

1993 WL 738615 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 28, 1993

***1** Alana Holmes
Executive Director
South Carolina State Board of Chiropractic Examiners
810 Dutch Square Boulevard, Suite 395
Columbia, South Carolina 29210

Dear Alana:

You requested an official opinion from this Office to determine what impact, if any, the decision on September 4, 1992, by the United States Secretary of Education to deny the Petition for Renewal of Recognition submitted by the Commission on Accreditation, Straight Chiropractic Academic Standards Association [SCASA] might have on your acceptance of SCASA-accredited schools as candidates for licensure. That decision concludes:

Accordingly, effective immediately, SCASA accreditation or candidate status is recognized by the United States Department of Education solely with respect to the current accreditation status of the three schools discussed in this opinion—Southern California College of Chiropractic, Pennsylvania College of Straight Chiropractic, and Sherman College of Straight Chiropractic. That limited recognition will entirely expire as of June 4, 1993.

Decision of the Secretary of Education on the Petition for Renewal of Recognition Submitted by the Commission on Accreditation, Straight Chiropractic Academic Standards Association, p. 6 (Sep. 4, 1992). Your request notes: "Sherman College in Spartanburg is only accredited by SCASA and Southern Association of Schools & Colleges. I assume this would not affect them in S.C. so long as they are accredited by the latter. [sic]"

S.C.Code Ann. § 40–9–40 (1976) provides:

No person may be granted a license to engage in the practice of chiropractic unless he presents proof that he has at least two years of pre-professional college credits from a college or university accredited by the Southern Association of Colleges and Schools or an accrediting agency of equal status and recognition and that he is a graduate of a chiropractic college which is accredited by or has recognized candidate status with the Council on Chiropractic Education or with the Commission on Accreditation of the Straight Chiropractic Academic Standards Association or meets equivalent standards.

Section 40–9–40 recognizes three alternatives for a chiropractic college to be appropriate for its graduates to be eligible for a license: a chiropractic college which is accredited by or has recognized candidate status (1) with the Council on Chiropractic Education or (2) with the Commission on Accreditation of the Straight Chiropractic Academic Standards Association or (3) meets equivalent standards. Based on information contained in your request, Sherman College of Straight Chiropractic apparently does not meet the first alternative. As to the second alternative, § 40–9–40 does not require SCASA to be recognized by the United States Department of Education. You do not indicate whether or not SCASA will cease existence or will discontinue its accreditation of Sherman College of Straight Chiropractic as a result of the decision on September 4, 1992, by the United States Department of Education. Assuming SCASA continues to exist (even though it is no longer recognized by the United States Department of Education)¹ and accredit Sherman College of Straight Chiropractic, the second alternative of § 40–9–40 would technically be met. The South Carolina General Assembly might, however, consider whether or not to amend § 40–9–40 in light of the United States Department

of Education's denial of recognition of SCASA. As to the third alternative, the meaning of the phrase "meets equivalent standards" is the issue. Of course, statutory construction is the province of the courts. *Johnson v. Pratt*, 200 S.C. 315, 20 S.E.2d 865 (1942). Nevertheless, the construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overturned absent compelling reasons. *Laurens County School Districts 55 and 56 v. Cox*, —S.C. —, 417 S.E.2d 560 (1992). Thus, the South Carolina State Board of Chiropractic Examiners should first construe the meaning of the phrase "meets equivalent standards." S.C.Code Ann. § 59-103-120 (1976), which addresses "[a]ccreditation and chartering of chiropractic colleges," might assist in that construction. According to § 59-103-120:

*2 One hundred and eighty days from the effective date of this act, the State Commission on Higher Education shall publish a list of the accrediting agency or agencies, which may include itself, approved by it for accreditation of chiropractic colleges or schools doing business in this State. Any chiropractic college or schools doing business in this State shall, upon publication of said list of such accrediting agency or agencies, forthwith apply for such accreditation or candidate status and furnish the State Commission on Higher Education documented evidence of such application.

Failure to obtain such accreditation or candidate status within nineteen months after publication of the list of approved agencies shall result in the Commission on Higher Education revoking the status of such college or school as a recognized college or school of chiropractic.

Provided, further, any college of chiropractic applying for a South Carolina charter must furnish the Commission on Higher Education with sufficient evidence that such school will qualify for required accreditation. Upon certification by the Commission on Higher Education to the Secretary of State, the Secretary of State may issue a charter; provided, further, however, that any college now chartered must attain required licensure before one hundred eighty days after the effective date of this act or have its charter revoked upon a finding by the Attorney General that such licensure has not been attained by such date. In addition to other existing criteria, licensure of all chiropractic colleges shall be renewable annually contingent upon supplying semiannual reports as to the progress of accreditation to the Commission on Higher Education and the Commission shall make a determination if such progress is satisfactory.

In light of § 59-103-120, you may also want to contact the South Carolina Commission on Higher Education for information before you construe the third alternative of § 40-9-40.

Thus, the United States Department of Education's decision to deny recognition of SCASA may have no impact on the current language of § 40-10-40 relative to the second alternative contained therein, assuming that SCASA continues to exist and accredit Sherman College of Straight Chiropractic. In addition, the third alternative of § 40-9-40 may apply to Sherman College of Straight Chiropractic depending upon the construction of "meets equivalent standards" by the South Carolina State Board of Chiropractic Examiners (and ultimately the courts).

If I can answer any questions, please advise me.

Sincerely,

Samuel L. Wilkins
Assistant Attorney General

Footnotes

- 1 In a discussion with an Associate Commissioner of the South Carolina Commission on Higher Education, I understand that SCASA existed prior to any recognition by the United States Department of Education and the United States Department of Education's denial of recognition of SCASA would not necessarily cause SCASA to cease to exist.

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