

**STATE OF TENNESSEE**

OFFICE OF THE  
ATTORNEY GENERAL  
500 CHARLOTTE AVENUE  
NASHVILLE, TENNESSEE 37243

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Opinion No. 01-002

Membership of a Professional Limited Liability Company for the Practice of Electrolysis

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**QUESTION**

Can a medical doctor and a registered nurse, who has been trained in electrolysis, be members of a professional limited liability company (PLLC) for the practice of electrolysis?

**OPINION**

No. Assuming, for purposes of this opinion, that PLLCs “for the practice of electrolysis” are authorized by law, we believe that current statutory and regulatory authority permits a physician or registered nurse to be a member of a PLLC “for the practice of electrolysis” only if he or she holds a license to practice electrology.<sup>1</sup>

We are aware, however, of nothing that would prohibit a medical doctor from being a member of a PLLC for the practice of medicine, and engaging, in that capacity, in the practice of activities that would otherwise constitute the practice of electrology. Furthermore, while the regulations promulgated by the Board of Medical Examiners do not permit a registered nurse to be a member of a PLLC “for the practice of medicine,” such PLLC could employ a registered nurse who is not licensed as an electrologist to perform electrology services under the doctor’s supervision and control.

**ANALYSIS**

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<sup>1</sup>The Electrologists Practice Act defines the terms “electrolysis” and “electrology” in similar fashion. “Electrology” is “the art and practice relating to the removal of hair from the normal skin of the human body by application of an electric current to the hair papilla by means of a needle or needles so as to cause growth inactivity of the hair papilla and thus permanently remove the hair.” Tenn. Code Ann. § 63-26-102(3). “Electrolysis” is “the process by which the hair is removed from the normal skin by the application of an electric current to the hair root by means of a needle or needles, whether the process employs direct electric current or short wave alternating electric current or combination of both, or by F.D.A. approved laser beam process designated for permanent hair removal.” Tenn. Code Ann. § 63-26-102(5). The terms will be used interchangeably in this opinion.

You question whether a medical doctor and a registered nurse, who has been trained in electrolysis, can be members of a professional limited liability company (PLLC) “for the practice of electrolysis.”<sup>2</sup> As is described below, we believe that current statutory and regulatory authority permits a physician or registered nurse to be a member of a PLLC “for the practice of electrolysis” only if he or she holds a license to practice electrology.

It is important to note, in the first place, that absent specific statutory exemption, all persons who engage in the practice of electrology in this state must be licensed to do so by the Board of Electrolysis Examiners. Tenn. Code Ann. §§ 63-26-118, 63-26-122. Practice of electrology without a license is a Class C misdemeanor.

Second, Section 48-248-401 of the legislation governing professional limited liability companies,

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<sup>2</sup>While we have assumed, for purposes of this opinion, that PLLCs “for the practice of electrolysis” are authorized by law, we must note, as is described below, that we have some question that this is so.

In 1994, Tennessee enacted legislation which authorized the formation of professional limited liability companies (PLLCs). Tenn. Code Ann. § 48-248-101, *et seq.* Section 48-248-103 of this legislation, entitled “Formation,” provides that a PLLC is formed by delivering to the secretary of state for filing articles that state it is a PLLC and that, among other matters, its purpose is to render specified “professional services.” Tenn. Code Ann. § 48-248-104(a) provides that a limited liability company (LLC) may elect professional LLC status under § 48-248-103 “solely for the purpose of rendering professional services (including services ancillary to them) . . .” Tenn. Code Ann. § 48-248-203(a) prohibits a PLLC from “render[ing] any professional service or engag[ing] in any business other than the professional service and business authorized by its articles.”

The term, “professional service,” as it is used in the chapter governing PLLCs, is defined as:

A service that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority in this state to render the service and that may not be lawfully rendered by a corporation under the Tennessee Business Corporation Act, compiled in chapters 11-27 of this title or by an LLC under chapters 201-248 of this title.”

In Tenn. Op. Atty. Gen. 94-131 (11/8/94), we opined that it is not unlawful for a general corporation to engage in the business of providing professional physical therapy services, as opposed to medical or optometric services, in Tennessee. In reaching this conclusion, we reexamined the common law principles of the “corporate practice doctrine” as such principles had been applied by the Tennessee Supreme Court in *State ex rel. Loser v. National Optical Stores, Co.*, 189 Tenn. 433, 225 S.W.2d 263 (1949), noted the absence of any statute specifically prohibiting the practice of physical therapy by a general corporation, and recognized important differences between the provision of physical therapy services and the provision of medical and optometric services. *Id.* For similar reasons, we see no legal impediment to the provision of electrology services by a general corporation or by a general limited liability corporation.

As a result, because electrology services may be lawfully rendered by a general corporation or general LLC, they do not fall within the definition of a “professional service,” as the term is defined by and used in the legislation governing PLLCs. We thus question whether the statutes governing professional limited liability companies authorize the formation of PLLCs “for the practice of electrolysis.”

entitled “Eligible members,” provides, in relevant part:

(a) A PLLC may have persons not licensed to practice a profession described in the PLLC’s articles in Tennessee as members only if the licensing authority which licenses the professionals forming such PLLCs specifically so authorizes. . . .

. . .

(c) The membership interest purported to be held by a person in violation of this section or a rule promulgated under this section is void.

(Emphasis added).

Thus, in the situation about which you inquire, a doctor or nurse who is not licensed to practice the profession described in the PLLC’s articles (electrolysis) may be a member of a PLLC for the practice of electrolysis only if the licensing authority which licenses the doctor (the Board of Medical Examiners) or the nurse (the Board of Nursing) specifically so authorizes.

The Board of Medical Examiners is established at Section 63-6-101(a) of the Medical Practice Act. We have examined the Medical Practice Act and its implementing regulations which have been adopted by the Board of Medical Examiners; *i.e.*, Tenn. Code Ann. §§ 63-6-101, *et seq.*; Tenn. Comp. Adm. R. & Regs. Chaps. 0880-1 through 0880-8. Nothing in any of these statutes or regulations gives “specific authoriz[ation]” which would permit a physician not licensed to practice electrolysis to be a member of a PLLC “for the practice of electrolysis.” Similarly, the Board of Nursing, established at Section 63-7-201 of the Nursing Practice Act, is the licensing authority which licenses and regulates nurses. No provision of the Nursing Practice Act nor of its implementing regulations gives the required “specific authoriz[ation]” for a registered nurse not licensed to practice electrolysis to be a member of a PLLC “for the practice of electrolysis.” Tenn. Code Ann. §§ 63-7-101, *et seq.*; Tenn. Comp. Adm. R. & Regs. Chaps. 1000-1 through 1000-4.

We thus conclude that unless a physician or a registered nurse holds a license to practice electrolysis, he is not permitted by current statutory and regulatory authority to be a member of a PLLC “for the practice of electrolysis.”

We are aware, however, of nothing that would prohibit a medical doctor from being a member of a PLLC “for the practice of medicine,” and engaging, in that capacity, in the practice of activities that would otherwise constitute the practice of electrology. The “practice of medicine” is broadly defined as “treat[ing], or profess[ing] to diagnose, treat, operate on or prescribe for any physical ailment or any physical injury to or deformity of another.” Tenn. Code Ann. § 63-6-204(a)(1). The Electrologists Practice Act itself recognizes that physicians, and particularly dermatologists, may be substantially involved

in the practice of electrology. *See, e.g.*, Tenn. Code Ann. §§ 63-26-104(a)(2), 63-26-111(4)(C).

Furthermore, while the regulations promulgated by the Board of Medical Examiners do not permit a registered nurse to be a member of a PLLC for the practice of medicine (Tenn. Adm. Comp. R. & Regs. 0880-8-2-.02(14), 0880-8-2-.03(2), 0880-8-2-.04(1)), such PLLC could employ a registered nurse who is not licensed as an electrologist to perform electrology services under the doctor's supervision and control. In such circumstances, the doctor must make an evaluation of each patient and supervise a diagnostic screening with respect to the patient; furthermore, the registered nurse cannot hold himself out to be a licensed electrologist. *See generally*, Tenn. Code Ann. § 63-26-108(b).

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