



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 28, 1998

Mr. John Maline  
Executive Director  
Executive Council of Physical Therapy  
and Occupational Therapy Examiners  
333 Guadalupe, Suite 2-510  
Austin, Texas 78701-3942

Letter Opinion No. 98-054

Re: Whether committee chairs or committee members of the Texas Physical Therapy Association may be members of the Texas Board of Physical Therapy Examiners (RQ-1110)

Dear Mr. Maline:

No officer of a Texas trade association in the field of health care is eligible to serve on the Texas Board of Physical Therapy Examiners ("board"). You ask whether an elected member of the Texas Physical Therapy Association's ("TPTA") nominating committee may serve on the board. You similarly ask whether two nonelected chairs of standing committees of the TPTA may serve on the board. Because none of the three are directors of the TPTA nor listed as officers in the TPTA's bylaws, we believe they are eligible to serve.

You explain that three of the nine board members<sup>1</sup> continue to hold positions with the TPTA that they held prior to their appointment to the board. One board member is an elected member of the TPTA's nominating committee. The other two board members chair standing committees of the TPTA; these positions are not elected.

Section 2C(a) of V.T.C.S. article 4512e, which article, among other things, creates the board, deems ineligible for board membership "[a]n officer, employee, or paid consultant of a Texas trade association<sup>2</sup> in the field of health care."<sup>3</sup> Thus, whether section 2C deems these three board members ineligible to sit on the board turns on three issues:

1. Whether the TPTA is a Texas trade association as defined by article 4512e, section 2C(c).

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<sup>1</sup>See V.T.C.S. art. 4512e, § 2(a) (creating nine-member board to regulate practice of physical therapy in this state to safeguard public's health and welfare).

<sup>2</sup>Article 4512e, section 2C(c), V.T.C.S., defines the term *Texas trade association* as "a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest."

<sup>3</sup>(Footnote added.)

2. If the answer to the first question is yes, whether the TPTA is a trade association in the field of health care.
3. If the answer to the second question is yes, whether the board members are officers, employees, or paid consultants of the TPTA.

We do not understand the first two issues to be of concern; consequently, we will assume for purposes of this opinion that the TPTA is a Texas trade association in the field of health care. We concentrate on the remaining, third issue: whether the board members are officers, employees, or paid consultants of the TPTA. We assume the board members are not the TPTA's employees or paid consultants. Accordingly, if they are within section 2C's prohibition, they must be the TPTA's officers.

The answer hinges upon how we define the term *officer* for purposes of section 2C. Nothing in article 4512e itself defines the term *officer*. We may, however, construe section 2C by referring to constructions of any of the similar conflict-of-interest provisions that pepper Texas statutes.<sup>4</sup> Indeed, section 2C was added to article 4512 in 1993,<sup>5</sup> the same year the legislature applied identical or substantially similar conflict-of-interest restrictions to nineteen other health-care licensing boards, that, like the board, were under sunset review that year.<sup>6</sup> Similar conflict-of-interest provisions apply to other agencies not related to health care.<sup>7</sup> Justifying another, markedly similar conflict-of-interest provision, the Sunset Commission cited a need to protect the integrity of agency decision-making from a private entity's undue influence: "An agency may develop close ties with professional trade organizations and other interested groups[,] which may not be in the public interest. Conflict-of-interest provisions are necessary to prevent these kinds of relationships from developing."<sup>8</sup>

Consistently with our construction of the term *officer* in a related statute, therefore, we define the term to include members of a trade association's board of directors as well as officers named in the association's organizational charter or bylaws. In a previous opinion considering section 2C's counterpart pertaining to the Board of Licensure for Nursing Home Administrators, this office concluded that the officers of a trade association include directors, as well as the obvious: president,

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<sup>4</sup>See Gov't Code § 311.023(4) (permitting court to construe statute by referring to laws on same or similar subjects).

<sup>5</sup>See Act of May 19, 1993, 73d Leg., R.S., ch. 352, sec. 2.04, § 2C, 1993 Tex. Gen. Laws 1578, 1587.

<sup>6</sup>See SUNSET ADVISORY COMM'N, RECOMMENDATIONS TO THE GOVERNOR OF TEXAS AND MEMBERS OF THE SEVENTY-THIRD LEGISLATURE 90, 118 (Mar. 1993); *cf.*, *e.g.*, V.T.C.S. arts. 4495b, § 2.05(g), (h), (i) (Board of Medical Examiners); 4512b, § 3(d) (Board of Chiropractic Examiners); 4512c, § 5(g) (Board of Examiners of Psychologists); 4542a-1, § 8(a)(1)(B) (Board of Pharmacy).

<sup>7</sup>*Cf.*, *e.g.*, Agric. Code § 42.010 (Food & Fibers Comm'n); Fin. Code § 12.107 (Dep't of Banking); Gov't Code § 444.006 (Comm'n on the Arts).

<sup>8</sup>Letter Opinion No. 96-043 (1996) at 3 (quoting SUNSET ADVISORY COMM'N, RECOMMENDATIONS TO THE GOVERNOR OF TEXAS AND MEMBERS OF THE SEVENTY-SECOND LEGISLATURE, FINAL REPORT 5, 118 (1991)).

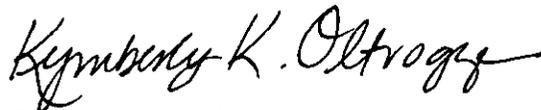
vice president, secretary, and treasurer.<sup>9</sup> We note, for example, that the TPTA's bylaws list as officers the president, vice president, speaker of the assembly, secretary, treasurer, district chair representative to the executive committee, president elect, treasurer elect, and past president. Individuals holding any of these positions, as well as any of the TPTA's board members, are, we conclude, ineligible to serve on the board under section 2C.

We conclude, based upon what you have told us, that the individuals about whom you inquire are not ineligible to serve on the board under V.T.C.S. article 4512e, section 2C(a). An elected member of the TPTA's nominating committee is not among those positions listed as officers in the TPTA's bylaws, nor, we assume, is it a position on the board of directors. Likewise, appointed chairs of TPTA standing committees do not appear to hold offices under the TPTA's bylaws nor, we assume, do they hold positions on the TPTA's board of directors. Consequently, the positions about which you ask are not officers for purposes of V.T.C.S. article 4512e, section 2C(a).

### S U M M A R Y

An elected member of a trade association's nominating committee and appointed chairs of the trade association's standing committees are not officers for purposes of V.T.C.S. article 4512e, section 2C(a). None of these positions are listed as offices in the trade association's bylaws, nor do the position holders serve on the trade association's board of directors.

Yours very truly,



Kymerly K. Oltrogge  
Assistant Attorney General  
Opinion Committee

<sup>9</sup>See Attorney General Opinion JM-607 (1986) at 5-6; see also Attorney General Opinion MW-173 (1980) at