ATTORNEY GENERAL OF MISSOURI
ERIC SCHMITT

August 3, 2021

Missouri Department of Commerce and Insurance
Division of Professional Registration
ATTN: Sarah E. Ledgerwood, Interim Division Director
3605 Missouri Boulevard
Jefferson City, MO 65109
(573) 751-5648

RE: Opinion request

Dear Interim Division Director Ledgerwood:

You ask whether § 324.047.2(13), RSMo, prohibits an individual from practicing, for compensation, as a "registered" practitioner, where the individual's occupation is not one required to be "registered" with the state and the private organization that issued the credential uses the term "registered" in the title of the credential.

The facts you provided are that most private organizations that confer credentials on individuals use the term "certified" in that credential. However, some private organizations use the term "registered" in the credential they confer. Individuals who have earned credentials from those private organizations are using the word "registered" in their titles as they practice their occupations, for example, "Registered Dietitian" or "Registered Radiologist Assistant." No Missouri law requires these practitioners to submit notification of their credential to any state agency, so they are not "registered" with the State of Missouri.

We conclude that § 324.047.2(13), RSMo, does not prohibit individuals from using the term "registered" in their titles where the credential has been granted by a nongovernmental entity and the legislature has not enacted any requirement of registration with the state.

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1. Plain language of the statute governs

The "primary rule of statutory interpretation is to give effect to legislative intent as reflected in the plain language of the statute at issue." *Karney v. Department of Labor and Industrial Relations*, 599 S.W.3d 157, 162 (Mo. 2020). A court will resort "to other rules of statutory interpretation only when the plain meaning of the statute is ambiguous or defeats the purpose of the statute." *Id.*

2. The plain language of the statute in question does not forbid using the term "registered" where there is no requirement of registration

The Division of professional registration has responsibilities regarding the issuance and renewal of licenses. § 324.001, RSMo. The legislature has stated a public policy that individuals may engage in a chosen occupation with "the least restrictive type of occupational regulation consistent with [protecting] the public interest." § 324.047.3, RSMo.

Section 324.047, RSMo, sets out specific requirements for the use of certain words in a practitioner's title:

> (2) "Certification", a program in which the government grants nontransferable recognition to an individual who meets personal qualifications established by a regulatory entity. Upon approval, the individual may use "*certified*" as a designated title. ...
> (13) "Registration", a requirement established by the general assembly in which an individual:
> (a) Submits notification to a state agency; and
> (b) May use "registered" as a designated title.
> Notification may include the individual's name and address, the individual's agent for service of process, the location of the activity to be performed, and a description of the service the individual provides. Registration may include a requirement to post a bond but does not include education or experience requirements. *If the requirement of registration is not met, the individual is prohibited from performing the*

> *occupation for compensation or using "registered" as a designated title.*
> (14) "Regulatory entity", any board, commission, agency, division, or other *unit or subunit of state government that regulates* one or more professions, occupations, industries, businesses, or other endeavors in this state;

Emphasis added. This statute was first passed in 2018, with a later amendment that addressed hair braiding. No cases interpret this statute.

By its plain terms, this statute only forbids using the term "registered" when performing an occupation for compensation or using the term "registered" in an individual's title, if the general assembly's "requirement of registration is not met[.]" Therefore, there could be three situations where this statute has application.

The first situation is where there is a requirement of registration, and that requirement is met. In that situation, an individual may use the term "registered" in performing the occupation for compensation and may use the term in the individual's title.

The second situation is if there is a requirement of registration, and that requirement is not met. In that situation, an individual may not use the term "registered" in performing the occupation for compensation and may not use the term in the individual's title. *See Attorney General Opinion 1954-68* (osteopath who was not licensed as an optometrist could not advertise as a "registered" optometrist). This is true even if the person has received a credential with the term "registered" in it from a private credentialing organization. That is, if a person is required to be registered with the state, the person cannot use the term "registered" in the person's title, even if the person is "registered" by a private organization.

The third situation is where there is no requirement of registration. By its plain terms, this statute does not forbid an individual from using the term "registered" in performing the occupation for compensation, and does not forbid using the term in the individual's title. Nothing in this statute addresses the ability of an individual to practice an occupation or use the term "registered" in the individual's title where the general assembly has not required registration for the occupation. Therefore, if the general assembly has not established a requirement for registration for a certain occupation,

nothing in the plain language of this statute prohibits that individual from practicing that occupation for compensation or using "registered" in the individual's title.

It is consistent with the express legislative intent of § 324.047, RSMo, to read § 324.047.2(13), RSMo, to allow individuals to use the term "registered" in their titles when this credential has been granted by a nongovernmental entity and there is no requirement of registration by the legislature. As stated in § 324.047.3, RSMo:

> All individuals may engage in the occupation of their choice, free from unreasonable government regulation. The state shall not impose a substantial burden on an individual's pursuit of his or her occupation or profession unless there is a reasonable interest for the statute to protect the general welfare. If such an interest exists, the regulation adopted by the state shall be the least restrictive type of occupational regulation consistent with the public interest to be protected.

Where the legislature has not required a particular occupation to be registered, and therefore has made no avenue for a person practicing that particular occupation to become registered with the state, it seems unlikely that the legislature intended to restrain a person, when in practice, from using the name of the credential the person has earned from a private organization.

In sum, § 324.047(13)(b), RSMo, does not mandate state registration by all those practicing in any particular area; it only mandates that, *if* the legislature has established a requirement of registration, that registration must be met before the person may use the term "registered" in the person's title. This statute does not contain any explicit prohibition against using the term in a title if a person has not been registered by the state and the state does not have a requirement of (or even a path to) registration by the state.

3. The statutes reflect a legislative understanding that private organizations issue credentials, and that some of the names of these credentials might overlap with state-issued designations.

The legislature has recognized that private organizations may issue credentials with terms such as "certified" or "registered." The legislature has shown itself ready to distinguish between these credentials and those issued by the state when needed.

For example, in the statutes regarding physician assistants, § 334.735.1(2), RSMo, defines "Certifying entity" as "the *nongovernmental* agency or association which *certifies or registers* individuals who have completed academic and training requirements;" *emphasis added.* In this area, the certifying entities are required to register with the department of commerce and insurance. § 334.737, RSMo, § 334.735(5), RSMo. But here the legislature has recognized that legitimate credentials such as certifications and registrations may be granted by nongovernmental entities.

Another example is the legislature's system of certification. Section 324.047.2(2), RSMo, provides, in pertinent part, that "certification" is: "a program in which *the government* grants nontransferable recognition to an individual who meets personal qualifications established by a regulatory entity. Upon approval, the individual may use 'certified' as a designated title." *Emphasis added.* However, the legislature also recognizes that private entities issue "certifications" to individuals in certain professions—the statutes regarding electrical contractors define the term "Certifying entity" as "the *nongovernmental* agency or association which *certifies or registers* individuals who have completed academic and training requirements[.]" § 324.900(1), RSMo, *emphasis added.* And, the statutes regarding dentistry define the term "Certified dental assistant" as "a dental assistant who is currently certified by the Dental Assisting National Board, Inc." § 332.011(4), RSMo. Therefore, even though § 324.047.2(2), RSMo, permits an individual to use the term "certified" if there is a government program that grants the recognition, the legislature also appears to recognize that certifications from private entities exist and are valid.

4. Where the legislature has intended to forbid a person from using a specific term in a person's credential, the legislature has clearly stated this

In contrast, other statutes specifically prohibit an individual from using a specific term in describing a credential if that credential has not been issued by the state; this is true even if a credential has been issued by a private organization. *See Yokley v. Townsend*, 849 S.W.2d 722, 725 (Mo. App. W.D. 1993) (in interpreting statutes, those on the same subject matter should be compared with each other). For example, the statute regarding nurses provides, in pertinent part:

> 1. Any person who holds a license to practice professional nursing in this state may use the title "Registered Professional Nurse" and the abbreviation "R.N.". *No other person shall use the title "Registered Professional Nurse" or the abbreviation "R.N.". No other person shall assume any title or use any abbreviation or any other words, letters, signs, or devices to indicate that the person using the same is a registered professional nurse.*

§ 335.076, RSMo, *emphasis added.* The subsections regarding the title "Licensed Practical Nurse" and "Advanced Practice Registered Nurse" contain substantially the same prohibitions. *See* § 335.076.2, RSMo, and § 335.076.3, RSMo. Further, two additional subsections place further prohibitions on individual's use of certain terms in their titles:

> 4. No person shall practice or offer to practice professional nursing, practical nursing, or advanced practice nursing in this state or use any title, sign, abbreviation, card, or device to indicate that such person is a practicing professional nurse, practical nurse, or advanced practice nurse *unless he or she has been duly licensed* under the provisions of this chapter.
>
> 5. In the interest of public safety and consumer awareness, it is unlawful for any person to use the title "nurse" in reference to himself or herself in any capacity, *except individuals who are or have been*

> *licensed as a registered nurse, licensed practical nurse, or advanced practice registered nurse under this chapter.*

§ 335.076, RSMo, *emphasis added.* These provisions show that, where the legislature intended to prohibit an individual from using a specific title, the legislature made that intent clear.

As another example, § 324.205, RSMo, specifically prohibits the use of certain terms in a person's title if the person has not been licensed by the state:

> 1. Any person who holds a license to practice dietetics in this state may use the title "Dietitian" or the abbreviation "L.D." or "L.D.N.". *No other person may use the title "Dietitian" or the abbreviation "L.D." or "L.D.N.".* No other person shall assume any title or use any title or use any abbreviation or any other words, letters, signs, or devices to indicate that the person using the same is a licensed dietitian.
> 2. *No person shall practice or offer to practice dietetics in this state for compensation or use any title, sign, abbreviation, card, or device to indicate that such person is practicing dietetics unless he or she has been duly licensed pursuant to the provisions of sections 324.200 to 324.225.*
> 3. Any person who violates the provisions of subsection 1 of this section is guilty of a class A misdemeanor.

Emphasis added. See also § 324.215, RSMo (requirements for State Committee of Dietitians to issue license). This statute requires all practicing dietitians to be licensed by the state, and prohibits anyone from using that title if the person has not been licensed by the state.

But even in this area, the legislature has recognized that a person may be granted a credential such as certification from a private professional organization:

> 1. An applicant for licensure as a dietitian ... shall furnish evidence to the committee that ... (2) The

applicant has completed a supervised practice requirement from an institution *that is certified by a nationally recognized professional organization* as having a dietetics specialty or who meets criteria for dietetics education established by the committee. The committee *may specify those professional organization certifications which are to be recognized* and may set standards for education training and experience required for those without such specialty certification to become dietitians.

3. The applicant shall successfully pass an examination as determined by the committee and possess a current registration with the Commission on Dietetic Registration. The committee may waive the examination requirement and grant licensure to an applicant for a license as a dietitian who presents satisfactory evidence to the committee of *current registration as a dietitian with the commission on dietetic registration.*[1]

§ 324.210, RSMo, *emphasis added*. Here, the legislature has recognized that a person may receive a credential, such as registration, from a nongovernmental entity, but has specifically forbidden the person from giving out that the person is practicing dietetics unless the person has been licensed by the state.

These examples demonstrate that, when the legislature intended to forbid a person's use of a privately issued credential, the legislature clearly expressed this intent.

5. Conclusion

The statutes regarding occupations and professions demonstrate that the legislature understands that private organizations issue credentials, and that some of the names of these credentials might overlap with state-issued designations. Where the legislature intended to forbid an individual from using the name of a privately issued credential, the legislature clearly expressed this intent. Nothing in the plain language of § 324.047, RSMo,

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[1] The "commission on dietetic registration" is not a governmental agency, but an arm of the Academy of Nutrition and Dietetics, a private organization.

expresses this intent. Therefore, it appears to us that the legislature did not intend § 324.047.2(13), RSMo, to prohibit individuals from using the term "registered" in their practice and titles where the credential has been granted by a nongovernmental entity and the legislature has not enacted any requirement of registration with the state.

Sincerely,

LINDA LEMKE
Assistant Attorney General