



HENRY McMASTER  
ATTORNEY GENERAL

June 17, 2009

Davis Hook, Jr. RPH  
Chairman, South Carolina Board of Pharmacy  
Post Office Box 11927  
Columbia, South Carolina 29211-1927

Dear Mr. Hook:

We understand you desire an opinion of this Office on behalf of the South Carolina Board of Pharmacy (the "Board") addressing what authority the Office of Licensure and Compliance (the "Office"), within the Department of Labor Licensing and Regulation ("LLR"), has with regard to "the issuance of licenses, registrations, and permits . . . ." In your letter, you informed us that the Board met with the director of the Office

regarding the new processes by which Pharmacist, Pharmacy Technicians and Pharmacies receive Licenses, Registrations and Permits respectfully. The director indicated during his presentation that his department "issued" these licenses, registrations and permits. The Board also learned that this was a department within LLR. This office has no employees assigned to the SC Board of Pharmacy directing or supervising the licensure, registration and permitting. It is separate from the Board of Pharmacy and has not Pharmacist employed within its office.

#### **Law/Analysis**

Chapter 43 of title 40 of the South Carolina Code (2001 & Supp. 2008) contains the South Carolina Pharmacy Practices Act (the "Act"), which governs the practice of pharmacy in South Carolina. Section 40-43-40 of the South Carolina Code (2001) establishes the State Board of Pharmacy. Section 40-43-60 of the South Carolina Code (2001 & Supp. 2008) explains the authority and responsibilities of the Board. These duties include:

- (1) regulate the practice of pharmacy;
- (2) regulate the sale and dispensing of drugs, poisons, and devices;

(3) regulate the supervision and training of pharmacy interns and technicians in pharmacies;

(4) investigate alleged violations of this chapter or any other law in the State pertaining to, or in connection with, persons licensed by the board or otherwise authorized by state laws to manufacture, sell, distribute, dispense, or possess drugs, medicines, poisons, or devices, or as related to misbranded or counterfeit drugs, or any regulations promulgated by the board under this chapter; conduct hearings when, in its discretion, it appears to be necessary; and bring violations to the notice of the prosecuting attorney of the court of competent jurisdiction in which a violation takes place or to the notice of the Attorney General;

(5) establish the minimum specifications for the physical facilities, technical equipment, environment, supplies, personnel, and procedures for the storage, compounding or dispensing, or both, of drugs or devices, and for the monitoring of drug therapy;

(6) confine at any time to prescription order only the dispensing of a drug found to be potentially dangerous to public safety if dispensed without prescription;

(7) seize any drugs and devices found by the board to constitute an imminent danger to the public health and welfare;

(8) promulgate regulations which the board, in its judgment, considers necessary for the carrying out of the purposes of this chapter;

(9) license in accordance with this chapter pharmacists who shall practice in this State and permit all facilities which possess or dispense drugs in this State, except as provided in subsections (H) and (I) of this section, and as otherwise provided for in this chapter and except as to those entities and persons authorized to obtain and possess drugs pursuant to Section 47-3-420(A)(1)(i) and to suspend, revoke, or cancel a license or permit in accordance with law;

(10) adopt rules of professional conduct for pharmacists which must be appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession; and

(11) to have such powers and authority as may be necessary and proper to accomplish the foregoing or as may be prescribed by law.

S.C. Code Ann. § 40-43-60(D). Section 40-43-82 of the South Carolina Code (Supp. 2008) specifically places the responsibility of registering pharmacy technicians with the Board. Thus, pursuant to this provision and section 40-43-60(D), the Act expressly authorizes the Board to issue licenses to pharmacists, register technicians, and permit all facilities in South Carolina that possess or dispense drugs.

As for LLR's authority with regard to licensing, permitting, and registering those involved in the practice of pharmacy, we must first look to LLR's general authority. In a prior opinion, this Office considered the scope of LLR's authority. Op. S.C. Atty. Gen., January 27, 2005. Recognizing LLR as an administrative agency, we stated:

[I]t is important to emphasize several fundamental principles involving the power and authority of administrative agencies generally. First, it is black letter law that the authority of a state agency or governmental entity created by statute "is limited to that granted by the legislature." Nucor Steel v. S.C. Public Service Commission, 310 S.C. 539, 426 S.E.2d 319 (1992). An administrative agency "has only such powers as have been conferred by law and must act within the authority granted for that purpose." Bazzle v. Huff, 319 S.C. 443, 462 S.E.2d 273 (1975). In this regard, we have consistently concluded that "... administrative agencies, as creatures of statutes, possess only those powers expressly conferred or necessarily implied for them to effectively fulfill the duties with which they are charged." Op. S.C. Atty. Gen., February 11, 1993, citing Captain's Quarters Motor Inn, Inc. v. South Carolina Coastal Council, 306 S.C. 488, 413 S.E.2d 13 (1991). Thus, as we have repeatedly emphasized, "[g]overnmental agencies or corporations . . . can exercise only those powers conferred upon them by their enabling legislation or constitutional provisions, expressly inherently, or impliedly." Op. S.C. Atty. Gen., September 9, 2002; Op. S.C. Atty. Gen., January 8, 1999; Op. S.C. Atty. Gen., September 22, 1988. See also, Medical Society of S.C. v. MUSC, 334 S.C. 270, 513 S.E.2d 352, 355 (1999).

In our review of the Act, we found no indication that the Legislature gave LLR or any of its departments the authority to issue licenses or permits or to register pharmacy technicians. The only provision in the Act that mentions LLR is section 40-43-82, governing pharmacy technicians. Subsection (A)(2) of this provision instructs that in renewing a registration, the applicant shall look to the renewal dates prescribed by LLR “with consent of the board.” In addition, this provision states that the application for renewal is to be provided by LLR. S.C. Code Ann. § 40-43-82(A)(2). However, nothing in section 40-43-82 of the South Carolina Code gives LLR the authority to register pharmacy technicians.

Chapter 1 of title 40 of the South Carolina Code contains the general provisions regulating professions and occupations in the State of South Carolina. Section 40-1-40 of the South Carolina Code (2001 & Supp. 2008) states that the Board of Pharmacy, along with various other boards and commissions, is administered by LLR. Section 40-1-50 of the South Carolina Code (2001) specifies the authority given to LLR by the Legislature. This provision states that LLR “is responsible for all administrative, fiscal, investigative, inspectional, clerical, secretarial and license renewal operations and activities of the boards and commission enumerated in section 40-1-40.” S.C. Code Ann. § 40-1-50(A). The provisions of this statute specifically call for LLR to keep certain records regarding applications for licensure, permitting, certification, and registration. S.C. Code Ann. § 40-1-50(B). In addition, LLR is charged with preparing and maintaining a roster of licensee for each board. S.C. Code Ann. § 40-1-50(C). However, we did not find any provision in chapter 1 giving LLR the authority to issue licenses, permit facilities, or register technicians.

Section 40-1-50(F) allows boards to give LLR “the authority to issue an authorization to practice to an applicant whose proof of qualifications fall within established guidelines by the board.” However, to our knowledge, the Board has not transferred this authority to LLR. Thus, through our review of both the provisions generally governing LLR and the provisions governing the practice of pharmacy, we find no evidence that the Legislature granted authority to LLR to license, permit, and register those persons and entities involved in the practice of pharmacy. Thus, we are of the opinion that LLR does not have such authority. Moreover, we found no statute creating the Office or giving it specific authority. Therefore, we do not believe the Office would have such authority.

### **Conclusion**

The Legislature, through the Pharmacy Practices Act, granted specific authority to the Board to issues licenses, issue permits, and register those persons and entities engaged in the practice of pharmacy. However, we found nothing in the Pharmacy Practices Act or any provision in the law generally governing LLR and the regulation of professions and occupations giving similar authority to LLR or a department within LLR. Although, pursuant to section 40-1-50(F), the Board may delegate its authority to issue licenses to LLR, we are not aware of the Board transferring such

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authority. Therefore, we are of the opinion that while LLR is generally responsible for “administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations . . .” for the Board, it does not have authority to issue licenses for the practice of pharmacy, issue permits for facilities dealing with prescription drugs, or register pharmacy technicians as required by law.

Very truly yours,

Henry McMaster  
Attorney General



By: Cydney M. Milling  
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REVIEWED AND APPROVED BY:



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