

1977 S.C. Op. Atty. Gen. 298 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-374, 1977 WL 24711

Office of the Attorney General

State of South Carolina

Opinion No. 77-374

November 25, 1977

*1 TO: O. Frank Thornton
Secretary of State

QUESTION:

May psychiatrists registered as a professional corporation under Georgia's Professional Corporation Act, Sections 84–54 *et seq.*, Georgia Code of Laws, incorporate in South Carolina as a foreign corporation under Section 33–23–20, South Carolina Code?

CASES AND STATUTES:

[Ezell v. Ritholz](#), 188 S.C. 39, 198 S.E. 419 (1938);

[Wadsworth v. McRae Drug Co.](#), 203 S.C. 543, 28 S.E.2d 419 (1943);

Section 33–23–20, SOUTH CAROLINA CODE OF LAWS (1976);

Sections 33–51–10, *et seq.*, SOUTH CAROLINA CODE OF LAWS (1976);

Section 40–47–40, SOUTH CAROLINA CODE OF LAWS (1976);

Sections 84–54, *et seq.*, GEORGIA CODE OF LAWS.

DISCUSSION:

A Georgia professional corporation (to be distinguished from a professional association) seeks to qualify to do business in South Carolina as a foreign corporation under Section 33–23–20, 1976 Code. South Carolina, unlike Georgia, has no professional corporation statutes, although there does exist a professional association statute.

The professional corporation in question is composed of psychiatrists. Under South Carolina law, a psychiatrist is included as one who practices medicine under Section 40–47–40, 1976 Code:

Any person shall be regarded as practicing medicine within the meaning of this article who . . . (c) shall diagnose, care, relieve in any degree or profess or attempt to diagnose, care or relieve any human disease, ailment, defect abnormality or complaint, whether of physical or mental origin, by attendance or advice, by prescribing, using or furnishing any drug, appliance, manipulation, adjustment or method or by any therapeutic agency whatsoever. [emphasis supplied].

[Ezell v. Ritholz](#), 188 S.C. 39, 198 S.E. 419 (1938) and [Wadsworth v. McRae Drug Company](#), 203 S.C. 543, 28 S.E.2d 419 (1948), both held that a corporation may not engage in the practice of medicine even through licensed employees. It was felt that high professional standards which flow from the professional's direct personal and individual responsibility to his patient or client would suffer were the physician or other professional to become merely an agent of a corporation which, by its commercial

nature, is not concerned so much with the patient or client's well-being as it is with its balance sheet and profit margin. [198 S.E. at 424](#). Therefore, a corporation may not engage in the practice of medicine.

By statute, however, South Carolina has provided for the formation of professional associations. Section 33-51-20(b) defines such an entity as 'an unincorporated association, as distinguished from a partnership, organized under this chapter for the purpose of rendering one type of professional service.' If a professional wished to practice in South Carolina in other than an individual capacity, the professional association would be the logical choice.

CONCLUSION:

*2 Therefore, a Georgia professional corporation may not do business in South Carolina as a foreign corporation pursuant to Section 33-23-20, 1976 Code, but should qualify as a professional association under Sections 33-51-10 et seq. of South Carolina's Professional Association Act, assuming the professional practitioner(s) is (are) desirous of practicing in other than an individual capacity.

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