CHAPTER 1

Professions and Occupations

ARTICLE 1

Board Regulation of Professions and Occupations

**SECTION 40‑1‑10.** Extent of regulation.

(A) The right of a person to engage in a lawful profession, trade, or occupation of choice is clearly protected by both the Constitution of the United States and the Constitution of the State of South Carolina. The State cannot abridge this right except as a reasonable exercise of its police powers when it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public.

(B) No statute or regulation may be imposed under this article upon a profession or occupation except for the exclusive purpose of protecting the public interest when the:

(1) unregulated practice of the profession or occupation can harm or endanger the health, safety, or welfare of the public and the potential for harm is recognizable and not remote or dependent upon tenuous argument;

(2) practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work or labor;

(3) practice of the profession or occupation requires specialized skill or training and the public needs and will benefit by assurances of initial and continuing professional and occupational ability; and

(4) public is not effectively protected by other means.

(C) If the General Assembly determines that a particular profession or occupation should be regulated or that a different degree of regulation should be imposed on the regulated profession or occupation, it shall consider the following degrees of regulation in the order provided and only shall regulate the profession or occupation to the degree necessary to fulfill the need for regulation:

(1) If existing common law and statutory causes of civil action or criminal prohibitions are not sufficient to eradicate existing harm or prevent potential harm, the General Assembly first may consider making statutory changes to provide stricter causes for civil action and criminal prosecution.

(2) If it is necessary to determine the impact of the operation of a profession or occupation on the public, the General Assembly may consider implementing a system of registration.

(3) If the public requires a substantial basis for relying on the professional services of the practitioner, the General Assembly may consider implementing a system of certification.

(4) If adequate regulation cannot be achieved by means less than licensing, the General Assembly may establish licensing procedures.

(D) In determining the proper degree of regulation, if any, the General Assembly shall determine:

(1) whether the practitioner, if unregulated, performs a service to individuals involving a hazard to the public health, safety, or welfare;

(2) what the opinion of a substantial portion of the people who do not practice the particular profession, trade, or occupation is on the need for regulation;

(3) the number of states which have regulatory provisions similar to those proposed;

(4) whether there is sufficient demand for the service for which there is no regulated substitute, and this service is required by a substantial portion of the population;

(5) whether the profession or occupation requires high standards of public responsibility, character, and performance of each individual engaged in the profession or occupation, as evidenced by established and published codes of ethics;

(6) whether the profession or occupation requires such skill that the public generally is not qualified to select a competent practitioner without some assurance that the practitioner has met minimum qualifications;

(7) whether the professional or occupational associations do not adequately protect the public from incompetent, unscrupulous, or irresponsible members of the profession or occupation;

(8) whether current laws which pertain to public health, safety, and welfare generally are ineffective or inadequate;

(9) whether the characteristics of the profession or occupation make it impractical or impossible to prohibit those practices of the profession or occupation which are detrimental to the public health, safety, and welfare;

(10) whether the practitioner performs a service for others which may have a detrimental effect on third parties relying on the expert knowledge of the practitioner.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Verbal or physical abuse of commissioner or commission representative, see S.C. Code of Regulations R. 20‑9.2; S.C. Code of Regulations R. 20‑27.28.

Library References

Licenses 1, 5, 7, 11.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 1 to 5, 8 to 10, 13 to 14, 20 to 21, 27 to 49, 51, 53, 55.

RESEARCH REFERENCES

Forms

Am. Jur. Pl. & Pr. Forms Accountants Section 2 , Introductory Comments.

NOTES OF DECISIONS

In general 1

1. In general

Legislature has broad authority, within constitutional limits, to regulate the medical and other professions through the enactment of statutes and regulations. Sloan v. South Carolina Bd. of Physical Therapy Examiners (S.C. 2006) 370 S.C. 452, 636 S.E.2d 598, rehearing denied. Health 111

**SECTION 40‑1‑20.** Definitions.

As used in this title unless the context requires a different meaning:

(1) “Administrator” means the individual to whom the director has delegated authority to administer the programs of a specific board or of a professional or occupational group for which the department has regulatory authority or has delegated authority to administer the programs of a specific board;

(2) “Authorization to practice” or “Practice authorization” means the approval to practice the specified profession, engage in the specified occupation, or use a title protected under this article, which has been granted by the applicable board. This authorization is granted in the form of a license, permit, certification, or registration;

(3) “Board” or “Commission” means the group of individuals charged by law with the responsibility of licensing or otherwise regulating an occupation or profession within the State. Except as otherwise indicated, “board” is used in this article to refer to both boards and commissions;

(4) “Department” means the Department of Labor, Licensing and Regulation;

(5) “Director” means the Director of the Department of Labor, Licensing and Regulation or the director’s official designee;

(6) “Licensee” means a person granted an authorization to practice pursuant to this article and refers to a person holding a license, permit, certification, or registration granted pursuant to this article;

(7) “Licensing act” means the individual statute or regulations, or both, of each regulated profession or occupation which include, but are not limited to, board governance, the qualifications and requirements for authorization to practice, prohibitions, and disciplinary procedures;

(8) “Person” means an individual, partnership, or corporation;

(9) “Profession” or “occupation” means a profession or occupation regulated or administered, or both, by the department pursuant to this article.

HISTORY: 1996 Act No. 453, Section 2.

**SECTION 40‑1‑30.** Authorization to practice.

It is unlawful for a person to engage in a profession or occupation regulated by a board or commission administered by the Department of Labor, Licensing and Regulation without holding a valid authorization to practice as required by statute or regulation.

An authorization to practice issued pursuant to this title is valid for up to two years and is renewable on renewal dates as established by the Director of Labor, Licensing and Regulation with the consent of each applicable regulatory board.

HISTORY: 1996 Act No. 453, Section 2.

Library References

Licenses 11.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 51, 53, 55.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 3, Definitions and General Considerations.

S.C. Jur. Accountants Section 6, License or Certificate.

**SECTION 40‑1‑40.** Purpose of division; domain.

(A) The purpose of the Division of Professional and Occupational Licensing, South Carolina Department of Labor, Licensing and Regulation, is to protect the public through the regulation of professional and occupational licensees and the administration of boards charged with the regulation of professional and occupational practitioners.

(B) The following boards and the professions and occupations they license or otherwise regulate must be administered by the Department of Labor, Licensing and Regulation pursuant to this article:

Board of Accountancy

Board of Architectural Examiners

Athletic Commission

Auctioneers Commission

Board of Barber Examiners

Accessibility Committee of the Building Codes Council

Building Code Council

Board of Chiropractic Examiners

Contractors’ Licensing Board

Board of Cosmetology

Board of Dentistry

Engineers and Land Surveyors Board

Environmental Certification Board

Board of Registration for Foresters

Board of Funeral Service

Board of Registration for Geologists

Manufactured Housing Board

Board of Medical Examiners

Modular Buildings Board of Appeals

Board of Nursing

Long Term Health Care Administrators Board

Board of Occupational Therapy

Board of Examiners in Opticianry

Board of Examiners in Optometry

Board of Pharmacy

Board of Physical Therapy Examiners

Pilotage Commission

Board of Podiatry Examiners

Board of Examiners for Licensure of Professional Counselors and Marital and Family Therapists

Board of Examiners in Psychology

Board of Pyrotechnic Safety

Real Estate Appraisers Board

Real Estate Commission

Residential Builders Commission

Board of Social Work Examiners

Board of Examiners in Speech‑Language Pathology and Audiology

Board of Veterinary Medical Examiners

(C) Each regulatory board within the department is a separate board.

(D) The Department of Labor, Licensing and Regulation is a member of the Governor’s executive cabinet and must be headed by a director who must be appointed by the Governor with the advice and consent of the Senate, subject to removal from office by the Governor pursuant to Section 1‑3‑240(B). The director shall supervise the department under the direction and control of the Governor and shall exercise other powers and perform other duties as the Governor requires.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Mobile dental facilities and portable dental operations, see S.C. Code of Regulations R. 39‑18.

Library References

Licenses 10.1 to 18.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 50 to 55.

RESEARCH REFERENCES

ALR Library

165 ALR 1174 , Power to Revoke License as Affected by the Fact that the Penalty Provided by License Statute or Ordinance for Violation of Its Terms or Conditions Does Not Include Revocation.

Encyclopedias

S.C. Jur. Accountants Section 6, License or Certificate.

Attorney General’s Opinions

A court will most likely find an individual who has been granted Deferred Action for Childhood Arrival status should be denied a professional or occupational license in South Carolina. S.C. Op.Atty.Gen. (March 3, 2014) 2014 WL 1398592.

While the Department of Labor Licensing and Regulation is generally responsible for “administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations ...” for the South Carolina Board of Pharmacy, 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. S.C. Op.Atty.Gen. (June 17, 2009) 2009 WL 1968610.

Notes of Decisions

Construction and application 1

1. Construction and application

Quasi‑judicial immunity afforded to guardians ad litem (GAL) did not apply to professional disciplinary proceeding initiated by Board of Social Work Examiners against licensed social worker for allegedly asserting she had performed duties she had not actually performed while working as a GAL, in violation of Social Work Examiners Practice Act; extension of quasi‑judicial immunity to social worker in disciplinary proceedings would have hampered Board’s purpose of protecting the public. Forman v. South Carolina Department of Labor (S.C.App. 2016) 419 S.C. 64, 796 S.E.2d 138, rehearing denied. Licenses 38

**SECTION 40‑1‑45.** Public and consumer members of boards and panels.

The department, in consultation with currently serving board members, the Office of the Governor, members of professional and industry associations, and the general public shall encourage public and consumer membership and participation on all boards and panels associated with the department. Public and consumer membership may not include current or former, active or inactive members of the profession or occupation being regulated. Public and consumer members have the same rights and responsibilities as professionally or occupationally‑related board members and shall participate fully in all discussions, deliberations, decisions, and votes of the board or panel on which they serve unless otherwise prohibited by statute or regulation.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

State Board of Medical Examiners, appointment, terms and vacancies, powers and duties, see Section 40‑47‑10.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

**SECTION 40‑1‑50.** Authority of department; record of board proceedings; roster of licensees; fee structures.

(A) The department is responsible for all administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities of the boards and commissions enumerated in Section 40‑1‑40.

The director shall employ and supervise personnel necessary to effectuate the provisions of this article for each board provided for in Section 40‑1‑40. When hiring a person charged with evaluating or administering professional qualifications or licensing standards, the director must select from a list of three candidates submitted by the appropriate licensing board. However, a candidate whose name is submitted to the director must be chosen from a list of all candidates found to be qualified by the Human Management Office of the department. The authority to remove an employee of the department is vested with the Director of the Department of Labor, Licensing and Regulation.

The director shall establish compensation for personnel assigned to the boards as the director considers necessary and appropriate for the administration of this article. Compensation and necessary expenses incurred in the performance of duties by personnel assigned to the board must be paid as an expense of the board in the administration of this article.

The director shall enter into contracts and agreements the director considers necessary or incidental to carry out the provisions of this article to provide for all services required by each board.

Board members must be compensated for their services at the usual rate for mileage, subsistence, and per diem as provided by law for members of state boards, committees, and commissions and may be reimbursed for actual and necessary expenses incurred in connection with and as a result of their work as members of the board. The director, within the limits set by the Comptroller General, shall establish reimbursement standards for travel and other expenses incurred by a board member in the performance of the board member’s official duties. Compensation and reimbursements paid to board members under this subsection must be paid as an expense of the board in the administration of this article and the board’s chapter and must be paid from the fees received by the board pursuant to the provisions of this article or in a manner prescribed by the Department of Labor, Licensing and Regulation.

The director shall maintain a separate account for funds collected on behalf of a board and shall indicate the expenses allotted to the board. The director shall adjust fees for revenue‑funded boards in accordance with Section 40‑1‑50 (D).

The director annually shall prepare a report to the Governor and the General Assembly indicating those regulated trades, occupations, and professions that do not meet the spirit and intent of Section 40‑1‑10.

The director may perform any additional administrative functions requested by the boards.

(B) The department shall keep a record of the proceedings of each board and shall maintain a registry of all applications for licensure, permitting, certification, and registration. The registry shall include the name, age, and last known address of each applicant, the place of business of the applicant, the education, experience, and other qualifications of the applicant, type of examination required, whether or not an authorization to practice was granted, the date of the action of the department, and other information considered necessary by the board.

Except as otherwise required by law, the record of a board’s proceedings and its registry of applicants must be open to public inspection, and a copy of the registry must be provided upon request and payment of a fee.

Records of a board and its registry are prima facie evidence of its proceedings, and a copy certified by the administrator or the director under seal is admissible as evidence with the same force and effect as the original.

(C) The department may prepare and publish a roster for each respective board containing the names and places of business of persons licensed under this article. A copy of the roster must be provided upon request and upon payment of a fee which may not exceed the cost of printing and distribution of the roster.

(D) Initial fees for revenue‑funded boards must be established by each board and shall serve as the base for necessary administrative adjustments. Each board, on at least a biennial basis, shall provide the director with a statement of anticipated expenditures, program changes, and other information as may be used in determining fees for the next biennial period.

Fees for revenue‑funded boards must be assessed, collected, and adjusted on behalf of each board by the department in accordance with this article. Fees may be adjusted biennially to ensure that they are sufficient but not excessive to cover expenses including the total of the direct and indirect costs to the State for the operations of each respective board. Fees must be deposited in accounts established for each respective board.

The following steps must be used in the development and analysis of fee structures:

(1) Determine current financial position of the program. Each month, the department’s administrative section shall prepare statements reflecting monthly revenue collection activity and related program expenses for each board program. The financial standing of a board program must be reviewed each biennium for boards that renew biennially, annually for boards that renew on an annual basis, and more frequently if indicators evidence a significant financial fluctuation of more than ten percent variance between a program’s revenue and related expenses;

(2) Project future activity and related costs of the program. By reviewing historical volume information and adjusting trends to reflect changes in the industry, changes in the program, indicators from the board members to the staff, and general economic indicators, project program activity including, but not limited to, renewals and new applicants for the upcoming two to three years. Based on these population projections, forecast program revenues using the current fee structure. With input from the board and the staff, analyze related program direct board costs for the upcoming two to three years, based on historical trends, changes in program requirements, changes to expenditure centers, and changes in staffing requirements. To these direct costs, add the program’s proportionate share of other related costs of the program including, but not limited to, administration of exams, agency administration, and information systems to arrive at the total program cost;

(3) Determine the projected financial position of the program, propose changes where necessary, and compare the total projected revenue at the current fees to the total projected costs of the program over the next two to three years. If the current fees and the projected program activity do not support the projected program’s expenses, develop alternative fee structures which would ensure the program’s continuing financial stability as required by law;

(4) Present findings to the director and staff for discussion, revision, evaluation, and adoption. While developing fee analyses, maintain communications with staff and agency management to ensure all necessary factors are evaluated and cost savings, efficiencies, and alternative cost reduction scenarios are pursued. Present fee analyses to board staff and management for discussion and revision where necessary. Propose alternatives to the director for consideration when preparing to adopt proposed fee schedules to achieve a structure sufficient to support the program.

Fees for a board funded by general appropriations must be set by the General Assembly and deposited into the general fund. All fees are nonrefundable.

(E) Where appropriate, the director shall adopt the necessary procedures to implement the biennial renewal of authorizations to practice in a manner as to ensure that the number of renewals is reasonably evenly distributed throughout each two‑year period. During any transition, fees must be proportionate to the biennial fee.

(F) A board may elect to delegate to the department the authority to issue an authorization to practice to an applicant whose proof of qualifications falls within established guidelines set by the board.

A board may elect to delegate to the department the authority to deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or the licensing act of the board, who has failed to comply with a final order of a board, or who has failed to demonstrate the basic qualifications or standards for practice authorization contained in the board’s licensing act. The applicant may appeal the denial to the board which has final regulatory decision‑making authority for reconsideration. The board may uphold the denial, order issuance of the authorization to practice, or order issuance of the authorization to practice upon conditions set by the board. If the administrative decision is upheld, the applicant may reapply at the end of a twelve‑month period.

(G) The department shall suspend the practice authorization issued by a board administered by this article to a person who submits a check, money draft, or similar instrument for payment of a fee which is not honored by the financial institution named. The suspension becomes effective ten days following delivery by certified mail of written notice of the dishonor and the impending suspension to the person’s address. Upon notification of suspension, the person may reinstate the authorization to practice upon payment of the fee and penalties required under statute or regulation. This suspension is exempt from the Administrative Procedures Act.

(H) The department shall revoke the authorization to practice of a person found to be in violation of the Family Independence Act as it relates to child support enforcement requirements.

(I) The department may prepare an annual report for submission to the Governor.

It is the duty of the director to notify and seek approval of the board or commission at least thirty days in advance of filing with Legislative Council as required by Section 1‑23‑30 of any proposed changes in any rules or regulations which may affect the practice or service of the respective licensing board or commission.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Administration of program of soil classifiers, see Section 40‑65‑50.

Dental Sedation Act, permits, applications, fees, see Section 40‑15‑400.

Examination, Board of Landscape Architectural Examiners, see S.C. Code of Regulations R. 76‑7.

Explosives, licensing and permitting fees, see S.C. Code of Regulations R. 71‑8302.3.

Fees, Environmental Certification Board, see S.C. Code of Regulations R. 51‑6.

Fees for licensing, testing, and inspections, portable fire extinguishers and fixed fire extinguishing systems, see S.C. Code of Regulations R. 71‑8303.3.

Liquefied petroleum gas, licensing and permitting fees, see S.C. Code of Regulations R. 71‑8304.3.

Liquefied petroleum gas, plan submittal requirements, see S.C. Code of Regulations R. 71‑8304.5.

Real estate brokers, salespersons and property managers, establishment of license fees, see Section 40‑57‑70.

Real estate brokers, salespersons, and property managers, see Section 40‑57‑110.

Registration fee for mobile dental facilities and portable dental operations, see S.C. Code of Regulations R. 39‑18.

Library References

Licenses 21, 22, 27.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60, 70 to 72, 101 to 114.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 7, Prohibited Acts and Practices.

Attorney General’s Opinions

While the Department of Labor Licensing and Regulation is generally responsible for “administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations ...” for the South Carolina Board of Pharmacy, 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. S.C. Op.Atty.Gen. (June 17, 2009) 2009 WL 1968610.

**SECTION 40‑1‑60.** Officers of boards; meetings.

(A) A board annually shall elect from among its members a chairman, vice‑chairman, and other officers as the board determines necessary. The board shall adopt rules and procedures reasonably necessary for the performance of its duties and the governance of its operations and proceedings.

(B) A board shall meet at least two times a year and at other times upon the call of the chairman or a majority of the board.

(C) A majority of the members of a board constitutes a quorum; however, if there is a vacancy on the board, a majority of the members serving constitutes a quorum.

(D) A board member is required to attend meetings or to provide proper notice and justification of inability to do so. Unexcused absences from meetings may result in removal from the board as provided for in Section 1‑3‑240.

HISTORY: 1996 Act No. 453, Section 2.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 6, License or Certificate.

**SECTION 40‑1‑70.** Powers and duties of boards.

The powers and duties of regulatory boards include, but are not limited to:

(1) determining the eligibility of applicants for examination and licensure;

(2) examining applicants for licensure including, but not limited to:

(a) prescribing the subjects, character, and manner of licensing examinations;

(b) preparing, administering, and grading the examination or assisting in the selection of a contractor for the preparation, administration, or grading of the examination;

(3) establishing criteria for issuing, renewing, and reactivating the authorizations to practice of qualified applicants, including the issuance of active or permanent, temporary, limited, and inactive licenses, or other categories as may be created;

(4) adopting a code of professional ethics appropriate to the profession or occupation which it licenses or regulates;

(5) evaluating and approving continuing education course hours and programs;

(6) conducting hearings on alleged violations of this article and regulations promulgated under this article;

(7) resolving consumer complaints, where appropriate and possible;

(8) disciplining persons licensed under this article in a manner provided for in this article;

(9) promulgating regulations which have been submitted to the director, at least thirty days in advance of filing with Legislative Council as required by Section 1‑23‑30.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Powers and duties of South Carolina Real Estate Commission, see Section 40‑57‑60.

Regulations pertaining to the State Board of Medical Examiners, see S.C. Code of Regulations R. 81‑12 et seq.

State Board of Medical Examiners, appointment, terms and vacancies, powers and duties, see Section 40‑47‑10.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

Attorney General’s Opinions

The South Carolina Manufactured Housing Board has the authority to mandate the continuing education of its licensees as a prerequisite of licensure. S.C. Op.Atty.Gen. (March 20, 2017) 2017 WL 1180537.

**SECTIONS 40‑1‑75, 40‑1‑77.** Repealed by 2013 Act No. 45, Section 4, eff June 7, 2013.

Editor’s Note

Former Section 40‑1‑75 was titled Continuing education exemption for persons serving on active military duty and was derived from 2008 Act No. 299, Section 2.

Former Section 40‑1‑77 was titled Temporary professional licenses for military spouses and was derived from 2012 Act No. 274, Section 1, eff June 26, 2012.

**SECTION 40‑1‑80.** Investigations.

(A) If the director has reason to believe that a person has violated a provision of this article or a regulation promulgated under this article or the licensing act or regulation of a board or that a licensee has become unfit to practice the profession or occupation or if a person files a written complaint with the board or the director charging a person with the violation of a provision of this article or a regulation promulgated under this article, the director may initiate an investigation.

(B) In conducting the investigation, the director may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation including, but not limited to, the existence, description, nature, custody, condition, and location of books, documents, or other tangible items and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the director, the director may apply to an administrative law judge for an order requiring the person to comply.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Appraisal Management Company Registration Act, investigations and disciplinary proceedings, notice requirements, see Section 40‑60‑480.

Landscape architect licensure and certification, investigative procedures, see Section 40‑28‑110.

Soil classifiers, investigative procedures, who may file complaint, see Section 40‑65‑80.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 80, 82 to 100.

**SECTION 40‑1‑90.** Disciplinary action proceedings.

(A) The results of an investigation must be presented to the board. If from these results it appears that a violation has occurred or that a licensee has become unfit to practice the profession or occupation, the board, in accordance with the Administrative Procedures Act, may take disciplinary action authorized by Section 40‑1‑120. No disciplinary action may be taken unless the matter is presented to and voted upon by the board. The board may designate a hearing officer or hearing panel to conduct hearings or take other action as may be necessary under this section.

(B) For the purpose of a proceeding under this article, the department may administer oaths and issue subpoenas for the attendance and testimony of witnesses and the production and examination of books, papers, and records on behalf of the board or, upon request, on behalf of a party to the case. Upon failure to obey a subpoena or to answer questions propounded by the board or its hearing officer or panel, the board may apply to an administrative law judge for an order requiring the person to comply with the subpoena.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Appraisal Management Company Registration Act, investigations and disciplinary proceedings, notice requirements, see Section 40‑60‑480.

Library References

Licenses 38.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 80, 82 to 100.

Attorney General’s Opinions

Service as a hearing officer appointed by a regulatory board or commission pursuant to Section 40‑1‑90 would not constitute an office for purposes of the dual office holding prohibition contained in the South Carolina Constitution. S.C. Op.Atty.Gen. (March 29, 2016) 2016 WL 1533259.

**SECTION 40‑1‑100.** Equitable relief; immunity.

(A) When the board has reason to believe that a person is violating or intends to violate a provision of this article or a regulation promulgated under this article, in addition to all other remedies, it may order the person immediately to cease and desist from engaging in the conduct. If the person is practicing a profession or occupation without being licensed under this article, is violating a board order, a provision of this article, or a regulation promulgated under this article, the board also may apply, in accordance with the rules of the Administrative Law Court, to an administrative law judge for a temporary restraining order.

No board member or the Director of the Department of Labor, Licensing and Regulation or another employee of the department may be held liable for damages resulting from a wrongful temporary restraining order.

(B) The board may seek from an administrative law judge other equitable relief to enjoin the violation or intended violation of this article or a regulation promulgated under this article.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Appraisal Management Company Registration Act, Board authorized to issue restraining orders, see Section 40‑60‑490.

Landscape architect licensure and certification, cease and desist orders and equitable relief, see Section 40‑28‑120.

Real estate brokers, salespersons, and property managers, investigations, restraining orders, surrender of license, disciplinary action, report to be posted, see Section 40‑57‑720.

Soil classifiers, cease and desist orders and equitable relief, see Section 40‑65‑100.

Library References

Injunction 89(5).

Licenses 38.

Westlaw Topic No. 212, 238.

C.J.S. Injunctions Sections 242 to 243, 245 to 247.

C.J.S. Licenses Sections 80, 82 to 100.

**SECTION 40‑1‑110.** Additional grounds for disciplinary action.

In addition to other grounds contained in this article and the respective board’s chapter:

(1) A board may cancel, fine, suspend, revoke, or restrict the authorization to practice of an individual who:

(a) used a false, fraudulent, or forged statement or document or committed a fraudulent, deceitful, or dishonest act or omitted a material fact in obtaining licensure under this article;

(b) has had a license to practice a regulated profession or occupation in another state or jurisdiction canceled, revoked, or suspended or who has otherwise been disciplined;

(c) has intentionally or knowingly, directly or indirectly, violated or has aided or abetted in the violation or conspiracy to violate this article or a regulation promulgated under this article;

(d) has intentionally used a fraudulent statement in a document connected with the practice of the individual’s profession or occupation;

(e) has obtained fees or assisted in obtaining fees under fraudulent circumstances;

(f) has committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public;

(g) lacks the professional or ethical competence to practice the profession or occupation;

(h) has been convicted of or has pled guilty to or nolo contendere to a felony or a crime involving drugs or moral turpitude;

(i) has practiced the profession or occupation while under the influence of alcohol or drugs or uses alcohol or drugs to such a degree as to render him unfit to practice his profession or occupation;

(j) has sustained a physical or mental disability which renders further practice dangerous to the public;

(k) violates a provision of this article or of a regulation promulgated under this article;

(l) violates the code of professional ethics adopted by the applicable licensing board for the regulated profession or occupation or adopted by the department with the advice of the advisory panel for the professions and occupations it directly regulates.

Each incident is considered a separate violation.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Appraisal Management Company Registration Act, disciplinary action, see Section 40‑60‑470.

Department of Labor, Licensing and Regulation Panel for Dietetics, misconduct defined, see S.C. Code of Regulations R. 40‑10.

Landscape architect licensure and certification, grounds for disciplinary action, see Section 40‑28‑130.

Mixed martial arts, disciplinary action, see S.C. Code of Regulations R. 20‑27.19.

Real estate brokers, salespersons, and property managers, grounds for denial of issuance of license or for disciplinary action against licensee, see Section 40‑57‑710.

Soil classifiers, grounds for disciplinary action, see Sections 40‑65‑45, 40‑65‑110.

Library References

Licenses 38 to 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 80, 82 to 100, 115 to 126.

Notes of Decisions

In general 1

1. In general

Dentist allowed his license to lapse in state, and thus application to have his license reinstated was a new request to be licensed in state, and not a continuation of prior disciplinary proceedings. Trimmier v. South Carolina Dept. of Labor, Licensing and Regulation (S.C.App. 2013) 405 S.C. 239, 746 S.E.2d 491. Health 224

**SECTION 40‑1‑115.** Term of board jurisdiction.

A board has jurisdiction over the actions committed or omitted by current and former licensees during the entire period of licensure. The board has jurisdiction to act on any matter which arises during the practice authorization period.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Appraisal Management Company Registration Act, jurisdiction, see Section 40‑60‑500.

Library References

Licenses 21.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 58 to 60.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Veterinarians Section 4, Powers and Duties.

**SECTION 40‑1‑120.** Sanctions.

(A) Upon a determination by a board that one or more of the grounds for discipline exists, in addition to the actions the board is authorized to take pursuant to its respective licensing act, the board may:

(1) issue a public reprimand;

(2) impose a fine not to exceed five hundred dollars unless otherwise specified by statute or regulation of the board;

(3) place a licensee on probation or restrict or suspend the individual’s license for a definite or indefinite time and prescribe conditions to be met during probation, restriction, or suspension including, but not limited to, satisfactory completion of additional education, of a supervisory period, or of continuing education programs;

(4) permanently revoke the license.

(B) A decision by a board to discipline a licensee as authorized under this section must be by a majority vote of the total membership of the board serving at the time the vote is taken.

(C) A final order of a board disciplining a licensee under this section is public information.

(D) Upon a determination by a board that discipline is not appropriate, the board may issue a nondisciplinary letter of caution.

(E) A board may establish a procedure to allow a licensee who has been issued a public reprimand to petition the board for expungement of the reprimand from the licensee’s record.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Appraisal Management Company Registration Act, disciplinary action, see Section 40‑60‑470.

Real estate brokers, salespersons, and property managers, investigations, restraining orders, surrender of license, disciplinary action, report to be posted, see Section 40‑57‑720.

Library References

Licenses 38, 40, 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 80, 82 to 100, 121 to 126.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Veterinarians Section 4, Powers and Duties.

NOTES OF DECISIONS

In general 1

1. In general

Following imposition of sanction in medical disciplinary proceeding that physician reestablish competency before returning to practice, decision of State Board of Medical Examiners regarding sufficiency of physician’s proof of competence must be made objectively and reasonably; approval cannot be unreasonably withheld. Osman v. South Carolina Dept. of Labor (S.C. 2009) 382 S.C. 244, 676 S.E.2d 672. Health 224

State Board of Medical Examiners was authorized, in medical disciplinary proceeding, to impose sanction that physician meet certain requirements to reestablish her competency if she returned to the practice of surgical obstetrics. Osman v. South Carolina Dept. of Labor (S.C. 2009) 382 S.C. 244, 676 S.E.2d 672. Health 222(1)

**SECTION 40‑1‑130.** Board’s authority to sanction.

A board may deny an authorization to practice to an applicant who has committed an act that would be grounds for disciplinary action under this article or the licensing act of the respective board. A board must deny authorization to practice to an applicant who has failed to demonstrate the qualifications or standards for licensure contained in the respective board’s licensing act. The applicant shall demonstrate to the satisfaction of the board that the applicant meets all the requirements for the issuance of a license.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Appraisal Management Company Registration Act, grounds for denial of registration, see Section 40‑60‑510.

Soil classifiers, grounds for denial of licensure or certification, see Section 40‑65‑130.

Library References

Licenses 20.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 62 to 66.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Veterinarians Section 4, Powers and Duties.

**SECTION 40‑1‑140.** Effect of prior criminal convictions.

A person may not be refused an authorization to practice, pursue, or engage in a regulated profession or occupation solely because of a prior criminal conviction unless the criminal conviction directly relates to the profession or occupation for which the authorization to practice is sought. However, a board may refuse an authorization to practice if, based upon all information available, including the applicant’s record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the profession or occupation.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Landscape architect licensure and certification, denial of licensure, see Sections 40‑28‑70, 40‑28‑160.

Soil classifiers, criminal record grounds for denial of license or certification, see Sections 40‑65‑32, 40‑65‑140.

Library References

Licenses 20.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 62 to 66.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 4, Constitutional and Statutory Provisions.

S.C. Jur. Advertising Section 35, Veterinarians.

S.C. Jur. Veterinarians Section 10, Authority.

S.C. Jur. Veterinarians Section 11, Grounds.

**SECTION 40‑1‑150.** Voluntary surrender of authorization to practice.

A licensee who is under investigation for a violation provided for in Section 40‑1‑110 or the licensing act of the applicable board for which disciplinary action may be taken may voluntarily surrender authorization to practice to the board. The voluntary surrender invalidates the authorization to practice at the time of its relinquishment, and no person whose authorization to practice is surrendered voluntarily may practice the profession or occupation unless the board, by a majority vote, reinstates the license. A person practicing a regulated profession or occupation during the period of voluntary surrender is considered an illegal practitioner and is subject to the penalties provided by this article. The surrender of an authorization to practice may not be considered an admission of guilt in a proceeding under this article and does not preclude the board from taking disciplinary action against the licensee as provided for in this article or the board’s licensing act including, but not limited to, imposing conditions that must be met before the board reinstates the license.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Appraisal Management Company Registration Act, voluntary surrender of registration, see Section 40‑60‑530.

Landscape architect licensure and certification, voluntary surrender of license when under investigation for violation, see Sections 40‑28‑70, 40‑28‑160.

Real estate brokers, salespersons, and property managers, investigations, restraining orders, surrender of license, disciplinary action, report to be posted, see Section 40‑57‑720.

Soil classifiers, voluntary surrender of license or certification when under investigation for violation, see Section 40‑65‑150.

Library References

Licenses 40, 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 126.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Veterinarians Section 10, Authority.

S.C. Jur. Veterinarians Section 12, Procedure.

**SECTION 40‑1‑160.** Appeal.

A person aggrieved by a final action of a board may appeal the decision to the Administrative Law Court in accordance with the Administrative Procedures Act and the rules of the Administrative Law Court. Service of a petition requesting a review does not stay the board’s decision pending completion of the appellate process.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Appraisal Management Company Registration Act, review, see Sections 40‑60‑480, 40‑60‑540.

Library References

Licenses 40, 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 126.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Veterinarians Section 13, Review of Decision.

NOTES OF DECISIONS

In general 1

1. In general

Review of decision of State Board of Medical Examiners by Administrative Law Court (ALC) is governed by provision of Administrative Procedures Act (APA) governing judicial review upon exhaustion of administrative remedies. Osman v. South Carolina Dept. of Labor (S.C. 2009) 382 S.C. 244, 676 S.E.2d 672. Health 222(1)

**SECTION 40‑1‑170.** Costs of investigation and prosecution.

(A) In an order issued in resolution of a disciplinary proceeding before a board, a licensee found in violation of the applicable licensing act may be directed to pay a sum not to exceed the reasonable costs of the investigation and prosecution of the case in addition to other sanctions.

(B) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the director, or the director’s designee, is prima facie evidence of reasonable costs.

(C) Failure to make timely payment in accordance with the order results in the collection of costs in accordance with Section 40‑1‑180.

(D) The board may conditionally renew or reinstate for a maximum of one year the license of an individual who demonstrates financial hardship and who enters into a formal agreement to reimburse the board within that one‑year period for the unpaid costs.

(E) This section does not apply to a regulated profession or occupation if a specific provision in the applicable licensing act provides for recovery of costs in an administrative disciplinary proceeding.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Landscape architect licensure and certification, person found in violation to pay costs of investigation and prosecution, see Section 40‑28‑170.

Real estate brokers, salespersons, and property managers, investigations, restraining orders, surrender of license, disciplinary action, report to be posted, see Section 40‑57‑720.

Soil classifiers, person found in violation to pay costs of investigation and prosecution, see Section 40‑65‑170.

Library References

Licenses 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 124.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 8, Examination and Qualifications for Licensing and Certification.

S.C. Jur. Veterinarians Section 14, Penalties for Noncompliance.

**SECTION 40‑1‑180.** Failure to pay costs or fines; remittance of funds collected.

(A) All costs and fines imposed pursuant to this article and the respective boards’ licensing acts are due and payable immediately upon imposition or at the time indicated by final order of the board. Unless the costs and fines are paid within sixty days after the order becomes final, the order becomes a judgment and may be filed and executed upon in the same manner as a judgment in the court of common pleas, and the board may collect costs and attorneys’ fees incurred in executing the judgment. Interest at the legal rate accrues on the amount due from the date imposed until the date paid.

(B) All fines and costs collected under this section must be remitted by the department to the State Treasurer and deposited in a special fund established for the department to defray the administrative costs associated with investigations and hearings under this article.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Landscape architect licensure and certification, payment of cost and fine for violation, see Sections 40‑28‑130, 40‑28‑180.

Soil classifiers, payment of cost and fine for violation, see Sections 40‑65‑38, 40‑65‑180.

Library References

Licenses 40, 41.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 121 to 126.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 8, Examination and Qualifications for Licensing and Certification.

S.C. Jur. Veterinarians Section 14, Penalties for Noncompliance.

**SECTION 40‑1‑190.** Privileged communications.

(A) A communication, whether oral or written, made by or on behalf of a person, to the director or board or a person designated by the director or board to investigate or hear matters relating to discipline of a licensee, whether by way of complaint or testimony, is privileged and no action or proceeding, civil or criminal, may be brought against the person, by or on whose behalf the communication is made, except upon proof that the communication was made with malice.

(B) Nothing in this article may be construed as prohibiting the respondent or the respondent’s legal counsel from exercising the respondent’s constitutional right of due process under the law or as prohibiting the respondent from normal access to the charges and evidence filed against the respondent as part of due process under the law.

(C) Notwithstanding the provisions of this section, a final order of a board disciplining a licensee is public information as provided for in Section 40‑1‑120.

HISTORY: 1996 Act No. 453, Section 2.

CROSS REFERENCES

Appraisal Management Company Registration Act, confidentiality of investigations and proceedings, communications privileged, see Section 40‑60‑550.

Regulation regarding change of employment of multi‑lot salesperson licensed by the Manufactured Housing Board, see S.C. Code of Regulations R. 79‑20.

Regulation regarding change of employment of salesperson licensed by the Manufactured Housing Board, see S.C. Code of Regulations R. 79‑19.

Landscape architect licensure and certification, confidentiality of investigations and proceedings, see Section 40‑28‑190.

Soil classifiers, confidentiality of investigations, see Section 40‑65‑190.

Library References

Privileged Communications and Confidentiality 423.

Westlaw Topic No. 311H.

C.J.S. Witnesses Sections 370 to 371.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 3, Definitions and General Considerations.

S.C. Jur. Accountants Section 4, Constitutional and Statutory Provisions.

S.C. Jur. Accountants Section 8, Examination and Qualifications for Licensing and Certification.

Notes of Decisions

In general 1

1. In general

In breach of contract action brought by corporation that provided assets and support services to medical providers against professional association that specialized in reproductive endocrinology, and against association’s president, even if defendants had placed “at issue” topics covered by federal regulations making information reported to the National Practice Data Bank (NPDB) confidential, and South Carolina statutes making proceedings before the South Carolina Board of Medical Examiners and hospital peer review proceedings confidential, the “at issue” doctrine, which could operate as a waiver of common law privileges, did not apply to operate as a waiver of the statutory and regulatory privileges. IntegraMed America, Inc. v. Patton, 2014, 298 F.R.D. 326. Privileged Communications and Confidentiality 369; Privileged Communications and Confidentiality 422(2); Privileged Communications and Confidentiality 423

**SECTION 40‑1‑200.** Unlawful practice.

A person who practices or offers to practice a regulated profession or occupation in this State in violation of this article or who knowingly submits false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than fifty thousand dollars.

HISTORY: 1996 Act No. 453, Section 2.

Library References

Licenses 22, 40, 42(7).

Westlaw Topic No. 238.

C.J.S. Licenses Sections 70 to 72, 125 to 126, 132.

**SECTION 40‑1‑210.** Civil proceedings before Administrative Law Court.

The department, in addition to instituting a criminal proceeding, may institute a civil action through the Administrative Law Court, in the name of the State, for injunctive relief against a person violating this article, a regulation promulgated under this article, or an order of the board. For each violation the administrative law judge may impose a fine of no more than ten thousand dollars.

HISTORY: 1996 Act No. 453, Section 2.

Library References

Licenses 40.

Westlaw Topic No. 238.

C.J.S. Licenses Sections 125 to 126.

**SECTION 40‑1‑220.** Severability.

If a provision of this article or the application of a provision of this article to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this statute which can be given effect without the invalid provision or application, and to this end the provisions of this statute are severable.

HISTORY: 1996 Act No. 453, Section 2.

Library References

Statutes 64(2).

Westlaw Topic No. 361.

C.J.S. Statutes Sections 83, 87, 89 to 90, 94 to 97, 99, 102 to 104, 107.

ARTICLE 3

Miscellaneous Licensure Provisions for Military Personnel

Editor’s Note

2013 Act No. 45, preamble and Section 1, provide as follows:

“Whereas, the South Carolina General Assembly finds that military service members after separating from military service are frequently delayed in getting post‑military employment even though the service member may have applicable military education, training, and experience which could qualify for an occupational license or certification, or which could provide academic credit toward college, university, or technical degree requirements; and

“Whereas, the General Assembly finds it is advantageous to the State to create occupational and educational opportunities for post‑military service members who are honorably discharged and spouses of active‑duty service members who must leave work in another state to accompany their service member on transfer and assignment for military duty in this State; and

“Whereas, the General Assembly finds that the spouse of an active‑duty service member assigned for duty in this State who possesses a valid professional license or certification with current experience in another state should be allowed to apply for the same professional license or certification in this State and such application should be expedited for better employment opportunities and based upon the person having substantially equivalent education, training, and experience for licensure in this State. Now, therefore,”

“SECTION 1. This act is known and may be cited as the ‘Military Service Occupation, Education, and Credentialing Act’.”

**SECTION 40‑1‑610.** Continuing education exemption.

A person whose profession or occupation is regulated by this title is exempt from completing continuing education requirements for his profession or occupation while serving on active military duty.

HISTORY: 2013 Act No. 45, Section 3, eff June 7, 2013.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 9, Reciprocity, Waiver and Continuing Education.

**SECTION 40‑1‑620.** License fee exemption.

A person whose profession or occupation is regulated by this title may not be assessed, and is exempt from being required to pay, a license fee for his profession or occupation for a calendar year in which he serves any period of active military duty.

HISTORY: 2013 Act No. 45, Section 3, eff June 7, 2013.

**SECTION 40‑1‑630.** Temporary professional licenses; application.

(A) A board or commission that regulates the licensure of a profession or occupation under Title 40 may issue a temporary professional license for a profession or occupation it regulates to the spouse of an active duty member of the United States Armed Forces if the member is assigned to a duty station in this State pursuant to the official active duty military orders of the member.

(B)(1) A person seeking a temporary professional license under subsection (A) shall submit an application to the board or commission from which it is seeking the temporary license on forms the board or commission shall create and provide. In addition to general personal information about the applicant, the application must include proof that the:

(a) applicant is married to a member of the United States Armed Forces who is on active duty;

(b) applicant holds a valid license issued by another state, the District of Columbia, a possession or territory of the United States, or a foreign jurisdiction for the profession for which temporary licensure is sought;

(c) applicant holds the license in subitem (b) in “good standing” as evidenced by a certificate of good standing from the state, possession or territory of the United States, or foreign jurisdiction that issued the license;

(d)(i) applicant submitted at his expense to a fingerprint‑based background check conducted by the State Law Enforcement Division to determine if the applicant has a criminal history in this State and a fingerprint‑based background check conducted by the Federal Bureau of Investigation to determine if the person has other criminal history, and the official results of these checks must be provided to the board or commission to which application for temporary licensure is made; and

(ii) the provisions of this subitem only apply if a similar background check is required to obtain ordinary licensure in the profession or occupation for which temporary licensure is sought by the applicant; and

(e) spouse of the applicant is assigned to a duty station in this State pursuant to the official active duty military orders of the member.

(C) A temporary license issued under this section expires one year from the date of issue and may not be renewed.

HISTORY: 2013 Act No. 45, Section 3, eff June 7, 2013.

**SECTION 40‑1‑640.** Consideration of education, training, and experience completed by an individual as a member of the military.

(A) A professional or occupational board or commission governed by this title may accept the education, training, and experience completed by an individual as a member of the Armed Forces or Reserves of the United States, National Guard of any state, the Military Reserves of any state, or the Naval Militias of any state and apply this education, training, and experience in the manner most favorable toward satisfying the qualifications for issuance of the requested license or certification or approval for license examination in this State, subject to the receipt of evidence considered satisfactory by the board or commission.

(B) Nothing in this section may be construed to require the issuance of a license or certificate to an applicant who does not otherwise meet the stated eligibility standards, criteria, qualifications, or requirements for licensure, or certification, nor may the provisions be construed to automatically allow issuance of any license or certificate without testing or examination, without proper consideration by the licensing and examination board, or without proper verification that the applicant is not subject to pending criminal charges or disciplinary actions, has not been convicted of any offense prohibiting licensure or certification, and has no other impairment that would prohibit licensure or certification in this State.

HISTORY: 2013 Act No. 45, Section 3, eff June 7, 2013.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Accountants Section 8, Examination and Qualifications for Licensing and Certification.