SOUTH CAROLINA PANEL FOR DIETETICS
AGENDA
April 12, 2016 at 10:00 A.M.
110 Centerview Drive, Kingstree Building, Room 204
Columbia, South Carolina

Public Notice of this meeting was properly posted at the Dietetic Panel's Office, Synergy Business Park, Kingstree Building, and provided to all requesting persons, organizations, and news media in compliance with the South Carolina Freedom of Information Act, Section 30-4-80.

Call to Order

Approval of Agenda Greene | Rice

Approval / Disapproval of Absent Panel Member(s)

Introduction of New Panel Administrator – April Koon

Approval of September 18, 2015, Panel Meeting Minutes

Office of Investigations & Enforcement (OIE) Statistical Rpt - Althea Myers, Chief Investigator

Investigative Review Committee (IRC) Report – Althea Myers, Chief Investigator

Office of Disciplinary Counsel (ODC) Report – Prentiss Shealey, ODC Attorney

Office of Investigations & Enforcement and Office of Disciplinary Counsel Orientation – Althea Myers, Chief Investigator and Prentiss Shealey, ODC Attorney

Legislative Update – Holly Beeson
a. Proposed Revision to DHEC Regulations – Donnell Jennings

Application Hearing –Licensure Application – Juan Reynoso

Reports / Information
Administrative Information – April Koon
a. Licensee Totals Report
b. Financial Report

Unfinished Business
1. CE Requirement for License Renewal Language – Update BILL
   a. Talking Points – Ms. Rice

New Business
1. Elect Media Designee
2. Election of Board Officers
3. Acceptance of electronic transcripts

Public Comments

Announcements - Next Panel Meeting is September 20, 2016.

Adjournment

* Delegate of Authority - for admin. Chair w/ work w/ staff

South Carolina Department of Labor, Licensing and Regulation (SCLLR)
South Carolina Panel for Dietetics Meeting Minutes
September 18, 2015 at 10:00 A.M.
Synergy Business Park, Kingstree Building, Room 204
Columbia, South Carolina 29210

PANEL MEMBERS PRESENT:
Karen G. Schwartz, MS, RD, Chair
Rebecca G. Wrenn, RD
Ann F. Childers, RD
Kay J. MacInnis, RD
Judy H. Thomas, RD
Michael C. Greene, Esquire

PANEL MEMBER ABSENT:
Edna Rice Cox

SCLLR STAFF PRESENT:
Holly Beeson, Esquire, Communications & Government Affairs
Donnell Jennings, Esquire, Office of Advice Counsel
Angie M. Combs, Administrator
Missy D. Jones, Administrative Assistant
For IRC Report:
Althea B. Myers, Chief Investigator, Office of Investigations and Enforcement
Ashley Bailey, Investigator, Office of Investigations and Enforcement

IN ATTENDANCE:
Tina F. Behles, Certified Court Reporter, Capital City Reporting, LLC
Charlotte Caperton-Kilburn, RD, President, South Carolina Academy of Nutrition and Dietetics
Katherine Shavo, RD

Public notice of this meeting was properly posted at the South Carolina Panel for Dietetics office and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the 1976 South Carolina Code, as amended, relating to the Freedom of Information Act. A quorum was present at all times.

CALL TO ORDER / ATTENDANCE: The meeting was called to order at 10:00 a.m. by Panel Chair Karen Schwartz.

WELCOME NEW PANEL MEMBERS: Introduction of Kay J. MacInnis and Ann F. Childers.

APPROVAL OF AGENDA: The agenda was approved with no objection or revision.

APPROVAL/DISAPPROVAL OF ABSENT PANEL MEMBER(S): A **motion** was made by Ms. Wrenn to approve the absence of Ms. Edna Cox Rice. The motion was seconded by Ms. Childers and Ms. Thomas and carried unanimously.

APPROVAL OF MINUTES: A **motion** was made by Mr. Greene to accept the April 17, 2015 minutes as written. The motion was seconded by Ms. Wrenn and carried unanimously.

OFFICE OF INVESTIGATIONS & ENFORCEMENT (OIE) STATISTICAL REPORT: Althea Myers, Chief of Investigations and Enforcement, provided the OIE Statistical Report and a Training Report that listed training the OIE investigators have attended. The Panel accepted this as information.

INVESTIGATIVE REVIEW COMMITTEE (IRC) REPORT: Chief Myers provided the IRC Report from the September 3, 2015 IRC meeting. It was recommended to dismiss Case #2015-1. A **motion** was made by Ms. Wrenn to accept the IRC dismissal recommendation for Case #2015-1. The motion was seconded by Ms. MacInnis and carried unanimously. The IRC recommended dismissing Case #2015-2 with a Cease and Desist Order. A **motion** was made by Mr. Greene to accept the IRC dismissal recommendation with a Cease and Desist Order for Case #2015-2. The motion was seconded by Ms. Thomas and carried unanimously.

CARRIE ASHLEE CLAYTOR APPLICATION HEARING (10:13 to 10:50 a.m.)

Ms. Claytor's application was before the Panel due to a previous sanction from the Georgia State Board of Examiners of Licensed Dietitians.

Executive Session (10:26 to 10:49 a.m.) A **motion** was made by Mr. Greene to go into Executive Session to receive legal advice. The motion was seconded by Ms. Wrenn and carried unanimously. A **motion** was made by Mr. Greene to come out of Executive Session. The motion was seconded by Ms. Wrenn and carried unanimously.

A **motion** was made by Ms. Thomas to approve Ms. Claytor's licensure application. The motion was seconded by Mr. Greene and carried unanimously.

NEW BUSINESS

Notice of Hearing for Proposed Regulations: A **motion** was made by Mr. Greene to modify the agenda to move to New Business under Tab 7, number 3. The motion was seconded by Ms. Childers and carried unanimously. Ms. Beeson provided the Panel information concerning the regulatory process when proposing to amend regulations, the Notice of Drafting, and the Notice of Hearing for Proposed Regulations. The Panel accepted this as information.

Ms. Beeson departed meeting.

REPORTS / INFORMATION

Administrative Information - Information was provided by Ms. Combs concerning the following topics:

- Licensee Total Report – there are 996 currently licensed dietitians; 828 are in state and 168 are out of state.
- CE Audit – audit will be conducted beginning October 1, 2015.
- Office of Disciplinary Counsel (ODC) Report – no cases to report.
- Financial Report – provided as information.

UNFINISHED BUSINESS

Continuing Education (CE) Requirements for License Renewal Language – Talking Points: Since Ms. Rice Cox is not available to present her report, this item to be carried over to the next Panel meeting.

NEW BUSINESS

Designate Panel Representative in Communications with DHEC: Discussion ensued. The Panel appointed Ms. Childers to be the Panel's Representative in communications with DHEC.

Election of Officer for Vice Chair: A **motion** was made by Ms. Thomas to nominate Ms. Wrenn for Vice Chair. The motion was seconded by Ms. MacInnis and carried unanimously.

Finalize 2016 Board Meeting Dates: The Panel approved future meeting dates as April 12, 2016 and September 20, 2016.

PUBLIC COMMENTS

There were no public comments made.

ANNOUNCEMENTS

Upcoming Meeting Date – April 12, 2016.

ADJOURNMENT

A **motion** was made by Ms. Wrenn to adjourn the meeting. The motion was seconded by Mr. Greene and carried unanimously. There being no further business, Ms. Schwartz adjourned the meeting at 11:25 a.m.

These minutes are a record of the official actions taken by the Panel and a summary of the meeting provided by Angie M. Combs, Administrator. Minutes are presented to the Panel for final approval.

Administrative Information – April Koon

a. **Licensee Totals**

Total of all licensees – 1078

Instate licensee total – 874

Out-of-state licensee total – 204

Dietetic Board DB0025		June 2014 Cash Balance	June 2015 Cash Balance	Feb 2016 Cash Balance
		FY14	**FY15**	**FY15**
Beginning Cash Balance		279,089.26	210,929.49	207,973.30
Total Revenue		25,485.00	112,495.52	26,305.00
Total Direct Expenditures		(48,333.47)	(69,447.48)	(28,788.03)
Indirect Expenditures (Overhead):				
Admin/Dir/Adv Cou - Based on Previous Yr Expenses	.749%	(18,600.21)	(20,385.46)	(13,790.26)
POL Admin - - Based on Previous Yr Expenses	.749%	(2,008.78)	(6,943.33)	(4,661.82)
OLC - Former POL Program		-	-	-
OIE - Based on No. of Investigations	.037%	(6,297.64)	(4,389.78)	(792.21)
Legal - Based on No. of Investigations	.037%	(2,198.35)	(1,578.28)	(286.29)
Office of Business Services - Based on Prev Yr Exp		(5,685.17)	-	-
Office of Health & Medical Rel Bds - Based on Pre Yr Exp	0.000%	-	-	-
Remittance to General Fund - Proviso 81.3	10.00%	(4,833.35)	(6,944.75)	-
Communications-Based on Prev Yr Exp	.749%	(1,512.50)	(1,571.11)	(948.59)
Immigration Proviso 81.8-Based on Prev Yr Exp	.749%	(1,384.41)	(1,292.90)	(772.82)
Osha Proviso 81.7-Based on Prev Yr Exp	.749%	(2,790.89)	(2,898.62)	-
Total Indirect Expenditures (Overhead)		(45,311.30)	(46,004.23)	(21,251.99)
NET		(68,159.77)	(2,956.19)	(23,735.02)
Year End Balance		210,929.49	207,973.30	184,238.28

South Carolina Panel for Dietetics
Panel Meeting
April 12, 2016

Office of Investigations and Enforcement

IRC Report

South Carolina Panel of Dietetics
Panel Meeting
April 12, 2016
Conference Room 204

South Carolina Panel for Dietetics
Panel Meeting
April 12, 2016

IRC Case Recommendations Report

- ✓ Dismiss: 0
- ✓ Letter of Caution: 0
- ✓ Formal Complaint: 0

Total cases submitted for Approval: 0

Office of Investigations and Enforcement

Statistics Report

South Carolina Panel for Dietetics
Panel Meeting
April 12, 2016
Conference Room 204

Althea B. Myers, Chief Investigator
4/12/16

*****Panel Members****

South Carolina Panel for Dietetics
Panel Meeting
April 12, 2016

➢ Statistics Report – CY 2015

Cases ***Received*** – 1/1/2015 - 12/31/2015

Alleged Issues	Q1	Q2	Q3	Q4	Total
Unlicensed Practice	0	1	1	0	2
Totals	**0**	**1**	**1**	**0**	**2**

Cases ***Closed*** – 1/1/2015 - 12/31/2015

Resolutions	Q1	Q2	Q3	Q4	Total
Dismissed			1	1	2
Totals			**1**	**1**	**2**

➢ Statistics -- 1st Quarter 2016

Cases *Received* – 1/1/16 – 3/31/16

Alleged Issues	Q1	Q2	Q3	Q4	Total
Totals	**0**	**0**	**0**	**0**	**0**

Cases *Received* – 1/1/16 – 3/31/16

Resolutions	Q1	Q2	Q3	Q4	Total
Totals	**0**	**0**	**0**	**0**	**0**

South Carolina Panel for Dietetics
Panel Meeting
April 12, 2016

Office of Investigations and Enforcement

Training Report

➢ OIE Investigators attended the following Investigations training ***CY 2015:***

- **LRADAC Science of Addiction, Treatment, and Recovery**
- National Association of Drug Diversion Investigators (NADDI) Annual Conference
- **Council on Licensure, Enforcement and Regulation (CLEAR) Certification training**
- HIPAA Privacy and Security Rules
- **RPP Quarterly Meeting**
- Reid Technique Interviewing and Interrogation
- **HealthCare Information Security and Privacy Practitioner (HCISPP) Certification training**
- Code of Conduct
- **Threat Assessment Training**
- National Association of Drug Diversion Investigators (NADDI) – *Controlling Drug Diversion in Healthcare (webinar)*

➢ OIE Investigators attended the following Investigations training ***CY 2016 to date:***

- **National Association of Drug Diversion Investigators (NADDI) Annual Conference**

ALAN WILSON
ATTORNEY GENERAL

March 3, 2014

Melina Mann, General Counsel
South Carolina Department of Labor, Licensing and Regulation
Post Office Box 11329
Columbia, South Carolina 29211-1329

Dear Ms. Mann:

Attorney General Alan Wilson has referred your letter dated October 31, 2013 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue: Is an individual who has been granted Deferred Action for Childhood Arrivals ("DACA" or "deferred action") status eligible for a South Carolina professional or occupational license?

Short Answer: Based on the current law at this time and the position of the federal government, this Office believes a court will most likely find an individual who has been granted Deferred Action for Childhood Arrival (DACA) status should be denied a professional or occupational license in South Carolina.

Law/Analysis:
Before this Office begins its analysis of your question, we note that the issue of immigration is a national issue dictated by our government. It is rapidly changing. Our United States Supreme Court recently stated:

> The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens. See *Toll v. Moreno,* 458 U.S. 1, 10, 102 S.Ct. 2977, 73 L.Ed.2d 563 (1982); see generally S. Legomsky & C. Rodríguez, Immigration and Refugee Law and Policy 115–132 (5th ed. 2009). This authority rests, in part, on the National Government's constitutional power to "establish an uniform Rule of Naturalization," U.S. Const., Art. I, § 8, cl. 4, and its inherent power as sovereign to control and conduct relations with foreign nations, see *Toll, supra,* at 10, 102 S.Ct. 2977 (citing *United States v. Curtiss–Wright Export Corp.*, 299 U.S. 304, 318, 57 S.Ct. 216, 81 L.Ed. 255 (1936)).

Arizona v. U.S., 132 S.Ct. 2492, 2498 (2012). Therefore, we will answer your question to the best of our knowledge based on the current law as we understand it.[1]

DACA is a term that was announced June 15, 2012 in a memorandum by the Secretary of Homeland Security. Arizona Dream Act Coalition v. Brewer, 945 F.Supp.2d 1049 (D.Ariz. 2013). The Secretary announced DACA pursuant to prosecutorial discretion to defer the removal action of an individual not lawfully present in the United States. Id. The Arizona United States District Court stated the following in the Arizona Dream case concerning Arizona's denial of state-issued driver's licenses to DACA individuals:

> Plaintiffs initially appeared to argue that Arizona's policy was preempted because it conflicted with Secretary Napolitano's discretionary decision to grant deferred status to those who qualify under the DACA program. Plaintiffs identified several ways in which the Arizona policy conflicted with the purposes of the DACA program, arguing that the policy "impermissibly undermines the federal goal of permitting [DACA recipients] to remain and work in the United States, and to be full, contributing members of society." Doc. 30 at 23. In response to this argument, Defendants argued that Secretary Napolitano's memorandum could have no preemptive effect. Defendants are correct.
>
> The memorandum does not have the force of law. Although the Supreme Court has recognized that federal agency regulations "with the force of law" can preempt conflicting state requirements, *Wyeth*, 555 U.S. at 576, 129 S.Ct. 1187, federal regulations have the force of law only when they prescribe substantive rules and are promulgated through congressionally-mandated procedures such as notice-and-comment rulemaking. *See River Runners for Wilderness v. Martin*, 593 F.3d 1064, 1071 (9th Cir.2010) (citing *United States v. Fifty–Three (53) Eclectus Parrots*, 685 F.2d 1131, 1136 (9th Cir.1982)). **Secretary Napolitano's memorandum does not purport to establish substantive rules (in fact, it says that it does not create substantive rights) and it was not promulgated through any formal procedure. As a result, the memorandum does not have the force of law and cannot preempt state law or policy.**
>
> Perhaps as a result of this reality, Plaintiffs clarified their conflict preemption argument in their reply memorandum, asserting that the Arizona policy "conflicts with *Congress's* decision to grant discretion to the Executive Branch to enforce the immigration laws[.]" Doc. 99 at 15 (emphasis in original). Unfortunately for Plaintiffs, this preemption argument also fails. Conflict preemption exists when a state law or policy "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona*, 132 S.Ct. at 2501. The "purpose of Congress is the ultimate touchstone[.]" *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996) (quotation marks and citations omitted). Plaintiffs have identified no purpose of Congress with which the Arizona driver's license policy conflicts.

[1] At the time this Opinion is written, it is this Office's understanding that U.S. Senate bill S. 744, 133 (Cong. 2013) is pending and that the latest version of the bill includes the Coons amendment language concerning professional licenses.

> Plaintiffs characterize Defendants' driver's license policy as an attempt to decide "that DACA recipients are *not* authorized to be present" in the United States, an attempt that "undermines Congress' intent that the federal government alone have discretion to make these decisions." Doc. 99 at 16 (emphasis in original). The Court does not agree, however, that the Arizona policy constitutes an attempt to decide which aliens may remain in the United States. **The policy concerns driver's licenses. Unlike the Arizona policy that was found to be conflict-preempted in *Arizona*, the driver's license policy does not concern the arrest, prosecution, or removal of aliens from the State or the Nation. The Court cannot find that issuance or denial of driver's licenses "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in delegating immigration authority to DHS. *See Hines*, 312 U.S. at 67, 61 S.Ct. 399.**
>
> Plaintiffs argue that Defendants' driver's license policy undermines Congress's intent that the federal government decide who can work in the United States. Plaintiffs' submit that Defendants' policy stands as an obstacle to this federal objective because driving is frequently necessary to work. But Plaintiffs cite no authority to show that work was one of the objectives Congress had in mind when it delegated immigration authority to DHS. **And to the extent Plaintiffs rely on the purposes of the DACA program, they are looking to a nonbinding policy of a federal agency, not the intent of Congress which is the touchstone of conflict preemption analysis. What is more, the Court certainly cannot impute the intentions of the DACA program to Congress when Congress itself has declined repeatedly to enact legislation that would accomplish the goals of the DACA program. *See, e.g.*, DREAM Act of 2011, S. 952, H.R. 1842, 112th Cong. (2011).**
>
> ....
>
> Even DHHS classifies DACA recipients as not "lawfully present" for purposes of certain benefits. Plaintiffs in some respects are like the undocumented aliens in *Plyler*, whom the Court described as enjoying an "inchoate federal permission to remain," 457 U.S. at 226, 102 S.Ct. 2382, but there are material distinctions from the *Plyler* undocumented aliens as well.

Id. at 1059-1060, 1063-1064 (emphasis added).

As stated by the Department of Homeland Security, "[d]eferred action DOES NOT provide an individual with lawful status." U.S. Citizenship & Immigration Services, https://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process (or www.uscis.gov, click on Humanitarian, click on Consideration of Deferred Action for Childhood Arrivals Process) (February 25, 2014) (emphasis added); Dept. of Homeland Security, https://www.dhs.gov/deferred -action-childhood-arrivals (or www.dhs.gov/deferred-action, click on frequent questions) (February 25, 2014) (emphasis added). As quoted from Homeland Security's website,

> About Deferred Action for Childhood Arrivals
> Q1: What is deferred action?

A1:Deferred action is a **discretionary determination to defer removal action** of an individual as an act of **prosecutorial discretion. Deferred action does not confer lawful status upon an individual.** In addition, although an individual whose case is deferred will not be considered to be accruing unlawful presence in the United States during the period deferred action is in effect, deferred action does not excuse individuals of any previous or subsequent periods of unlawful presence.
Under existing regulations, an individual whose case has been deferred is eligible to receive employment authorization for the period of deferred action, provided he or she can demonstrate "an economic necessity for employment." DHS can terminate or renew deferred action at any time at the agency's discretion.

....

Q6: If my case is deferred, am I in lawful status for the period of deferral?
A6: **No.** Although action on your case has been deferred and **you do not accrue unlawful presence during the period of deferred action, deferred action does not confer any lawful status.**
There is a significant difference between "unlawful presence" and "unlawful status." Unlawful presence refers to a period an individual is present in the United States (1) without being admitted or paroled or (2) after the expiration of a period of stay authorized by the Department of Homeland Security (such as after the period of stay authorized by a visa has expired). Unlawful presence is relevant only with respect to determining whether the inadmissibility bars for unlawful presence, set forth in the Immigration and Nationality Act at Section 212(a)(9), apply to an individual if he or she departs the United States and subsequently seeks to re-enter. (These unlawful presence bars are commonly known as the 3- and 10-Year Bars.)
The fact that you are not accruing unlawful presence does not change whether you are in lawful status while you remain in the United States. Because you lack lawful status at the time DHS defers action in your case, you remain subject to all legal restrictions and prohibitions on individuals in unlawful status.

Q7: Does deferred action provide me with a path to permanent residence status or citizenship?
A7: **No. Deferred action is a form of prosecutorial discretion that does not confer lawful permanent resident status or a path to citizenship. Only the Congress, acting through its legislative authority, can confer these rights.**

....

Q13: Is passage of the DREAM Act still necessary in light of the new process?
A13: Yes.The Secretary of Homeland Security's June 15th memorandum allowing certain people to request consideration for deferred action is the most recent in a series of steps that DHS has taken to focus its enforcement resources on the removal of individuals who pose a danger to national security or a risk to public safety. Deferred action does not provide lawful status or a pathway to citizenship. As the President has stated, individuals who would qualify for the DREAM Act deserve certainty about

> their status. Only the Congress, acting through its legislative authority, can confer the certainty that comes with a pathway to permanent lawful status.

Dept. of Homeland Security, Deferred Action for Childhood Arrivals, https://www.dhs.gov/deferred-action-childhood-arrivals (or www.dhs.gov/deferred-action, click on frequent questions) (February 25, 2014) (emphasis added). DACA status by the Department of Homeland Security does not have the force of law and cannot preempt state law. Arizona Dream Act Coalition v. Brewer, 945 F.Supp.2d 1049 (D.Ariz. 2013).[2]

Therefore, we can conclude deferred action (DACA) status does not give an individual lawful status in the United States according to our federal government. Hence, let us examine a pertinent South Carolina law regarding licenses. South Carolina Code Section 8-29-10 requires a verification of lawful presence for every agency or political subdivision in South Carolina issuing a state or local public benefit. The statute states:

> (A) Except as provided in subsection (C) of this section or where exempted by federal law, on or after July 1, 2008, every agency or political subdivision of this State shall verify the lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 USC Section 1621, or for federal public benefits, as defined in 8 USC Section 1611, that are administered by an agency or a political subdivision of this State.
>
> (B) The provisions of this article shall be enforced without regard to race, religion, gender, ethnicity, or national origin.
>
> ....

S.C. Code § 8-29-10 (1976 Code, as amended). The verification for lawful presence pursuant to S.C. Code Section 8-29-10 requires an applicant to meet three requirements, which state if an applicant is not a U.S. citizen or legal permanent resident eighteen or older, he must be:

a. a qualified alien (or nonimmigrant) under the Federal Nation Immigration & Nationality Act, Public Law 82-414;
b. who is at least 18 yrs. old; and
c. **who is lawfully present in the United States.**

S.C. Code § 8-29-10(D) (emphasis added). As previously mentioned, the Department of Homeland Security has already clarified lawful status is not given to an individual under DACA. Department of Homeland Security, supra. However, let us examine 8 U.S.C. Section 1621 concerning state and local public benefits. The federal law states:

> (a) In general
> Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, **an alien who is not--**
> **(1) a qualified alien (as defined in section 1641 of this title),**

[2] See also Saldana v. Lahm, 2013 WL 5658233 (not reported in F.Supp.2d) (D.Neb. 2013).

(2) a nonimmigrant under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.], or
(3) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C.A. § 1182(d)(5)] for less than one year,
is not eligible for any State or local public benefit (as defined in subsection (c) of this section).
...

(c) "State or local public benefit" defined
(1) Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term "State or local public benefit" means--
(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.
(2) Such term shall not apply--
(A) to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;
(B) with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.] qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or
(C) to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.
(3) Such term does not include any Federal public benefit under section 1611(c) of this title.
(d) State authority to provide for eligibility of illegal aliens for State and local public benefits
A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility.

8 U.S.C. § 1621 (emphasis added). This federal statute makes it clear a professional license may not be

issued by a State or local government to an alien who is not one of three exceptions (qualified pursuant to 8 U.S.C. § 1641, a nonimmigrant pursuant to U.S.C. § 1101, or an alien who is paroled pursuant to 8 U.S.C. § 1182(d)(5) for less than one year)[3] unless there is a specific State law enacted after August 22, 1996 granting such eligibility. It is this Office's understanding there is no such State law in South Carolina authorizing public benefits such as professional licenses for aliens do not lawful status in the United States.

Furthermore, let us examine the definition of qualified alien pursuant to federal law Section 1641. It states:

> (a) In general
> Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act [8 U.S.C.A. § 1101(a)].
>
> (b) Qualified alien
> For purposes of this chapter, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is--
> (1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act [8 U.S.C.A. § 1101 et seq.],
> (2) an alien who is granted asylum under section 208 of such Act [8 U.S.C.A. § 1158],
> (3) a refugee who is admitted to the United States under section 207 of such Act [8 U.S.C.A. § 1157],
> (4) an alien who is paroled into the United States under section 212(d)(5) of such Act [8 U.S.C.A. § 1182(d)(5)] for a period of at least 1 year,
> (5) an alien whose deportation is being withheld under section 243(h) of such Act [8 U.S.C. 1253] (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act [8 U.S.C. 1231(b)(3)] (as amended by section 305(a) of division C of Public Law 104-208),
> (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act [8 U.S.C. 1153(a)(7)] as in effect prior to April 1, 1980; or
> (7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

8 U.S.C. § 1641.

Moreover, the United States Department of Justice filed an amicus brief in 2013 supporting the denial of a professional law license to an alien who immigration status is under the deferred action status. The Brief for the United States of America as Amicus Curiae before the Supreme Court of Florida regarding a license to practice law stated:

> Congress made certain categories of aliens ineligible, absent an affirmative state enactment conferring eligibility, for "any grant, contract, loan, professional license, or

[3] This Office is going to presume for purposes of your question that all licenses issued by the South Carolina Department of Labor, Licensing and Regulations would be included in 8 U.S.C. § 1621.

commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government." 8 U.S.C. § 1621(c). A license to practice law is a "professional license." The narrow issue of statutory construction before the Cort is therefore whether a state bar license is "provided by an agency of a State or local government or by appropriated funds of a State or local government." *Id.* As explained below, because this Court is funded through appropriations, the licenses that it issues are "provided ... by appropriated funds of a State." *Id.* Under federal law, undocumented aliens are therefore ineligible for these licenses absent the "enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." *Id.* § 1621(d).

In the PRWORA, Congress created two parallel provisions that address issuance of licenses and benefits by federal and state agencies. ... In the second provision, which is at issue here, Congress set a default rule (alterable by states) that makes certain aliens ineligible for *state* public benefits, similarly defined to include "any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government." *Id.* § 1621(c).

These provisions were plainly designed to preclude undocumented aliens from receiving commercial and professional licenses issued by States and the federal government. Their sweeping language demonstrates that Congress intended to act comprehensively in prohibiting receipt of such benefits by undocumented aliens, and they should be construed in a manner that furthers that evident purpose. We are aware of no commercial or professional license that is not provided by an agency, provided by appropriated funds, or both.

...

[II.] B. The notion of "deferred action' has no bearing on the question presented here. The term "deferred action" refers to the exercise of prosecutorial discretion by DHS as to aliens who are subject to removal from the United States. As the U.S. Supreme Court has explained, "[a]t each state [of the deportation process] the Executive has discretion to abandon the endeavor, and at the time [the Illegal Immigration Reform and Immigrant Responsibility Act] was enacted the [Immigration and Naturalization Service] had been engaging in a regular practice (which had come to be known as 'deferred action') of exercising that discretion for humanitarian reasons or simply for its own convenience." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999).

Although an alien who has been granted deferred action may apply for work authorization, *see* 8 C.F.R. § 274a.12(c)(14), deferred action is not an immigration status or category described in 8 U.S.C. § 1621(a). Neither deferred action nor employment authorization has any bearing on an individual's eligibility for state and local benefits under 8 U.S.C. § 1621.

> Exempting additional categories of aliens from the operation of 8 U.S.C. § 1621 would require new legislation. Congress is currently considering proposed legislation that would make substantial changes to the immigration laws. *See* S. 744, 113 (Cong. 2013). Such legislation could alter the operation of 8 U.S.C. § 1621. *Cf.* Coons Amendment 10 to S. 744, filed in Senate Judiciary Committee (2013) (proposing that "[a]l individual who is authorized to be employed in the United States may not be denied a professional, commercial, or business license on the basis of his or her immigration status.").

Florida Board of Bar Examiners RE: Question as to Whether Undocumented Immigrants are Eligible for Admission to the Florida Bar brief for the United States of America as Amicus Curiae by Stuart F. Delery (Case No. SC 11-2568) (filed May 20, 2013) (emphasis added).[4]

Nevertheless, this Office maintains that the South Carolina Department of Labor, Licensing, and Regulation ("LLR") is charged with the protection of the public through the regulation of professional and occupational licenses and the administration of boards of practitioners. S.C. Code § 40-1-40. LLR governs according to statute and regulatory authority. S.C. Code § 41-3-10, et al. Additionally, this Office points out the South Carolina General Assembly also maintains the power to regulate when needed, as stated below:

> (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.

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[4] It is worth noting regarding Social Security benefits, 8 CFR 1.3 (a)(4)(vi) states:

> (a) Definition of the term an "alien who is lawfully present in the United States." For the purposes of 8 U.S.C. 1611(b)(2) only, an "alien who is lawfully present in the United States" means:
>
> ...
>
> (4) An alien who belongs to one of the following classes of aliens permitted to remain in the United States because DHS has decided for humanitarian or other public policy reasons not to initiate removal proceedings or enforce departure:
>
> ...
>
> (vi) aliens in deferred action status;

While there may be multiple other statutes addressing deferred action, it is this Office's understanding the Department of Justice's amicus brief clarifies that deferred action is related to immigration enforcement and does not allow an individual to receive state or local benefits such as a professional license, as stated above, and thus we will not address the numerous other sources of laws, regulations and authorities.

(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.

S.C. Code § 40-1-10 (C), (D) (1976 Code, as amended).

Conclusion: Therefore, this Office believes except where State or federal law directs otherwise, South Carolina LLR regulates professional and occupational licenses (noting the South Carolina General Assembly may also intervene). Thus, it appears while deferred action (DACA) is a matter of prosecutorial discretion being implemented by the federal government, DACA does not give an individual "lawful status," and does not carry the force of law; the federal government makes it clear it sees DACA as a separate issue from receiving state and local benefits such as a professional license pursuant to 8

U.S.C. § 1621.[5] Based on such an interpretation by the same administration that issued the DACA status in its prosecutorial discretion and based on State law, this Office believes a court will find that such a license should be denied to an individual in DACA status. However, this Office is only issuing a legal opinion. Until a court, the federal government or the legislature further specifically address the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter at this time. If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

[5] This opinion is limited to the question asked, which concerns professional and occupational licenses only.

Donnell

S.C. Code of Regulations R. **61-16** § 1505 is amended as follows:

Diets shall be prepared in conformance with ~~physicians'~~ orders of a physician or other qualified prescriber. A current diet manual shall be readily available to attending physicians, food and nutrition service and nursing personnel and other qualified prescribers.

A. Diets shall be prescribed, dated and signed/authenticated by the physician or other qualified prescriber responsible for the care of the patient, or by a qualified registered dietitian in this state issued privileges to do so by the hospital where the dietitian works.

B. Facilities with patients in need of special or therapeutic diets shall provide for such diets.

C. Notations shall be made in the medical record of diet served, counseling or instructions given, as identified by patient and/or nutritional assessment and patient's tolerance of the diet.

D. Diets shall be planned, written, prepared and served with consultation from a registered dietitian licensed~~registered~~ in this state.

E. Persons responsible for diets shall have sufficient knowledge of food values in order to make substitutions when necessary. All substitutions made on the master menu shall be documented.

F. A hospital may privilege qualified registered dietitians on its staff who are also licensed in this state to do the following without the supervision or approval of a physician or other practitioner:

(1) order or prescribe patient diets, including therapeutic diets;

(2) order laboratory tests to monitor the effectiveness of dietary plans and orders; and

(3) make subsequent modifications to those diets based on the results of lab tests.

G. Nothing in this regulation shall be construed as restricting or expanding the scope of practice allowed for registered dietitians who are licensed in this state or as allowing hospital personnel not licensed as registered dietitian in this state to engage in activities for which registration or licensure as a- dietitian is required under the laws of this state.

Rice

Continuing Education Requirement for the Licensed Dietitian (LD)

Proposed Change for professional Continuing Education (CEU) requirements:

Section 40-8

B). Each applicant, for a renewal of a license, shall demonstrate compliance with the continuing education requirements consistent with the Commission on Dietetic Registration.

Define CDR requirements - Practitioners must have successfully completed the CPEUs required for their current cycle (75 CPEUs for RDs). *From 2015-2020 Professional Development Portfolio Guide*

Current S. C. Practice Act – SC licensure requires 30 hours of continuing professional education per renewal period (every 2 years).

Talking Points:

- A Licensed RD could receive 75 CEU hours in a single year that would satisfy CDR requirements. S.C.'s current requirement could create a 2 year licensing period in which the RD would have no CEUs; the RD would be in compliance with CDR's requirement, but not with the requirement for S.C.
- Should the current regulation / language be enforced, an unnecessary burden would be placed on the licensee.
- Current licensing CEU requirement places undo financial and time burden on both the licensee and / or the employer of the LD in order to meet the current requirement of 30 CEU hours every 2 years.
- Changing the S.C. requirement to agree with that of the CDR would not impact fees or operations of the current licensing board, LLR.
- This change would not impact the competency of the professional or the quality of service provided to the consumers of S.C.

This is the request from S.C. Panel of Dietetics to amend the current S.C. Practice Act for the Licensed Dietitian.

SOUTH CAROLINA PANEL FOR DIETETICS

SIGN IN SHEET

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