S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

January 24, 2003

Opinion No. 03-010

Board of Medical Examiners Rules / 2002 Public Chapter 742

QUESTION

Under 2002 Pub. Chap. 742, which professionals legally may serve as officers and directors of a professional corporation, or as governors or managers of a professional limited liability company?

OPINION

Any health care professionals possessing a right under 2002 Pub. Chap. 742 to form and become members of the same professional corporation or professional limited liability company, respectively, may serve as officers and directors of such a professional corporation, or as governors or managers of such a professional limited liability company.

ANALYSIS

2002 Pub. Chap. 742 amends Tenn. Code Ann. § 48-101-610 and Tenn. Code Ann. § 48-248-401 and provides that certain combinations of health care professionals shall have a right to form and own shares in the same professional corporation ("PC") formed pursuant to the amendment, as well as to become members of a professional limited liability company ("PLLC") formed pursuant to the amendment. The combinations of professionals who may form and become members of such professional corporations or professional limited liability companies, respectively, are: (1) optometrists licensed under Title 63, Chapter 8, and ophthalmologists licensed under Title 63, Chapter 6 or 9; and (2) podiatrists licensed under Title 63, Chapter 3, and physicians licensed under Title 63, Chapter 6 or 9 (except radiologists, pathologists, or anesthesiologists). Tenn. Code Ann. § 48-101-610(d); Tenn. Code Ann. § 48-428-401(d). The amendment accords this right notwithstanding any other provision of Tenn. Code Ann. §§ 48-101-610 *et seq.* or Tenn. Code Ann. §§ 48-248-401, *et seq*.

Nothing in the amendment specifies who legally may serve as officers and directors of such a professional corporation, or as governors or managers of such a professional limited liability

company.[1] However, Tenn. Code Ann. § 48-101-618, applicable to all PCs, provides that

> [i]f persons other than qualified persons are permitted by the licensing authority to serve as officers or directors, not less than one half (1/2) of the directors of a professional corporation and all of its officers, except the secretary and assistant secretary, and treasurer (if any) and any assistant treasurer (if any) of any professional corporation shall be qualified persons with respect to the corporation.

Similarly, Tenn. Code Ann. § 48-248-404, applicable to all PLLCs, provides that

> [i]f persons other than qualified persons are permitted by the licensing authority to serve as governors, if any, or managers of a PLLC, not less than one half (1/2) of the governors, if any, and all managers except the secretary and treasurer, if any, of a PLLC shall be qualified persons with respect to the PLLC.

"Qualified person" means either "an individual, general partnership or professional corporation to whom shares under this part may be issued," Tenn. Code Ann. § 48-101-603(8), or "an individual, general partnership, professional corporation, professional association or PLLC that is eligible under § 48-248-401 to be a member of a PLLC," Tenn. Code Ann. § 48-248-102(8). The amendment renders the professionals described in the categories set forth in Tenn. Code Ann. § 48-101-610(d) and Tenn. Code Ann. § 48-248-401(d) "qualified persons." This is because the amendment gives to the above combinations of health care professionals the right to form and own shares in the same professional corporation, as well as the right to form and become members of the same limited liability company.

The question arises, however, as to what effect, if any, the amendment has on the existing statutes, which seem to allow the licensing authorities the right to veto the formation of certain PCs and PLLCs. Regarding professional corporations, Tenn. Code Ann. § 48-101-610(a)(2) permits issuance of shares for sale to persons not licensed to practice the relevant professions in Tennessee only if the licensing authority which licenses the professionals forming such corporations specifically authorizes such sales. Further, Tenn. Code Ann. § 48-101-610(b) permits the licensing authority by rule to restrict or condition, or revoke in part, the authority of professional corporations subject to its jurisdiction to issue shares, if the licensing authority considers it necessary to prevent violation of the ethical standards of the profession. Regarding professional limited liability companies, Tenn. Code Ann. § 48-248-401(a) permits a PLLC to have persons not licensed to practice a profession described in such PLLC's articles in Tennessee only if the licensing authority which licenses the professionals forming such PLLCs specifically so authorizes. Moreover, Tenn. Code Ann. § 48-248-401(b) authorizes such licensing authority to restrict or condition, or to revoke in part, the authority

---

[1]The Tennessee Business Corporations Act applies to professional corporations to the extent not inconsistent with the provisions of the Professional Corporation Act. Tenn. Code Ann. § 48-1-1-602. Further, the Tennessee Limited Liability Company Act applies to professional limited liability companies to the extent not inconsistent with the provisions of the Professional Limited Liability Company Act. Tenn. Code Ann. § 48-248-101.

of PLLCs subject to its jurisdiction to have such unlicensed members, if such licensing authority considers it necessary to prevent violation of the ethical standards of the profession.

The amendment, on the other hand, provides that the health care professionals in the combinations it permits shall have a right to form and own shares in the same PC formed pursuant to the Professional Corporation Act, Tenn. Code Ann. § 48-101-610(d), as well as to form and become members of the same PLLC formed pursuant to the Professional Limited Liability Company Act. Tenn. Code Ann. § 48-248-401(d). Most important, the amendment grants these rights "[n]otwithstanding any other provision of this chapter."

In our opinion, the amendment repeals by necessary implication the conflicting sections in the existing statutes, as they pertain to the professional combinations covered by the amendment. The Legislature is presumed to know the state of the law on the subject matter under consideration at the time it enacts legislation. *See Equitable Life Assurance Co. v. Odle*, 547 S.W.2d 939, 941 (Tenn. 1977). Therefore, statutes upon the same subject matter should be construed together. *See Westinghouse Elec. Corp. v. King*, 678 S.W.2d 19, 23 (Tenn. 1984). However, if there is an irreconcilable conflict between former and subsequent statutes which should be construed *in pari materia*, the former is repealed by implication. *Strader v. United Family Life Ins. Co.*, 218 Tenn. 411, 416, 403 S.W. 2d 765 (1966). Nevertheless, repeals by implication are not favored, and in order to work a suspension of an earlier statute there must be an irreconcilable conflict between the earlier and later statutes which is plain and unavoidable. *Oliver v. King*, 612 S.W.2d 152, 154 (Tenn. 1981). The prior act is repealed only to the extent of the conflict. *Reams v. Trostel Mechanical Industries, Inc.*,522 S.W.2d 170, 173 (Tenn. 1985). The amendment reads in pertinent part:

> The services rendered by these health care professionals are considered related and complementary to each other; provided, that nothing in this chapter shall be construed to alter the lawful scope of practice of a professional forming a professional corporation pursuant to this subsection (d); and provided further, that nothing in this part shall be construed to allow any professional forming a professional corporation pursuant to this subsection (d) to conduct the professional's practice in a manner contrary to the standards of ethics applicable to the profession. Such individual shall accurately state the individual's professional credentials on any advertisement to the public.

Tenn. Code Ann. § 48-101-610(d)(2). (Tenn. Code Ann. § 48-248-401(d)(2) reads exactly the same, except that the term "professional limited liability company" is used instead of "professional corporation" each place it appears.)

We interpret the above language to apply only to the licensing authorities' ability to regulate professional practice (*i.e.,* lawful scope of practice and ethical conduct) after formation of such PC or PLLC. Certainly, each such licensing authority has the power to discipline the licenses of professionals under its jurisdiction. Tenn. Code Ann. § 63-6-214 (Board of Medical Examiners); Tenn. Code Ann. § 63-3-119 (Board of Registration in Podiatry); Tenn. Code Ann. § 63-8-120

(Board of Optometry). However, since the amendment establishes the right of certain health care professionals to form PCs and PLLCs "notwithstanding any other provision of this chapter," it appears to us that the language set out above necessarily refers to regulation of professional practices after a PC or PLLC comprised of one of the specified professional combinations has been formed, rather than to any ability by a licensing authority to prevent, restrict, condition or revoke in part the right which the amendment clearly grants. Were it otherwise, each licensing authority for each professional combination covered by the amendment could defeat the purpose of the amendment and frustrate the will of the Legislature. The Legislature, however, is presumed not to have intended to do a vain and useless thing, *Texas Gas Transmission Corp. v. Atkins*, 205 Tenn. 495, 327 S.W.2d 305 (1959), or to intend an absurdity. *Epstein v. State*, 211 Tenn. 633, 366 S.W.2d 914 (1963). Further, a statute should be viewed as a whole and in light of its general purpose. *City of Lenoir City v. State ex rel City of Loudon*, 571 S.W.2d 297 (Tenn. 1978). Also, it is the court's duty to construe a statute so that no part is inoperative, superfluous, void or insignificant. *State v. Northcutt*, 568 S.W.2d 636 (Tenn. Crim. App. 1978). Last, in construing a statute, the principal objective is to give effect to the intent and purpose of the legislature. *Carson Creek Vacation Resorts, Inc., v. State Department of Revenue*, 865 S.W.2d 1 (Tenn. 1993), and such intent is ascertained primarily from the natural and ordinary meaning of the language contained in a statute, when read in context with the whole statute. *James Cable Partners, L.P. v. City of Jamestown*, 818 S.W.2d 338 (Tenn. App. 1991).

Therefore, it is the opinion of this office that any health care professionals possessing a right under 2002 Pub. Chap. 742 to form and become members of the same professional corporation or professional limited liability company, respectively, may serve as officers and directors of that professional corporation, or as governors or managers of that professional limited liability company.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

SARA E. SEDGWICK
Assistant Attorney General

Requested by:

Rob Briley
Representative, 52nd Legislative District
17 Legislative Plaza
Nashville, TN 37243-0152