



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 30, 1990

Honorable Tracey Bright
County Attorney
Ector County Courthouse, Rm. 218
Quessa, Texas 79761

LO-90-51

Dear Ms. Bright:

You ask the following question:

May a business which is incorporated under the Texas Professional Corporation Act to provide the professional services of a Physical Therapist, hire an Occupational Therapist as an employee?

The Professional Corporation Act, article 1528e, V.T.C.S., provides in part:

One or more individuals, each of whom is licensed or otherwise legally authorized to render the same kind of professional service within this state, may incorporate a professional corporation by filing the original and a copy of Articles of Incorporation with the Secretary of State. . . . No professional corporation organized under this Act shall render more than one kind of professional service. . . .

V.T.C.S. art. 1528e, § 4. This office has already concluded that physical therapists render a professional service for purposes of article 1528e. Attorney General Opinion MW-99 (1979); see also V.T.C.S. art. 4512e (requiring license for practice of physical therapy). It follows from the reasoning in Attorney General Opinion MW-99 that occupational therapists also render a professional service for purposes of article 1528e. See V.T.C.S. art. 8851 (1983 act requiring license for practice of occupational therapy).

A professional corporation may render professional service in this state only

through its officers, employees and individual agents who are duly licensed to render such professional service in this state or through agents of the professional corporation that are themselves professional corporations that render such professional service only through officers and employees of the agent who are so licensed; provided, however, that this provision shall not be interpreted to include within such prohibition employees such as clerks, secretaries, bookkeepers, technicians, nurses, assistants and other individuals who are not usually and ordinarily considered by custom and practice to be rendering professional service for which a license or other legal authorization is required.

V.T.C.S. art. 1528e, § 15.

These provisions make clear that a professional corporation offering physical therapy services cannot hire as an employee a licensed occupational therapist.

The brief submitted with your request asks that we grant a "variance" from the statute. This office has no authority to grant variances from legislative enactments. Also, the brief contains a discussion of the value of physical therapists and occupational therapists working closely together. We note in that regard that article 1528e does not prohibit physical therapists and occupational therapists from working together. It merely prohibits a particular type of business arrangement.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section

SW/lcd

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