



STATE *of* TEXAS
HOUSE *of* REPRESENTATIVES

Tom Oliverson, M.D.
District 130

December 10, 2024

Honorable Ken Paxton
Office of the Attorney General
Attention Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Attorney General Opinion regarding whether a physician practice is required to register as a "Business Support Organization"

Dear Attorney General Paxton:

We request your formal opinion on the following question:

Does a physician or physician owned medical practice ("physician practice") have to register as a "Vision Support Organization" under Chapter 74, Business and Commerce Code, simply because it employs an optometrist or therapeutic optometrist, when the "business support services," as defined by that chapter, are provided to the practice itself for its practice operations?

The Texas Legislature, during the 88th regular Legislative Session, enacted SB820, requiring the registration of "Vision Support Organizations." Questions have arisen among physician practices regarding whether they are subject to registration requirements, because medical practices are not "support organizations", but rather are formed under Texas law for the purpose of providing professional services within the scope of practice of medicine.

Physicians create their medical practices as Professional Limited Liability Companies (PLLCs) or Professional Associations (PAs), which are statutorily "formed for the purpose of providing the professional service" rendered by physicians. TEX. OCC. CODE § 301.003. A support organization cannot be created as a PLLC or a PA, as it does not provide professional services, but rather provides administrative services. Thus, Chapter 74, if applied to physician practices, would be creating a legal fiction that conflicts with well-established and existing laws.

A Vision Support Organization Provides Administrative Services

SB880 amended the Business and Commerce Code by adding a new Chapter 74. Within that chapter, section 74.001(3) defines a "Vision Support Organization" as an entity that, under one or more agreements, provides two or more business support services to an optometrist." TEX. BUS. & COMM. CODE § 74.001(3). Does



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“one or more agreements” mean an employment agreement, whereby an optometrist is agreeing to provide services to and on behalf of the practice?

“Business support services” is defined as “business, management, consulting, or administrative services, facilities, or staff provided for an optometrist or an entity that employs or contracts with an optometrist to provide services or products, including: a) office space, furnishings, equipment, supplies, or inventory; b) staff employed by a vision support organization; c) regulatory compliance; d) eye care equipment, supplies, or products; e) information systems; f) marketing or advertising; g) financial services; h) accounting, bookkeeping, or monitoring of accounts receivable; i) payroll or benefits administration; j) billing and collection for services and products; k) reporting and payment of federal or state taxes; l) administration of interest expense or indebtedness incurred to finance the operation of a business; m) insurance services; or n) group purchasing services.” TEX. BUS. & COMM. CODE § 74.001(1). Is a practice that is providing these services to and for itself deemed to be providing it “for” an optometrist it employs?

A Medical Practice is Legally Formed Solely for the Practice of Medicine

A PLLC or PA is formed for the practice of professional services enumerated in its formation documents—the practice of medicine—and is limited to the creation for that purpose. A management services organization, or administrative support services organization, would not and could not be formed as a PLLC or PA because it does not provide the professional services authorized by the Texas Business Organizations Code. The legislation, therefore, if applied to physician practices, creates a legal conflict.

The professional limited liability company (PLLC) is a limited liability company that is formed for the purpose of providing a professional service. A “professional service” means any type of service that requires, as a condition precedent to the rendering of the service, the obtaining of a license in this state, including the personal service rendered by a dentist, attorney, physician, or veterinarian. A PLLC is governed by title 1, Title 3, and Chapters 301 and 304 of Title 7 of the Texas Business Organizations Code (BOC). Title 1, chapter 3, subchapter A of the BOC governs the formation of a PLLC and sets forth the provisions required or permitted to be contained in the certificate of formation.

Title 7, chapter 301 establishes certain restrictions and requirements regarding ownership and management of a PLLC. Only a professional individual or professional organization may be an owner or manager of a PLLC. Only a professional individual may be an officer of a PLLC. A professional individual is an individual who is licensed to practice the same professional service as the PLLC.

Likewise, professional associations (PA) can only be formed by (1) doctors of medicine, (2) doctors of osteopathy, (3) podiatrists, (4) mental health professionals (such as psychologists, family therapists, and licensed professional counselors), (5) optometrists, (6) therapeutic optometrists, (7) chiropractors, (8) dentists, or (9) veterinarians. BOC § 301.003.



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Summary

The “business support services” defined by Chapter 74, are the same services that a medical practice—or any other business—already provides to itself in order to operate as a business. Indeed, employees and contractors are providing a service *for* the business, not the other way around. All employees indirectly receive and enjoy the benefits of the existing administrative framework of the practice, as does any employee working for a company in any industry. The fact that a medical practice provides administrative services for itself does not render it an administrative “support organization.” A medical practice is authorized under law solely to perform the services within the scope of practice of medicine.

Please provide the Committee with an opinion under the provisions of Tex. Gov. Code § 402.042. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Oliverson".

Tom Oliverson, M.D.

