

September 28, 2016

Via Hand Delivery

Daniel E. Shearouse
Clerk
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29211

RECEIVED

SEP 28 2016

S.C. SUPREME COURT

M. Elizabeth Crum

lcrum@mcnair.net
T 803.753.3240
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Re: Kristin Joseph, P.T., et al. v. South Carolina Department of Licensing and
Regulation, et al.
Appellate Case No. 2014-001115

Dear Mr. Shearouse:

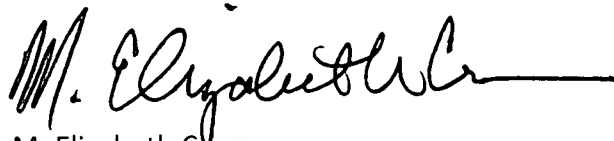
Enclosed, please find an original and seven (7) copies of Attachment A to Appellants' Memorandum In Opposition To Motion For Extension of Time to File a Petition for Rehearing which was inadvertently omitted from our Motion. We would appreciate your filing the original and returning file-stamped copies to our courier.

By copy of this letter to all counsel, we are hereby serving them with copies of same.

Thank you in advance for your assistance in this matter.

Very truly yours,

McNAIR LAW FIRM, P.A.



M. Elizabeth Crum

MEC:lf

cc: S. Jahue Moore Esq. (via email and US Mail)
N. Thomas Connally, III, Esq. (via email and US Mail)
Monteith P. Todd, Esq. (via email and US Mail)
John Devlin, Esq. (via email and US Mail)
Darra Coleman, Esq. (via email and US Mail)

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Joseph v. SC Board of Physical Therapy et al., Ruling

September 15th, 2016

It is with great disappointment and frustration that I inform you of the long-awaited decision issued by the South Carolina Supreme Court in the controversial case of Joseph et al. v. South Carolina Department of Licensing, Labor and Regulation, South Carolina Board of Physical Therapy. The Joseph case addresses the issue of physician ownership of physical therapist services in the state of South Carolina.

On September 14, 2016 in a 3-2 decision, the state's high court chose to overrule its 2006 Sloan v. South Carolina Department of Licensing, Labor and Regulation, South Carolina Board of Physical Therapy decision. The Sloan decision ruled that the South Carolina physical therapy practice act appropriately prevents physical therapists from working for a physician-owned practice (SC-LLR Section 40-45-110). Since that date, SCAPTA has had numerous legislative victories, and a long-standing successful defense of the Practice Act, despite the deep-pockets of our opponents.

The plaintiffs in the Joseph case, two physicians and a physical therapist (PT), argued that the statutory prohibition as interpreted by Sloan should also reach "referrals" made by PTs and PTAs employed in a PT-operated practice. They argued that if this language doesn't apply to therapists as it does to physicians, the 2006 Sloan decision should be overruled. The South Carolina Chapter of APTA (SCAPTA), a PT, and two PTAs joined the Joseph case as co-defendants and respondents. The case was initially heard in 2014 in a South Carolina Circuit Court and a judgment in our favor was entered. The plaintiffs (Joseph et. al.) appealed this decision and the case was heard before the high court on February 19, 2015.

Unfortunately, the five-member State Supreme Court in Joseph overruled the 2006 Sloan opinion and reversed the 2014 Circuit Court's decision. Only two of the five justices overruled Sloan on the ground that the fee-splitting language found in the PT statute, as interpreted in the 2006 Sloan decision, was unconstitutional. A third justice joined these two in overruling Sloan, but did not address the constitutional questions. The remaining two justices would have upheld the earlier Circuit Court decision because they believed the plaintiffs lacked standing. However, as a practical matter the court's most recent decision means physical therapists and physical therapist assistants in South Carolina can be employed by physician-owned practices.

ATTACHMENT A

In the ruling, now retired Chief Justice Toal took the opportunity to move the practice of physical therapy back a decade to an era fraught with overutilization of physical therapy services, fraud, and abuse. The decision, authored by Justice Toal, contained statements like, "...prohibiting physicians' employment of PTs deprives physicians of their right to practice medicine in the best interests of their patients..." The ruling contains numerous examples of how some of the Justices got this decision wrong.

As a valued member, it is important to know that now, more than ever, SCAPTA proudly stands by our mission to promote the profession of physical therapy and the patients we serve. SCAPTA will continue to support the American Physical Therapy Association's (APTA) efforts to end relationships that have been proven to be abusive and result in overutilization. This ruling in no way changes our long-held belief in patient choice or our resolve to abolish inherent conflicts of interest that have the potential to do harm to our patients and the practice of physical therapy. In the coming months SCAPTA in conjunction with APTA will be producing information to answer questions you might have concerning this unfortunate ruling. We will also be doing everything we can to further investigate this slight setback and will communicate any subsequent details with our members.

It is important that we acknowledge all of those that have worked tirelessly and given so much to our organization in the defense of anti-referral for profit relationships. Specifically, we would like to thank the American Physical Therapy Association (APTA), the Orthopaedic Section, Private Practice Section, all components and chapters across the country that have supported us, with donations, strategies, and legal support. We would also like to recognize Monteith P. Todd, S. Jahue Moore, John C. Bradley, Jr., N. Thomas Connally, III, and John R. Devlin, Jr. for their legal representation, and Mike Daniels and Associates for their outstanding legislative and lobbying and strategy efforts. Finally, we would like to thank the members of our association and acknowledge current and past leadership of our chapter. To our members that have personally and professionally sacrificed for the good of this just cause, we cannot thank you enough. Without your participation and engagement, this monumental undertaking would have been lost before it ever started.

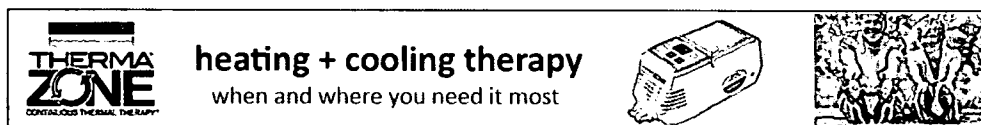
As your president I am honored and humbled to be given the opportunity to serve you. Some of the best and brightest physical therapists, physical therapist assistants, and students live between the foothills and the ocean in this state filled with beautiful places and smiling faces and I am confident that we will find a silver lining and embrace this new challenge.

Thank you for being a member of SCAPTA, and remember, "Dum spiro, spero."

Sincerely,

Aaron E. Embry, PT, DPT, MSCR
President of the South Carolina Chapter of the American Physical Therapy Association

Decision-by-Supreme-Court-9-14-16.pdf



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