

1978 WL 35074 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 26, 1978

*1 Vernon E. Merchant, Jr., M.D.
President
State Board of Medical Examiners
1315 Blanding Street
Columbia, South Carolina 29201

Dear Dr. Merchant:

In response to your inquiry as to whether or not the South Carolina Supreme Court's recent decision in *Gold v. The South Carolina Board of Chiropractic Examiners, et al.*, ___ S.C. ___, ___ S.E.2d ___ (Opinion No. 20681 filed May 10, 1978), has rendered invalid the statutory method for selecting the members of the State Board of Medical Examiners provided for in [Section 40-47-10, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, my opinion is that it has not so invalidated it.

There are critical differences between the statute struck down in the *Gold* case and [Section 40-47-10](#), to wit: the chiropractic statute requires the Governor to commission members of the Board of Chiropractic Examiners “from a list of all members of the South Carolina Chiropractors' Association” while [Section 40-47-10](#) provides that the medical doctor members of the Board of Medical Examiners are to be “selected one from each of the six congressional districts and two from the State at large, to be nominated by the State Medical Association and the doctor of osteopathy to be nominated from the State at large, by the South Carolina Osteopathic Association and appointed and commissioned by the Governor” [emphasis added]. Thus, the Medical Board members need not be members of either the Medical Association or the Osteopathic Association unlike the members of the Chiropractic Board. Moreover, [Section 40-47-10](#) expressly provides that the Governor is not bound by the nominations submitted by the Medical and Osteopathic Associations:

... the Governor may reject any or all of the members nominated, upon satisfactory showing as to the unfitness of those rejected....

In *Gold*, the Supreme Court held that:

The Governor's authority to appoint the members of the Board is restricted by [Section 40-9-30](#) to those members of the Association, a private organization. Thus, membership in the Association is a prerequisite to membership on the Board. Since the Association's ability as a private organization to control its membership is absolute, the Association possesses the unbridled authority to determine who is eligible for appointment to the Board.

This authority is tantamount to an express grant of the appointive power which, when placed in the hands of a private organization, violates Article III Section 1. Slip Op. at 16 [footnote and citation omitted]. [Emphasis added.]

Since the ability of the Medical and Osteopathic Associations to control the membership of the Medical Board is, by statute, far from absolute but, instead, is recommendatory only, the Supreme Court's decision in *Gold* has not had the effect of rendering the method of appointment prescribed by [Section 40-47-10](#) unconstitutional.

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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