



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
INSURANCE DIVISION
500 JAMES ROBERTSON PARKWAY 4TH FLOOR
NASHVILLE, TENNESSEE 37243-5065
615-741-2176

March 30, 2010

Neil B. Krugman, Esq.
Waller, Lansden, Dortch, and Davis, LLP
Nashville City Center
511 Union Street, Suite 2700
Nashville, Tennessee 37219

Re: Vision Discount Plans

Dear Mr. Krugman,

This letter is written in response to your letter dated November 25, 2009 to Assistant Commissioner Larry Knight wherein you sought guidance from the Department in the form of an interpretive opinion. The following interpretive opinion is issued by the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division") pursuant to Tenn. Comp. R. & Regs. Tit. Dept. of Commerce and Ins., ch. 0780-01-77-.01(1).

The facts as understood and summarized by the Division are as follows:

Your client, Vision Care Direct ("VCD") is an organization which supplies marketing and administration services for an LLC comprised of licensed optometrists who have come together for the purpose of offering prepaid discount plans for vision related services and products. This company, Tennessee Eye Care Alliance ("TECA"), obtains members through an application process. TECA wishes to use licensed insurance producers to sell its packages.

You opine on behalf of VCD that the packages administered and marketed by them are prepaid vision plans, and not vision service plans regulated by the Division.

RESPONSE:

It is the position of the Division that prepaid vision discount plans are not insurance products, and therefore not regulated by this Department as insurance. TENN. CODE ANN. § 56-7-101 defines a contract of insurance as, "an agreement by which one party, for a consideration, promises to pay money or its equivalent... upon the destruction or injury, loss or damage of

Letter to Neil Krugman, Esq.

Re: Prepaid Vision Plans

March 30, 2010

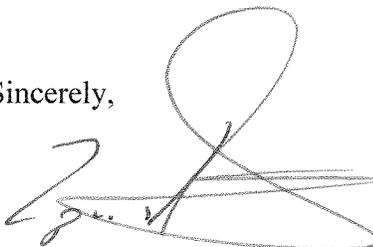
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something in which the other party has an insurable interest...". The party purchasing a prepaid vision discount plan has no insurable interest at the time of purchase. Further, there is no transference of risk from the purchaser of a prepaid vision discount plan to the seller of such a plan; instead there is present consideration given for services to be performed in the future.

While the Division asserts that a prepaid discount plan is not tantamount to a contract of insurance, it is the responsibility of the Division to regulate licensed insurance producers. Nothing in the specific facts provided to the Division suggests that the use of producers to sell VCD packages alone makes them insurance products; however, the Division would maintain any authority it has over the license of those producers. In other words, the Division would be acting within its jurisdiction to take action against the license of a producer who behaved fraudulently or criminally or who violated any applicable provision of TENN. CODE ANN. § 56-6-112 in the sale of this product.

This response by the Insurance Division is specific to a fact situation relating to the interpretation of the Tennessee Insurance Law and should not be construed as a legal position or opinion of the Commissioner of Commerce and Insurance or any other official in the Department of Commerce and Insurance. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent. Any variation in the facts presented to the Insurance Division could result in a different conclusion as asserted herein.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry C. Knight, Jr.", with a large, stylized flourish above the name.

Larry C. Knight, Jr.
Assistant Commissioner for Insurance

LCK/lmw

cc: Leslie A. Newman, Commissioner
Mary Griffin, Deputy General Counsel for Insurance
Vicky Stotzer, Policy Analysis Section
LaCosta N. Wix, Assistant General Counsel