40-47-40" after the word "chiropractors," as authorizing chiropractors to engage in any activity not already permitted under existing law. To interpret the amendment otherwise would render virtually meaningless the extensive chiropratic licensing statutes found at Section 40-9-10 et seq. Moreover, without a clear indication from the General Assembly, we cannot attribute to that body an intent to so radically alter the authority of chiropractors in such a short-handed fashion. And if the legislature had indeed intended such a change in this manner, presumably the chapter dealing with the licensure of chiropractors would have, at the very least, been referenced.

However, the reference to Section 40-47-40 contained in the amendment to H. 2319 does inject the potential for confusion into any later interpretation of the bill if enacted. As we have already noted, since the enactment of the chiropractic licensing statutes in 1932, there is no longer any need to refer to the "practice of medicine" with regard to the practice of chiropractic; the two professions are entirely separately regulated by separate licensing boards. The requirements for licensure of each profession are different. In short, chiropractors presently practice their profession pursuant to

Section 40-9-10 et seq., not by virtue of the "practice of medicine" provisions. To refer to chiropractors or members of other professions such as podiatrists or oral surgeons as "practicing pursuant to Section 40-47-40," which section defines the practice of medicine, could be read by some as broadening the authority of chiropractors (or podiatrists or oral surgeons) where such was not intended. Conceivably, some would argue that such language would authorize the same activities as those now permitted by licensed physicians, pursuant to Section 40-47-10 et seq. This concern is enhanced when other provisions of H.2319 are read together as more fully discussed hereinafter.

If, as we believe, such expansive readings are not the intent of the General Assembly, such may be avoided by clarifying language. Rather than reference Section 49-47-40, the committee may wish to specifically refer to Section 40-9-10 et seq. with regard to chiropractors, as well as the licensing statutes of the other professions mentioned in the bill. By so doing, there would be no question as to the scope of authority of the various professions enumerated in the bill. Moreover, since the General Assembly is presumed to have knowledge of these licensing provisions, which must be read in conjunction with H.2319 anyway, the committee may determine that no purpose is served by the amendment. Again, none of the professions enumerated (podiatrist, oral surgeon, or chiropractor) now "practice pursuant to Section 40-47-40," but instead practice their professions by virtue of their own licensing laws.

You have referenced another question with regard to H.2319 and the proposed amendment thereto. You wish to know whether the bill as drafted could be subject to interpretation that chiropractors (as well as podiatrists and oral surgeons) could now be entitled to the same "payment or reimbursement" as physicians for provision of like services. Present Section 38-35-90 makes it clear that if a policy of insurance provides for payment or reimbursement for any service within the scope of practice of a duly licensed podiatrist or oral surgeon, the insured or other person entitled to benefits under the policy is entitled to payment of or reimbursement in accordance with the usual and customary fee for said services, regardless of the respective profession of the provider. H.2319 adds chiropractors to this provision, and thus the bill, if enacted, would entitle chiropractors to be reimbursed at the same rate as other professions when chiropractors provide like services. Of course, H.2319 does not expressly mandate any particular form of health care coverage.

Your final inquiry concerns the effect of H.2319 as amended upon that language contained in present Section 38-35-90, which provides that "the policyholder insured or beneficiary has the right to choose the provider of the services, notwithstanding any provision to the contrary in any statute." (Emphasis added.) Apparently, this provision has heretofore not been interpreted as redefining the scope of practice of any respective profession. Nonetheless, when this provision is read together with the proposed amendment to H.2319 which refers to Section 40-47-40 (practice of medicine), we believe there is a possibility that H.2319 could be read as authorizing the practice of medicine by the other referenced professionals. Again, we do not think the General Assembly would intend that result, and we do not attribute that intent to the legislature by the bill in its present form. However, to avoid later confusion and possible disputes as to the precise meaning of the bill, we would suggest clarification in the areas specifically outlined above.

We hope that this interpretation and suggestions for clarification will be beneficial to you. Please advise if you need additional assistance or clarification.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions