

# TEXAS OPTOMETRY BOARD

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## Opinion Committee

Honorable John Cornyn  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

VIA U.S. Mail, Certified  
Return Receipt Requested

Article No. Z 436,325,696,9

FILE # ML-40903-99

I.D. # 40903

RE: Opinion Request

Dear General Cornyn:

The Texas Optometry Board has learned of two similar situations where parent corporations (hereinafter "parent") own a subsidiary corporation that manufactures, wholesales, and/or sells at retail ophthalmic goods, such as eyeglasses (hereinafter "retailer"). These parent corporations also own additional subsidiary corporations which have entered into agreements with optometrists that involve the practice of optometry.

Specifically, one situation involves a duly registered Health Maintenance Organization (HMO) which contracts with optometrists or a group of optometrists to provide vision care services to enrollees of the HMO, with payment made by the HMO either for each vision care service provided, or in a negotiated lump sum to cover all vision care services for a time certain. The vision care services contracted for involve the practice of optometry. The parent corporation of the HMO also owns 100 percent of a corporation that is a retailer.

In a similar situation, a registered third party administrator (TPA) contracts with optometrists or a group of optometrists to provide vision care services to members of health insurance plans for which the TPA is the administrator. The TPA (as well as the HMO) is registered with the Department of Insurance. The TPA may also enter into agreements such that the TPA will pay optometrists for the vision care services provided to members of health insurance plans. The parent corporation of the TPA owns a 100 percent interest in a retailer. Again, the vision care services contracted for involve the practice of optometry. These complicated arrangements are presented graphically in the Board's Brief.

Article 4552-5.11 (a)(2) of the Texas Optometry Act prohibits a manufacturer, wholesaler, or retailer from "directly or indirectly ... contracting for the services of an optometrist ... if any part of such

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Lois Ewald  
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optometrist's ... duties involve the practice of optometry ...." TEX. REV. CIV. STAT. ANN. art. 4552-5.11(a)(2) (Vernon Supp. 1999).

The Board has three questions regarding the application of the statute to these situations:

- 1) For purposes of article 4552-5.11 (a)(2), are the HMO and TPA manufacturers, wholesalers, and/or retailers?
- 2) If the HMO and TPA are manufacturers, wholesalers, and/or retailers, does article 4552-5.11 (a)(2) prohibit the HMO and TPA from entering into the described agreements with optometrists or therapeutic optometrists to perform duties that involve the practice of optometry?
- 3) Would the answers to questions one and two be different if the parent corporation has an ownership interest in the HMO (or TPA) and/or the retailer, but the interest is less than 100 percent?

On July 9, 1999, the Optometry Board authorized me to seek an opinion on these questions from the Office of the Attorney General. Please provide the Board with an opinion under the provisions of TEX. GOV. CODE §402.042 (Vernon 1990). I have attached the Board's brief for your consideration.

The Board has identified the following entities, organizations or individuals who may be interested in this request:

Texas Optometric Association  
1503 South IH 35  
Austin, TX 78741

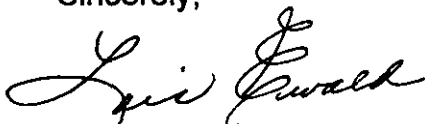
Texas Association of Optometrists  
918 Congress Avenue, Suite 200  
Austin, TX 78701

David Sherriff  
Vice President & General Counsel  
Cole Vision Corporation  
18903 South Miles Road  
Warrensville HTS, OH 44128

Russell P. Gantos, Jr.  
Vice President, Sales & Marketing  
ECCA Managed Vision Care  
11103 West Avenue  
San Antonio, TX 78213-1392

Should you have any questions, please call me at 305-8502.

Sincerely,



Lois Ewald  
Executive Director