

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 27 2014

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. Supreme Court

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-001115

Kristin Joseph P.T., Thomas N. Joseph, M.D., and William G. McCarthy, M.D., Appellants,

v.

South Carolina Department of Labor, Licensing and Regulation, South Carolina
Board of Physical Therapy,

Respondents,

and

South Carolina Chapter, American Physical Therapy Association, Joseph M.
McKowen, PT, Sabrina Queen Bridges, PTA, and Amalia W. Kirby, (PTA),

Respondents.

RECORD ON APPEAL
Volume II

M. Elizabeth Crum
lcum@mcnair.net
Ariail B. Kirk
akirk@mcnair.net
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211-1390
(803) 799-9800

Attorneys for Appellants

Monteith P. Todd
mtodd@sowellgray.com
SOWELL GRAY STEPP &
LAFFITTE, LLC
1310 Gadsen Street
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400

*Counsel for Respondent South Carolina
Department of Labor, Licensing and
Regulation, South Carolina Board of
Physical Therapy*

5/3/13

Clemson Sports Medicine and Rehabilitation Mall - good AM



cc: Stoker <jim.stoker@csmr.org>

good AM

2 messages

Bob Carpenter, PT, ATC, CSCS <bob@healthquestpt.org>
 Reply-To: bob@healthquestpt.org
 To: Jim Stoker <jim.stoker@csmr.org>

Tue, May 3, 2011 at 5:06 AM

FYI-I just sent the letter out to Marilyn & Vernolca and also a separate one to Jack.
 Let me know if there are any problems or you need any further assistance re: this manner!

Thanks again for all that you have done & continue to do on behalf of SCAPTA and representing all us "little
 guys" in the state.

Have a great day,

Bob

-

Bob Carpenter, PT, ATC, CSCS
 Physical Therapist
 Certified Athletic Trainer
 Certified Strength and Conditioning Specialist

HealthQuest Physical Therapy
 265 Charter Oak Road
 Lexington, SC 29072

Phone: 803-951-3200
 Fax: 803-951-0990
 www.healthquestpt.org
 bob@healthquestpt.org

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Jim Stoker <jim.stoker@csmr.org>
 To: bob@healthquestpt.org

Tue, May 3, 2011 at 8:34 AM

Thanks Bob!
 [Quoted text hidden]

-
 Sent from my mobile device

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PLAINTIFFS' MSJ - EXHIBIT # 27

Page 2

5/8/13

Clemson Sports Medicine and Rehabilitation Mail - good AM

Jim Stoker, PT, MA, SCS, CSCS
VP, Clemson Sports Medicine and Rehabilitation
fax# 864-482-0081
ph# 864-482-0064 ext. 118
www.csmr.org

[https://mail.google.com/mail/?ui=2&ik=0441a7fa97&view=pt&q=bob carpenter &q5=true&search=query&th=12b51c0c1650127](https://mail.google.com/mail/?ui=2&ik=0441a7fa97&view=pt&q=bob%20carpenter&q5=true&search=query&th=12b51c0c1650127)

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5/8/13

Clemson Sports Medicine and Rehabilitation Mail - how's this version



The following email message was received:

how's this version

4 messages

Bob Carpenter, PT, ATC, CSCS <bob@healthquestpt.org>
 Reply-To: bob@healthquestpt.org
 To: Jim Stoker <jim.stoker@csmr.org>

Tue, May 3, 2011 at 8:05 AM

Sorry for the misunderstanding. I should have asked about this.

Bob

-

Bob Carpenter, PT, ATC, CSCS
 Physical Therapist
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HealthQuest Physical Therapy
 265 Charter Oak Road
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Phone: 803-951-3200
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 **SCBPTE Request-2.doc**
 34K

Jim Stoker <jim.stoker@csmr.org>
 To: bob@healthquestpt.org
 Bcc: Jim Stoker <jim.stoker@csmr.org>

Tue, May 3, 2011 at 8:06 AM

this one is done....
 [Quoted text hidden]

Jim Stoker, PT, MA, SCS, CSCS
 VP, Clemson Sports Medicine and Rehabilitation
 fax# 864-482-0081

[https://mail.google.com/mail/?ui=2&ik=0441a71a97&view=pt&q=bob carpenter&q&s=true&search=query&th=12fb5c0217402d2d](https://mail.google.com/mail/?ui=2&ik=0441a71a97&view=pt&q=bob%20carpenter&q&s=true&search=query&th=12fb5c0217402d2d)

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5/6/13

Clemson Sports Medicine and Rehabilitation Mail - how's this version

ph# 864-482-0064 ext. 118
www.csmr.org

 SCBPTE Request 2.doc
34K

Bob Carpenter, PT, ATC, CSCS <bob@healthquestpt.org>
Reply-To: bob@healthquestpt.org
To: Jim Stoker <jim.stoker@csmr.org>

Tue, May 3, 2011 at 8:10 AM

Need help interpreting early AM Stoker-ism! You mean this looks version looks OK?

Thanks,

Bob
[Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>
To: bob@healthquestpt.org

Tue, May 3, 2011 at 9:13 AM

Use the one I sent you just after 8 this morning. It's good to go.

On 5/3/11, Bob Carpenter, PT, ATC, CSCS <bob@healthquestpt.org> wrote:

> Need help interpreting early AM Stoker-ism! You mean this looks version
> looks OK?

>

> Thanks,

>

> Bob

>

> On 5/3/2011 8:06 AM, Jim Stoker wrote:

>> this one is done....

>>

>> On Tue, May 3, 2011 at 8:05 AM, Bob Carpenter, PT, ATC, CSCS

>> <bob@healthquestpt.org <mailto:bob@healthquestpt.org>> wrote:

>>

>> Sorry for the misunderstanding. I should have asked about this.

>>

>> Bob

>>

>> -

>>

>> Bob Carpenter, PT, ATC, CSCS

>> Physical Therapist

>> Certified Athletic Trainer

>> Certified Strength and Conditioning Specialist

>>

>> HealthQuest Physical Therapy

>> 265 Charter Oak Road

>> Lexington, SC 29072

>>

>> Phone: 803-951-3200 <tel:803-951-3200>

>> Fax: 803-951-0990 <tel:803-951-0990>

>> www.healthquestpt.org <http://www.healthquestpt.org/>

>> bob@healthquestpt.org <mailto:bob@healthquestpt.org>

<https://mail.google.com/mail/?ui=2&ik=0441a7a97&view=pt&q=bob%20carpenter&qs=true&search=query&th=12fb5c0217402d2d>

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2/3

5/8/13

Clemson Sports Medicine and Rehabilitation Mail - how's this version

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>>
>>
>> -

>> Jim Stoker, PT, MA, SCS, CSCS
>> VP, Clemson Sports Medicine and Rehabilitation
>> fax# 864-482-0081
>> ph# 864-482-0064 ext. 118
>> www.csmr.org <<http://www.csmr.org>>

[Quoted text hidden]

Sent from my mobile device

[Quoted text hidden]

05-03-2011

Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Intra-Professional Interactions

Dear Marilyn:

As you know, in Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (S.C. 2006), the South Carolina Supreme Court held that South Carolina Code Ann. § 40-45-110(A)(1) prohibits a physical therapist from working as an employee of a physician when the physician refers patients to the physical therapist for services. I am writing on behalf for clarification & to ask the South Carolina Board of Physical Therapy Examiners (SCBPTE or Board) to issue a position statement advising how it interprets the statute by answering two questions set forth below.

As explained in the Court's opinion, the litigation was triggered by an opinion the Attorney General issued in 2004, which the Sloan opinion upheld. The Court ruled that the statutory prohibition applies when a physical therapist (PT) is employed by a physician who refers patients to the PT for the provision of physical therapy services -- in short, an inter-professional referral. I understand that the Attorney General's office has received a request for an opinion as to whether the statutory clause covers intra-professional as well as inter-professional interactions. It appears that the Attorney General has received a request for an opinion on two questions, which are substantially as follows:

(#1) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for another physical therapist or physical therapist assistant or group of physical therapists when the physical therapist or physical therapist assistant refers a patient to another physical therapist or physical therapist assistant for physical therapy services?

(#2) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for a professional corporation owned by one or more licensed physical therapists when a physical therapist owner or employee of the corporation refers a patient to the physical therapist for physical therapy services?

I would like for the Board issue a position statement addressing these two questions. I believe that the correct answer to the two questions is that the prohibition does not extend to a situation in which one physical therapist sends or directs a patient for treatment to

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another physical therapist who is employed by the sending therapist or by a professional corporation owned by the sending therapist. I intend to submit to the Board in the near future a legal analysis addressing the questions.

In addition, I would like to ask the Board to advise the Attorney General that it is considering these questions and to request the Attorney General to postpone issuing his opinion until the Board has had the opportunity to answer the questions. I believe that the Board is the appropriate agency to address the questions. As the Sloan opinion stated, "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." 370 S.C. at 469, 636 S.E.2d at 607. The Attorney General follows this admonition to give appropriate deference to an agency's interpretation of the law it administers. See Op. S.C. Att'y. Gen., April 20, 2007, "This Office, just as the courts of this state, 'gives deference to the opinion of a state agency charged with the duty and responsibility of enforcing a state statute.'" See Op. S.C. Att'y. Gen., July 1, 2004, "If the administrative interpretation is reasonable, courts will defer to that construction, even if it is not the only reasonable one or the one the court would have adopted in the first instance." The office of the Attorney General does not have primary responsibility for administering the physical therapy practice act. I think it would be very unfortunate if the Attorney General were to issue an opinion before the Board had the opportunity to state its position concerning the law it is charged to enforce.

Thank you for your attention to my requests.

Respectfully,

Bob Carpenter, PT, ATC-L, CSCS

000007



Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Intra-Professional Interactions

Dear Marilyn:

As you know, in Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (S.C. 2006), the South Carolina Supreme Court held that South Carolina Code Ann. § 40-45-110(A)(1) prohibits a physical therapist from working as an employee of a physician when the physician refers patients to the physical therapist for services. I am writing to ask the South Carolina Board of Physical Therapy Examiners (SCBPTE or Board) to issue a position statement advising how it interprets the statute by answering two questions set forth below.

As explained in the Court's opinion, the litigation was triggered by an opinion the Attorney General issued in 2004, which the Sloan opinion upheld. The Court ruled that the statutory prohibition applies when a physical therapist (PT) is employed by a physician who refers patients to the PT for the provision of physical therapy services – in short, an inter-professional referral. I understand that the Attorney General's office has received a request for an opinion as to whether the statutory clause covers intra-professional as well as inter-professional interactions. It appears that the Attorney General has received a request for an opinion on two questions, which are substantially as follows:

(#1) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for another physical therapist or physical therapist assistant or group of physical therapists when the physical therapist or physical therapist assistant refers a patient to another physical therapist or physical therapist assistant for physical therapy services?

(#2) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for a professional corporation owned by one or more licensed physical therapists when a physical therapist owner or employee of the corporation refers a patient to the physical therapist for physical therapy services?

I hereby request that the Board issue a position statement addressing these two questions. I believe that the correct answer to the two questions is that the prohibition does not extend to a situation in which one physical therapist sends or directs a patient for

000008

2

treatment to another physical therapist who is employed by the sending therapist or by a professional corporation owned by the sending therapist. I intend to submit to the Board in the near future a legal analysis addressing the questions.

In addition, I hereby ask the Board to advise the Attorney General that it is considering these questions and to request the Attorney General to postpone issuing his opinion until the Board has had the opportunity to answer the questions. I believe that the Board is the appropriate agency to address the questions. As the Sloan opinion stated, "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." 370 S.C. at 469, 636 S.E.2d at 607. The Attorney General follows this admonition to give appropriate deference to an agency's interpretation of the law it administers. See Op. S.C. Atty. Gen., April 20, 2007, "This Office, just as the courts of this state, 'gives deference to the opinion of a state agency charged with the duty and responsibility of enforcing a state statute.'" See Op. S.C. Atty. Gen., July 1, 2004, "If the administrative interpretation is reasonable, courts will defer to that construction, even if it is not the only reasonable one or the one the court would have adopted in the first instance." The office of the Attorney General does not have primary responsibility for administering the physical therapy practice act. I believe it would be unfortunate if the Attorney General were to issue an opinion before the Board had the opportunity to state its position concerning the law it is charged to enforce.

Thank you for your attention to my request.

Sincerely,

000009

5/9/13

Clemson Sports Medicine and Rehabilitation Mail - Fwd: clarification question for the SC PT Board of Examiners



Jim Stoker <jim.stoker@csmr.org>

Fwd: clarification question for the SC PT Board of Examiners

2 messages

Marilyn <mswy1030@aol.com>

Tue, May 3, 2011 at 1:15 PM

To: jim.stoker@csmr.org

Are you aware Bob sent us this? He has also retracted it.

Marilyn Swygert, PT, DPT
Charleston Physical Therapy
1730 Savannah Hwy.
843 763 4115

-----Original Message-----

From: Bob Carpenter, PT, ATC, CSCS <bob@healthquestpt.org>

To: mswy1030@aol.com; reynoldsv@llr.sc.gov

Sent: Tue, May 3, 2011 4:58 am

Subject: clarification question for the SC PT Board of Examiners

Hi Marilyn & Veronica,

Here is a question that I would like to pose for our state PT Board. Thanks for any clarification that you good folks could provide on this question!

Please call me if you have any questions.

Respectfully,

Bob

Bob Carpenter, PT, ATC, CSCS
Physical Therapist
Certified Athletic Trainer
Certified Strength and Conditioning Specialist

HealthQuest Physical Therapy
265 Charter Oak Road
Lexington, SC 29072

Phone: 803-951-3200
Fax: 803-951-0990
www.healthquestpt.org
bob@healthquestpt.org

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<https://mail.google.com/mail/?ui=2&ik=0441a7fa97&view=pt&q=mswy1030%40aol.com&q.s=true&search=querv&th=12fb6e10e60346c9>

1/2

5/3/13

Clemson Sports Medicine and Rehabilitation Mail - Fwd: clarification question for the SC PT Board of Examiners

 SCBPTE_Request-1.doc
33K

Jim Stoker <jim.stoker@csmr.org>
To: Marilyn <mswy1030@aol.com>

Tue, May 3, 2011 at 1:31 PM

Yes

[Quoted text hidden]

-

Sent from my mobile device

Jim Stoker, PT, MA, SCS, CSCS
VP, Clemson Sports Medicine and Rehabilitation
fax# 864-482-0081
ph# 864-482-0064 ext. 118
www.csmr.org

000011

<https://mail.google.com/mail/?ui=2&ik=0441a7fa97&view=ol&o=mswy1030%40aol.com&as=true&search=nu&ui=12fba10e9734R-9>

2/2

05-03-2011

Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Intra-Professional Interactions

Dear Marilyn:

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The Chapter hereby requests that the Board issue a position statement addressing these two questions. The Chapter believes that the correct answer to the two questions is that

000012

2

the prohibition does not extend to a situation in which one physical therapist sends or directs a patient for treatment to another physical therapist who is employed by the sending therapist or by a professional corporation owned by the sending therapist. The Chapter intends to submit to the Board in the near future a legal analysis addressing the questions.

In addition, the Chapter hereby asks the Board to advise the Attorney General that it is considering these questions and to request the Attorney General to postpone issuing his opinion until the Board has had the opportunity to answer the questions. The Chapter believes that the Board is the appropriate agency to address the questions. As the Sloan opinion stated, "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." 370 S.C. at 469, 636 S.E.2d at 607. The Attorney General follows this admonition to give appropriate deference to an agency's interpretation of the law it administers. See Op. S.C. Atty. Gen., April 20, 2007, "This Office, just as the courts of this state, 'gives deference to the opinion of a state agency charged with the duty and responsibility of enforcing a state statute.'" See Op. S.C. Atty. Gen., July 1, 2004, "If the administrative interpretation is reasonable, courts will defer to that construction, even if it is not the only reasonable one or the one the court would have adopted in the first instance." The office of the Attorney General does not have primary responsibility for administering the physical therapy practice act. The Chapter believes it would be unfortunate if the Attorney General were to issue an opinion before the Board had the opportunity to state its position concerning the law it is charged to enforce.

Thank you for your attention to the Chapter's requests.

Respectfully,

Bob Carpenter, PT, ATC-L, CSCS

000013



American Physical Therapy Association
South Carolina Chapter

3581 Centre Circle
Suite 104
Fort Mill, SC 29715
(803) 802-5450
(815) 371-1499 fax

May 2, 2011

Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

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President

Vernice PT

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Lise Saladin, PT
Chief Delegate

Lisa Saladin, PT
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Aaron Murphy, PT

Nina Cimby, PT

Mark Murphy, PT

Steve Clark, PTA

Greg Benedetto, PT

Greg Sills, PTA

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Inter-professional Interactions

I am writing to you, as I know, in Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.E.2d 598 (S.C. 2006), the South Carolina Supreme Court held that South Carolina Code Ann. § 40-45-110(A)(1) prohibits a physical therapist from working as an employee of a physician when the physician refers patients to the physical therapist for services. I am writing on behalf of the South Carolina Chapter, American Physical Therapy Association (SCAPTA or Chapter) to ask the South Carolina Board of Physical Therapy Examiners (SCBPTE or Board) to issue a position statement advising how it interprets the statute by answering two questions set forth below.

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American Physical Therapy Association
South Carolina Chapter

(#2) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for a professional corporation owned by one or more licensed physical therapists when a physical therapist owner or employee of the corporation refers a patient to the physical therapist for physical therapy services?

The Chapter hereby requests that the Board issue a position statement addressing these two questions. The Chapter believes that the correct answer to the two questions is that the prohibition does not extend to a situation in which one physical therapist directs a patient for treatment to another physical therapist who is employed by the sending therapist or by a professional corporation owned by the sending therapist. The Chapter intends to submit to the Board in the near future a legal analysis addressing the questions.

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Thank you for your attention to the Chapter's requests.

Sincerely,

James P. Stoker, PT, SCS
President

000015



3581 Centre Circle
Suite 104
Fort Mill, SC 29715
(803) 802-5450
(815) 371-1499 fax

May 2, 2011

Executive Committee

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President

Joe Albano, PT
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Gracie Rodak, PT
Treasurer

Jill Boorman, PT
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Lisa Saladin, PT
Chief Delegate

Lisa Saladin, PhD
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Dave Clark, PTA

Anthony Benedetto, PT
Greg Sills, PTA

Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

Re: Request dated 5/2/2011

Dear Marilyn:

The South Carolina Chapter, American Physical Therapy Association
respectfully withdraws the request:

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Intra-Professional Interactions dated 5/2/2011.

Thank you for your attention to this matter.

Sincerely,

James P. Stoker, PT, SCS
President

000016

5/9/13

Clemson Sports Medicine and Rehabilitation Mail - Board Question



Jim Stoker <jim.stoker@csmr.org>

Board Question

9 messages

Jim Stoker <jim.stoker@csmr.org>
 To: Marilyn <mwy1030@aol.com>, reynolds@llr.sc.gov

Mon, May 2, 2011 at 8:39 AM

Dear Marilyn and Veronica,

Please see attached request from the South Carolina Chapter, American Physical Therapy Association.
 Thank you for your attention.

Sincerely,

Jim Stoker, PT, SCS
 President, SCAPTA

SCBPTE Request 5.2.2011.pdf
 366K

Mail Delivery Subsystem <mailer-daemon@googlemail.com>
 To: jim.stoker@csmr.org

Mon, May 2, 2011 at 8:39 AM

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reynolds@llr.sc.gov

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MIME-Version: 1.0
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 Mon, 02 May 2011 05:39:53 -0700 (PDT)
 Received: by 10.204.46.30 with HTTP; Mon, 2 May 2011 05:39:53 -0700 (PDT)
 Date: Mon, 2 May 2011 08:39:53 -0400
 Message-ID: <BANLkTimsscM7k5S+tTysm_W9H-XSEbKEQ@mail.gmail.com>
 Subject: Board Question
 From: Jim Stoker <jim.stoker@csmr.org>
 To: Marilyn <mwy1030@aol.com>, reynolds@llr.sc.gov
 Content-Type: multipart/mixed; boundary=000325557c86fbbd1c04a24a513b
 [Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>
 To: reynoldsv@llr.sc.gov, Marilyn <mwy1030@aol.com>

Mon, May 2, 2011 at 8:42 AM

Dear Marilyn and Veronica,

000017

http://mail.000017.com/mail/?ui=2&ik=0441a7fa97&view=pt&q=mwy1030%40aol.com&qe=true&search=query&th=12fb0b8d3ca675bb

1/5

5/9/13

Clemson Sports Medicine and Rehabilitation Mail - Board Question

Please see attached request from the South Carolina Chapter, American Physical Therapy Association. Please confirm receipt.
Thank you for your attention.

Sincerely,

Jim Stoker, PT, SCS
President, SCAPTA

 SCBPTE Request 5.2.2011.pdf
366K

Veronica Reynolds <reynoldsv@llr.sc.gov>
To: Jim Stoker <jim.stoker@csmr.org>, Marilyn <mswy1030@aol.com>

Mon, May 2, 2011 at 10:39 AM

Jim I will forward to the board's attorney. Thank you

Veronica Reynolds, Administrator CPM

SC Board of Dentistry

SC Board of Physical Therapy

SC Board of Speech/Audiology

(803) 896-4655 Telephone

(803) 896-4719 Fax

Website: www.llr.state.sc.us

From: Jim Stoker [mailto:jim.stoker@csmr.org]
Sent: Monday, May 02, 2011 8:43 AM
To: Veronica Reynolds; Marilyn
Subject: Fwd: Board Question

[Quoted text hidden]

Veronica Reynolds <reynoldsv@llr.sc.gov>
To: Jim Stoker <jim.stoker@csmr.org>

Mon, May 2, 2011 at 10:56 AM

Jim

I did not receive d the email to forward to send to the attorney

<https://mail.google.com/mail/?ui=2&ik=0441a71a97&view=pt&q=mswy1030%40aol.com&q&s=true&search=query&th=12fb0b6d3ca675bb>

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2/5

5/9/13

Clemson Sports Medicine and Rehabilitation Mail - Board Question

Veronica Reynolds, Administrator CPM

SC Board of Dentistry

SC Board of Physical Therapy

SC Board of Speech/Audiology

(803) 896-4655 Telephone

(803) 896-4719 Fax

Website: www.llr.state.sc.us

From: Jim Stoker [mailto:jim.stoker@csmr.org]
Sent: Monday, May 02, 2011 8:43 AM
To: Veronica Reynolds; Marilyn
Subject: Fwd: Board Question

Dear Marilyn and Veronica,

[Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>
To: Veronica Reynolds <reynoldsv@llr.sc.gov>, Marilyn <mswy1030@aol.com>

Mon, May 2, 2011 at 11:04 AM

Dear Veronica and Marilyn,

Please be advised that the South Carolina Chapter, American Physical Therapy Association withdraws the previously received request per the attached letter.

Regards,

Jim

[Quoted text hidden]

 **SCBPTE Request withdrawal 5.2.2011.doc**
 95K

Veronica Reynolds <reynoldsv@llr.sc.gov>
To: Jim Stoker <jim.stoker@csmr.org>

Mon, May 2, 2011 at 11:05 AM

Thanks I will send on to the Boards attorney. Have a great week.

000019

<https://mail.ccmle.com/mail/?id=7&lk=0441a7fa97&view=ol&a=mswy1030%40aol.com&q=true&search=query&th=12fb0b9d3ca679bb>

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5/8/13

Clemson Sports Medicine and Rehabilitation Mail - Board Question

Veronica Reynolds, Administrator CPM

SC Board of Dentistry

SC Board of Physical Therapy

SC Board of Speech/Audiology

(803) 896-4655 Telephone

(803) 896-4719 Fax

Website: www.llr.state.sc.us

From: Jim Stoker [mailto:jim.stoker@csmr.org]
Sent: Monday, May 02, 2011 11:05 AM
To: Veronica Reynolds; Marilyn
Subject: Re: Board Question

[Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>
To: Veronica Reynolds <reynoldsv@llr.sc.gov>, Marilyn <mswy1030@aol.com>
Bcc: Jim Stoker <jim.stoker@csmr.org>

Mon, May 2, 2011 at 11:07 AM

Thank you Veronica,

The attached is the sign copy. Please disregard the earlier insigned copy.
Thank you for your attention.

Jim

[Quoted text hidden]

 SCBPTE Request withdrawal 5.2.2011.pdf
139K

Veronica Reynolds <reynoldsv@llr.sc.gov>
To: Jim Stoker <jim.stoker@csmr.org>

Mon, May 2, 2011 at 11:08 AM

Thanks I will forward this one on also.

Veronica Reynolds, Administrator CPM

SC Board of Dentistry

SC Board of Physical Therapy

SC Board of Speech/Audiology

(803) 896-4655 Telephone

000020

<https://mail.cnoole.com/mail/?ui=2&lk=0441a7fa97&view=pt&q=mswy1030%40aol.com&q&s=true&search=query&th=12fb0b8d3ca675bb>

4/5

5/9/13

Clemson Sports Medicine and Rehabilitation Mail - Board Question

(803) 896-4719 Fax

Website: www.llr.state.sc.us

From: Jim Stoker [mailto:jim.stoker@csmr.org]
Sent: Monday, May 02, 2011 11:08 AM

[Quoted text hidden]

[Quoted text hidden]

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<http://mail.google.com/mail/?ui=2&ik=0441a7fa97&view=pt&q=mswy1030%40ad.com&qs=true&search=query&th=12b0b8d3ce675bb>

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DRAFT: 04/29/2011 [POPTS\SC\bennett-2011-04-29-SCBPTE-questions-intra-professional-#2_popts]

[SCAPTA letterhead]

[date]

Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Intra-Professional Interactions

Dear Marilyn:

As you know, in Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (S.C. 2006), the South Carolina Supreme Court held that South Carolina Code Ann. § 40-45-110(A)(1) prohibits a physical therapist from working as an employee of a physician when the physician refers patients to the physical therapist for services. I am writing on behalf of the South Carolina Chapter, American Physical Therapy Association (SCAPTA or Chapter) to ask the South Carolina Board of Physical Therapy Examiners (SCBPTE or Board) to issue a position statement advising how it interprets the statute by answering two questions set forth below.

As explained in the Court's opinion, the litigation was triggered by an opinion the Attorney General issued in 2004, which the Sloan opinion upheld. The Court ruled that the statutory prohibition applies when a physical therapist (PT) is employed by a physician who refers patients to the PT for the provision of physical therapy services – in short, an inter-professional referral. The Chapter understands that the Attorney General's office has received a request for an opinion as to whether the statutory clause covers intra-professional as well as inter-professional interactions. It appears that the Attorney General has received a request for an opinion on two questions, which are substantially as follows:

(#1) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for another physical therapist or physical therapist assistant or group of physical therapists when the physical therapist or physical therapist assistant refers a patient to another physical therapist or physical therapist assistant for physical therapy services?

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(#2) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for a professional corporation owned by one or more licensed physical therapists when a physical therapist owner or employee of the corporation refers a patient to the physical therapist for physical therapy services?

The Chapter hereby requests that the Board issue a position statement addressing these two questions. The Chapter believes that the correct answer to the two questions is that the prohibition does not extend to a situation in which one physical therapist sends or directs a patient for treatment to another physical therapist who is employed by the sending therapist or by a professional corporation owned by the sending therapist. The Chapter intends to submit to the Board in the near future a legal analysis addressing the questions.

In addition, the Chapter hereby asks the Board to advise the Attorney General that it is considering these questions and to request the Attorney General to postpone issuing his opinion until the Board has had the opportunity to answer the questions. The Chapter believes that the Board is the appropriate agency to address the questions. As the Sloan opinion stated, "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." 370 S.C. at 469, 636 S.E.2d at 607. The Attorney General follows this admonition to give appropriate deference to an agency's interpretation of the law it administers. See Op. S.C. Atty. Gen., April 20, 2007, "This Office, just as the courts of this state, 'gives deference to the opinion of a state agency charged with the duty and responsibility of enforcing a state statute.'" See Op. S.C. Atty. Gen., July 1, 2004, "If the administrative interpretation is reasonable, courts will defer to that construction, even if it is not the only reasonable one or the one the court would have adopted in the first instance." The office of the Attorney General does not have primary responsibility for administering the physical therapy practice act. The Chapter believes it would be unfortunate if the Attorney General were to issue an opinion before the Board had the opportunity to state its position concerning the law it is charged to enforce.

Thank you for your attention to the Chapter's requests.

Sincerely,

James P. Stoker, PT, SCS
President

000023

DRAFT: 04/29/2011 [POPTS\SC\bennett-2011-04-29-SCBPTE-questions-intra-professional-#1_popts]

[SCAPTA letterhead]

[date]

Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Intra-Professional Interactions

Dear Marilyn:

As you know, in Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (S.C. 2006), the South Carolina Supreme Court held that South Carolina Code Ann. § 40-45-110(A)(1) prohibits a physical therapist from working as an employee of a physician when the physician refers patients to the physical therapist for services. I am writing on behalf of the South Carolina Chapter, American Physical Therapy Association (SCAPTA or Chapter) to ask the South Carolina Board of Physical Therapy Examiners (SCBPTE or Board) to issue a position statement advising how it interprets the statute by answering two questions set forth below.

By way of background, the Chapter has had conversations this year with representatives of the South Carolina Orthopaedic Association (SCOA), and one of the topics discussed was the interpretation of the clause interpreted in the Sloan case. As explained in the Court's opinion, the litigation was triggered by an opinion the Attorney General issued in 2004, which the Sloan opinion upheld. The Court ruled that the statutory prohibition applies when a physical therapist (PT) is employed by a physician who refers patients to the PT for the provision of physical therapy services – in short, an inter-professional referral.

The SCOA, which was one of the parties in the case, indicated that it was considering enlisting the assistance of a legislator to ask the Attorney General for an opinion as to whether the statutory clause covers intra-professional as well as inter-professional interactions. A legislator evidently has accommodated the SCOA, since it appears that the Attorney General has received a request for an opinion on two questions, which are substantially as follows:

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(#1) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for another physical therapist or physical therapist assistant or group of physical therapists when the physical therapist or physical therapist assistant refers a patient to another physical therapist or physical therapist assistant for physical therapy services?

(#2) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for a professional corporation owned by one or more licensed physical therapists when a physical therapist owner or employee of the corporation refers a patient to the physical therapist for physical therapy services?

The Chapter hereby requests that the Board issue a position statement addressing these two questions. The Chapter believes that the correct answer to the two questions is that the prohibition does not extend to a situation in which one physical therapist sends or directs a patient for treatment to another physical therapist who is employed by the sending therapist or by a professional corporation owned by the sending therapist. The Chapter intends to submit to the Board in the near future a legal analysis addressing the questions.

In addition, the Chapter hereby asks the Board to advise the Attorney General that it is considering these questions and to request the Attorney General to postpone issuing his opinion until the Board has had the opportunity to answer the questions. The Chapter believes that the Board is the appropriate agency to address the questions. As the Sloan opinion stated, "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." 370 S.C. at 469, 636 S.E.2d at 607. The Attorney General follows this admonition to give appropriate deference to an agency's interpretation of the law it administers. See Op. S.C. Atty. Gen., April 20, 2007, "This Office, just as the courts of this state, 'gives deference to the opinion of a state agency charged with the duty and responsibility of enforcing a state statute.'" See Op. S.C. Atty. Gen., July 1, 2004, "If the administrative interpretation is reasonable, courts will defer to that construction, even if it is not the only reasonable one or the one the court would have adopted in the first instance." The office of the Attorney General does not have primary responsibility for administering the physical therapy practice act. The Chapter believes it would be unfortunate if the Attorney General were to issue an opinion before the Board had the opportunity to state its position concerning the law it is charged to enforce.

Thank you for your attention to the Chapter's requests.

Sincerely,

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3.

James P. Stoker, PT, SCS
President

000026



3581 Centre Circle
Suite 104
Fort Mill, SC 29715
(803) 802-5450
(815) 371-1499 fax

May 2, 2011

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Secretary

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Chief Delegate

Lisa Salas, PT
Past President

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Greg Benedetto, PT

Greg Silas, PTA

Marilyn Swygert, PT, Chairperson
Carolina Board of Physical Therapy Examiners
Box 11329
Columbia, S.C. 29211-1329

Re: Request dated 5/2/2011

Dear Marilyn:

The South Carolina Chapter, American Physical Therapy Association
respectfully withdraws the request:

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Intra-Professional Interactions dated 5/2/2011.

Thank you for your attention to this matter.

Sincerely,


James P. Stoker, PT, SCS
President

000027



American Physical Therapy Association
South Carolina Chapter

3581 Centre Circle
Suite 104
Fort Mill, SC 29715
(803) 802-5450
(815) 371-1499 fax

May 2, 2011

Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

Executive Committee

President

PT

PT

Jill Boorman, PT

Secretary

Lisa Salas, PT

Chief Delegate

Lisa Saladin, PT

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Executive Director

Board of Directors

Aaron Murphy, PT

Mina Chitty, PT

Mark Murphy, PT

Steve Clark, PTA

Beneditto, PT

Greg Sills, PTA

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Interprofessional Interactions

As explained in the Court's opinion, the litigation was triggered by an opinion the Attorney General issued in 2004, which the Sloan opinion upheld. The Court ruled that the statutory prohibition applies when a physical therapist (PT) is employed by a physician who refers patients to the PT for the provision of physical therapy services – in short, an inter-professional referral. The Chapter understands that the Attorney General's office has received a request for an opinion as to whether the statutory clause covers intra-professional as well as inter-professional interactions. It appears that the Attorney General has received a request for an opinion on two questions, which are substantially as follows:

(#1) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for another physical therapist or physical therapist assistant or group of physical therapists when the physical therapist or physical therapist assistant refers a patient to another physical therapist or physical therapist assistant for physical therapy services?

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American Physical Therapy Association
South Carolina Chapter

(#2) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for a professional corporation owned by one or more licensed physical therapists when a physical therapist owner or employee of the corporation refers a patient to the physical therapist for physical therapy services?

The Chapter hereby requests that the Board issue a position statement addressing these two questions. The Chapter believes that the correct answer to the two questions is that the prohibition does not extend to a situation in which one physical therapist directs a patient for treatment to another physical therapist who is employed by the sending therapist or by a professional corporation owned by the sending therapist. The Chapter intends to submit to the Board in the near future a legal analysis addressing the questions.

In addition, the Chapter hereby asks the Board to advise the Attorney General that it is considering these questions and to request the Attorney General to postpone issuing his opinion until the Board has had the opportunity to answer the questions. The Chapter believes that the Board is the appropriate agency to address the questions. As the Sloan opinion stated, "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." 370 S.C. at 469, 636 S.E.2d at 607. The Attorney General follows this admonition to give appropriate deference to an agency's interpretation of the law it administers. See Op. S.C. Atty. Gen., April 20, 2007, "This Office, just as the courts of this state, 'gives deference to the opinion of a state agency charged with the duty and responsibility of enforcing a state statute.'" See Op. S.C. Atty. Gen., July 1, 2004, "If the administrative interpretation is reasonable, courts will defer to that construction, even if it is not the only reasonable one or the one the court would have adopted in the first instance." The office of the Attorney General does not have primary responsibility for administering the physical therapy practice act. The Chapter believes it would be unfortunate if the Attorney General were to issue an opinion before the Board had the opportunity to state its position concerning the law it is charged to enforce.

Thank you for your attention to the Chapter's requests.

Sincerely,

James P. Stoker, PT, SCS
President

000029

2 messages

Thu, Apr 26, 2012 at 4:06 PM

Thu, Apr 26, 2012 at 5:19 PM

000030



1111 North Fairfax Street
Alexandria, VA 22314-1488
703 684 2782
703 684 7343 fax
www.apta.org

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Nicole L. Stout, PT, MPT,
CLT-LANA

Chief Executive Officer

John D. Barnes

PT 2011
June 8-11, 2011
National Harbor, MD

May 10, 2011

The Honorable Alan Wilson
Attorney General of South Carolina
P.O. Box 11549
Columbia, S.C. 29211

Re: **Physical Therapy Practice Act
Intra-Professional Interactions**

Dear General Wilson:

The American Physical Therapy Association (APTA) is the national professional association representing physical therapists and physical therapist assistants. It has over 75,000 members nationwide, all of whom belong also to an APTA-affiliated Chapter for the state in which they live or work. The South Carolina Chapter, American Physical Therapy Association (SCAPTA) has about 1,000 members.

In 2006 the South Carolina Supreme Court ruled that South Carolina Code Ann. § 40-45-110(A)(1) prohibits a physical therapist (PT) from working as an employee of a physician or a physician-owned professional corporation when the physician refers patients to the physical therapist for physical therapy services. Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (S.C. 2006). The Court concluded that in the event of such an inter-professional referral the PT would be participating in the dividing of fees received for the PT's professional services by means of a consideration (i.e., "wages") with a person (i.e., the physician) who referred the patient.

The APTA understands that your office has pending a request for an opinion as to whether the statutory clause covers intra-professional as well as inter-professional interactions. The APTA is very grateful to Robert Cook and

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Leigha Blackwell of your office for accommodating our request to be permitted to submit our legal analysis.

The questions posed reportedly track those underlying Op. S.C. Atty. Gen., March 30, 2004, except that the questions presuppose a referral made not by a physician but by a physical therapist. In particular, the APTA understands that the pending questions are substantially as follows:

(#1) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for another physical therapist or physical therapist assistant or group of physical therapists when the physical therapist or physical therapist assistant refers a patient to another physical therapist or physical therapist assistant for physical therapy services?

(#2) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for a professional corporation owned by one or more licensed physical therapists when a physical therapist owner or employee of the corporation refers a patient to the physical therapist for physical therapy services?

For the reasons set forth below, the answer to each question is negative – the statutory prohibition does not apply to such intra-professional interactions.

A. Role of the Licensing Board

Before proceeding with a legal analysis of the questions, the APTA would like to raise a threshold matter relating to process. The South Carolina Board of Physical Therapy Examiners (SCBPTE or Board) is the agency charged with responsibility for the "administration and enforcement of" the physical therapy practice act. S.C. Code Ann. § 40-45-10.¹ The Board to date has not taken any position with respect to the questions set forth above. However, the APTA understands that the Board has before it substantially the same questions as the ones before your office.²

The APTA believes that the Board is the appropriate agency to address the questions in the first instance. As the Sloan opinion stated, "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." 370 S.C. at 469, 636 S.E.2d at 607. Your office customarily follows

¹ Section references hereinafter are to the South Carolina Code of Laws Annotated, unless otherwise indicated.

² Enclosed as Annex A is a copy of a letter dated 05/03/2011 from Robert Carpenter, a licensed physical therapist, to the South Carolina Board of Physical Therapy Examiners.

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this admonition and gives appropriate deference to an agency's interpretation of the law it administers. See Op. S.C. Atty. Gen., April 20, 2007, "This Office, just as the courts of this state, 'gives deference to the opinion of a state agency charged with the duty and responsibility of enforcing a state statute.'"³ Indeed, your office sometimes takes the initiative to contact an agency to determine how it interprets the statute under consideration. See Op. S.C. Atty. Gen., March 23, 2004, Senior Assistant Attorney General contacted the Department of Public Safety concerning its interpretation of § 56-15-10(h). The APTA respectfully requests that you refrain from issuing an opinion in this case until the Board has had a reasonable opportunity to adopt a position with respect to the questions.

Waiting for the Board to address the questions need not lead to undue delay. The Board is very unlikely to embark on the time-consuming rulemaking process set forth in Chapter 23 of Title 1 of the S.C. Code. The Board is much more likely to proceed on a comparatively fast track, since its custom is to issue position statements from time to time, and the request submitted to the Board asked for such a position statement.⁴ The questions are more important than they are pressing. The statute, after all, was passed in 1998, and the Sloan opinion was issued in 2006.

B. Issue Raised

The first question involves a scenario in which a PT (whom this letter will call Jim Jones) is employed directly by another PT (whom this letter will call John Smith). The second question involves a scenario in which Jones is employed by a professional corporation owned by Smith. The evident factual premise of the questions is that a patient arrives at Smith's practice, Smith evaluates the patient, Smith sends/directs the patient to Jones for treatment, and Jones subsequently treats the patient.⁵ In addition, the evident premise is that

³ See Op. S.C. Atty. Gen., July 1, 2004, "If the administrative interpretation is reasonable, courts will defer to that construction, even if it is not the only reasonable one or the one the court would have adopted in the first instance."

⁴ Deference to an agency's interpretation of its statute is not limited to interpretations embodied in regulations adopted through the rulemaking process. See, e.g., Op. S.C. Atty. Gen., April 20, 2007, deference to an advisory letter from the Director of the South Carolina Retirement System.

⁵ The evaluation and treatment by Smith and/or Jones are assumed to be within the scope of practice of a PT. The statute provides:

(9) "The practice of physical therapy" means the evaluation and treatment of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction, and pain from injury, disease, and any other bodily or mental condition and includes the administration, interpretation, documentation, and evaluation of physical therapy tests and measurements of bodily functions and structures; the establishment, administration, evaluation, and modification of a physical therapy treatment plan which includes the use of physical, chemical, or

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Smith's practice receives some payment, from the patient and/or an insurance company or other third-party payer, for the services rendered by Smith and Jones.

The physical therapy practice act authorizes the South Carolina Board of Physical Therapy Examiners to discipline licensed PTs for various kinds of conduct. The clause under consideration provides:

(A) In addition to other grounds provided for in Section 40-1-110, the board, after notice and hearing, may restrict or refuse to grant a license to an applicant and may refuse to renew the license of a licensed person, and may suspend, revoke, or otherwise restrict the license of a licensed person who:

(1) requests, receives, participates, or engages directly or indirectly in the dividing, transferring, assigning, rebating, or refunding of fees received for professional services or profits by means of a credit or other valuable consideration including, but not limited to, wages, an unearned commission, discount, or gratuity with a person who referred a patient, or with a relative or business associate of the referring person;

§ 40-45-110(A)(1). The Sloan opinion indicates that Jones' receipt of his compensation from Smith's corporation would amount to "participat[ing]" in the "dividing" of "fees received for professional services" by "means of . . . wages" within the terms of the statute. The Sloan opinion does not address a PT's sending or directing a patient to another PT, so the open question, in the terms of the statute, is whether Smith is "a person who referred" the patient for the purposes of the statute. Of course, Smith is a "person,"⁶ so the ultimate question is whether Smith's sending or directing the patient to Jones is what the legislature intended to cover by the word "referred" in § 40-45-110(A)(1). As explained below, the answer is negative – the General Assembly did not

mechanical agents, activities, instruction, and devices for prevention and therapeutic purposes; and the provision of consultation and educational and other advisory services for the purpose of preventing or reducing the incidence and severity of physical disability, bodily malfunction, and pain. The use of roentgen rays and radium for diagnostic or therapeutic purposes and the use of electricity for surgical purposes, including cauterization and colonic irrigations, are not authorized under the term "physical therapy" as used in this chapter, and nothing in this chapter shall be construed to authorize a physical therapist to prescribe medications or order laboratory or other medical tests.

§ 40-45-20(9).

For purposes of the physical therapy practice act:

(3) "Person" means an individual.

§ 40-45-20(3). Thus, any licensed PT is a "person" within the meaning of § 40-45-110(A)(1).

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intend the prohibition to extend to a PT's sending or directing a patient to another PT.

C. Primacy of Legislative Intent

The question under consideration is a matter of statutory interpretation. An opinion of the Attorney General has a useful one-sentence summary of the law concerning statutory interpretation:

All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can reasonably be discovered in the language used, and such language must be construed in light of the statute's intended purpose. State v. Hudson, 336 S.C. 237, 519 S.E.2d 577 (Cl. App. 1999).

Op. S.C. Atty. Gen., August 24, 2006, p. 7. The South Carolina Supreme Court this year set forth the following principles:

"A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Sloan v. S.C. Bd. of Physical Therapy Examiners, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006). When faced with an undefined statutory term, the Court must interpret the term in accordance with its usual and customary meaning. Branch v. City of Myrtle Beach, 340 S.C. 405, 409-10, 532 S.E.2d 289, 292 (2000). Courts should consider not merely the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the whole purpose of the statute and the policy of the law. Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997).

Travelscape, LLC v. South Carolina Department of Revenue, 391 S.C. 89, 99, 705 S.E.2d 28, 33 (S.C. 2011).

The physical therapy practice act does not define the word "referral" or "referred," and the decisive question before the Attorney General is whether the legislature intended "referred" in § 40-45-110(A)(1) to encompass a PT's sending or directing a patient that he/she has seen to another PT. The request submitted to the Attorney General simply begs the question. That is, the request rather craftily assumes that a PT's sending or directing a patient to another PT is a "referral" for purposes of § 40-45-110(A)(1). The drafter of the question evidently hoped to divert the Attorney General's attention to the easily-answered question whether a physical therapist is a "person" and away from the heart of the issue.

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D. Language of the Particular Clause

Under the applicable principles for determining the usual and customary meaning of a term, a PT such as Smith would not be a "person who referred" the patient to his fellow PT Jones. A starting point for the interpretation of a particular undefined term is the plain meaning of the word. The Supreme Court took this approach in the Sloan case, where it looked to the "plain meaning [of 'refer'], which in this instance is 'to send or direct for treatment, aid, information, [or] decision, [e.g.] a patient to a specialist.' Webster's Third New International Dictionary 1907 (1981)." Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 470, 636 S.E.2d 598, 608 (S.C. 2006). Thus, under the dictionary definition, a referral is the sending of a patient from a generalist to a specialist. A physician's sending or directing a patient to a PT fits easily within the dictionary definition, because from a physician's perspective a PT is a "specialist" on the generalist-to-specialist spectrum.⁷ However, from the perspective of a PT who sends or directs a patient, a fellow PT is not a "specialist," since each PT has the same scope of practice.

The view that § 40-45-110(A)(1) applies to a PT's sending or directing a patient to another PT gives "refer" a more expansive interpretation than the plain meaning identified by the Sloan opinion. In any event, even if some dictionary defined "refer" broadly enough to encompass a PT's sending a patient to a fellow PT, that expansive interpretation would be at odds with South Carolina law. The word "refer" is certainly a general term, which means that it should not be given a more expansive meaning in § 40-45-110(A)(1) than in the other clauses in that provision. The South Carolina Court of Appeals has stated the rule of interpretation as follows:

While section 38-77-350(E) uses the general term "form," a basic rule of statutory construction is that "general words – and it makes no difference how general – will be confined to the subject treated of." Henderson v. McMaster, 104 S.C. 268, 272, 88 S.E. 645, 646 (1916); see also Beattie v. Aiken County Dep't of Soc. Servs., 319 S.C. 449, 452, 462 S.E.2d 276, 278 (1995) ("An entire code section should be read as a whole so that phraseology of an isolated section is not controlling."). Absent legislative intent to the contrary, a statutory term should not be given a more expansive construction in one subsection of the statute than in another subsection.

⁷ A physician's relationship to a PT is that of generalist to specialist in that a PT's scope of practice is much narrower than that of a physician. The medical practice provides that the scope of practice of a doctor of medicine includes "undertaking to prevent or to diagnose, correct or treat in any manner, or by any means, methods, or devices, disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of a person." (Emphasis added.) § 40-47-20(36)(c). The scope of practice of a PT is comparatively much narrower. See § 40-45-20(9). In particular, PTs do not perform surgery or prescribe drugs.

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(Emphasis added.) Government Employees Insurance Company v. Draine, 389 S.C. 586, 698 S.E.2d 866, 871 (S.C. Ct. App. 2010).⁸

The foregoing rule of interpretation compels the conclusion that the word "referred" in § 40-45-110(A)(1) does not extend to a PT's sending or directing a patient to another PT. In § 40-45-110(A) the word "refer" or a cognate term appears in two paragraphs in addition to § 40-45-110(A)(1), and each time it covers only an inter-professional referral, one from a physician to a PT or from a PT to a physician.⁹ Thus, the principle of interpretation stated in the Government Employees Insurance Company and Travelscape opinions entails that "refer" in § 40-45-110(A)(1) does not extend to an intra-professional interaction in which one PT sends or directs a patient to another PT.

E. Legislative Intent of § 40-45-110(A)(1)

Even on the flawed assumption that the "plain meaning" of "refer" is broad enough to cover a PT's sending or directing a patient to another PT, § 40-45-110(A)(1) still would not extend to such an intra-professional interaction. As

⁸ The Supreme Court has explained:

As a general rule, "identical words and phrases within the same statute should normally be given the same meaning." Powerex Corp. v. Reliant Energy Serv., Inc., 551 U.S. 224, 232, 127 S.Ct. 2411, 2417 (2007). The South Carolina Court of Appeals has long recognized a similar rule. See e.g. Busby v. State Farm Mut. Auto. Ins. Co., 280 S.C. 330, 333, 312 S.E.2d 716, 718 (Ct. App. 1984) (citing Pampanga Sugar Mills v. Trinidad, 279 U.S. 211, 218, 49 S.Ct. 308, 310 (1929)) ("Where the same word is used more than once in a statute it is presumed to have the same meaning throughout unless a different meaning is necessary to avoid an absurd result."). This Court has held that words in a statute must be construed in context, and their meaning may be ascertained by reference to words associated with them in the statute. Eagle Container Co., LLC v. Cty. of Newberry, 379 S.C. 564, 571, 666 S.E.2d 892, 895 (2008).

Travelscape, LLC v. South Carolina Department of Revenue, 391 S.C. 89, 100-101, 705 S.E.2d 28, 34 (S.C. 2011).

⁹ Paragraph (2) of § 40-45-110(A) says that a PT may be disciplined for failing "to refer to a licensed medical doctor or dentist any patient whose medical condition should have been determined at the time of evaluation or treatment to be beyond the scope of practice of a physical therapist." (Emphasis added.) Paragraph (4) of § 40-45-110(A) says that a PT may be disciplined if "in the absence of a referral from a licensed medical doctor or dentist, [the PT] provides physical therapy services beyond thirty days after the initial evaluation and/or treatment date without the referral of the patient to a licensed medical doctor or dentist." (Emphasis added.) Each time "refer" is used in § 40-45-110(A) outside paragraph (1) it covers only inter-professional referrals, the sending of a patient from a physician (medical doctor or dentist) to a PT or from a PT to a physician. In each case the practitioner is making a decision to send a patient to a practitioner in a different profession, not to a colleague in the same profession.

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observed above, all rules of statutory interpretation – including the “plain meaning” rule – are subservient to the one that legislative intent must prevail.

The expansive interpretation of § 40-45-110(A)(1) must fail because it does nothing to advance the legislative intent of the statute. The Supreme Court in Sloan has articulated the intent of § 40-45-110(A)(1). In short, the General Assembly’s intent was to curtail the overutilization of physical therapy services by ending the potential for conflict of interest that a physician faces when he/she has the opportunity to make a referral to a PT with whom the physician has a business association.¹⁰ The law left each physician free to associate with other physicians, but it effectively prohibited business associations with PTs, a prohibition that eliminates the conflict of interest that attends a physician’s decision to refer to a PT when he/she has a self-interest in making the referral.

The expansive interpretation of § 40-45-110(A)(1), on the other hand, is untenable because it would not eliminate of even affect any conflict of interest that remains after eradication of the physician’s conflict. It would leave in place the unavoidable conflict of interest that affects the provision of all physical therapy (and other professional) services, while serving only to interfere with the ability of physical therapists to associate in practice with other physical therapists – a bit of mischief that the General Assembly certainly did not intend to inflict on South Carolina.

When the legislature revised the practice act in 1998¹¹ it was not attempting the impossible task of eliminating all potential conflicts of interest connected with the provision of physical therapy – because some conflicts are unavoidable. A thoughtful analysis of what the General Assembly was about must pay attention to the economic incentives that are associated with decisions to initiate and to continue physical therapy. In the case under consideration, the patient who appeared in Smith’s office for the initial physical therapy evaluation arrived either (i) self-directed, as a result of his/her own decision, or (ii) pursuant to a referral from a physician (whom this

¹⁰ The Court explained:

Although we lack the benefit of any legislative history explaining the Legislature’s specific motivation for enacting this statute, it is no great stretch to conclude the statute was passed for the same reasons which prompted enactment of the state Provider Self-Referral Act and the federal Stark laws - to protect consumers as well as government-sponsored health care programs such as Medicare and Medicaid from actual and potential conflicts of interest which are likely to lead to overuse of medical services by physicians who, for their own financial gain rather than their patients’ medical needs, refer patients to entities in which the physicians hold a financial interest.

(Emphasis added.) 370 S.C. at 469, 636 S.E.2d at 607.

¹¹ In Act No. 360, 1998 S.C. Acts 2103-2119, the legislature substantially amended the physical therapy practice act, to which it added the new provision at issue, § 40-45-110(A)(1).

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letter will call Richard Roe).¹² In either case the decision to initiate physical therapy was not motivated by economic self-interest, since the legislature in 1998 decided to rescue Roe from the temptation to "overuse . . . medical services" based on self-interest rather than on the needs of his patients.

The legislature did not intend, however, to rescue Smith from the temptation he faces whenever a patient arrives for an initial evaluation. Physical therapists are not immune from the tug of self-interest, and virtually every patient Smith sees presents him with at least a potential conflict of interest concerning the care to be provided. The basic economic calculus is not mysterious. If Smith's practice will be paid more for providing more therapy – more visits, more procedures, more expensive procedures – then his self-interest is to generate revenue by delivering more therapy.¹³ On the other hand, if Smith's practice will not be paid more for providing the patient with more visits/procedures (as in some capitation arrangements),¹⁴ then his self-interest is to provide less rather than more therapy in order to free up time to treat other better-paying patients.¹⁵ Whether Smith's self-interest (in providing more or in providing less therapy) coincides with the needs of the

¹² South Carolina law in general prevents a PT from evaluating a patient whom a physician has not referred, with a narrow exception for the first thirty days of patient care. See § 40-45-110(A)(4), which says the SCBPTE may discipline a PT who "(4) in the absence of a referral from a licensed medical doctor or dentist, provides physical therapy services beyond thirty days after the initial evaluation and/or treatment date without the referral of the patient to a licensed medical doctor or dentist." Most private insurance plans make some kind of physician referral a condition of payment for physical therapy services. Similarly, the federal Medicare program calls for a physician to certify, at least every thirty days, that physical therapy services were furnished under a plan of treatment that the physician has reviewed. See 42 CFR 424.24(a) and (c)(1), 42 CFR 410.61(e). As a practical matter, therefore, most patients who arrive in a PT's office are physician-referred.

¹³ Of course, as a practical matter a PT's freedom to indulge his/her self-interest is constrained by various factors, such as limitations on the plan of care in an underlying physician referral and an insurance company's refusal to authorize payment for additional visits. See § 40-45-110(A)(5), which provides a PT may be disciplined if he/she "changes, or in any way modifies, any specific patient care instructions or protocols established by an appropriate health care provider without prior consultation with and approval by the appropriate health care provider." Such restraints, however, do not eliminate the self-interest factor.

¹⁴ With respect to capitation arrangements, the APTA's website explains:

capitation: reimbursement method that pays the provider a set fee each month/quarter, based on the number of patients enrolled in the insurance plan. Usually measured in terms of *per member per month* (PMPM). Since the capitated payment will not vary according to the number of patients seen, under the payment method the health care provider (not the insurer) assumes all, or most, of the financial risk for providing care.

Glossary of Payment Terms, at <http://www.apta.org/Payment/Glossary/>.

¹⁵ An example at the far end of the spectrum would be a PT's undertaking to provide pro bono services to a homeless person in need of physical therapy. In light of the fixed fee (zero dollars), the PT's self-interest would be to provide less rather than more physical therapy, an interest inevitably in conflict with the patient's need for therapy.

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patients will vary from patient to patient. What is inevitable, however, is the certainty that whenever a patient appears in Smith's office a potential conflict of interest will be present. In enacting § 40-45-110(A)(1) the legislature was not intending to eliminate the potential conflicts of interest faced by Smith because they are ineradicable.

The upshot is that interpreting the statute to apply to a PT's sending a patient to another PT would do nothing whatsoever to advance or serve the legislative goal of § 40-45-110(A)(1), which was to eliminate the avoidable conflict of interest that a physician confronts whenever he/she is called upon to decide whether to make a self-interested referral for physical therapy. Furthermore, such an interpretation would do nothing whatsoever to curtail the unavoidable potential conflict of interest that confronts every PT whenever a patient appears for evaluation or treatment. If the statute were interpreted to mean that Smith may not send any patient to Jones, then Smith himself still would have the same economic incentives (i.e., the incentives to provide more care or to provide less care) that exist under a regime that allows Smith to send patients to Jones. Prohibiting Smith from sending Jones a patient evaluated by Smith would not eliminate Smith's self-interest in providing more therapy to some patients and less therapy to others, without regard to the patients needs.¹⁶

F. Pernicious Consequences of the Expansive Interpretation

The fact that the expansive interpretation of § 40-45-110(A)(1) would do nothing to advance the legislative intent is not its worst defect. It is not a harmless misinterpretation. On the contrary, the expansive interpretation would have pernicious consequences, results the legislature could not have intended.

1. Atomization of Physical Therapy Practice

The primary practical consequence of interpreting § 40-45-110(A)(1) as prohibiting a PT from sending a patient he/she has evaluated to another PT would be the atomization of the physical therapy profession in South Carolina. A physical therapist such as Smith would be precluded from practicing in association with any other PT because Smith would be unable to enlist the

¹⁶ An understanding of the financial incentives relating to the initiation and continuation of physical therapy care is crucial to making sense of the intent underlying § 40-45-110(A)(1). This circumstance illustrates why the office of the Attorney General would do well to refrain from issuing an opinion until the SCBPTE has spoken. The lawyers in the Attorney General's office have expertise concerning the general legal principles relating to statutory construction, expertise not shared by the nine members of the SCBPTE. However, six of the SCBPTE members must be practicing physical therapists, which means that these individuals have much greater familiarity with the economic realities affecting the delivery of healthcare in South Carolina than do most lawyers.

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colleague in the care of any of Smith's patients without exposing the colleague to disciplinary action under § 40-45-110(A)(1). Smith would be able to care for all the patients coming to him, but he would not be able to allow any other PT in his practice to collaborate with him in caring for these patients. If Smith wanted to form a professional corporation in order to practice with another PT he would be stymied, since either PT's caring for any patient treated by the other would lead to a prohibited participation in the dividing of fees with a "person who referred" the patient. Smith and his would-be co-owner could not avoid the legal prohibition by forming an ordinary business corporation, a limited liability company, a business trust, or even a partnership. The same obstacle would apply to any form of business association between two or more PTs, since under any arrangement the PTs in some manner would be dividing the fees the entity received for the professional services rendered. If § 40-45-110(A)(1) actually meant that a PT may not send or direct a patient to another PT then all South Carolina PTs would have to be solo practitioners in order to be in compliance with the law.¹⁷

2. Extirpation of Physical Therapist Assistants

A collateral practical consequence of the expansive interpretation of § 40-45-110(A)(1) would be the elimination of the use of physical therapist assistants in South Carolina. A physical therapist assistant (PTA) is "a person who is licensed by the board to assist a physical therapist in the practice of physical therapy and whose activities are supervised and directed by a physical therapist whose license is in good standing." § 40-45-20(5). Every PTA is subject to discipline under § 40-45-110(A)(1) because the clause applies to a "licensed person." Unlike a PT, a PTA does not have the option of practicing on his/her own. The law limits a PTA's activity to providing therapy under the direction of a PT. If § 40-45-110(A)(1) were interpreted to cover a PT's sending or directing a patient to a PTA, then the consequence would be that it

¹⁷ As a matter of mere logic, under the expansive interpretation of § 40-45-110(A)(1) each of two PTs could form a professional corporation, own 50% of the stock, care for patients as employees of the corporation, and draw a salary and/or receive dividends from it, provided that neither PT ever treated a patient treated by the other PT. The proviso demonstrates the utter impracticality of any attempt by two or more PTs to associate with one another in a business entity and still comply with the expansive interpretation of § 40-45-110(A)(1). If they were prohibited from ever treating the same patient, then they would have little or no reason to associate as co-owners and co-employees of the corporation. The prohibition would largely defeat the ordinary reasons for establishing a multi-PT business. One basic advantage of having two or more PTs on staff is that the practice is better able to accommodate the scheduling needs of patients. Physical therapy very often requires patients to come for therapy several times a week for multiple weeks. A commonplace scenario would be for PT Smith to evaluate a patient, prepare a plan of care, and then direct the patient to PT Jones for the treatment because Jones works the early (or late) hours that suit the patient's needs. A law preventing PT Jones from treating a patient evaluated by PT Smith would do no good with regard to conflict-of-interest considerations, but it clearly would harm the interests of patients by making it more difficult for them to obtain therapy at a convenient time.

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would be impossible for a PTA to care for any patient without violating South Carolina law. The upshot is that under the expansive interpretation of § 40-45-110(A)(1) South Carolina would be dotted with PTs practicing as solo practitioners and PTAs working in fields other than healthcare.

G. Principles Mandating Rejection of the Expansive Interpretation

Consideration of the consequences of the expansive interpretation of § 40-45-110(A)(1) demonstrates that the interpretation is untenable. It can be maintained only by ignoring a number of applicable principles of statutory interpretation.

1. Absurd Results

The expansive interpretation of § 40-45-110(A)(1) must be rejected because it violates the principle that statutes should be interpreted to avoid absurd results. The Supreme Court has noted, "In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature. Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008)." Lancaster County Bar Association v. South Carolina Commission on Indigent Defense, 380 S.C. 219, 670 S.E.2d 371, 373 (S.C. 2008). The most obvious impact of the expansive interpretation is that it would prevent PTs in South Carolina from practicing in association with other PTs, forcing them instead to practice on a solo basis.

Such an atomization of the profession would be absurd. The statute's actual intent was to eliminate conflicts of interest faced by physicians by preventing them from employing PTs, a policy choice that some people oppose, but one that other states have made. For example, Delaware has a provision in its physical therapy practice act that is substantially the same as § 40-45-110(A)(1).¹⁸ In addition, the California Legislative Counsel recently

¹⁸ The Delaware statute that regulates physical therapists and athletic trainers authorizes the licensing board to discipline a licensee who:

(8) Engages directly or indirectly in the division, transferring, assigning, rebating or refunding of fees received for professional services or who profits by means of a credit or other valuable consideration such as wages, an unearned commission, discount or gratuity with any person who referred a patient, or with any relative or business associate of the referring person. Nothing in this paragraph shall be construed as prohibiting the members of any regularly and properly organized business entity recognized by Delaware law and comprised of physical therapists or athletic trainers from making any division of their total fees among themselves as they determine by contract necessary to defray their joint operating costs. This paragraph shall not apply to physical therapist or athletic trainer positions currently held by physical therapists or athletic trainers employed by licensed medical and osteopathic physicians.

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explained that PTs in California may be disciplined under the physical therapy practice act for accepting employment from a referring physician.¹⁹ Although physicians interested in employing PTs may find § 40-45-110(A)(1) harsh, it prevents them from hiring only one kind of practitioner, and it does nothing to prevent them from associating with fellow physicians to practice in a professional corporation.

In stark contrast, the expansive interpretation of § 40-45-110(A)(1) would have utterly absurd results. It would prevent PTs in South Carolina from associating with fellow PTs to practice in a professional corporation or other business entity – unless they scrupulously avoided ever collaborating in the care of a fellow PT's patient. The APTA is not aware of any state that prohibits PTs from associating in practice, requires them to practice on a solo basis, or prevents them from functioning as a member of a team of practitioners providing patient care. The APTA is not aware of any state that even has considered such rules. Moreover, the APTA has never heard any argument in favor of such ludicrous rules from any source in any state. The last point is the most telling. The consequences of the expansive interpretation are absurd not primarily because they would be harsh – since many laws have harsh consequences – but because they would be senseless. As explained above, adopting the expansive interpretation of § 40-45-110(A)(1) would do nothing to eliminate the potential for conflicts of interest, the obvious purpose of the statute. At the same time, it would harm patients by making it more difficult for them to schedule physical therapy sessions at convenient times – which could not have been the legislature's goal. The fact that nobody – in South Carolina or elsewhere – argues that it would be “good public policy” to force PTs to practice in isolation demonstrates the absurdity of the expansive interpretation. In truth, it does not aim to give the statute a

24 Del. Code § 2616(a)(8). The first sentence of this statute is virtually identical to S.C. Code Ann. § 40-45-110(A)(1), as recognized in the March 30, 2004, opinion of your office that figured in the *Sloan* case. The second sentence of the Delaware statute makes clear that Delaware did not intend its prohibition to reach a PT's sending a patient to another PT with whom the sending PT is associated. The fact that the South Carolina statute does not have corresponding language tells nothing about the intent of the General Assembly in enacting § 40-45-110(A)(1). If the General Assembly had considered and rejected such language, such a rejection perhaps would give pause. In fact, however, language corresponding to the second sentence of 24 Del. Code § 2616(a)(8) never came before the South Carolina General Assembly. Attached as Annex B is a Bill Status Report with respect to H. 3784, the bill that became Act No. 360, generated by the Legislative Printing, Information, and Technology Systems (LPITS), which shows that H. 3784 was introduced on 04/01/1997 and that it was signed by the Governor on 06/08/1998. The Bill Status Report mentions amendments at various points, with citations to the relevant entries in the Journal of the House of Representatives or the Journal of the Senate. A review of these entries shows no change whatsoever to § 40-45-110(A)(1) as the bill moved through the General Assembly. Thus, the General Assembly did not have before it any language corresponding to the second sentence of 24 Del. Code § 2616(a)(8).

¹⁹ Attached as Annex C is a copy of the opinion of the California Legislative Counsel dated September 29, 2010.

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"practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers." Rather, the evident purpose behind the pending request for your opinion must be to elicit an opinion that, if credited, would force the legislature to amend the statute on account of its absurdity.

2. Statute as a Whole and Surplusage

The expansive interpretation of § 40-45-110(A)(1) should be rejected because it violates the principle that the different parts of a statute must be construed together and harmonized, if at all possible, so that each part has some effect. Foothills Brewing Concern, Inc. v. City of Greenville, 660 S.E.2d 264, 268, 377 S.C. 355 (S.C. 2008) ("When construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect.")

To accept the expansive interpretation would amount to treating a significant portion of the practice act as mere hot air. The practice act has provisions for the licensure of PTAs, and the SCBPTE has adopted regulations that address PTAs. By definition, a PTA is a person licensed "to assist a physical therapist in the practice of physical therapy and whose activities are supervised and directed by a physical therapist whose license is in good standing." (Emphasis added.) § 40-45-20(5). If PT Smith evaluated a patient and then sent the patient to PT Jones for treatment, the expansive interpretation would treat Smith as a "person who referred" the patient to Jones for § 40-45-110(A)(1) purposes. By the same token, if Smith evaluated a patient and then sent the patient to a PTA (whom this letter calls Bill Williams) for further care, the expansive interpretation again would treat Smith as a "person who referred" the patient to Williams, which would mean that Williams would be subject to revocation of his license for accepting payment for his work. Williams, unlike PT Jones, would not even have the theoretical ability to function on a purely solo basis, since a licensed PTA may assist in the practice of physical therapy only as "supervised" and "directed" by a PT.

If the practice act were construed in accordance with the expansive interpretation then PTAs would be unable to care for patients sent to them by their PT employers, since by doing so they would violate § 40-45-110(A)(1).²⁰ Accepting the expansive interpretation would give rise to a comical conflict between § 40-45-110(A)(1) and § 40-45-10, which calls for two of the nine members of the SCBPTE to be PTAs, each of whom "must have had at least three years' experience before being appointed" and who, "while serving on the board[, must] be actively practicing in this State." If the former provision must be interpreted expansively, then the only way a licensed PTA could avoid violating § 40-45-110(A)(1) would be by way of refraining from

²⁰ Licensed PTAs would not even be able to flee to work in the offices of physicians, since a physician employer who directed a PTA to care for a patient still would be a "person who referred" the patient.

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practicing in South Carolina, conduct that would make the PTA ineligible to serve on the SCBPTE. The legislature surely did not intend to say that only scofflaw PTAs would be eligible to serve on the SCBPTE. The obvious answer to this riddle is that the expansive interpretation of § 40-45-110(A)(1) is erroneous – the prohibition does not apply to a PT's sending a patient he/she evaluated to a PTA any more than it applies to a PT's sending such a patient to another PT. The two sections of the practice can be harmonized by restricting the reach of § 40-45-110(A)(1) to the referrals the legislature intended to reach – economically self-interested referrals from a physician to a PT.

3. Repeal by Implication

The expansive interpretation of § 40-45-110(A)(1) should be rejected because it violates the principle that repeal by implication is disfavored. The effect of accepting the expansive interpretation would be to nullify the provisions of the South Carolina Professional Corporation Supplement (PC Supplement) that authorize a professional corporation (PC) to employ two or more PTs to engage in providing physical therapy services. The PC Supplement dates back to 1988, and there is nothing in the physical therapy practice act, enacted in 1998, that says or suggests the legislature intended a partial repeal of the PC Supplement when it enacted § 40-45-110(A)(1). South Carolina law is clear that, in such circumstances, the expansive interpretation of § 40-45-110(A)(1) must be rejected if at all possible.²¹

²¹ The Supreme Court has stated:

"Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconciliation." Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 141-42, 628 S.E.2d 38, 41 (2006), citing Mims v. Alston, 312 S.C. 311, 440 S.E.2d 357 (1994). Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them. *Id.*, citing City of Rock Hill v. South Carolina DHEC, 302 S.C. 161, 167, 394 S.E.2d 327, 331 (1990).

Spectre, LLC v. South Carolina Department of Health and Environmental Control, 386 S.C. 357, 688 S.E.2d 844, 852 (S.C. 2010). See Op. S.C. Atty. Gen., January 10, 2011, "Moreover, it is well settled that where statutory provisions are in conflict with one another, '[r]epeal by implication is disfavored and is found only when [the] two statutes are incapable of any reasonable reconciliation.'" Similarly, in Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (S.C. 2000), the Court said:

The law does not favor the implied repeal of statute. Butler v. Unisun Ins., 323 S.C. 402, 475 S.E.2d 758 (1996). Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative. *Id.* "It is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would . . . expressly do so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the later repealed the first." Justice v. Panty, 330 S.C. 37, 43-44, 496 S.E.2d 871, 874 (Ct. App. 1998) (quoting State v. Hood, 181 S.C. 488, 491, 188 S.E. 134, 136 (1936)).

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The PC Supplement plainly allows a PC organized to render physical therapy services to employ two or more licensed PTs. The PC Supplement, Chapter 19 of title 33 of the South Carolina Code, is part of the South Carolina Business Corporation Act of 1988 (BCA).²² The PC Supplement authorizes the creation of a professional corporation for the rendering of "professional services,"²³ a term defined to include physical therapy services.²⁴ Furthermore, the PC Supplement explicitly authorizes a professional corporation (PC) to provide professional services through two or more employed professionals.²⁵

341 S.C. at 88-89, 533 S.E.2d at 583.

²² See § 33-1-101 ("Chapters 1 through 20 of Title 33 is known and may be cited as the 'South Carolina Business Corporation Act of 1988'.")

²³ The general rule is that a PC may be established "solely for the rendering of professional services, including services ancillary to them, within a single profession," although the corporation may render services in two or more professions to the extent such combination is authorized by the applicable licensing law. § 33-19-110.

²⁴ The statute defines "professional service" to mean "a service that may be rendered lawfully 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 chapters 1 through 17 of this title." § 33-19-103(7). Physical therapy is a service that may be rendered only by a person licensed under the physical therapy practice act. See § 40-45-30 ("A person shall not engage in the practice of physical therapy without a license issued in accordance with this chapter.") Whether a corporation may lawfully render physical therapy services under Chapters 1 through 17 depends on whether its articles of incorporation place it under Chapter 19, the PC Supplement. The PC Supplement says that a "person may incorporate a professional corporation by delivering to the Secretary of State for filing articles of incorporation that state (1) it is a professional corporation and (2) its purpose is to render the specified professional services." § 33-19-109(a). Specifying in the articles the purpose to render physical therapy services is elective. That is, Chapter 3 says, "Every corporation incorporated under Chapters 1 through 20 of this Title has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation." § 33-3-101(a). (Emphasis added.) The articles of incorporation of a corporation organized under the BCA need not say anything about the purposes of the corporation – in which case the corporation evidently has the purpose of engaging in "any lawful business" pursuant to § 33-1-101(a). See § 33-2-102(b)(2)(i), which says, "(b) The articles of incorporation may set forth: . . . (2) Provisions not inconsistent with the law regarding: (i) the purpose for which the corporation is organized." (Emphasis added.) However, if the corporation's articles of incorporation include a statement within § 33-19-109(a) that its purpose is to render physical therapy services, then that corporation is a professional corporation organized under the PC Supplement. The website of South Carolina Secretary of State's confirms the foregoing analysis. It contains a "Search Business Filings" feature at http://www.sccos.com/Business_Filings/Search_Business_Filings. A search conducted on 05/10/2011 yielded over 200 business entities with the words "physical therapy" in their name. A sizable number of the entities were professional corporations – a circumstance revealed by the fact that their name included a word or abbreviation required by § 33-19-150(a)(1), such as "P.C." or "P.A."

²⁵ The PC Supplement says:

(b) The relationship between a domestic or foreign professional corporation and the client or patient for whom its employees are rendering professional services is the same as that between the client or patient and the employee.

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The consequence of accepting the expansive interpretation of § 40-45-110(A)(1) would be that two or more PTs would be unable to associate to form a professional corporation – at least not a PC in which one PT ever sends a patient to a fellow employee – because the act of sending the patient would be a violation of § 40-45-110(A)(1). That consequence is at odds, however, with the PC Supplement, which antedates § 40-45-110(A)(1) and which explicitly contemplates that a PC formed to render physical therapy services may employ multiple PTs. As a matter of logic, the conflict can be resolved in either of two ways. The first alternative is to suppose that in 1998 the legislature actually intended to repeal the PC Supplement insofar as it authorizes a PC to employ multiple PTs,²⁶ but that it just omitted to say so. The second alternative is to reject the expansive interpretation and instead limit § 40-45-110(A)(1) to self-interested referrals from a physician to a PT of the kind discussed in the Slon opinion. Under South Carolina law the first alternative, repeal by implication, is disfavored. Thus, the answer to the questions under consideration is that the prohibition in § 40-45-110(A)(1) does not extend to one PT's sending or directing a patient to another PT.²⁷

(Emphasis added.) § 33-19-320(b). Similarly, the PC Supplement says:

(b) A domestic or foreign professional corporation whose employees perform professional services within the scope of their employment or of their apparent authority to act for the corporation is liable to the same extent as its employees.

(Emphasis added.) § 33-19-340(b). See § 33-19-130(a) ("A domestic or foreign corporation may render professional services in this State only through individuals licensed or otherwise authorized in this State to render the services."). (Emphasis added.) The emphasized terms make clear beyond doubt that it is permissible for a PC to employ two or more physical therapists.

²⁶ The rule that repeal by implication is disfavored applies to repeal of part of a statute as well as to repeal of the entire statute. See Denman v. City of Columbia, 387 S.C. 131, 139, 691 S.E.2d 465, 469 (S.C. 2010) ("As such, we are constrained by the rules of statutory construction that a statute of specific nature is not to be considered as repealed in whole or in part by a later general statute, unless there is a direct reference to the former or the intent of the legislature to repeal is explicitly implied therein. Spartanburg County Dept. of Soc. Serv's v. Little, 309 S.C. 122, 125, 420 S.E.2d 499, 501 (1992)."). (Emphasis added.)

²⁷ The expansive interpretation violates the principle of interpretation not just once but twice. That is, the Uniform Limited Liability Company Act of 1996, Chapter 44 of Title 33, also antedates § 40-45-110(A)(1), and it also expressly allows a limited liability company (LLC) formed to provide professional physical therapy services to employ multiple PTs. The statute says that an LLC "may be organized ... for any lawful purpose, subject to any of this State governing or regulating business." § 33-44-112(a). The statute defines "business" to include "every ... profession," thereby covering physical therapy. § 33-44-101(3). In fact, many PTs in South Carolina have availed themselves of the opportunity to form LLCs. A search on 05/10/2011 of the "Search Business Filings" feature on the website of the Secretary of State yielded over 200 business entities with the words "physical therapy" in their name, many of which were limited liability companies. The LLC statute says explicitly that an LLC has various powers, including the power to "appoint officers, employees, and agents." § 33-44-112(b)(9).

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H. Conclusion

For the reasons set forth above, the APTA respectfully submits that the correct response to the questions under consideration is that § 40-45-110(A)(1) does not apply to a physical therapist's sending or directing a patient to another physical therapist. The applicable principles of statutory construction compel this conclusion. The Supreme Court in Sloan articulated the abuse at which § 40-45-110(A)(1) was aimed, as follows:

In this case, the legislative purpose sought to be achieved presumably is the avoidance of overuse of physical therapy services by physicians who, for their own financial gain rather than their patients' medical needs, refer patients to therapists employed by the physician who will generate additional fees for the physician. The statutory prohibition on employment relationships between physicians and physical therapists bears a reasonable relation to that purpose.

(Emphasis added.) 370 S.C. at 482, 636 S.E.2d at 614. The expansive interpretation of § 40-45-110(A)(1) does nothing to advance the statute's purpose. Indeed, as demonstrated above, the interpretation does not have any impact at all on potential conflicts of interest of the kind faced by physical therapists. All that the expansive interpretation would accomplish would be to prevent PTs from associating with fellow PTs to care for patients – and, by the way, to force PTAs to stop working in South Carolina. Both results would be absurd. No one can suggest with a straight face that the legislature enacted § 40-45-110(A)(1) in order to accomplish such bizarre ends.

The only circumstance that arguably supports the expansive interpretation of the statute is the fact that the word “refer,” standing alone, can have a very broad meaning. However, the “plain meaning” rule is subservient to the overriding rule that the purpose of statutory interpretation is to discover the legislative intent. South Carolina law does not require the tail to wag the dog. The Sloan opinion made the point succinctly:

The real purpose and intent of the lawmakers will prevail over the literal import of particular words.

370 S.C. at 468, 636 S.E.2d at 606-607. Even if the “plain meaning” argument in favor of the expansive interpretation were strong – which it is not – it still would not win the day. The Supreme Court has declared:

One rule of statutory construction allows the Court to deviate from a statute's plain language when the result would be so patently absurd that it is clear that the Legislature could not have intended such a result. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (“However plain the ordinary meaning of the

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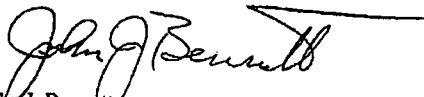
words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect." (quoting Stackhouse v. Rowland, 86 S.C. 419, 422, 68 S.E. 561, 562 (1910))).

Harris v. Anderson County Sheriff's Office, 673 S.E.2d 423, 426 n. 1 (S.C. 2009). The expansive interpretation of § 40-45-110(A)(1) leads to manifestly absurd results, and it also violates other well established principles of interpretation.

A recurrent theme in the case law is that courts should strive to give statutes an interpretation that is "practical" and "reasonable," that is consonant with the legislative intent, and that does not entail "absurd results." Although the APTA does not know the circumstances behind the submission of the pending request, it is easy to surmise that the aim was to elicit an opinion supporting the expansive interpretation – not in order to make the statute "practical" or "reasonable" but precisely in order to make it "absurd." The APTA trusts that its analysis has made sufficiently clear that subscribing to the expansive interpretation of § 40-45-110(A)(1) would be a misinterpretation of the statute, one at odds with well established South Carolina rules of construction.

Thank you very much for your attention to the APTA's argument.

Respectfully,



John J. Bennett
General Counsel

Attachments

cc: Robert D. Cook, Deputy Attorney General
Leigha Blackwell, Assistant Attorney General

[POPTS\SC\APTA-2011-05-10-AG-analysis_popts]

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ANNEX A

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Robert Avery Carpenter, PT, ATC-L, CSCS
216 Scooter Bridge Road
Batesburg, SC 29006-8133

May 3, 2011

Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Intra-Professional Interactions

Dear Ms. Swygert:

I am a physical therapist licensed to practice in South Carolina. My license number is 4743, and it is valid through December 31, 2012. I am the founder and owner of HealthQuest Physical Therapy, a private practice located in Lexington, South Carolina.

As you know, in Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (S.C. 2006), the South Carolina Supreme Court held that South Carolina Code Ann. § 40-45-110(A)(1) prohibits a physical therapist from working as an employee of a physician when the physician refers patients to the physical therapist for services. I am writing to ask the South Carolina Board of Physical Therapy Examiners (SCBPTE or Board) to issue a position statement advising how it interprets the statute by answering two questions set forth below. The answers to the questions are potentially relevant to the operation of my physical therapy practice.

As explained in the Court's opinion, the litigation was triggered by an opinion the Attorney General issued in 2004, which the Sloan opinion upheld. The Court ruled that the statutory prohibition applies when a physical therapist (PT) is employed by a physician who refers patients to the PT for the provision of physical therapy services – in short, an inter-professional referral. I understand that a question has arisen concerning the potential applicability of the statute to a situation in which a physical therapist makes an initial evaluation of a patient who comes to him and then directs the patient to another physical therapist in his practice for further evaluation and treatment. The patient could have come to the practice on his/her own initiative, pursuant to the 30-day window in South Carolina Code Ann. § 40-45-110(A)(4), or pursuant to a referral from a medical doctor.

I hereby ask the Board to issue a position statement answering the following two questions:

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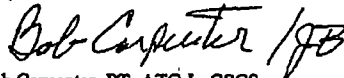
(#1) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for another physical therapist or physical therapist assistant or group of physical therapists when the physical therapist or physical therapist assistant refers a patient to another physical therapist or physical therapist assistant for physical therapy services?

(#2) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for a professional corporation owned by one or more licensed physical therapists when a physical therapist owner or employee of the corporation refers a patient to the physical therapist for physical therapy services?

I believe that the correct answer to the two questions is that the prohibition does not extend to a situation in which one physical therapist sends or directs a patient for treatment to another physical therapist who is employed by the sending therapist or by a professional corporation owned by the sending therapist. The contrary conclusion would have implications that could be very disruptive to the practice of physical therapy in South Carolina.

Thank you for your attention to my request.

Respectfully,

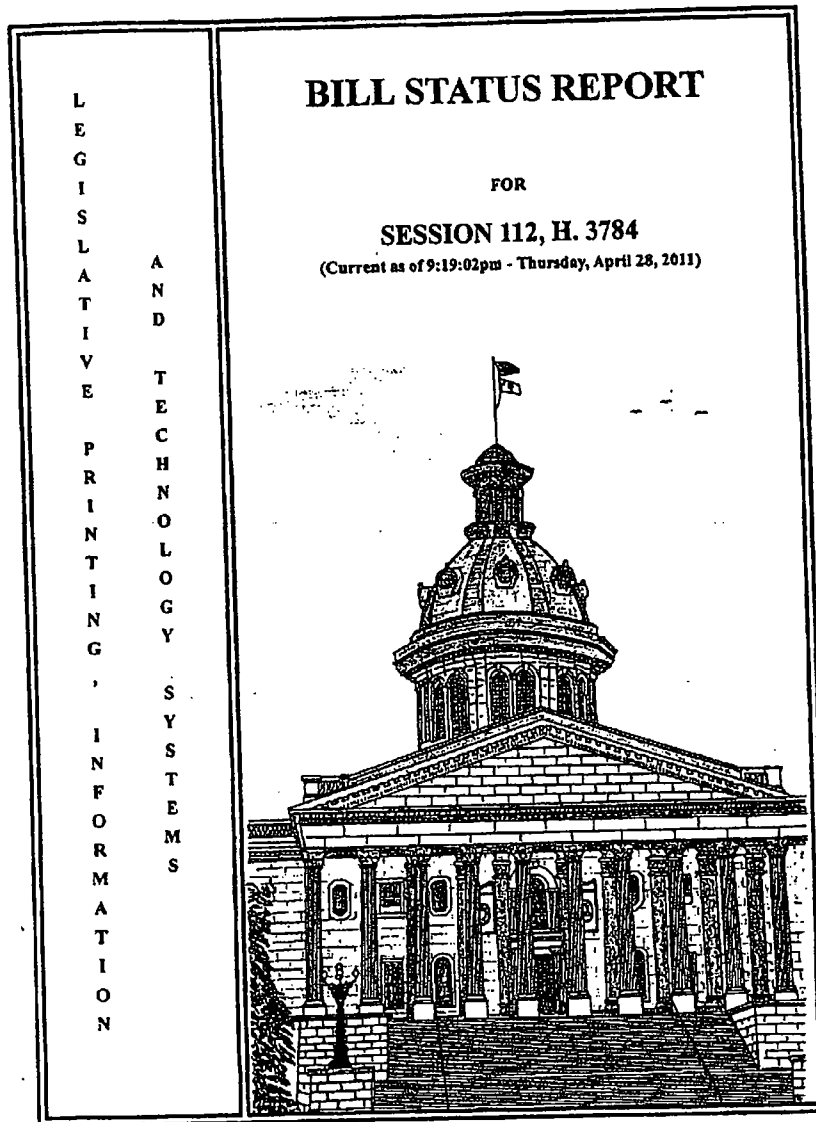
A handwritten signature in cursive script that reads "Bob Carpenter" followed by a stylized monogram or initials "JCB".

Bob Carpenter, PT, ATC-L, CSCS

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ANNEX B

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LEGISLATIVE PRINTING, INFORMATION AND TECHNOLOGY SYSTEMS

HOUSE - Session 112 (1997-1998)

H. 3784 (Rat # 0448, Act # 0360) General Bill, By Haskins, Allison, Altman, Bailey, Barfield, Barrett, Battle, Bawcy, J.M. Bazley, Bowers, G.A. Brown, H. Brown, A.W. Byrd, Campsen, Cato, Cave, Clyburn, Cobb-Hunter, Cooper, Davenport, Edge, Fleming, Govan, Hamilton, Harrell, J. Hines, M. Hines, J.H. Hodges, Howard, Jennings, B.L. Jordan, Kelley, Knotts, Law, Lesch, Lee, Lincoff, Littlejohn, Loftis, Mack, Maddox, McCraw, McKay, Meacham, Miller, J.H. Neal, Parks, Phillips, Plackney, Quinn, Rice, Riber, Robinson, Sandifer, Scott, Sharpe, Sistrup, F. Smith, R. Smith, Townsend, Tripp, Trotter, Vaughn, Webb, Whitley, Whipper, Woodrum and W.J. Young *Similar (S 6639)*

A BILL TO AMEND CHAPTER 45, TITLE 40, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LICENSING AND REGULATION OF PHYSICAL THERAPISTS, SO AS TO CONFORM THIS CHAPTER TO THE STATUTORY ORGANIZATIONAL FRAMEWORK ESTABLISHED FOR PROFESSIONAL AND OCCUPATIONAL LICENSING BOARDS IN CHAPTER 1, TITLE 40 AND TO INCREASE THE BOARD OF PHYSICAL THERAPY EXAMINERS FROM FIVE TO NINE, TO FURTHER PROVIDE FOR THE LICENSURE AND REGULATION OF PHYSICAL THERAPISTS INCLUDING, BUT NOT LIMITED TO, DELETING THE REQUIREMENT FOR TREATMENT BY PRESCRIPTION OF A PHYSICIAN OR DENTIST, PROVIDING SANCTIONS FOR TREATING PATIENTS BEYOND THIRTY DAYS WITHOUT A REFERRAL FROM A DOCTOR OR DENTIST OR BEYOND THE SCOPE OF PRACTICE, CLARIFYING THE SCOPE OF PRACTICE, PROHIBITING RECEIVING OR IN ANY WAY PARTICIPATING IN REFUNDING FEES FOR PATIENT REFERRALS, REVISING REQUIREMENTS FOR LICENSEES NOT GRADUATING FROM AN APPROVED SCHOOL, ESTABLISHING PROVISIONAL LICENSES AND BIENNIAL LICENSURE, REQUIRING CONTINUING EDUCATION FOR RENEWAL, PROVIDING A CIVIL PENALTY--AMENDED TITLE

04/01/97 House Introduced and read first time HJ-81
04/01/97 House Referred to Committee on Medical, Military, Public and Municipal Affairs HJ-81
01/14/98 House Committee report: Favorable with amendment Medical, Military, Public and Municipal Affairs HJ-5
01/15/98 House Objection by Rep. Cotty, Cromer, Harvin, Keegan, Seithel & Hawkins HJ-11
01/29/98 House Debate adjourned until Tuesday, February 3, 1998 HJ-25
02/03/98 House Debate adjourned until Tuesday, February 10, 1998 HJ-19
02/19/98 House Amended HJ-37
02/19/98 House Debate interrupted HJ-43
02/19/98 House Member(s) added as co-sponsor(s): Rep(s) Campsen and Harrell HJ-8
02/23/98 House Amended HJ-50
02/23/98 House Read second time HJ-66
02/23/98 House Roll call Yeas-94 Nays-13 HJ-66
02/26/98 House Read third time and sent to Senate HJ-28
03/03/98 Senate Introduced and read first time SJ-8
03/03/98 Senate Referred to Committee on Medical Affairs SJ-8
03/04/98 Senate Recalled from Committee on Medical Affairs SJ-3
03/04/98 Senate Committed to Committee on Labor, Commerce and Industry SJ-3
04/14/98 Senate Committee report: Favorable with amendment Labor, Commerce and Industry SJ-12
04/29/98 Senate Special order- Chairman's slot
05/19/98 Senate Amended SJ-46
05/19/98 House Read second time HJ-46
05/19/98 Senate Ordered to third reading with notice of amendments SJ-46
05/19/98 Senate Retaining place on calendar SJ-47
05/20/98 Senate Read third time and returned to House with amendments SJ-44
05/27/98 House Senate amendment amended HJ-53
05/27/98 House Returned to Senate with amendments HJ-54
05/28/98 Senate Concurred in House amendment and enrolled SJ-22

06/04/98
06/08/98
06/08/98
06/19/98
06/19/98

Ratified R 448
Signed By Governor
Effective date 06/08/98
Copies available
Act No. 360

LEGISLATIVE PRINTING, INFORMATION AND TECHNOLOGY SYSTEMS

HOUSE - Session 112 (1997-1998)

	GENERAL BILLS	JOINT RESOLUTIONS	CONCURRENT RESOLUTIONS	RESOLUTIONS	TOTAL
PASSED	1	0	0	0	1
NOT PASSED	0	0	0	0	0
TOTAL	1	0	0	0	1

For more information about this report and others, please contact:

**LEGISLATIVE PRINTING, INFORMATION
AND TECHNOLOGY SYSTEMS**

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Cover artwork provided by Jim Fleshman

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ANNEX C

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ASSEMBLYMEMBER NAVA

002/008

LEGISLATIVE
COUNSEL
BUREAUA TRADITION OF EXCELLENCE SERVING
TO THE CALIFORNIA LEGISLATURELEGISLATIVE COUNSEL BUREAU
625 S. STREET
SACRAMENTO, CALIFORNIA 95834
TELEPHONE (916) 241-3000
FAX (916) 241-3000
INTERNET WWW.LEGISLATIVECOUNSEL.BUREAU.CA.GOV

September 29, 2010

Honorable Pedro Nava
Room 2148, State Capitol

PHYSICAL THERAPISTS: MEDICAL CORPORATIONS - #1021592

Dear Mr. Nava:

You have asked us whether a physical therapist may be subject to discipline by the Physical Therapy Board of California for providing physical therapy services as an employee of a medical corporation. In analyzing this question, you have asked us to consider whether subdivision (h) of Section 2660 of the Business and Professions Code may be implicated.

Generally, the formation, powers, and duties of corporations are expressed in various statutory provisions of the Corporations Code (see generally, Div. 1 (commencing with Sec. 100), Title 1, Corp. C.). A corporation is a "creature of statute;" therefore, it has only those powers as expressed in a statute (see *Kayser v. McNaughton* (1936) 6 Cal.2d 248, 253). As a general rule, corporations are prohibited from practicing learned professions, such as medicine (*People v. Cole* (2006) 38 Cal.4th 964, 970-971; *California Assn. of Dispensing Opticians v. Pearle Vision Center, Inc.* (1983) 143 Cal.App.3d 419, 427 (finding that the ban on corporate practice of medicine applies to optometrists); *Benjamin Franklin Life Assur. Co. v. Mitchell* (1936) 14 Cal.App.2d 654, 656-657; *Pacific Employers Ins. Co. v. Carpenter* (1935) 10 Cal.App.2d 592, 594-595; 11 Ops.Cal.Atty.Gen. 236 (1948)). Among the reasons for this prohibition is to avoid the control of the practice of medicine by laypersons (*California Physicians' Service v. Garrison* (1946) 28 Cal.2d 790, 810) and to protect the public from possible abuses stemming from commercial exploitation of the practice of medicine (*Los Angeles County v. Ford* (1953) 121 Cal.App.2d 407, 413).

The rule prohibiting the corporate practice of medicine is codified in the Medical Practice Act (Ch. 5 (commencing with Sec. 2000), Div. 2, B.& P.C.) in Sections 2052 and 2400 of the Business and Professions Code¹ (*California Physicians' Service v. Aoki Diabetes*

¹ All further section references are to the Business and Professions Code unless otherwise indicated.

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Honorable Pedro Nava — Request #1021592 — Page 2

Research Institute (2008) 163 Cal.App.4th 1506, 1514). Subdivision (a) of Section 2052 prohibits a person from practicing or holding himself or herself out as practicing any system or mode of treating the sick or afflicted in this state, or diagnosing or treating any physical or mental condition of a person, without having a certificate under the Medical Practice Act or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law (see *Strumath v. Medical Board* (2000) 85 Cal.App.4th 458, 460). However, a certificate under the Medical Practice Act is only available for natural persons (see Secs. 2082, 2089, and 2096). Furthermore, Section 2400 makes clear that a corporation does not have the ability to obtain a license or engage in the practice of medicine, as follows:

"2400. Corporations and other artificial legal entities shall have no professional rights, privileges, or powers. However, the Division of Licensing may in its discretion, after such investigation and review of such documentary evidence as it may require, and under regulations adopted by it, grant approval of the employment of licensees on a salary basis by licensed charitable institutions, foundations, or clinics, if no charge for professional services rendered patients is made by any such institution, foundation, or clinic."

Exceptions to the rule banning the corporate practice of medicine have been made in various circumstances.² Specifically, medical and podiatry corporations are exempt from the rule if they are practicing pursuant to, and in compliance with the Moscone-Knox Professional Corporation Act (Pt. 4 (commencing with Sec. 13400), Div. 3, Title 1, Corp. C.; hereafter the Professional Corporation Act), which authorizes the formation and operation of professional corporations (Sec. 2402). The Professional Corporation Act defines a professional corporation as "a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 [of the Corporations Code] that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5 [of the Corporations Code], pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by

² Health care service plans are specifically authorized to employ physicians (subd. (b), Sec. 1395, H.& S.C.; see also Sec. 2411). The courts have also found authorization for contracting for physician's services, even where the statutory language was not compelling, where there were limitations on improper motives (*Los Angeles County v. Ford*, supra, at pp. 413-414). In addition, arrangements not amounting to employment relationships may be entered into by hospitals and physicians for the provision of medical services (see *Blank v. Palo Alto-Stanford Hospital Center* (1965) 234 Cal.App.2d 377). For purposes of this opinion, we will assume that none of these exceptions apply to the corporation in question here.

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ASSEMBLYMEMBER NAVA

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Honorable Pedro Nava — Request #1021592 — Page 3

statute" (Sec. 13401, Corp. C.). Thus, a professional corporation may only render services in a single profession except as authorized under Section 13401.5 of the Corporations Code.

Section 13401.5 of the Corporations Code provides that certain licensed persons "may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation." (Emphasis added.) With respect to medical corporations, subdivision (a) of Section 13401.5 provides that the following licensed persons may be shareholders, officers, directors, or professional employees of the corporation:

- "(a) Medical corporation.
- "(1) Licensed doctors of podiatric medicine.
- "(2) Licensed psychologists.
- "(3) Registered nurses.
- "(4) Licensed optometrists.
- "(5) Licensed marriage and family therapists.
- "(6) Licensed clinical social workers.
- "(7) Licensed physician assistants.
- "(8) Licensed chiropractors.
- "(9) Licensed acupuncturists.
- "(10) Naturopathic doctors."

Section 13401.5 of the Corporations Code thereby liberalizes the language of Section 13401 of the Corporations Code by allowing more than the members of a single profession to participate in the ownership and operation of certain professional corporations.

Pursuant to the doctrine of "expressio unius est exclusio alterius," the enumeration of acts, things, or persons as coming within the operation or exception of a statute will preclude the inclusion by implication in the class covered or excepted of other acts, things, or persons (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403). Courts may not read into a statute an exception not incorporated therein by the Legislature, unless such an exception must reasonably and necessarily be implied (*Phillippe v. Shapell Industries* (1987) 43 Cal.3d 1247, 1265). As a result, we think that only the licensees listed in paragraphs (1) to (10), inclusive, of subdivision (a) of Section 13401.5 of the Corporations Code may be professional employees of a medical corporation. Because this list does not include physical

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Honorable Pedro Nava — Request #1021592 — Page 4

therapists, we think that a physical therapist is prohibited from providing physical therapy services as an employee of a medical corporation.¹

We next turn to whether a physical therapist may be subject to discipline by the Physical Therapy Board of California (hereafter the board) for providing physical therapy services as an employee of a medical corporation. The Physical Therapy Practice Act (Ch. 5.7 (commencing with Sec. 2600), Div. 2) provides for the licensure and regulation of physical therapists by the board. Section 2660 authorizes the board to revoke or impose probationary conditions upon any license, certificate, or approval issued under the Physical Therapy Practice Act for unprofessional conduct, as follows:

"2660. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

- "(a) Advertising in violation of Section 17500.
- "(b) Fraud in the procurement of any license under this chapter.
- "(c) Procuring or aiding or offering to procure or aid in criminal abortion.
- "(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.
- "(e) Habitual intemperance.
- "(f) Addiction to the excessive use of any habit-forming drug.
- "(g) Gross negligence in his or her practice as a physical therapist or physical therapist assistant.
- "(h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act.

¹ Furthermore, in 2003, Section 13401.5 of the Corporations Code was amended to authorize naturopathic doctor corporations to employ various licensed professionals, including licensed physical therapists (Ch. 485, Stats. 2003). The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other aspects are made is indicative of an intent to leave the law as it stands in the aspects not amended (*Cumero v. Public Employment Relations Bd.* (1989) 49 Cal.3d 575, 596).

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ASSEMBLYMEMBER NAVA

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Honorable Pedro Nava — Request #1021592 — Page 5

"(i) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

"(j) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

"(k) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.

"(l) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

"(m) The commission of verbal abuse or sexual harassment."

(Emphasis added.)

Section 2691 provides that it constitutes unprofessional conduct and a violation of the Physical Therapy Practice Act "for any person licensed under (the act) to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws." Thus, because the Professional Corporation Act does not permit a physical therapist to provide professional services as an employee of a medical corporation, we think a physical therapist who provides those services could be charged with violating, attempting to violate, or assisting in or abetting the violation of the

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Honorable Pedro Nava — Request #1021592 — Page 6

Professional Corporation Act, and, as a result, could be subject to discipline by the board under Sections 2691 and 2660. However, it is important to note that "the words 'aiding or abetting' in provisions of this kind require scienter or guilty knowledge on the part of one charged with unprofessional conduct" (see 36 Cal.Jur.3d (2010) Healing Arts and Institutions, Sec. 306 (citing *James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1109; *Berrett v. Board of Osteopathic Examiners of California* (1935) 4 Cal.App.2d 135, 139)).

In addition, Section 2630 makes it unlawful for a person to practice physical therapy without holding a valid, unexpired, unrevoked license under the Physical Therapy Practice Act. As discussed above, except as provided by statute, neither a corporation nor any unlicensed person or entity may engage, directly or indirectly, in the practice of certain professions, including the legal and medical professions (*People ex rel. State Bd. of Medical Examiners v. Pacific Health Corp.* (1938) 12 Cal.2d 156, 158). Because a medical corporation is not authorized to employ a physical therapist to provide physical therapy services, we think a medical corporation that does so would be unlawfully engaging in the practice of physical therapy. The medical corporation would thereby violate Section 2630 and the physical therapist providing those services could be subject to discipline for aiding or abetting that violation under subdivision (i) or (j) of Section 2660.⁵

Lastly, subdivision (h) of Section 2660 provides that it is unprofessional conduct and grounds for discipline for a physical therapist to aid or abet a violation of the Medical Practice Act. The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. As discussed above, the rule prohibiting corporations from engaging in the practice of medicine is codified in the Medical Practice Act in Sections 2052 and 2400. Section 2402 and the Professional Corporation Act provide an exception to this rule but do not give a medical corporation the authority to employ physical therapists to provide professional services. As a result, we think a medical corporation that employs a physical therapist to provide those services would fall outside the exception provided by Section 2402 and the Professional Corporation Act and would thereby violate Sections 2052 and 2400. Consequently, the physical therapist may be subject to discipline under subdivision (h) of Section 2660 if he or she is found to have aided or abetted in that violation.⁶

⁵ But see the discussion *supra* regarding required knowledge for "aiding or abetting."

⁶ But see the discussion *supra* regarding required knowledge for "aiding or abetting." In addition, the Medical Practice Act specifies that it does not prohibit the practice of other persons licensed under other provisions of law when that person is engaged in his or her authorized and licensed practice (Sec. 2061). Thus, the physical therapist in question here, if licensed under the Physical Therapy Practice Act, would not, himself or herself, be in violation of subdivision (a) of Section 2052.

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09/29/2010 23:08 FAX 9163182135

ASSEMBLYMEMBER NAVA

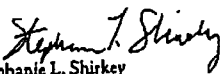
008/008

Honorable Pedro Nava — Request #1021592 — Page 7

In conclusion, it is our opinion that a physical therapist may be subject to discipline by the Physical Therapy Board of California for providing physical therapy services as an employee of a medical corporation.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By 
Stephanie L. Shirkey
Deputy Legislative Counsel

SLS:dkr

000065

5/8/13

Clemson Sports Medicine and Rehabilitation Mail - Fwd: clarification question for the SC PT Board of Examiners



Jim Stoker <jim.stoker@csmr.org>

Fwd: clarification question for the SC PT Board of Examiners

2 messages

Marilyn <mwy1030@aol.com>

Tue, May 3, 2011 at 1:15 PM

To: jim.stoker@csmr.org

Are you aware Bob sent us this? He has also retracted it.

Marilyn Swygert, PT, DPT
Charleston Physical Therapy
1730 Savannah Hwy.
843 763 4115

—Original Message—

From: Bob Carpenter, PT, ATC, CSCS <bob@healthquestpt.org>
To: mwy1030@aol.com; reynoldsv@llr.sc.gov
Sent: Tue, May 3, 2011 4:58 am
Subject: clarification question for the SC PT Board of Examiners

Hi Marilyn & Veronica,

Here is a question that I would like to pose for our state PT Board. Thanks for any clarification that you good folks could provide on this question!

Please call me if you have any questions.

Respectfully,

Bob

Bob Carpenter, PT, ATC, CSCS
Physical Therapist
Certified Athletic Trainer
Certified Strength and Conditioning Specialist

HealthQuest Physical Therapy
265 Charter Oak Road
Lexington, SC 29072

Phone: 803-951-3200
Fax: 803-951-0990
www.healthquestpt.org
bob@healthquestpt.org

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[https://mail.google.com/mail/?ui=2&ik=0441a71a97&view=ct&as=bob carpenter&as=true&search=nu&ui=12145e10e441a71a97](https://mail.google.com/mail/?ui=2&ik=0441a71a97&view=ct&as=bob%20carpenter&as=true&search=nu&ui=12145e10e441a71a97)

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5/3/13

Clemson Sports Medicine and Rehabilitation Mail - Fwd: clarification question for the SC PT Board of Examiners

 SCBPTE_Request-1.doc
33K

Jim Stoker <jim.stoker@csmr.org>
To: Marilyn <mwy1030@aol.com>

Tue, May 3, 2011 at 1:31 PM

Yes

[Quoted text hidden]

Sent from my mobile device

Jim Stoker, PT, MA, SCS, CSCS
VP, Clemson Sports Medicine and Rehabilitation
fax# 864-482-0081
ph# 864-482-0064 ext. 118
www.csmr.org

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[https://mail.google.com/mail/?ui=2&ik=0441a71a57&view=pt&q=bob camenter and travis and the 12th of march](https://mail.google.com/mail/?ui=2&ik=0441a71a57&view=pt&q=bob%20camenter%20and%20travis%20and%20the%2012th%20of%20march)

05-03-2011

Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Intra-Professional Interactions

Dear Marilyn:

As you know, in Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (S.C. 2006), the South Carolina Supreme Court held that South Carolina Code Ann. § 40-45-110(A)(1) prohibits a physical therapist from working as an employee of a physician when the physician refers patients to the physical therapist for services. I am writing on behalf of the South Carolina Chapter, American Physical Therapy Association (SCAPTA or Chapter) to ask the South Carolina Board of Physical Therapy Examiners (SCBPTE or Board) to issue a position statement advising how it interprets the statute by answering two questions set forth below.

As explained in the Court's opinion, the litigation was triggered by an opinion the Attorney General issued in 2004, which the Sloan opinion upheld. The Court ruled that the statutory prohibition applies when a physical therapist (PT) is employed by a physician who refers patients to the PT for the provision of physical therapy services – in short, an inter-professional referral. The Chapter understands that the Attorney General's office has received a request for an opinion as to whether the statutory clause covers intra-professional as well as inter-professional interactions. It appears that the Attorney General has received a request for an opinion on two questions, which are substantially as follows:

(#1) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for another physical therapist or physical therapist assistant or group of physical therapists when the physical therapist or physical therapist assistant refers a patient to another physical therapist or physical therapist assistant for physical therapy services?

(#2) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for a professional corporation owned by one or more licensed physical therapists when a physical therapist owner or employee of the corporation refers a patient to the physical therapist for physical therapy services?

The Chapter hereby requests that the Board issue a position statement addressing these two questions. The Chapter believes that the correct answer to the two questions is that

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the prohibition does not extend to a situation in which one physical therapist sends or directs a patient for treatment to another physical therapist who is employed by the sending therapist or by a professional corporation owned by the sending therapist. The Chapter intends to submit to the Board in the near future a legal analysis addressing the questions.

In addition, the Chapter hereby asks the Board to advise the Attorney General that it is considering these questions and to request the Attorney General to postpone issuing his opinion until the Board has had the opportunity to answer the questions. The Chapter believes that the Board is the appropriate agency to address the questions. As the Sloan opinion stated, "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." 370 S.C. at 469, 636 S.E.2d at 607. The Attorney General follows this admonition to give appropriate deference to an agency's interpretation of the law it administers. See Op. S.C. Atty. Gen., April 20, 2007, "This Office, just as the courts of this state, 'gives deference to the opinion of a state agency charged with the duty and responsibility of enforcing a state statute.'" See Op. S.C. Atty. Gen., July 1, 2004, "If the administrative interpretation is reasonable, courts will defer to that construction, even if it is not the only reasonable one or the one the court would have adopted in the first instance." The office of the Attorney General does not have primary responsibility for administering the physical therapy practice act. The Chapter believes it would be unfortunate if the Attorney General were to issue an opinion before the Board had the opportunity to state its position concerning the law it is charged to enforce.

Thank you for your attention to the Chapter's requests.

Respectfully,

Bob Carpenter, PT, ATC-L, CSCS

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www.pearsoned.com.au/education

3 messages

Tue, Jun 14, 2011 at 9:29 PM

Bob

Tue, Jun 14, 2011 at 9:57 PM

000070

<https://mail.google.com/mail/?ui=2&ik=NdA1a7fa97&ui=nl&n=tnh-narnanter&n=tnh-nd-aer-hn-n:n:n-8-th-17ND/nch-1414~?>

5/8/13

Clemson Sports Medicine and Rehabilitation Mail - Fwd: Intra-Professional Interactions

To: Amanda Wuenscher <amanda@mdanielassoc.com>, Mike Daniel <mike@mdanielassoc.com>, Justin Elliott <Justinelliott@apta.org>, LISA SALADIN <lisasaladin@apta.org>, JANET SHELLEY <jshelley@4mbc.com>, Aaron Embry <aembrypt@gmail.com>, Amanda Somers <amanda@ssi-physicaltherapy.com>, Ty Collier <etcollier04@yahoo.com>

Evening all,
Attached is the SCBPTE response to Bob Carpenter's question. It is a matter of public record and will be referred to during their meeting on July 14.

Justin,
Please forward to Jack as I do not have his e-mail on my phone.
Jim

Jim Stoker, PT, SCS, CSCS
VP, Clemson Sports Medicine and Rehabilitation

Begin forwarded message:

From: "Bob Carpenter, PT, ATC, CSCS" <bob@healthquestpt.org>
Date: June 14, 2011 9:29:43 PM EDT
To: Jim Stoker <jim.stoker@csmr.org>
Subject: Fwd: Intra-Professional Interactions
Reply-To: bob@healthquestpt.org

[Quoted text hidden]

 Intra-Professional Interactions.pdf
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www.clemson.edu/csmr/mail/2/11/0441a71a97&view=pt&q=bob%20carpenter&q3=true&search=query&tr=13090eb9b1414c21

2/2



South Carolina Board of Physical Therapy Examiners

Koger Office Park, Kingstree Building
110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329

(803) 896-4655
FAX: (803) 896-4719

Robert Avery Carpenter, PT.
210 Scooter Bridge Road
Batesburg, SC 29006-8133

June 2, 2011

Re: Application of S.C. Code Ann. Sec. 40-45-110(A)(1) to
Intra-Professional Interactions

Dear Mr. Carpenter:

The answer to the two questions posed in your letter of May 3, 2011 is NO for the following reasons:

In 1998, the General Assembly enacted Act 360 which constituted a major revision to the laws governing the licensing and regulation of physical therapists. Under this Act, the Board may take disciplinary action against a therapist who "in the absence of a referral from a licensed medical doctor or dentist provides physical therapy services beyond 30 days after the initial evaluation and/or treatment without referring the patient to a licensed medical doctor or dentist." See Sec.40-45-110(A)(4).

The Board may also take disciplinary action against a therapist who "requests, receives, participates or engages directly or indirectly in the dividing, transferring, assigning, rebating, or refunding fees received for professional services or profits by means of a credit or other valuable consideration including, but not limited to, wages, and unearned commission, discount, or gratuity with a person who referred a patient or with a relative or business associate of the referring person." See Sec.40-45-110(A)(1). The statutes were discussed first in an opinion from the Attorney General for the State of South Carolina in March of 2004 and then by the Supreme Court of South Carolina in the case of Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006). The Sloan case provides the answer to your inquiry.

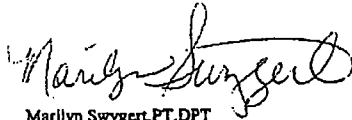
The purpose of Sec.40-45-110(A)(1) is to "protect consumers as well as government-sponsored health care programs such as Medicare and Medicaid from actual and potential conflicts of interest which are likely to lead to overuse of medical services by physicians who, for their own financial gain rather than their patient's medical needs, refer patients to entities in which the physicians hold financial interest.

The question presented is whether or not a physical therapist or physical therapist assistant working in the same practice as another physical therapist can provide services to a patient during the 30 day window in which physical therapists can provide services to patients without a referral from a medical doctor or whether or not other physical therapists or physical therapist assistants in the group can provide physical therapy services upon referral by a medical doctor. The answer to these questions turns on the definition of the term "referral"

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In Sloan, the South Carolina Supreme Court held that Sec40-45-110(A)(1) prohibits a physical therapist from receiving referrals or dividing fees if that physical therapist is part of the referring physician's practice. The South Carolina Supreme Court held that the term "refer" as used in the statute should be interpreted according to its plain meaning, which in this instance is "to send or direct for treatment, aid, information [or] decision [e.g.] a patient to a specialist." Webster's 3rd New International Dictionary 1907 (1981); Sloan, 370 S.C. at 470, 636 S.E.2d at 607-608.

In a group practice, a physical therapist or physical therapist assistant providing services to a patient of that practice should not fall within this definition of "referral". The physical therapist or physical therapist assistant seeing a patient at the request of another physical therapist in the same group does not constitute a "referral", but is rather a physical therapist or physical therapist assistant providing coverage either within the 30-day window or pursuant to the same referral from a physician for another member of the group. Moreover, because each of the physical therapists or physical therapist assistants are providing the same medical treatment, a physical therapist who is unable to see a patient is not directing a patient for treatment or aid that that particular physical therapist was unable to provide and thus, would not be sending a patient to a specialist, as is the typical definition of a referral. To hold otherwise would produce the absurd result of requiring a patient develop a new relationship with each physical therapist or physical therapist assistant who provides treatment to the patient within the 30 day window in which physical therapist can treat without referral from a physician, or in the situation of a physician referral, would require a separate referral for each and every physical therapist or physical therapist assistant who treats the patient. Having other physical therapists or physical therapist assistants in the same group covering for each other should not constitute a referral and should not violate Sec. 40-45-110(A)(1).



Marilyn Swygert, PT, DPT
SC Board of Physical Therapy Chair

000073

5/13/13

Clemson Sports Medicine and Rehabilitation Mail - Revised SCAPTA letter to LLR



Jim Stoker <jim.stoker@csmr.org>

Revised SCAPTA letter to LLR

Messages

Elliott, Justin <justinelliott@apta.org>

Mon, Mar 25, 2013 at 12:20 PM

To: "Self, Gretchen" <mgsaw@msn.com>, "aembrypt@gmail.com" <aembrypt@gmail.com>

Cc: Jim Stoker <jim.stoker@csmr.org>, "MSWY1030@aol.com" <mswy1030@aol.com>, "Saladin, Lisa" <lissaladin@apta.org>, "amanda@mdanielassoc.com" <amanda@mdanielassoc.com>, "Shelley, Janet" <jshelley@4mbc.com>, Leo albono <leo@olympicpt.net>, "mike@mdanielassoc.com" <mike@mdanielassoc.com>, "amanda@ssi-physicaltherapy.com" <amanda@ssi-physicaltherapy.com>, Lisa Saladin <saladinl@muscd.edu>, "wanda@mdanielassoc.com" <wanda@mdanielassoc.com>

Hi Everyone,

Attached is a revised draft of the SCAPTA letter to LLR. This version DELETES the language related to students taking the exam prior to graduation, and adds some additional language under the removal of the 30-day direct access restriction.

Justin Elliott

Director, State Government Affairs

American Physical Therapy Association

www.apta.org



American Physical Therapy Association • 1111 N. Fairfax Street, Alexandria, VA, 22314. 800-999-APTA (2782). To manage the types of e-mail messages you receive from APTA, please visit www.apta.org/email

Revised DRAFT SCAPTA Commnet letter to LLR.docx
26K

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Jim Stoker <jim.stoker@csmr.org>

Mon, Mar 25, 2013 at 12:48 PM

<https://mail.google.com/mail/?ui=2&ik=0441a7fa57&view=pt&q=mswy1030%40aol.com&q=s=true&search=ouerv&th=13ba05626673a41b>

5/13/13

Clemson Sports Medicine and Rehabilitation Mail - Revised SCAPTA letter to LLR

To: "Elliott, Justin" <justinelliott@apta.org>
Cc: "Seif, Gretchen" <mgsaw@msn.com>, "aembrypt@gmail.com" <aembrypt@gmail.com>, "MSWY1030@aol.com" <mswy1030@aol.com>, "Saladin, Lisa" <lisasaladin@apta.org>, "amanda@mdanielassoc.com" <amanda@mdanielassoc.com>, "Shelley, Janet" <jshelley@4mbc.com>, Leo albono <leo@olympicpt.net>, "mike@mdanielassoc.com" <mike@mdanielassoc.com>, "amanda@ssi-physicaltherapy.com" <amanda@ssi-physicaltherapy.com>, Lisa Saladin <saladinl@musc.edu>, "wanda@mdanielassoc.com" <wanda@mdanielassoc.com>

Looks good to me. Thank you Justin.

Jim
[Quoted text hidden]
—
Jim

Jim Stoker, PT, MA, SCS, CSCS
Senior VP, Clemson Sports Medicine and Rehabilitation
fax# 864-482-0081
ph# 864-482-0064 ext. 20112
www.csmr.org

Matthew and Gretchen SEIF <mgsaw@msn.com>

Mon, Mar 25, 2013 at 5:05 PM

To: justinelliott@apta.org, aembrypt@gmail.com
Cc: Jim Stoker <jim.stoker@csmr.org>, "MSWY1030@aol.com" <mswy1030@aol.com>, lisasaladin@apta.org, "amanda@mdanielassoc.com" <amanda@mdanielassoc.com>, "jshelley@4mbc.com" <jshelley@4mbc.com>, Leo albono <leo@olympicpt.net>, mike@mdanielassoc.com, amanda@ssi-physicaltherapy.com, "saladinl@musc.edu" <saladinl@musc.edu>, wanda@mdanielassoc.com

I like this version as well.
I will forward to the BOD for a call tomorrow.
Gretchen

From: justinelliott@apta.org
To: mgsaw@msn.com; aembrypt@gmail.com
CC: jim.stoker@csmr.org; mswy1030@aol.com; lisasaladin@apta.org; amanda@mdanielassoc.com; jshelley@4mbc.com; leo@olympicpt.net; mike@mdanielassoc.com; amanda@ssi-physicaltherapy.com; saladinl@musc.edu; wanda@mdanielassoc.com
Subject: Revised SCAPTA letter to LLR
Date: Mon, 25 Mar 2013 16:20:08 +0000
[Quoted text hidden]

Wanda Crotwell <wanda@mdanielassoc.com>
To: Jim Stoker <jim.stoker@csmr.org>
Cc: Amanda Wuenschel <amanda@mdanielassoc.com>

Thu, Apr 11, 2013 at 2:13 PM

Jim,

Was this the final that went to LLR? Amanda and I just wanted to be sure we have the correct version for our files. Thanks bunches!!

000075

<https://mail.google.com/mail/?ui=2&ik=0441a7fa97&view=pt&q=mswy1030%40aol.com&qs=true&search=query&th=13da2558c673af1b>

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5/13/13

Clemson Sports Medicine and Rehabilitation Mail - Revised SCAPTA letter to LLR

Wanda

From: Jim Stoker [mailto:jim.stoker@csmr.org]

Sent: Monday, March 25, 2013 12:48 PM

To: Elliott, Justin

Cc: Self, Gretchen; aembrypt@gmail.com; MSWY1030@aol.com; Saladin, Lisa; amanda@mdanielassoc.com; Shelley, Janet; Leo albono; mike@mdanielassoc.com; amanda@ssi-physicaltherapy.com; Lisa Saladin; wanda@mdanielassoc.com

Subject: Re: Revised SCAPTA letter to LLR

[Quoted text hidden]

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<https://mail.google.com/mail/?ui=2&ik=0441e7fa97&view=pt&q=mswy1030%40aol.com&q=13da2598c673af1b>

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March 26, 2013

South Carolina Department of Labor, Licensing and Regulation
Office of Communications
110 Centerview Drive
Columbia, South Carolina 29211

RE: Comments on current statutes and regulations

To Whom It May Concern,

Thank you for providing the South Carolina Physical Therapy Association (SCAPTA) the opportunity to submit comments on laws and regulations that are an undue burden to the delivery of services to the citizens of South Carolina. SCAPTA is the professional association representing more than 1,100 licensed physical therapist, physical therapist assistants, and students in South Carolina.

We have identified three specific aspects to the current laws governing the practice of physical therapy under Chapter 40, Title 45 we believe should either be repealed or amended to ensure greater flexibility for both patients and licensees, and to eliminate unnecessary barriers that will improve efficiency in the provision of services to the people of South Carolina.

RECOMMENDATION 1 – Amend Part 4 under Section 40-45-110 of the South Carolina physical therapy statute and eliminate the current 30-day restriction tied to treatment absent a referral.

Reasoning The current 30-day restriction tied to physical therapy treatment without referral is capricious and arbitrary; it is not based on any scientific or clinical reasoning or evidence. The 30-day restriction is burdensome to consumers, providers and the healthcare system by creating additional, unnecessary, expenses to the consumer and healthcare system. The consumer must absorb the expense of time and travel in addition to the expense of additional, unnecessary medical visits, many of which require extremely high co-pays. The burden and expense is magnified in the many rural and underserved areas of South Carolina. The provider's ability to deliver the most cost effective, efficient, evidence-based practice is interrupted causing unnecessary delays in patient recovery and fragmentation of care.

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The intent of the statute is consumer protection. The consumers of South Carolina are protected through the existing language found under part 2 of Section 40-45-110 that requires a physical therapist to refer any patient to a licensed medical doctor or dentist whose medical condition should have been determined at the time of evaluation or treatment to be beyond the scope of practice of a physical therapist.

Suggested language Strike Part 4 in its entirety under Section 40-45-110 as follows:

SECTION 40-45-110. Refusal to grant licenses; suspensions, revocations, or other restrictions; grounds; mental and physical exams allowed; evidentiary use of records; opportunity to demonstrate ability to practice.

(A) In addition to other grounds provided for in Section 40-1-110, the board, after notice and hearing, may restrict or refuse to grant a license to an applicant and may refuse to renew the license of a licensed person, and may suspend, revoke, or otherwise restrict the license of a licensed person who:

~~(4) in the absence of a referral from a licensed medical doctor or dentist, provides physical therapy services beyond thirty days after the initial evaluation and/or treatment date without the referral of the patient to a licensed medical doctor or dentist~~

RECOMMENDATION 2 – Amend Section 40-45-270 of the South Carolina physical therapy statute to add additional specific exemptions to state licensure under certain circumstances for individuals licensed in another state as a physical therapist or physical therapist assistant.

Reasoning Currently under Section 40-45-270, persons exempt from licensure requirements include 1) a PT and PTA enrolled in a board-approved education program while engaged in completing the clinical education requirement, 2) a PT or PTA licensed in another state who is teaching or participating in special physical therapy education projects, demonstrations, or courses in this State, and 3) a physical therapist or physical therapist assistant solely employed by the United States Armed Services, United States Public Health Service, Veterans Administration, or another federal agency and practicing within the scope of employment. However there are other situations in which physical therapists licensed in another U.S. jurisdiction need to travel into South Carolina temporarily that should not require the process of obtaining a South Carolina license. Such situations include physical therapists that are connected with a travelling sports team or performing arts company, or who simply provide video consultations via telehealth. In addition, in cases of a natural disaster or other declared emergency, such as a hurricane, licensure portability will be critical. Inclusion of these additional exemptions will provide greater efficiencies.

Suggested language Amend Section 40-45-270 to add the following exemption language:

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A physical therapist who is licensed in another jurisdiction of the United States if that person is providing consultation by means of telecommunication to a physical therapist licensed under this act.

A physical therapist who is licensed in a jurisdiction of the United States or credentialed in another country, if that person by contract or employment is providing physical therapy to individuals affiliated with or employed by established athletic teams, athletic organizations or performing arts companies temporarily practicing, competing or performing in the state for no more than sixty days in a calendar year.

A physical therapist who is licensed in a jurisdiction of the United States and who enters this state to provide physical therapy during a declared local, state or national disaster or emergency. This exemption applies for no longer than 60 days following the declaration of the emergency. In order to be eligible for this exemption the physical therapist shall notify the board of their intent to practice.

A physical therapist licensed in a jurisdiction of the United States who is forced to leave his/her residence or place of employment due to a declared local, state or national disaster or emergency and due to such displacement seeks to practice physical therapy. This exemption applies for no more than 60 days following the declaration of the emergency. In order to be eligible for this exemption the physical therapist shall notify the board of their intent to practice.

RECOMMENDATION 3 – Amend Section 40-45-230 to allow for more opportunities for candidates for licensure to pass the national licensure exam

Reasoning The current law restricts applicants for licensure to three attempts at taking the national licensure exam. The current restriction is arbitrary and does not provide the South Carolina Board of Physical Therapy Examiners (licensure board) any flexibility for candidates who may have extenuating circumstances.

Suggested language Amend Section 40-45-230 to strike Part H in its entirety, and add language to Part G as follows:

(G) If an applicant fails the examination, whether or not taken in South Carolina, the applicant may take the examination a second time on payment of the examination fee and completion of an official application. If the applicant fails the examination for a second time, the applicant, in addition to the requirements for the previous examination, must take courses the board may require and furnish evidence of completing these courses. If an applicant fails the examination for a third time, the applicant may take the examination additional times only upon approval from the Board following evidence from the applicant of completion of a remediation plan prescribed by the Board.

~~(H) No person may be licensed under this chapter if the person has failed the examination three or more times, whether or not the exam was taken in South Carolina.~~

000079³

Finally SCAPTA would like to take this opportunity to highlight an aspect of the South Carolina physical therapy statute that we believe has been helpful to small businesses and economic development in the state. The currently South Carolina physical therapy statute prohibits licensees from engaging in fee-splitting and referral for profit (Section 40-45-110, A, 1). This statutory language, which has been upheld by the South Carolina Attorney General and South Carolina State Supreme Court, has prevented anti-competitive physician-owned physical therapy monopolies from forming in the state. The current law has been highlighted as a model for other states to adopt to ensure patient choice and foster independent PT small businesses. In states where this type of law does not exist, monopolies have led to over-utilization in the health care costs, while diminishing competition. The current law ensures patient choice and access, and most importantly – competition in the health care marketplace. We urge that this aspect of the South Carolina physical therapy statute remain in place and unaltered.

Again, thank you for the opportunity to submit comments on this initiative. Please let us know if you have any questions or need additional information.

Sincerely,

000080

4

2/09/2011

Jack Bennett Meeting

Discussion of the question...Does the word "person" and "referral" in Section 40-45-110 include PT's. Jack was adamant that this was a discussion and initial thoughts and in no way represented his ultimate position.

The word referral is mentioned a few times in the practice act and the forwarding of a patient from one PT to another within the same practice may be interpreted as a referral. The word "person" is defined in the initial section of the practice act and essentially means flesh and blood and therefore would not be construed as a corporation. Therefore, there may be a thought process that could interpret "person" as another PT.

The discussion centered around the possibility that referral could be considered only inter-professional and not intra-professional, thereby applying to MD to PT and not PT to PT.

Additionally, the subject of the legislative intent of the statute should be considered. The intent of the statute was established by the SCBPTE with notification to the legislature to address Referral for Profit arrangements between MD's and PT's and not PT to PT. Furthermore, if the section was interpreted to prohibit referrals between PT's then it would require an implicit repeal of the professional corporations act which allows for the formation of like profession corporations and employment and the subsequent dividing of fees through revenue for partners and through wages for employer/employees.

The rationale that the section was not intended to implicitly repeal the professional corporations act would then allow for the interpretation that "person" does not apply to a PT.

The discussion then reviewed the avenues for gaining an opinion/interpretation. Various options are available.

- 1) Ask the question of the AG.
- 2) The SCBPTE could issue a Position Statement. Does SC Law allow them to do so? Who writes the answer/position?
- 3) Adjudication-A complaint would initiate an investigation and ultimate decision by the SCBPTE.
- 4) SCBPTE could issue a regulation that would require a notice and comment period.

000081

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - Room # Change: Subcommittee Hearing Information



Jim Stoker <jim.stoker@csmr.org>

Room # Change: Subcommittee Hearing Information

2 messages

Jim Stoker <jim.stoker@csmr.org>

Wed, Feb 10, 2010 at 5:23 PM

To: mswy1030@aol.com, health-tracks@sc.rr.com, healthquest@windstream.net, amanda@ssi-physicaltherapy.com, Sean.McEnroe@proaxistherapy.com, jshelley@4mbc.com, jcombs@selfregional.org, callie.rabun@gmail.com, etcollier04@yahoo.com, liuzzo@mailbox.sc.edu, rchain772@gmail.com, brittanybarksdale@gmail.com, jmayk23@hotmail.com, bradsaunders20@yahoo.com, kdublin@g.clemson.edu, mike@mdanielassoc.com, BAILEYLB@mailbox.sc.edu, palmer.dpt@gmail.com, amanda@mdanielassoc.com, justinellott@apta.org, kheath@sc.rr.com, SFRITZ@mailbox.sc.edu, Jillpremierpt@aol.com, katiesmyers@advancedtherapysolutions.com, MRutledge@rcctherapy.com
Cc: Jim Stoker <jim.stoker@csmr.org>

Good Afternoon,

PLEASE NOTE THE CHANGE IN THE ROOM NUMBER WHERE WE ARE MEETING PRIOR TO THE HEARING. We now have close to 30 attending the hearing tomorrow. The hearing is schedule for **Thursday, February 11, 2010 at 9:30 a.m. in Room #207 of the Gressette Building.** I did notice a revision to the schedule. There is now 1 bill ahead of S. 1031 on the agenda.

We will meet prior to the hearing in **Room 507** of the Gressette Building. Please arrive between 8:45 and no later than 9:00 am. We will briefly discuss the proceedings for the morning. The room that will hold the hearing #207 will not be open until approx. 9:20-9:25 am. If you have not been before there are Senators offices throughout this building so please considerate. After the subcommittee meeting we will reconvene to discuss the events and plan for the remainder of the morning. We would like to conduct individual meetings with your Representatives and Senators. You can try to schedule a meeting with them by calling their office.

I hope I have included everyone that responded. If you know someone that did and do not see their name on the address list forward or call them.

Thanks again for your time. Please let me now if you have any questions prior to tomorrow.

See you then.

Jim Stoker, PT
President, SCAPTA
c# 864-901-7115

FRITZ, STACY <SFRITZ@mailbox.sc.edu>

Wed, Feb 10, 2010 at 5:54 PM

To: Jim Stoker <jim.stoker@csmr.org>

000082

I have reviewed the information and read up some more...I think I am good to go...see you tomorrow

<https://mail.google.com/mail/?ui=2&ik=0441a7fa97&view=pt&as=msw1030%40aol.com&as=true&search=querv&th=126349a6083115da>

1/2

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - Room # Change: Subcommittee Hearing Information

From: Jim Stoker [mailto:jim.stoker@csmr.org]
Sent: Wednesday, February 10, 2010 5:23 PM
To: mswy1030@aol.com; health-tracks@sc.rr.com; healthquest@windstream.net; amanda@ssi-physicaltherapy.com; Sean.McEnroe@proaxistherapy.com; jshelley@4mbc.com; jcombs@selfregional.org; callie.rabun@gmail.com; etcollier04@yahoo.com; LIUZZO, DEREK; rchain772@gmail.com; brittanybarksdale@gmail.com; jmayk23@hotmail.com; bradsaunders20@yahoo.com; kdublin@g.clemson.edu; mike@mdanielassoc.com; BAILEY, LANE; palmer.dpt@gmail.com; amanda@mdanielassoc.com; justinelliott@apta.org; kheath@sc.rr.com; FRITZ, STACY; Jillpremierpt@aol.com; katiesmyers@advancedtherapysolutions.com; MRutledge@rcctherapy.com
Cc: Jim Stoker
Subject: Room # Change: Subcommittee Hearing Information

[Quoted text hidden]

000083

<https://mail.google.com/mail/?ui=2&ik=0441a7fa97&view=of&q=mswy1030%40aol.com&as=true&search=query&th=126b9fa69831154a>

2/2

5/9/13

Clemson Sports Medicine and Rehabilitation Mail - Fw:



Jim Stoker <jim.stoker@csmr.org>

Fw:

11 messages

amanda@mdanielassoc.com <amanda@mdanielassoc.com>
Reply-To: amanda@mdanielassoc.com
To: Jim Stoker <jim.stoker@csmr.org>

Mon, Feb 20, 2012 at 10:48 AM

FYI this Reg. is up this week...call if there are any concerns!
Thanks:)
Sent from my Verizon Wireless BlackBerry

From: Amanda Wuenschel <amandawuenschel@gmail.com>
Date: Mon, 20 Feb 2012 10:45:06 -0500
To: Amanda Wuenschel <amanda@mdanielassoc.com>
Subject:

Agency Name: Board of Physical Therapy Examiners
Statutory Authority: 40-1-70 and 40-45-10 et seq.
Document Number: 4248
Proposed in State Register Volume and Issue: 35/12
House Committee: Medical, Military, Public and Municipal Affairs Committee
Senate Committee: Medical Affairs Committee
120 Day Review Expiration Date for Automatic Approval: 06/06/2012
Status: Pending
Subject: Requirements of Licensure for Physical Therapists

History: 4248

By	Date	Action Description	Jt. Res. No.	Expiration Date
-	12/23/2011	Proposed Reg Published in SR		
-	02/07/2012	Received by Lt. Gov & Speaker		06/06/2012
S	02/07/2012	Referred to Committee		
H	02/08/2012	Referred to Committee		

Document No. 4248
BOARD OF PHYSICAL THERAPY EXAMINERS
CHAPTER 101

Statutory Authority: 1976 Code Sections 40-1-70 and 40-45-10 et seq.

- 101-04. General Licensing Provisions for Physical Therapists.
- 101-05. General Licensing Provisions for Physical Therapist Assistants.
- 101-07. Continuing Education.
- 101-08. Fees.

000084

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1/2

101-10. Use of Aides in the Practice of Physical Therapy.

To satisfy the requirements of licensure for physical therapists, Regulations 101-04 through 101-05, and 101-07 through 101-10 are updated in conformance with the current Physical Therapy Practice Act.

Instructions:

Indicates New Matter

Text:

LICENSING PROVISIONS

An applicant for licensure as a physical therapist must:

(1) be a graduate of a physical therapy educational program approved by the Board; or, if foreign educated, must have a credentials evaluation by a Board approved credentialing evaluation agency that determines the applicant's education is substantially equivalent to the education of physical therapists educated in an accredited entry level program as determined by the Board. To determine substantial equivalency, the approved credentialing evaluation agency shall use the appropriate Course Work Tool ("CWT") adopted by the Federation of State Boards of Physical Therapy. The appropriate CWT means the CWT in place at the time the foreign educated physical therapist graduated from their physical therapy program;

- (2) submit an application on a form approved by the Board, along with the required fee; and
 (3) speak the English language as a native language or demonstrate an effective proficiency of the English language in the manner prescribed by and to the satisfaction of the board; and
 (3)-(4) pass an examination approved by the Board; and
 (4)-(5) submit proof of not less than one thousand (1000) clinical practice hours under the on-site supervision of a licensed physical therapist on a form approved by the Board if the applicant is not a graduate of an approved school.

000085

101-05. General Licensing Provisions for Physical Therapist Assistants.

An applicant for initial licensure as a physical therapist assistant must:

- (1) be a graduate of a physical therapist assistant program approved by the Board; and
- (2) submit an application on a form approved by the Board, along with the required fee; and
- (3) pass an examination approved by the Board; and
- (4) speak the English language as a native language or demonstrate an effective proficiency of the English language in the manner prescribed by and to the satisfaction of the board.

ARTICLE 4

CONTINUING EDUCATION

101-07. Continuing Education.

Continuing education requirements become effective upon approval by the Governor and must first be reported beginning in 2002 and thereafter.

- (1) Every licensed physical therapist and physical therapist assistant shall earn 3.0 CEUs or thirty (30) hours of acceptable continuing education credit per biennium year.
- (2) Physical therapists and physical therapist assistants licensed in South Carolina will not have a CEU requirement for the first biennium renewal period in which they are initially licensed. Graduates of a Board approved educational program and initially licensed are said to have met the CEU requirement for the first biennium renewal year.
- (3) Standards for approval of continuing education. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit:
 - (a) it constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and
 - (b) it pertains to common subjects or other subject matters which integrally relate to the practice of physical therapy; and
 - (c) it is conducted by individuals who have a special education, training, and experience by reason of which said individuals should be considered experts concerning the subject matter of the program and is accompanied by a paper, manual, or outline which substantively pertains to the subject matter of the program and reflects program schedule, including:
 - (1) fulfilling stated program goals or objectives, or both;
 - (2) providing proof of attendance to include original certificate with participant's name, date, place, course title, presenter(s), and number of program contact hours; and
 - (d) the Board will not grant prior approval but each licensee will be responsible for ensuring that each course submitted for continuing education credit meets these standards.
- (4) The following courses are automatically approved for required contact hours:
 - (a) APTA (American Physical Therapy Association) and SCAPTA (South Carolina American Physical Therapy Association) sponsored courses. APTA home study courses, and courses sponsored by other state professional physical therapy associations; and
 - (b) college course work which is judged germane to the practice of physical therapy and is conducted or sponsored by accredited institutions of higher education; and
 - (c) AMA (American Medical Association) continuing education courses that involve physical therapy;

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000086

(d) in-service hours totaling 0.4 CEUs maximum per biennium; and
(e) CPR of 0.4 CEUs per biennium; and

(g) achievement or renewal of any Clinical Specialist Certification through the American Physical Therapy Association will be considered as meeting the education requirement for the entire licensure biennium in which the certification or renewal is received; and

(5) Unacceptable activities for continuing education include, but are not limited to:

(b) teaching or supervision; and

(d) non-educational, entertainment, or recreational meetings or activities; and

(f) meetings for purposes of policy-making; and

(h) informal self study, e.g. self selected reading, participation in a journal club, listening to audio

(i) published research.

(a) reports shall be submitted on forms available from the Board. The Board shall routinely distribute its continuing education report forms with the biennial renewal notice. By signing the biennial report of continuing education, the licensee signifies that the report is true and accurate; and

(7) Audit of continuing competency.

(b) these records shall be subject to a random audit by the Board to assure compliance with this

(c) the Board may audit a percentage of the continuing education reports.

~~ARTICLE 4. CONTINUING EDUCATION~~

FEES

000087

5/9/13

Clemson Sports Medicine and Rehabilitation Mall - Fw.

(A) Fees are as follows:

- | | |
|---------------------------------------|------------------------|
| (1) Application fee | \$120.00 |
| (2) Biennial license renewal | |
| (a) physical therapist | \$100.00 |
| (b) physical therapist assistant | \$90.00 |
| (3) Late Renewal Processing Fee | \$150.00 |
| (4) Deactivation | \$50.00 |
| (5) Reactivation (inactive to active) | \$150.00 + renewal fee |
| (6) Reinstatement (lapsed to active) | \$300.00 + renewal fee |

(B) A check which is presented to the Board as payment for a fee which the Board is permitted to charge under this chapter and which is returned unpaid may be cause for denial of a license or for imposing a sanction authorized under this chapter or Section 40-1-50(G).

(C) The Board may direct applicants to pay an examination fee directly to a third party who has contracted to administer the examination.

(D) Fees are nonrefundable and may be prorated in order to comply with a biennial schedule.

ARTICLE 5. FEES

ARTICLE 6

STANDARDS OF PRACTICE

101-09. Supervision Guidelines.

It is recommended that a physical therapist should not concurrently supervise more than three (3) full-time equivalent physical therapist assistant positions. The Board, in its discretion, may permit supervision of more than three (3) full-time equivalent physical therapist assistant positions, for a short, defined period of time, if a situation arises in a physical therapy treatment setting that makes compliance impossible. Relief from this supervision ratio is allowable if there is no immediate risk to public health or safety as determined by the Board.

ARTICLE 6. STANDARDS OF PRACTICE

101-10. Use of Aides in the Practice of Physical Therapy.

Aides are non-licensed personnel who assist the physical therapist or physical therapist assistant but whose duties do not require an understanding of physical therapy or formal training in anatomical, biological, or physical sciences. Education or training of the physical therapy aide shall not exceed the scope of activities described in Section 40-45-290. Aides are not to be assigned duties that may be performed only by a licensed physical therapist or licensed physical therapist assistant. When aides are utilized in the treatment of patients, the following guidelines shall apply:

- (1) when applying hydrotherapy, heat or cold treatments, a physical therapist or physical therapist assistant may allow an aide to assist patients in dressing and undressing, drape and position the patient in preparation for treatment, clean and fill the whirlpool, attend the patient during treatment, wrap the patient's extremities after a paraffin bath, and place the hot packs on the patient; and
- (2) when applying electrotherapy, a physical therapist or physical therapist assistant may allow an aide

000088

<http://www.clemson.edu/mall/2013/05/09/2013-05-09-1359b73bc106af8b>

5/8

5/9/13

Clemson Sports Medicine and Rehabilitation Mail - Fw:

to prepare the area to be treated and to prepare equipment and apply electrodes as specified by the physical therapist and physical therapist assistant; and

(3) when applying traction, a physical therapist or physical therapist assistant may allow an aide to prepare the patient for treatment, position the patient, and apply the cervical or pelvic harness; and

(4) when applying therapeutic exercise, a physical therapist or physical therapist assistant may allow an aide to set up the patient's exercise equipment, prepare the equipment, and give the patient established amount of weights for resistive exercise; and

(5) when applying gait training, a physical therapist or physical therapist assistant may allow an aide to prepare equipment such as crutches, walkers, parallel bars, and braces and to assist the physical therapist or physical therapist assistant in gait training of the patient.

Fiscal Impact Statement:

There will be no cost incurred by the State or any of its political subdivisions.

Statement of Rationale:

These regulations are updated in conformance with the current Physical Therapy Practice Act.

Jim Stoker <jim.stoker@csmr.org>
To: amanda@mdanielassoc.com

Mon, Feb 20, 2012 at 10:54 AM

I don't see anything but will ask Dargan and Marilyn. Where will it come up? I'm guessing it is in Committee?

Thanks,

[Quoted text hidden]

—
Jim Stoker, PT, MA, SCS, CSCS
VP, Clemson Sports Medicine and Rehabilitation
fax# 864-482-0081
ph# 864-482-0064 ext. 118
www.csmr.org

Jim Stoker <jim.stoker@csmr.org>
To: Dargan Ervin <edervinj@gmail.com>, Marilyn <mwy1030@aol.com>
Cc: Amanda <amanda@mdanielassoc.com>

Mon, Feb 20, 2012 at 10:59 AM

Good Morning,

Please see below. Evidently, this is on the calendar for this week. Do you all have a brief summary of what this regulations does/changes? Anything other than the English proficiency change/addition?
I'm sure I will receive a few questions/phone calls or e-mails. I hope to be consistent with what you all would or will present.

Thanks,

Jim

[Quoted text hidden]

[Quoted text hidden]

000089

Marilyn <mwy1030@aol.com>
To: jim.stoker@csmr.org

Mon, Feb 20, 2012 at 11:12 AM

Marilyn <mwy1030@aol.com> wrote:

6/8

5/9/13

Clemson Sports Medicine and Rehabilitation Mail - Fw.

This was an overall clean up of LLR laws and regulations of mostly updates and correcting Titles and numbering system. No changes in regulation at all.

Marilyn Swygert,PT,DPT
Charleston Physical Therapy
1730 Savannah Hwy.
843 763 4115
[Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>
To: Amanda <amanda@mdanielassoc.com>

Mon, Feb 20, 2012 at 11:15 AM

fyi see below...
[Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>
To: Marilyn <mswy1030@aol.com>

Mon, Feb 20, 2012 at 11:16 AM

Thank you Marilyn.

Jim
[Quoted text hidden]

amanda@mdanielassoc.com <amanda@mdanielassoc.com>
Reply-To: amanda@mdanielassoc.com
To: Jim Stoker <jim.stoker@csmr.org>

Mon, Feb 20, 2012 at 11:22 AM

That's what I thought...it's up Wednesday...they can't amend it in committee since it's a Reg so it should go right through, but I'll keep you posted.
Sent from my Verizon Wireless BlackBerry

From: Jim Stoker <jim.stoker@csmr.org>
Date: Mon, 20 Feb 2012 11:15:31 -0500
To: Amanda<amanda@mdanielassoc.com>
Subject: Fwd:
[Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>
To: "amanda@mdanielassoc.com" <amanda@mdanielassoc.com>

Mon, Feb 20, 2012 at 11:26 AM

Thx

Jim Stoker, PT, SCS, CSCS
VP, Clemson Sports Medicine and Rehabilitation

[Quoted text hidden]

Dargan Ervin <edervinjr@gmail.com>
To: Jim Stoker <jim.stoker@csmr.org>

Tue, Feb 21, 2012 at 8:07 AM

Hey Jim,

000090

This is another one of the Governor's "good ideas"; a regulatory "clean up" for all of the folks at LLR; these were developed by staff and have no substantive changes other than to clarify and bring some alignment with the over

<http://www.clemson.edu/sportsmedicineandrehabilitation/llr>

5/9/13

Clemson Sports Medicine and Rehabilitation Mail - Fw:

arching statute for LLR (40-1-1). As a Board we reviewed the proposed changes at our meeting in late 2010; we saw no problems with the changes as written; you can see that if there is some question as to conflicts in regulations, there is deference to 40-1-1; we looked at those and did not see any issues;

Sorry I thought Marilyn forwarded that stuff to you;

Anything that I can do for you now?

Dargan

[Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>

To: Dargan Ervin <edervinjr@gmail.com>

Tue, Feb 21, 2012 at 8:12 AM

Thank you Dargan. Sounds like that should be sufficient information for Mike and Amanda if any questions arise. Please put Wed March 28 on your calendar for PT Day. Love to have you join us.

Jim

[Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>

To: Amanda <amanda@mdanielassoc.com>, mike@mdanielassoc.com

Tue, Feb 21, 2012 at 8:12 AM

Please see below from Dargan regarding the regulations.

Jim

[Quoted text hidden]

000091

mailto:erwin@clemson.edu?ui=en7&ie=0441a7fa97&view=pt&q=mewy1030%40csl.com&q=1359b73bc106af8b

8/8



American Physical Therapy Association
South Carolina Chapter

3581 Centre Circle
Suite 104
Fort Mill, SC 29715
(803) 802-5450
(815) 371-1489 fax

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Lisa Saladin, PT
Chief Delegate

Lisa Saladin, PhD, PT
Past President

Jane Boston
Executive Director

Board of Directors

Aaron Embry, PT
Nina Chiky, PT

Mark Murphy, PT
Dave Clark, PTA

Tony Benedetto, PT
Greg Sills, PTA

Senator John Scott
612 Gressette Bldg.
Columbia, SC 29201

Dear Senator Scott,

The South Carolina Physical Therapy Association supports the amendment to S. 420 which would increase the maximum number of opportunities to take the Physical Therapy board exam to five. We greatly appreciate your efforts and attention to this issue.

Sincerely,

Jim Stoker, PT
President, SCAPTA

000092



American Physical Therapy Association
South Carolina Chapter

3650-A Centre Circle
Fort Mill, SC 29715
(803) 802-5450
(815) 371-1499 fax

2/12/2010

Senator Clementa C. Pinckney
Senate Medical Affairs Subcommittee
512 Gressette Building
Columbia, SC 29201

Executive Committee

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Sandra Brotherton, PT
Chief Delegate

Lisa Saladin, PhD, PT
Past President

Jane Boston
Executive Director

Senator Pinckney,

Thank you again for the opportunity to address your subcommittee yesterday. We greatly appreciate your time and efforts to gather accurate information. I have enclosed the letter from Mr. Dan Ciolek that I referenced yesterday. As I mentioned, the letter is somewhat technical and I felt it deserved explanation with delivery. I am glad I was able to address the specifics yesterday.

We were also pleased to hear Dr. O'Leary's testimony regarding his current practice with an appropriate lease agreement and a strong professional relationship with both Physical Therapists in his office building and others in the outlying rural areas.

Please do not hesitate to contact me with any questions regarding Mr. Ciolek's letter.

Sincerely,

Jim Stoker, PT, MA
President, SCAPTA

000093



American Physical Therapy Association
South Carolina Chapter

3650-A Centre Circle
Fort Mill, SC 29715
(803) 802-5450
(815) 371-1499 fax

2/12/2010

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Vice President

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Janele Paluco
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Sandra Brotherton, PT
Chief Delegate

Lisa Saladin, PhD, PT
Past President

Jane Brogan
Executive Director

Senator Shane R. Martin
Senate Medical Affairs Subcommittee
501 Gressette Building
Columbia, SC 29201

Senator Martin,

Thank you again for the opportunity to address the subcommittee yesterday. We greatly appreciate your time and efforts to gather accurate information. I have enclosed the letter from Mr. Dan Ciolek that I referenced yesterday. As I mentioned, the letter is somewhat technical and I felt it deserved explanation with delivery. I am glad I was able to address the specifics yesterday.

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Please do not hesitate to contact me with any questions regarding Mr. Ciolek's letter.

Sincerely,

Jim Stoker, PT, MA
President, SCAPTA

000094



American Physical Therapy Association
South Carolina Chapter

3650-A Centre Circle
Fort Mill, SC 29715
(803) 802-6450
(815) 371-1488 fax

2/12/2010

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Janelle Delucio
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Sandra Brotherton, PT
Chief Delegate

Lisa Saladin, PhD, PT
Past President

Jane Boston
Executive Director

Senator C. Bradley Hutto
Senate Medical Affairs Subcommittee
510 Gressette Building
Columbia, SC 29201

Senator Hutto,

Thank you again for the opportunity to address the subcommittee yesterday. We greatly appreciate your time and efforts to gather accurate information. I have enclosed the letter from Mr. Dan Ciolek that I referenced yesterday. As I mentioned, the letter is somewhat technical and I felt it deserved explanation with delivery. I am glad I was able to address the specifics yesterday.

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Please do not hesitate to contact me with any questions regarding Mr. Ciolek's letter.

Sincerely,

Jim Stoker, PT, MA
President, SCAPTA

000095

 APTA
American Physical Therapy Association
South Carolina Chapter

3650-A Centre Circle
Fort Mill, SC 29715
(803) 802-5450
(815) 371-1499 fax

2/12/2010

Senator Robert W. Hayes, Jr.
Chairman
Senate Medical Affairs Subcommittee
555 Gressette Building
Columbia, SC 29201

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Jim Stoker, PT
President

Leo Albano, PT
Vice President

Chris Jenkins, PT
Treasurer

Jane W. Luco, PT
Secretary

Sandra Brotherton, PT
Chief Delegate

Lisa Saladin, PT
Past President

Jane Boston
Executive Director

Mrs. Chaitman

Thank you again for the opportunity to address your subcommittee yesterday. We greatly appreciate your time and efforts to gather accurate information. I have enclosed the letter from Mr. Brian Ciolek that I referenced yesterday. As I mentioned, the letter is somewhat technical and I felt it deserved explanation with delivery. I am glad I was able to address the specifics yesterday.

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Please do not hesitate to contact me with any questions regarding Mr. Ciolek's letter.

Sincerely,

Jim Stoker, PT, MA
President, SCAPTA

000096

 APTA
American Physical Therapy Association
South Carolina Chapter

3650-A Centre Circle
Fort Mill, SC 29715
(803) 802-5450
(815) 371-1499 fax

2/12/2010

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Vice President

Chris Junkins, PT
Treasurer

Janeella Delucio
Secretary

Sandra Brotherton, PT
Chief Delegate

Lisa Saladin, PT
Past President

Jane Boston
Executive Director

Senator Raymond E. Cleary III
Senate Medical Affairs Subcommittee
501 Gressette Building
Columbia, SC 29201

Senator Cleary,

Thank you again for the opportunity to address your subcommittee yesterday. We greatly appreciate your time and efforts to gather accurate information. I have enclosed the letter from Mr. Dan Ciolek that I referenced yesterday. As I mentioned, the letter is somewhat technical and I felt it deserved explanation with delivery. I am glad I was able to address the specifics yesterday.

We were also pleased to hear Dr. O'Leary's testimony regarding his current practice with an appropriate lease agreement and a strong professional relationship with both Physical Therapists in his office building and others in the outlying rural areas.

Please do not hesitate to contact me with any questions regarding Mr. Ciolek's letter.

Sincerely,

Jim Stoker, PT, MA
President, SCAPTA

000097

5/13/13

Clemson Sports Medicine and Rehabilitation Mail - SCAPTA Legislative Update



Jim Stoker <jim.stoker@csmr.org>

SCAPTA Legislative Update

Jim Stoker <jim.stoker@csmr.org>

Tue, Jan 3, 2012 at 9:38 AM

To: SCAPTA <office@scapta.org>

Bcc: "Elliott, Justin" <justinelliott@apta.org>, "Rossi, Sandy" <sandyrossi@apta.org>, aembrypt@gmail.com, alexis@ssi-physicaltherapy.com, Amanda@ssi-physicaltherapy.com, amie.white@csmr.org, Awhitener@carolinashospital.com, health-tracks@sc.rr.com, breck.bowen@csmr.org, bob@healthquestpt.org, catherine.sullivan@csmr.org, cece_griff@yahoo.com, rcjunk5835@aol.com, cellis@sc.rr.com, ptcolleen@aol.com, jcombs@selfregional.org, dervin@fsbpt.org, Diana.Strider@palmettohealth.org, dianef@simpledsi.com, Duckettpt@aol.com, SFRITZ@mailbox.sc.edu, Greg.Forlini@fdtc.edu, MGS GAW@msn.com, hmathews@gwm.sc.edu, holly@ssi-physicaltherapy.com, JM98@aol.com, janelle.deluco@tuomey.com, jshelley@4mbc.com, Jean.Harnick@gvltc.edu, jlkeller2003@yahoo.com, jim.stoker@csmr.org, khouston@charlestonpt.net, kent@olympicpt.net, kim.durst@csmr.org, kristen.bouchard@csmr.org, larry.kopelman@hgtc.edu, LKnight@srhs.com, leo@olympicpt.net, lisasaladin@apta.org, lbartleson@hotmail.com, lori.fischer@tridenttech.edu, lwinkles@srhs.com, lynesmonds@bellsouth.net, mswy1030@aol.com, premierptupstate@aol.com, mrutledge@rcctherapy.com, nob@scccoast.net, mary.betenbaugh@palmettohealth.org, maryaddison.balckstone@palmettohealth.org, diverpt1023@aol.com, mdosher@charter.net, mbarowjr@aol.com, Nancy.Williams@gvltc.edu, Natedixon@aol.com, niefwsser@advancedtherapysolutions.com, nchitty@mindspring.com, paul_hecker@yahoo.com, Lowestherapy@cs.com, Rachbrunet@aol.com, robbiebleonard@bellsouth.net, lroberson@selfregional.org, mwatts@lexhealth.org, roger@acceleratedpt.com, sandy0516@aol.com, sfelkel@sc.rr.com, mckenroe@proaxistherapy.com, runner07@bellsouth.net, clemsmr@aol.com, stacey.harward@csmr.org, lbarnesdpt@gmail.com, thomas.moriarty@tenethealth.com, vivna@juno.com, albanowl@bellsouth.net, dave.rav@gmial.com, "scoreia@rcctherapy.com" <SCorreia@rcctherapy.com>, dervin@gmail.com, suzanne.mcallster@csmr.org, madlene.workman@csmr.org, paula.bolton@csmr.org, rusty.smith@csmr.org, laura.christiansen@csmr.org, darren.vance@csmr.org, alison.morris@csmr.org, genevieve.badaoui@csmr.org, megan.graham@csmr.org, dennis.ittenbach@csmr.org, ted.porada@csmr.org, jim.cole@csmr.org, heather.cumbie@csmr.org, reception.saluda@csmr.org, vicky.pamell@csmr.org, gary.davis@csmr.org

Greetings and Happy New Year!

I hope this e-mail finds everyone well after a great holiday season. You are receiving this e-mail because you have expressed interest in legislative issues facing Physical Therapy. As you all know, the first of January brings the beginning of a new legislative session here in South Carolina. We do anticipate a few issues that directly impact Physical Therapists to be address in this session and need your action to relay SCAPTA's position to your legislators.

We are once again, concerned with the introduction of legislation to amend the Physical Therapy Practice Act to allow Referral for Profit in Physical Therapy through Physician employment of PT's and PTA's.

- Please contact your legislators and encourage them to NOT co-sponsor or sign on to the draft legislation that would amend our practice act. Remind them that the SC Supreme Court has ruled on the current state law and found it to be in the best interest of the consumer.

Also, legislation addressing the team management of concussions resides in the Senate Committee on Education and the House Committee on Education and Public Works. I have met with the

<https://mail.google.com/mail/?ui=2&ik=0441a7b97&view=pt&q=mswy1030%40aol.com&os=true&search=quer&ui=1342d117ae&fr=2>

000098

5/13/13

Clemson Sports Medicine and Rehabilitation Mail - SCAPTA Legislative Update

President of the South Carolina Athletic Trainer's Association regarding the inclusion of Physical Therapists in concussion management. We have a verbal agreement to work together on this legislation for the betterment of our patients. We are planning to support an amendment to both the House and Senate bills and then work to support passage.

- **Please inform your legislators of the potential amendment to ensure Physical Therapists can continue to treat patients recovering from a concussion.**

The legislative Committee is continuing to develop relationships and work with legislators and regulators regarding Medicaid.

- **Please encourage your legislators to keep you informed of potential discussions regarding Medicaid coverage and payment.**

This year is also an election year in both the House and Senate. This means campaigns and yes... campaign contributions. The SCAPTA PAC and the Legislative Defense Fund need your contribution to in turn support the legislators that support Physical Therapy.

- **SCAPTA PAC and Legislative Defense Fund donations can now be accepted through the SCAPTA website. A maximum of \$3,500 annually can be contributed each from a person and group/company to the PAC.**

Please contact your legislators now regarding these issues and relay any feedback to the SCAPTA Legislative Committee.

Thank you for your continued support of your profession!

Jim Stoker, PT
SCAPTA, President and Legislative Chair

000099

5/13/13

Clemson Sports Medicine and Rehabilitation Mail - Dargan



Jim Stoker <jim.stoker@csmr.org>

Dargan

i message

Elliott, Justin <justinelliott@apta.org>
To: "Stoker, James" <jim.stoker@csmr.org>

Fri, Feb 26, 2010 at 3:59 PM

See below!

From: Dargan Ervin [mailto:dervin@fsbpt.org]
Sent: Friday, February 26, 2010 4:06 PM
To: Elliott, Justin; Stoker, James
Subject: RE: PT Update - hearing scheduled, help needed!

Hi Jim,

I can be there.

Dargan

From: South Carolina Physical Therapy Association [mailto:justinelliott@apta.org]
Sent: Friday, February 26, 2010 3:11 PM
To: dervin@fsbpt.org
Subject: PT Update - hearing scheduled, help needed!

Dear Dargan,

First, **THANK YOU** for your ongoing support and assistance in the battle against South Carolina HB 4329 & SB 1031, legislation that would repeal the current anti-referral for profit law.

The Senate Medical Affairs Subcommittee has scheduled another hearing on SB 1031 this **THURSDAY, MARCH 4** at 9:00 AM in Room #308 of the Gressette Building in the capitol complex in Columbia.

Once again, we need *your help* to have a strong show of force at the hearing!

000100

5/13/13

Clemson Sports Medicine and Rehabilitation Mail - Dargan

We would greatly appreciate it if you could to attend this important hearing – we need to pack the room! We will be meeting at **8:15 AM** to get organized and review our plan for the hearing. Location of where we will meet at 8:15 AM will be sent to you in a follow up email.

Thank you for your dedication and continued support of the PT profession in South Carolina!

Sincerely,

Jim Stoker, PT

President, South Carolina Physical Therapy Association

P.S. Remember you can always call or email your state legislators about HB 4329/SB 1031 by going to www.scapta.org (click on the red banner that says "Act NOW to Prevent Referral for Profit in PT")

Need driving directions to the capitol complex in Columbia? <http://www.scstatehouse.gov/studentpage/explore/fieldtrip.shtml>

American Physical Therapy Association - 1111 N. Fairfax Street, Alexandria, VA, 22314. 800-899-APTA (2782). To manage the types of e-mail messages you receive from APTA, please visit www.apta.org/email

000101

...&search=query&th=1270c139cbs10807

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5/7/13

Clemson Sports Medicine and Rehabilitation Mail - Board Letter to House and Senate



Jim Stoker <jim.stoker@csmr.org>

Board Letter to House and Senate

11 messages

Dargan Ervin <dervin@fsbpt.org>

Thu, Jan 14, 2010 at 10:32 PM

Reply-To: dervin@fsbpt.org

To: Marilyn Swygert <mswy1030@aol.com>, Jim Stoker <jim.stoker@csmr.org>

Hi guys,

Interesting day..... Here is what I would offer for Marilyn to get to the General Assembly early next week (if not sooner).

It hopefully will slow the process down a bit. Let me know what you think.

Dargan



To House and Senate Sponsors.doc
25K

Jim Stoker <jim.stoker@csmr.org>

Thu, Jan 14, 2010 at 11:05 PM

To: dervin@fsbpt.org, Marilyn Swygert <mswy1030@aol.com>

Thanks Dargan. I'll have a chance to read it in the am. One scenario was posed to me today...Do you think our opposition will now try to get patients to submit complaints to the board? I think that if they did it would obviouslt seem contrived.

Any thoughts?

Jim

On 1/14/10, Dargan Ervin <dervin@fsbpt.org> wrote:

> Hi guys,

>

>

>

> Interesting day... Here is what I would offer for Marilyn to get to the

(Quoted text hidden)

-

Sent from my mobile device

Jim Stoker, PT, MA, CSCS
VP, Clemson Sports Medicine and Rehabilitation
fax# 864-482-0081
ph# 864-482-0064 ext. 118
www.csmr.org

000102

<https://mail.google.com/mail/?ui=2&ik=0441a7fa97&view=pt&q=mswy1030%40aol.com&q&s=true&search=query&th=1263004eb629d83f>

1/5

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - Board Letter to House and Senate

Jim Stoker <jim.stoker@csmr.org>
 To: "Elliott, Justin" <justinelliott@apta.org>

Thu, Jan 14, 2010 at 11:06 PM

Justin,
 Do you see any potential problems with this letter? I was asked if we thought our opposition would now began getting patients to submit complaints to the board. Don't you think the timing would make those complaints look terribly contrived?
 As always.....Thanks.
 Jim

----- Forwarded message -----

From: Dargan Ervin <derin@fsbpt.org>
 Date: Thu, 14 Jan 2010 22:32:37 -0500
 Subject: Board Letter to House and Senate
 To: Marilyn Swygert <mswy1030@aol.com>, Jim Stoker <jim.stoker@csmr.org>

Hi guys,

Interesting day... Here is what I would offer for Marilyn to get to the General Assembly early next week (if not sooner).

It hopefully will slow the process down a bit. Let me know what you think.

Dargan

[Quoted text hidden]

 To House and Senate Sponsors.doc
 25K

Dargan Ervin <derin@fsbpt.org>
 Reply-To: derin@fsbpt.org
 To: Jim Stoker <jim.stoker@csmr.org>

Fri, Jan 15, 2010 at 8:14 AM

Could something be more contrived than having the president-elect of the Ortho Society appointed to the Board? Actually I think that hurts/hinders them more than it helps.

I do not know what complaints could come in and with the non-disclosure of info related to complaints and the time that investigation would take, it would not provide them a benefit in the immediate future (this legislative session). I would think that they would bring patients into the subcommittee hearings and if you know any patients that have bad experiences with the physician owned settings may want to see if they are willing to speak.

000103

----- Forwarded message -----
 From: Dargan Ervin <derin@fsbpt.org>
 Date: Fri, 15 Jan 2010 17:07:07 -0500
 Subject: Board Letter to House and Senate
 To: Marilyn Swygert <mswy1030@aol.com>, Jim Stoker <jim.stoker@csmr.org>

2/5

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - Board Letter to House and Senate

Talk later,

Dargan

[Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>
To: derin@fsbpt.org

Fri, Jan 15, 2010 at 8:22 AM

I could not agree more.

Thanks,

Jim

[Quoted text hidden]

Elliott, Justin <justinelliott@apta.org>
To: "Stoker, James" <jim.stoker@csmr.org>

Fri, Jan 15, 2010 at 4:37 PM

I like it and think you can move forward with using it. If a complaint is filed you can then obviously point that it was filed AFTER the PT Board said there were no complaints. Also if the complaint is bogus then the PT Board can find the PT not guilty.

JE

—Original Message—

From: Jim Stoker [mailto:jim.stoker@csmr.org]

[Quoted text hidden]

American Physical Therapy Association - 1111 N. Fairfax Street, Alexandria, VA, 22314. 800-999-APTA (2782).

To manage the types of e-mail messages you receive from APTA, please visit www.apta.org/email

Jim Stoker <jim.stoker@csmr.org>
To: "Elliott, Justin" <justinelliott@apta.org>
Cc: derin@fsbpt.com, Marilyn <mshwy1030@aol.com>

Fri, Jan 15, 2010 at 4:47 PM

Thanks Justin. I'll pass along to go ahead with the letter.

Jim

[Quoted text hidden]

Jim Stoker <jim.stoker@csmr.org>
To: derin@fsbpt.org, Marilyn <mshwy1030@aol.com>

Fri, Jan 15, 2010 at 4:49 PM

Fyi...Thanks.

[Quoted text hidden]

Mail Delivery Subsystem <mailer-daemon@googlemail.com>
To: jim.stoker@csmr.org

Sat, Jan 16, 2010 at 5:21 PM

This is an automatically generated Delivery Status Notification

THIS IS A WARNING MESSAGE ONLY.

YOU DO NOT NEED TO RESEND YOUR MESSAGE.

Delivery to the following recipient has been delayed:

derin@fsbpt.com

000104

<https://mail.google.com/mail/?ui=2&ik=0441a71a97&view=pt&as=mshwy1030%40aol.com&as=true&search=query&th=1263004eb529d83f>

3/5

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - Board Letter to House and Senate

Message will be retried for 2 more day(s)

Technical details of temporary failure:
The recipient server did not accept our requests to connect. Learn more at <http://mail.google.com/support/bin/answer.py?answer=7720>
[fsbpt.com (1): Connection timed out]

— Original message —

MIME-Version: 1.0
Received: by 10.141.23.12 with SMTP Id a12mr2112505rj.158.1263592069899; Fri, 15 Jan 2010 13:47:49 -0800 (PST)
In-Reply-To: <7B8296A7F0B4364AB3155E817480FAF62CCC615D47@APTAMAIL64.apta.org>
References: <5AAE75DC764E45658137D2A481B90D1B@fsbpt.2003.dom>
<48f48ec110011420061465b066dgb98145cf33250e0@mail.gmail.com>
<7B8296A7F0B4364AB3155E817480FAF62CCC615D47@APTAMAIL64.apta.org>
Date: Fri, 15 Jan 2010 16:47:49 -0500
Message-ID: <48f48ec11001151347q11bbeb311171730a42f00ef09@mail.gmail.com>
Subject: Re: Board Letter to House and Senate
From: Jim Stoker <jim.stoker@csmr.org>
To: "Elliott, Justin" <justinelliott@apta.org>
Cc: derivin@fsbpt.com, Marilyn <mswy1030@aol.com>
Content-Type: text/plain; charset=ISO-8859-1
[Quoted text hidden]

Mail Delivery Subsystem <mailer-daemon@googlemail.com>
To: jim.stoker@csmr.org

Sun, Jan 17, 2010 at 5:06 PM

This is an automatically generated Delivery Status Notification

THIS IS A WARNING MESSAGE ONLY.

YOU DO NOT NEED TO RESEND YOUR MESSAGE.

Delivery to the following recipient has been delayed:

derivin@fsbpt.com

Message will be retried for 1 more day(s)

Technical details of temporary failure:
The recipient server did not accept our requests to connect. Learn more at <http://mail.google.com/support/bin/answer.py?answer=7720>
[fsbpt.com (1): Connection refused]

— Original message —

MIME-Version: 1.0
Received: by 10.141.23.12 with SMTP Id a12mr2112505rj.158.1263592069899; Fri, 15 Jan 2010 13:47:49 -0800 (PST)
In-Reply-To: <7B8296A7F0B4364AB3155E817480FAF62CCC615D47@APTAMAIL64.apta.org>
References: <5AAE75DC764E45658137D2A481B90D1B@fsbpt.2003.dom>
<48f48ec110011420061465b066dgb98145cf33250e0@mail.gmail.com>
<7B8296A7F0B4364AB3155E817480FAF62CCC615D47@APTAMAIL64.apta.org>
Date: Fri, 15 Jan 2010 16:47:49 -0500
Message-ID: <48f48ec11001151347q11bbeb311171730a42f00ef09@mail.gmail.com>

000105

<http://mail.google.com/mail/?ui=2&ik=044187fb97&view=pt&as=mswy1030%40aol.com&as=true&search=query&th=1263004eb529d83f>

4/5

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - Board Letter to House and Senate

Subject: Re: Board Letter to House and Senate
From: Jim Stoker <jim.stoker@csmr.org>
To: "Elliott, Justin" <justinelliott@apta.org>
Cc: derivin@fsbpt.com, Marilyn <mswy1030@aol.com>
Content-Type: text/plain; charset=ISO-8859-1

[Quoted text hidden]

Mail Delivery Subsystem <mailer-daemon@googlemail.com>
To: jim.stoker@csmr.org

Mon, Jan 18, 2010 at 7:34 PM

Delivery to the following recipient failed permanently:

derivin@fsbpt.com

Technical details of permanent failure:

The recipient server did not accept our requests to connect. Learn more at <http://mail.google.com/support/bin/answer.py?answer=7720>
[fsbpt.com (1): Connection refused]

— Original message —

MIME-Version: 1.0

Received: by 10.141.23.12 with SMTP id a12mr2112505rvj.158.1263592069899; Fri,
15 Jan 2010 13:47:49 -0800 (PST)

In-Reply-To: <7B8296A7F0B4364AB3155E817480FAF62CCC615D47@APTAMAIL64.apta.org>

References: <5AAE75DC764E45658137D2A481B90D1B@fsbpt.2003.dom>
<48f48ec110011420061465b066dgb98145cf33250e0@mail.gmail.com>
<7B8296A7F0B4364AB3155E817480FAF62CCC615D47@APTAMAIL64.apta.org>

Date: Fri, 15 Jan 2010 16:47:49 -0500

Message-ID: <48f48ec11001151347q11bbeb31171730a42f00ef09@mail.gmail.com>

Subject: Re: Board Letter to House and Senate

From: Jim Stoker <jim.stoker@csmr.org>

To: "Elliott, Justin" <justinelliott@apta.org>

Cc: derivin@fsbpt.com, Marilyn <mswy1030@aol.com>

Content-Type: text/plain; charset=ISO-8859-1

[Quoted text hidden]

000106

<http://mail.google.com/mail/?ui=2&ik=0441a7f997&view=pt&q=mswy1030%40aol.com&q=true&search=query&th=1263004eb529d83f>

5/5

To House and Senate Sponsors

The South Carolina Board of Physical Therapy has concerns regarding (HB 4329 & SB 1031) and would like to register at least a temporary opposition to this proposed legislation.

This bill has been introduced without any dialogue with the Board of Physical Therapy. The Board is not aware of any consumer or patient issues that warrant such an amendment of this section of the physical therapy practice act. We would very much like to have a conversation with the proponents of (HB 4329 & SB 1031) so that we may gain some understanding of the public protection issues that are driving this legislation and then study the ramifications if such an amendment should pass.

I would appreciate the opportunity to talk with you about (HB 4329 & SB 1031) and would also ask for any assistance that you could provide to help us meet with the individuals or organizations that are proposing this change. Again, we would oppose any amendment to 40-45-110 until some discussion of the issues can occur.

Thank you very much for your attention to my concerns. I can be reached at (843) XXX-XXXX.

Sincerely,

000107

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - History



Jim Stoker <jlm.stoker@csmr.org>

History

4 messages

Dargan Ervin <dervin@fsbpt.org>
Reply-To: dervin@fsbpt.org
To: Marilyn Swygert <mswy1030@aol.com>
Cc: Jim Stoker <jlm.stoker@csmr.org>

Wed, Feb 10, 2010 at 3:38 PM

The Board heard the AG opinion and announced it's intention to enforce the opinion at the meeting on April 8, 2004.

That initiated the lawsuit filed on April 9 (I think) that lead to the SC Supreme Court decision.

I do not have a copy of the letter that I sent out in the late 90's as a notice of our intention to amend the practice act but I have a copy at home that I will scan and forward it on to you this evening.

As far as talking points, I think the Board perspective should come from what is driving the need for such an amendment. I am offering this to you and Jim for consideration:

I would state that since the Supreme Court decision there has been no disciplinary action related to violations related to 40-45-110; so physical therapist practice in SC is compliant with the law (if there are questions about complaints.....the complaint process is strictly confidential to protect both complainant and the plaintiff so the Board would only know of complaints that had evidence to support a violation of the Act; if there are questions about the complaint process that will take longer than 2 minutes and you probably should request to explain that in a different time so as not to expend all of your allotted time)

Also, you then report that there have not been any evidence that has been brought to the Board's attention that would necessitate such an amendment to the PT Practice Act. If any complaints are filed, they will be investigated by the LLR staff that responds to all such complaints and if there is credible evidence of a consumer protection issue, it will be brought to the Board's attention for action.

So, moving to amend the practice act based on, to this point, unsubstantiated anecdotes is extremely premature. Any issues related to consumer protection and access should be referred to the Board for fact finding investigation and substantiation. If a true consumer protection issue exists, it is the Board's responsibility to take action. Any disciplinary action or other Board action would be public record. If any true consumer protection issue could not be resolved by Board Action, it would then be the Board's responsibility to amend the act.....but I would then stress that legislative change and the use of legislator's valuable time should be based on factual evidence.

000108

https://mail.google.com/mail/?ui=2&ik=0441a7fa97&view=pt&q=mswy1030%40aol.com&q_s=true&search=query&th=126b592d9cd08d30

1/3

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - History

I would keep it short and simple (and I know I am overusing the term but) and focus on the need for evidence to support legislative changes.

That concludes my initial ramblings on a plane coming back to SC.

Will forward on more later and feel free to follow up if you have any questions.

Jim Stoker <jim.stoker@csmr.org>
To: derwin@fsbpt.org
Cc: Marilyn Swygert <mswy1030@aol.com>

Wed, Feb 10, 2010 at 3:42 PM

Thank you Dargan.

I did change the word protection to safety....reason being is that we do not want to confuse their claims of consumer safety with our climas that the current law serves to protect consumers.

I definately believe we do not need to spend time with a long time table but to simply mention that this law has been on the books since 1998. It was challenged in Civil Court and then the SC Supreme Court in 2005 and 2006, both of whom affirmed the current statute.

I like the statements...there have not been any evidence (of a consumer safety issue) that has been brought to the Board's attention that would necessitate such an amendment to the PT Practice Act. So, moving to amend the practice act based on, to this point, unsubstantiated anecdotes is extremely premature. Any issues related to consumer safety and access should be referred to the Board for fact finding investigation and substantiation. If a true consumer safety issue exists, it is the Board's responsibility to take action. Any disciplinary action or other Board action would be public record. If any true consumer safety issue could not be resolved by Board Action, it would then be the Board's responsibility to amend the act.....but I would then stress that legislative change and the use of legislator's valuable time should be based on factual evidence.

Thanks,
Jim
[Quoted text hidden]

Jim Stoker, PT, MA, CSCS
VP, Clemson Sports Medicine and Rehabilitation
fax# 864-482-0081
ph# 864-482-0064 ext. 118
www.csmr.org

Jim Stoker <jim.stoker@csmr.org>
To: derwin@fsbpt.org
Cc: Marilyn Swygert <mswy1030@aol.com>

Wed, Feb 10, 2010 at 3:44 PM

Sorry...I guess Safety would be better the safety:)

On Wed, Feb 10, 2010 at 3:36 PM, Dargan Erwin <derwin@fsbpt.org> wrote:
[Quoted text hidden]

000109

<https://mail.google.com/mail/?ui=2&ik=0441a7b97&view=pt&q=mswy1030%40aol.com&q&s=true&search=query&th=126b992d5cd08d30>

2/3

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - History

[Quoted text hidden]

Dargan Ervin <dervin@fsbpt.org>
Reply-To: dervin@fsbpt.org
To: Jim Stoker <jim.stoker@csmr.org>
Cc: Marilyn Swygert <mswy1030@aol.com>

Wed, Feb 10, 2010 at 4:15 PM

Sounds fine to me, good input.....Marilyn, let me know if you have any questions,

Dargan

From: Jim Stoker [mailto:jim.stoker@csmr.org]
Sent: Wednesday, February 10, 2010 3:42 PM
To: dervin@fsbpt.org
Cc: Marilyn Swygert
Subject: Re: History

[Quoted text hidden]

000110

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - Correspondence



Jim Stoker <jim.stoker@csmr.org>

Correspondence

1 message

Dargan Ervin <derin@fsbpt.org>
 Reply-To: derin@fsbpt.org
 To: Marilyn Swygert <mswy1030@aol.com>
 Cc: Jim Stoker <jim.stoker@csmr.org>

Wed, Feb 10, 2010 at 7:01 PM

Here is some old correspondence that may or may not be helpful.

The file for the SC Medical Association shows the letter that was sent out to about 30 associations and other regulatory boards and the SC Department of Insurance. I still have many of the copies of the letters that went out. This particular one is kind of fun as it has a nasty response from the SCAMA director. I had to send the same follow up letter to all groups (also included) as I took a good bit of heat from the Governor and the LLR director as we should not have used State letterhead. It was mistakenly put on the wrong letterhead and that could be perceived as the Governor and Labor Dept being supportive of the revised act. In addition to the follow up letters, I had to do some big time groveling to Gov Beasley and Lewis Gossett. All were fine later. And after my (a bit pissy) thank you letter to Mr. Mahon, I never heard a word from him again.....I don't miss him.

And the Senate letter was sent to every Senator and the same correspondence was sent to each House member.

A full copy of the draft bill was sent with the association/board letter plus the bullet point summary that was provided to General Assembly members. Only bullet points were sent to General Assembly members.

The trip down memory lane was kind of fun,

Dargan

2 attachments

Senate Letter 2.25.1997.pdf
710K

SC Medical Association 10.25.1996.pdf
612K

000111

MAR 18 '97 01:52PM SC BD PHYS THER EXS

SOUTH CAROLINA STATE BOARD OF PHYSICAL THERAPY EXAMINERS

3600 Forest Drive, Suite 201
Post Office Box 11329
Columbia, SC 29211-1329

(803) 734-4170



FAX (803) 734-4218

TO: Honorable Members of the Senate
FROM: Dargan Ervin, M.H.S., P.T. *Dargan Ervin*
President
RE: Physical Therapy Practice Act Revision
DATE: February 25, 1997

The Board of Physical Therapy Examiners intends to introduce legislation that will significantly revise the physical therapy practice act. Please find enclosed a bullet summary of the proposed bill and a copy of the most recent draft.

This revision makes many important changes and improvements to the present physical therapy practice act that will be beneficial to the consumers of physical therapy services. Some of the most significant changes are as follows:

- Establishment of a continuing education requirement for licensure.
- Establishment of standards for the use of unlicensed personnel.
- Elimination of the prescription requirement for physical therapy service.
- Establishment of Board authority to deal with physical therapists practicing in referral for profit environments.
- Establishment of a Standards for Documentation for physical therapy service.
- Establishment of an educational standard for qualification for licensure.

We are providing this for your review, and we would request that you contact the Physical Therapy Board if you have any questions or concerns regarding the proposed legislation. Thank you for your time and consideration.

000112

CHAPTER 45

Physical Therapists

SECTION 1

- §40-45-05. Added by request of Legislative Council to save space in the statutes.
- §40-45-10. Board creation. Expansion from five to nine members, adding three more Pts and one more PTA. PT members to be chosen from congressional districts.
- §40-45-20. Adds definition for "On-site supervision" and "Person." Change in wording, but not meaning, for the definition of "Physical Therapist." Change in wording, but not meaning, for the definition of "Physical Therapist Assistant." Adds provision for supervision and direction of the Physical Therapist Assistant by the licensed Physical Therapist. Change in wording for definition of "Physical Therapy." Adds definition for "Practice of Physical Therapy" which accurately describes the present scope of practice. Deletes the requirement for treatment by prescription of a physician or dentist. Adds definition for "Physical Therapy Aide" and "Student." Deletes definition of "Prescription."
- §40-45-30. Reworded. Changes "registered" to "licensed." Deletes "shall be guilty of a misdemeanor..."
- §40-45-40.
- §40-45-50. Administration by Act 453. Fees established in regulation.
- §40-45-60. Board governance and operations. Use of official seal.
- §40-45-70. General powers and duties of regulatory boards by Act 453.
- §40-45-80. Investigative powers of regulatory boards by Act 453. Adds provision for technical advisors.
- §40-45-90. Hearing powers. Adds provision for Board or designated person to have subpoena powers.
- §40-45-100. Restraining orders by Act 453.
- §40-45-110. Gives Board power to restrict a license. Adds grounds for disciplinary action against physical therapists and physical therapist assistants who participate in a referral for profit practice. Rewords (A)(2) to provide for one who has practiced physical therapy and failed to refer to a licensed physician or dentist a patient whose condition is beyond the scope of practice of a physical

000113

- 1 therapist or whose medical condition has not improved within 30 days of initial
2 treatment. Provides for issuance of a formal complaint and disciplinary
3 proceedings against a licensee who has had disciplinary action in another state.
4 Adds provisions for filing complaints, for psychological or medical examinations
5 and for release of medical or psychological records.
6
7 §40-45-115. Board jurisdiction by Act 453.
8
9 §40-45-120. Disciplinary action. Provision for civil penalty.
10
11 §40-45-130. Grounds for denial of license by Act 453.
12
13 §40-45-140. Prior convictions not to abridge rights by Act 453.
14
15 §40-45-150. Voluntary surrender of a license by Act 453.
16
17 §40-45-160. Appeals by Act 453.
18
19 §40-45-170. Cost recovery by Act 453.
20
21 §40-45-180. Collection and interest on costs and fines by Act 453.
22
23 §40-45-190. Privileged communications and rights of licensees by Act 453.
24
25 §40-45-200. Changes imprisonment from not more than 90 days to not more than one year and
26 fines of not more than \$500 to not more than \$50,000.
27
28 §40-45-210. Injunctive relief and civil fines by Act 453.
29
30 §40-45-220. License qualifications reworded. Adds requirement of a minimum of 120 semester
31 credit hours of college education and 1000 clinical practice hours under
32 supervision of a licensed physical therapist if not a graduate of an approved school.
33 Adds requirement that the applicant is responsible for demonstrating that the
34 applicant possesses qualifications necessary for licensure.
35
36 §40-45-230. Section reworded. Details what must be submitted with application. In case of
37 failure of examination, adds language for whether or not taken in South Carolina.
38 Adds provision for no consideration of applications for applicants who have failed
39 the exam three or more time regardless of where the exam was taken. Passing
40 grade on exam to be established by Board.
41
42 §40-45-240. Section reworded. Details what must be submitted for endorsement
43 application.

- 1 §40-45-250. Changes annual license renewal to biennial license renewal, adds requirement for
- 2 30 hours of continuing education per biennium, establishes a provision for inactive
- 3 license, establishes procedures for reactivation of lapsed and inactive licenses.
- 4
- 5 §40-45-260. Provides for Issuance of licenses. Establishes procedures for provisional licenses
- 6 for applicants who must meet minimum number of contact hours, applicants
- 7 coming from inactive or lapsed status, and applicants with restricted practice.
- 8 Adds requirements for applicants not actively engaged in the profession.
- 9
- 10 §40-45-270. Section reworded. Adds provision for supervision of a PTA student by a licensed
- 11 physical therapist assistant. Deletes exemption for a "graduate."
- 12
- 13 §40-45-280. New section establishes standards for documentation of physical therapy records.
- 14
- 15 §40-45-290. New section outlines role of physical therapy aides.
- 16
- 17 §40-45-300. New section added for supervision. Changes supervision of the physical therapist
- 18 assistant to require reevaluation and resapproval of plan of care every eighth
- 19 treatment day or every 60 calendar days whichever comes first.
- 20
- 21 §40-45-310. This chapter does not authorize a PT or any other person to practice any other
- 22 methods of healing as authorized by laws of this state.
- 23
- 24 §40-45-320. New section added re. reimbursement. Does not mandate third party reimbursement
- 25 for physical therapy service.
- 26
- 27 §40-45-330. Severability by Act 453.
- 28
- 29 SECTION 2. Added for implementation of biennial license renewal system.
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38 2/14/97



SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION

David M. Beasley
Governor
Lewis F. Gossett
Director

BOARD OF PHYSICAL THERAPY EXAMINERS

3600 Forest Drive, Suite 203
Post Office Box 11329
Columbia, SC 29211-1329
(803) 734-4170
TT: (803) 734-4190
FAX: (803) 734-4218

October 25, 1996

Ms. Audria Belton
SC Medical Association
3210 Fernandina Road
Columbia, South Carolina 29210

Dear Ms. Belton:

In accordance with the statutory reorganizations that have been initiated with the advent of the Department of Labor, Licensing and Regulation, the State Board of Physical Therapy Examiners is planning to introduce our practice act revision in the 1997 legislative session.

Our Board is exploring the options of eliminating the requirement of a prescription from a licensed doctor of medicine or dentistry prior to initiation of physical therapy service. There are precedents in other states and strong arguments that show removing the prescription requirement would prove beneficial to the public.

Enclosed please find a copy of the Board's draft practice act revision. Also enclosed are possible language changes to this revision which would eliminate the requirement of a prescription. I would appreciate an opinion from the Medical Association regarding this issue. Our Board is receptive to opening a dialogue if there are concerns or if there would be opposition to this matter.

Thank you for your attention and cooperation.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. Dargan Ervin, Jr.".

E. Dargan Ervin, Jr., M.H.S., P.T.
President

Enclosures

000116



South Carolina Medical Association

P.O. Box 11188 • Columbia, South Carolina 29211-1188

Telephone (803) 798-6207

Fax (803) 772-6783

Carol S. Mohr, M.D.
President

B. Nelson Weston, M.D.
President-Elect

William H. Hester, M.D.
Secretary

Stephen A. Imbeau, M.D.
Treasurer

Richard E. Usher, M.D.
Chairman of the Board

William F. Mahon
Chief Executive Officer

November 1, 1996

RECEIVED NOV 04 1996

Mr. E. Dargan Ervin, Jr., M.H.S., P.T.
President
Board of Physical Therapy Examiners
SC Department of Labor, Licensing and Regulation
3600 Forest Drive, Suite 203
Post Office Box 11329
Columbia, SC 29211-1329

Dear Mr. Ervin:

I am seriously concerned with a letter we have received asking that we review practice act revisions being initiated by your board.

It is our belief that a regulatory board should be just that and that they should not be in the business of introducing legislative changes to expand the scope of practice of those that they regulate. A serious conflict of interest arises when a regulatory board takes such actions.

Once you step beyond your legislative authority to regulate you become lobbyists for the profession you oversee and lose sight of your duty. Much the same as police departments rely on the state legislature to determine what criminal laws are best for society the same holds true for regulatory boards.

Your use of the LLR stationery to circulate this legislative proposal implies approval of the ideas contained in the proposed legislation by Director Gossett and Governor Beasley. We do not believe that their approval or support for this bill has been obtained.

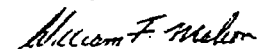
Physical Therapy has tried for many years to pass legislation that would eliminate the requirement for a prescription from a physician or dentist prior to rendering care. The legislature has continually rejected this concept. This may change now that you as a board have joined in the effort and lent your support.

Finally, the implication in the first paragraph of your letter that the expansion of the practice of physical therapy is "in accordance with the statutory reorganizations" of LLR is patently absurd.

000117

The purpose of restructuring was to get state agencies out of politics. The Board of Physical Therapy Examiners seems determined to stay in politics by promoting the cause of a trade association.

Sincerely,


William F. Mahon
Chief Executive Officer

c.c. The Honorable David M. Beasley
Director Lewis F. Gossett
Mr. Hal Zorn

000118

SOUTH CAROLINA STATE BOARD OF PHYSICAL THERAPY EXAMINERS

3600 Forest Drive, Suite 201
Post Office Box 11329
Columbia, SC 29211-1329

(803) 734-4170



FAX (803) 734-4218

November 1, 1996

Ms. Audria Belton
SC Medical Association
3210 Fernandina Road
Columbia, South Carolina 29210

Dear Ms. Belton:

This is written in reference to my letter of October 25, 1996, concerning revisions to the Physical Therapy Practice Act. The letter was sent to you on LLR letterhead, but it was not meant to convey that LLR has taken a stance on this proposed legislation.

It is the position of the Board that this is legislation which will be introduced and supported by the Board of Physical Therapy Examiners and the South Carolina American Physical Therapy Association, not LLR.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. Dargan Ervin, Jr." with a stylized flourish at the end.

E. Dargan Ervin, Jr., M.H.S., P.T.
President

Copy: The Honorable David M. Beasley
Director Lewis F. Gossett

000119

SOUTH CAROLINA STATE BOARD OF PHYSICAL THERAPY EXAMINERS

3600 Forest Drive, Suite 201
Post Office Box 11329
Columbia, SC 29211-1329



(803) 734-4170

FAX (803) 734-4218

November 7, 1996

William F. Mahon
Chief Executive Officer
South Carolina Medical Association
P.O. Box 11188
Columbia, South Carolina 29211-1188

Dear Mr. Mahon,

Thank you for your prompt response to my letter of October 22, 1996.

I will agree with you that LLR stationery should not have been used with this correspondence and hopefully this has been fully clarified with my follow up letter, dated November 1, 1996, which you should have received by now. Otherwise, your perspective opinion, as asked for, is appreciated and will be considered with input from the other boards, organizations and agencies that we have contacted. If you have any other concerns or constructive input regarding the remainder of the draft legislation that was provided to you, our Board does want to hear them.

Thank you for your time and attention in this matter.

Sincerely,

E. Dargan Ervin, Jr., M.H.S., P.T.
President

000120

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - History



Jim Stoker <jim.stoker@csmr.org>

history

2 messages

amanda@ssi-physicaltherapy.com <amanda@ssi-physicaltherapy.com>
 To: Marilyn <mswy1030@aol.com>, Jim Stoker <jim.stoker@csmr.org>

Wed, Feb 10, 2010 at 11:23 PM

Marilyn

here is the language we talked about. need to check some of the dates, esp the AG opinion.
 Jim- do you have any exact language from the ag report that can be inserted that states his opinion better than
 wt I put.

Amanda Somers, PT
 Co-Owner

Sports Spine & Industrial, Inc (SSI)
 140 Executive Dr
 Greer, SC 29651
 (864) 801-8706
 www.ssi-physicaltherapy.com

history- marilyn.doc
 25K

Jim Stoker <jim.stoker@csmr.org>
 To: amanda@ssi-physicaltherapy.com
 Cc: Marilyn <mswy1030@aol.com>

Wed, Feb 10, 2010 at 11:29 PM

Looks good to me. I would stick with the simple fact that the AG opinion affirmed the current statute.
 (Quoted text hidden)

—
 Jim Stoker, PT, MA, CSCS
 VP, Clemson Sports Medicine and Rehabilitation
 fax# 864-482-0081
 ph# 864-482-0064 ext. 118
 www.csmr.org

000121

12 years ago the SC Legislature and the SC Board of PT examiners diligently worked together to strengthen our laws for patient safety.

It has been said that vague language was secretly inserted into the revised PT practice act. This is not true. As stated in this letter dated.... , 1997 to the SC Senate the revisions to the Physical therapy practice act included

-
-
-

These practice act provisions were passed in 1998 with the support of the SCAMA and with no argument from the orthopedic surgeons.

In the SC Attorney General rendered an opinion that upheld the physical therapy practice act (I will try to find this opinion and give you exact verbage from it)

The current law has been tested by the legislature in 2006, and been upheld in the court system beginning with the Civil courts, and ending with the SC Supreme Court which stated- quote" this statute was passed to protect consumers as well as government sponsored health care programs from actual and potential conflicts of interest , which are likely to lead to over use of medical services by physicians- who for their own financial gain, rather than the patient's medical needs refer patients to entities in which physicians hold a financial interest" end of quote.

Then add what we talked about what Dargan recommended.

000122

5/7/13

Clemson Sports Medicine and Rehabilitation Mail - (no subject)



www.clemson.edu/sportsmedicineandrehabilitation

(no subject)

3 messages

amanda@ssi-physicaltherapy.com <amanda@ssi-physicaltherapy.com>

Wed, Feb 10, 2010 at 11:40 PM

To: Marilyn <mwy1030@aol.com>

Cc: Jim Stoker <jim.stoker@csmr.org>

the exact language that SCOA uses about our practice at language is
 "The physical therapy community utilized some vague language in the SC statutes to press for interpretation and enforcement of a rule that would allow the board of physical therapy to revoke the license of any therapist who was employed by a physician from whom they accept patient referrals"

SCOA Position statemt
 Physician employment of PT providers

Amanda Somers, PT
 Co-Owner

Sports Spine & Industrial, Inc (SSI)
 140 Executive Dr
 Greer, SC 29651
 (864) 801-8706
 www.ssi-physicaltherapy.com

Jim Stoker <jim.stoker@csmr.org>

Wed, Feb 10, 2010 at 11:46 PM

To: amanda@ssi-physicaltherapy.com

Great! I would quote that and then show the letter to the Senate and state it was not vague at all.

On 2/10/10, amanda@ssi-physicaltherapy.com
 [Quoted text hidden]

-
 Sent from my mobile device

Jim Stoker, PT, MA, CSCS
 VP, Clemson Sports Medicine and Rehabilitation
 fax# 864-482-0081
 ph# 864-482-0064 ext. 118
 www.csmr.org

000123

Clarification question for the SC PT Board of Examiners

Subject: clarification question for the SC PT Board of Examiners
From: "Bob Carpenter, PT, ATC, CSCS" <bob@healthquestpt.org>
Date: 5/3/2011 4:58 AM
To: mswy1030@aol.com, reynoldsv@llr.sc.gov

Hi Marilyn & Veronica,

Here is a question that I would like to pose for our state PT Board. Thanks for any clarification that you good folks could provide on this question!

Please call me if you have any questions.

Respectfully,

Bob

--

Bob Carpenter, PT, ATC, CSCS
Physical Therapist
Certified Athletic Trainer
Certified Strength and Conditioning Specialist

HealthQuest Physical Therapy
265 Charter Oak Road
Lexington, SC 29072

Phone: 803-951-3200
Fax: 803-951-0990
www.healthquestpt.org
bob@healthquestpt.org

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-- Attachments: --

SCBPTE Request-1.doc

33.0 KB

05-03-2011

Marilyn Swygert, PT, Chairperson
South Carolina Board of Physical Therapy Examiners
P.O. Box 11329
Columbia, S.C. 29211-1329

Re: Application of S.C. Code Ann. § 40-45-110(A)(1) to
Intra-Professional Interactions

Dear Marilyn:

As you know, in Sloan v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (S.C. 2006), the South Carolina Supreme Court held that South Carolina Code Ann. § 40-45-110(A)(1) prohibits a physical therapist from working as an employee of a physician when the physician refers patients to the physical therapist for services. I am writing on behalf of the South Carolina Chapter, American Physical Therapy Association (SCAPTA or Chapter) to ask the South Carolina Board of Physical Therapy Examiners (SCBPTE or Board) to issue a position statement advising how it interprets the statute by answering two questions set forth below.

As explained in the Court's opinion, the litigation was triggered by an opinion the Attorney General issued in 2004, which the Sloan opinion upheld. The Court ruled that the statutory prohibition applies when a physical therapist (PT) is employed by a physician who refers patients to the PT for the provision of physical therapy services – in short, an inter-professional referral. The Chapter understands that the Attorney General's office has received a request for an opinion as to whether the statutory clause covers intra-professional as well as inter-professional interactions. It appears that the Attorney General has received a request for an opinion on two questions, which are substantially as follows:

(#1) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for another physical therapist or physical therapist assistant or group of physical therapists when the physical therapist or physical therapist assistant refers a patient to another physical therapist or physical therapist assistant for physical therapy services?

(#2) Does S.C. Code Ann. § 40-45-110(A)(1) prohibit a physical therapist or physical therapist assistant from working for pay for a professional corporation owned by one or more licensed physical therapists when a physical therapist owner or employee of the corporation refers a patient to the physical therapist for physical therapy services?

The Chapter hereby requests that the Board issue a position statement addressing these two questions. The Chapter believes that the correct answer to the two questions is that

Carpenter 0022

the prohibition does not extend to a situation in which one physical therapist sends or directs a patient for treatment to another physical therapist who is employed by the sending therapist or by a professional corporation owned by the sending therapist. The Chapter intends to submit to the Board in the near future a legal analysis addressing the questions.

In addition, the Chapter hereby asks the Board to advise the Attorney General that it is considering these questions and to request the Attorney General to postpone issuing his opinion until the Board has had the opportunity to answer the questions. The Chapter believes that the Board is the appropriate agency to address the questions. As the Sloan opinion stated, "The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons." 370 S.C. at 469, 636 S.E.2d at 607. The Attorney General follows this admonition to give appropriate deference to an agency's interpretation of the law it administers. See Op. S.C. Atty. Gen., April 20, 2007, "This Office, just as the courts of this state, 'gives deference to the opinion of a state agency charged with the duty and responsibility of enforcing a state statute.'" See Op. S.C. Atty. Gen., July 1, 2004, "If the administrative interpretation is reasonable, courts will defer to that construction, even if it is not the only reasonable one or the one the court would have adopted in the first instance." The office of the Attorney General does not have primary responsibility for administering the physical therapy practice act. The Chapter believes it would be unfortunate if the Attorney General were to issue an opinion before the Board had the opportunity to state its position concerning the law it is charged to enforce.

Thank you for your attention to the Chapter's requests.

Respectfully,

Bob Carpenter, PT, ATC-L, CSCS

Carpenter 0023

od AM

Subject: good AM
From: "Bob Carpenter, PT, ATC, CSCS" <bob@healthquestpt.org>
Date: 5/3/2011 5:06 AM
To: Jim Stoker <jim.stoker@csmr.org>

FYI-I just sent the letter out to Marilyn & Vernoica and also a separate one to Jack.
Let me know if there are any problems or you need any further assistance re: this manner!

Thanks again for all that you have done & continue to do on behalf of SCAPTA and representing all us "little guys" in the state.

Have a great day,

Bob

--

Bob Carpenter, PT, ATC, CSCS
Physical Therapist
Certified Athletic Trainer
Certified Strength and Conditioning Specialist

HealthQuest Physical Therapy
265 Charter Oak Road
Lexington, SC 29072

Phone: 803-951-3200
Fax: 803-951-0990
www.healthquestpt.org
bob@healthquestpt.org

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Carpenter 0006

4/15/2013 10:48 AM

PLAINTIFFS' MSJ – EXHIBIT # 30

Clarification question for SCBPTE

Subject: clarification question for SCBPTE
From: "Bob Carpenter, PT, ATC, CSCS" <bob@healthquestpt.org>
Date: 5/3/2011 5:02 AM
To: johnbennett@apta.org

Hi Jack,

Here is the question that I have posed for our SC state board. Please fill free to contact me if you have any questions or need clarification re: this issue.

Thanks so very much for your assistance!

Respectfully,

Bob

--

Bob Carpenter, PT, ATC, CSCS
Physical Therapist
Certified Athletic Trainer
Certified Strength and Conditioning Specialist

HealthQuest Physical Therapy
265 Charter Oak Road
Lexington, SC 29072

Phone: 803-951-3200
Fax: 803-951-0990
www.healthquestpt.org
bob@healthquestpt.org

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---Attachments:---

SCBPTE Request-1.doc

33.0 KB

Sara McCartha

From: Marilyn [mswy1030@aol.com]
Sent: Tuesday, January 22, 2013 10:41 AM
To: Sara McCartha
Subject: Fwd: Intra-Professional Interactions
Attachments: Intra-Professional_Interactions.pdf
Categories: For future use

Marilyn Swygert,PT,DPT
Charleston Physical Therapy
1730 Savannah Hwy.
843 763 4115

-----Original Message-----

From: Marilyn <mswy1030@aol.com>
To: bob <bob@healthquestpt.org>
Sent: Thu, Jun 2, 2011 12:10 pm
Subject: Intra-Professional Interactions

Please see attached in response to your question of May 3,2011.

Marilyn Swygert,PT,DPT
SC Board of Physical Therapy

5726/1502
Joseph v. SCCLN, et al
017



South Carolina Board of Physical Therapy Examiners

Koger Office Park, Koger Building
110 Centerview Drive
Post Office Box 11379
Columbia, SC 29211-1379

(803) 896-1655
FAX: (803) 896-1719

Robert Avery Carpenter, PT,
210 Scooter Bridge Road
Batesburg, SC 29006-8133

June 2, 2011

Re: Application of S.C. Code Ann. Sec. 40-45-110(A)(1) to
Inter-Professional Interactions

Dear Mr. Carpenter:

The answer to the two questions posed in your letter of May 3, 2011 is NO for the following reasons:

In 1998, the General Assembly enacted Act 360 which constituted a major revision to the laws governing the licensing and regulation of physical therapists. Under this Act, the Board may take disciplinary action against a therapist who "in the absence of a referral from a licensed medical doctor or dentist provides physical therapy services beyond 30 days after the initial evaluation and/or treatment without referring the patient to a licensed medical doctor or dentist." See Sec. 40-45-110(A)(4).

The Board may also take disciplinary action against a therapist who "requests, receives, participates or engages directly or indirectly in the dividing, transferring, assigning, cheating, or refunding fees received for professional services or profits by means of a credit or other valuable consideration including, but not limited to, wages, and unearned commission, discount, or gratuity with a person who referred a patient or with a relative or business associate of the referring person." See Sec. 40-45-110(A)(1). The statutes were discussed first in an opinion from the Attorney General for the State of South Carolina in March of 2004 and then by the Supreme Court of South Carolina in the case of Sligh v. South Carolina Board of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598 (2006). The Sligh case provides the answer to your inquiry.

The purpose of Sec. 40-45-110(A)(1) is to "protect consumers as well as government-sponsored health care programs such as Medicare and Medicaid from actual and potential conflicts of interest which are likely to lead to overuse of medical services by physicians who, for their own financial gain rather than their patient's medical needs, refer patients to facilities in which the physicians hold financial interest.

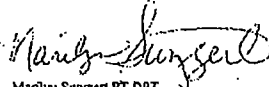
The question presented is whether or not a physical therapist or physical therapist assistant working in the same practice as another physical therapist can provide services to a patient during the 30 day window in which physical therapists can provide services to patients without a referral from a medical doctor or whether or not other physical therapists or physical therapist assistants in the group can provide physical therapy services upon referral by a medical doctor. The answer to these questions turns on the definition of the term "referral"

Attachment B

572@1502
Joseph v. SCLLR, et al
033

In Slone, the South Carolina Supreme Court held that Sec 40-45-110(A)(1) prohibits a physical therapist from receiving referrals or dividing fees if that physical therapist is part of the referring physician's practice. The South Carolina Supreme Court held that the term "referral" as used in the statute should be interpreted according to its plain meaning, which in this instance is "to send or direct for treatment, aid, information [or] decision [e.g.] a patient to a specialist." Webster's 3rd New International Dictionary 1907 (1981); Slone, 370 S.C. at 470, 616 S.E.2d at 607-608.

In a group practice, a physical therapist or physical therapist assistant providing services to a patient of that practice should not fall within this definition of "referral". The physical therapist or physical therapist assistant seeing a patient at the request of another physical therapist in the same group does not constitute a "referral", but is rather a physical therapist or physical therapist assistant providing coverage either within the 30-day window or pursuant to the same referral from a physician for another member of the group. Moreover, because each of the physical therapists or physical therapist assistants are providing the same medical treatment, a physical therapist who is unable to see a patient is not directing a patient for treatment or aid that that particular physical therapist was unable to provide and thus, would not be sending a patient to a specialist, as is the typical definition of a referral. To hold otherwise would produce the absurd result of requiring a patient develop a new relationship with each physical therapist or physical therapist assistant who provides treatment to the patient within the 30 day window in which physical therapist can treat without referral from a physician, or in the situation of a physician referral, would require a separate referral for each and every physical therapist or physical therapist assistant who treats the patient. Having other physical therapists or physical therapist assistants in the same group covering for each other should not constitute a referral and should not violate Sec. 40-45-110(A)(1).



Marilyn Swygert, PT, DPT
SC Board of Physical Therapy Clinicians

5726/1502
Joseph v. SCILLR, et al
034

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND)

Kristin Joseph, PT, Thomas N. Joseph, MD,) Civil Action No. 12-CP-40-2632
 and William G. McCarthy, MD,)

Plaintiffs,)

v.)

South Carolina Department of Labor,
 Licensing and Regulation, South
 Carolina Board of Physical Therapy,

Defendant.)

and)

South Carolina Chapter, American
 Physical Therapy Association, Joseph M.
 McKowen, PT, Sabrina Queen Bridges,
 PTA, and Amalia W. Kirby (PTA)

Defendants-Intervenors)

DEFENDANT, SOUTH CAROLINA
DEPARTMENT OF LABOR,
LICENSING AND REGULATION,
SOUTH CAROLINA BOARD OF
PHYSICAL THERAPY'S ANSWERS
TO PLAINTIFFS' FOURTH SET
OF INTERROGATORIES

The defendant, South Carolina Department of Labor, Licensing and Regulation,
 South Carolina Board of Physical Therapy, answers plaintiff's Fourth Set of Interrogatories as
 follows:

1. Marilyn Swygert sent an email to Dargan Ervin on May 23, 2011, at 1:48
 p.m. (Joseph v. SCLLR, et al., 01285) that included in the body of the email, the text of the letter
 sent by Ms. Swygert to Robert Carpenter on June 2, 2011 (Joseph v. SCLLR, et al., 033-034) in
 response to his May 3, 2011 request for an opinion from the Board. Why did Ms. Swygert send

PLAINTIFFS' MSJ – EXHIBIT # 32

this email including the text of the opinion letter she sent to Mr. Carpenter on June 2, 2011, to Mr. Ervin?

RESPONSE: Ms. Swygert wanted Mr. Ervin to see a draft of the letter she had written to Mr. Carpenter and obtain Mr. Ervin's comments before she sent the letter to Mr. Carpenter.

2. Did Mr. Ervin provide any documentary response or other communication to Ms. Swygert regarding the email referenced in interrogatory number 1? If so, describe the form of the response and the content of the response.

RESPONSE: Mr. Ervin informed Ms. Swygert he agreed with the text of the draft letter.

3. Did Ms. Swygert send the email identified in interrogatory number 1 or a similar email to any other Board member prior to sending her letter of June 2, 2011, in response to Mr. Carpenter's May 3, 2011, request for an opinion?

RESPONSE: Ms. Swygert did not send the email identified in interrogatory number 1 to any other Board member other than Mr. Ervin before sending it to Mr. Carpenter. She did provide a copy of the letter referenced in the email to all of the Board members at the Board's July 2011 meeting.

4. Dargan Ervin sent an email dated March 11, 2011, to Jim Stoker (Joseph v. SCLLR, et al., 01287) attaching a letter from W. James Evans, MD (Joseph v. SCLLR, et al., 01288) that Mr. Ervin apparently received as a member of the Board. Did Mr. Ervin receive the letter from Dr. Evans (Joseph v. SCLLR, et al., 01288) in his capacity as a Board member? Was the Evans letter sent to the Board and distributed to its members? Who forwarded the Evans letter to Mr. Ervin?

RESPONSE: Cheryl Walters, a PT in Lake City, sent the email to Mr. Ervin because Mr. Ervin is a friend and colleague of Ms. Walters. Mr. Ervin did not receive the email in his capacity as a Board member and did not send the email to other Board members.

5. Did Mr. Stoker provide Mr. Ervin with any documentary response or other communication regarding the email and attached letter (Joseph v. SCLLR, et al., 01287 and 01288) referenced in interrogatory 4? If so, describe the form of the response and the content of the response.

RESPONSE: No.

6. Identify Gayle Lee who is referenced in (Joseph v. SCLLR, et al., 01287). Did Ms. Lee provide any documentary response or other communication regarding the correspondence from Mr. Ervin? If so, describe the form of the response and the content of the response.

RESPONSE: Ms. Gayle Lee is an attorney who is the Associate Director of Federal Regulatory Affairs for APTA. Ms. Lee has expertise in Medicaid and Medicare compliance issues. Ms. Lee did not provide a response to Mr. Ervin.

7. Dargan Ervin sent an email dated June 13, 2011, to Marilyn Swygert entitled "Robert Carpenter inquiry – Opinion: Final Statement for Services" (Joseph v. SCLLR, et al., 01292) which requested that Ms. Swygert send a check made payable to S.C. Board of Physical Therapy Legal Defense Fund, apparently for the remainder of the outstanding invoice balance. Did Ms. Swygert comply with the request to send a check made payable to the S.C. Board of Physical Therapy Legal Defense Fund for the remainder of or any portion of the outstanding invoice balance for "Robert Carpenter Inquiry – Opinion: Final Statement for Services"? If so, identify the bank account upon which the check was made. Identify the check.

RESPONSE: Ms. Swygert did send a check from her personal bank account to the South Carolina Board of Physical Therapy Defense Fund in response to Mr. Ervin's email. The defendant objects to the remainder of the inquiries in this interrogatory as seeking irrelevant information.

8. A privilege log is attached to the June 14, 2013 letter from Mr. Todd transmitting additional documents responsive to Plaintiffs' Requests to Produce. The first entry on the Privilege Log is "05/23/11 opinion letter (Bates # 91289-01291) from Monteith P. Todd to Dargan Ervin and it asserts attorney client privilege. Is the SC Board of Physical Therapy Legal Defense Fund and Mr. Ervin the client regarding the opinion letter? If not, why was the opinion letter (Bates#01289-01291) sent to Mr. Ervin and the attorney client privilege asserted?

RESPONSE: Mr. Ervin requested an opinion on a legal matter on behalf of the Board of Physical Therapy regarding an interpretation of the Sloan case from the attorney who represented the Board in the Sloan case. This request was made on behalf of the Board of Physical Therapy. The South Carolina Board of Physical Therapy Legal Defense Fund is the fund used to pay the Board's attorney in the Sloan case. This fund was also used to obtain an opinion regarding an interpretation of the Sloan case in 2011 on behalf of the Board. The attorney client privilege is asserted because this letter is a communication between the Board's attorney and a Board's member.

9. Is the opinion letter referenced and for which attorney client privilege is claimed (Bates #01289-01291) the same or substantially the same as the June 2, 2011 opinion letter Ms. Swygert sent to Mr. Carpenter? If not, explain the differences between the two documents.

RESPONSE: This defendant objects to this request because it seeks the disclosure of privileged attorney client communication.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: Monty Todd
Monteith P. Todd
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant, South Carolina Department of
Labor, Licensing and Regulation, South Carolina Board
of Physical Therapy

Columbia, South Carolina

July 19. 2013



MONTEITH P. TODD
Direct Dial 803 231.7837
Direct Fax 803 231.7887
Email mtodd@sowellgray.com

May 24, 2013

M. Elizabeth Crum, Esquire
The McNair Law Firm
Post Office Box 11390
Columbia, SC 29211

RE: Kristin Joseph PT, Thomas N. Joseph, MD, and William G. McCarthy, MD v.
SC Department of Labor, Licensing and Regulation, SC Board of Physical Therapy
Civil Action No. 12-CP-40-2632
Our File No. 5726/1502

Dear Liz:

This letter is written to respond to some of the issues raised in your Motion to Compel and in your meet and confer letter of April 2, 2013, concerning the defendant's responses to Plaintiffs' Second Request to Produce and Second Interrogatories.

In regard to the issue regarding the Common Interest Agreement, we stand on our objection to producing documents and communications shared pursuant to the Common Interest Agreement. I will tell you that the communications for which we seek privilege are communications between the attorneys for SCAPTA/APTA and attorneys for the South Carolina Board of Physical Therapy. To the extent that there were direct communications between a member of the Board and SCAPTA or APTA, we do not claim a privilege for those communications.

In regard to your request for names of all Board members since 2000, we stand on our objection to that request as being overbroad and irrelevant. We will provide you with the names of all Board members for the years 2010 to present.

In regard to your request for the Board's legal defense fund ledger, we stand on our objection to that request as being irrelevant. As you are aware, this fund was used to pay me in the Sloan case. The portion of your lawsuit regarding the Sloan decision has been dismissed. Therefore, the method of the Board's payment to me in the Sloan case is irrelevant. Prior to issuing the Position Statement, the Board did request my opinion on the issue raised by Mr. Carpenter's letter and used the remaining funds in the ledger to pay me, but payment by the Board to its lawyers is not relevant

1310 Gadsden Street PO Box 11449 Columbia, SC 29211
Phone 803 929.1400 Fax 803 929.6387

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PLAINTIFFS' MSJ – EXHIBIT # 34



Litigation is our Business.

and we object to producing the ledger or any communications between the Board and me regarding my retention and payment. We previously provided you with the documents in which the Attorney General authorized my firm's retention to defend the Board in this lawsuit.

You also requested information about John Bennett. We advised you he is an in-house attorney with APTA. He has no formal relationship with the Board of Physical Therapy.

As for the production of documents by Marilyn Swygert and Dargan Ervin raised in Ms. Ariall King's letter of May 21, 2013, we will request Ms. Swygert and Mr. Ervin to do an additional search to see if they can locate additional emails or documents responsive to your requests. Also, as discussed, I will check with Dargan to find out and provide you with a more definite date as to when his computer crashed.

Please feel free to give me a call to discuss the issues raised in this letter or in your Motion to Compel.

Yours truly,

A handwritten signature in black ink that reads "Monty Todd". The signature is written in a cursive, slightly slanted style.

Monteith P. Todd

MPT:rc0

cc: Ariall E. King, Esquire
Sara McCartha, Esquire
John C. Bradley, Jr., Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Kristin Joseph P.T., Thomas N. Joseph,	)	C/A No. 2012-CP-40-2632
M.D., and William G. McCarthy, M.D.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	DEFENDANT'S RESPONSE TO PLAINTIFFS' SECOND
	)	REQUESTS TO ADMIT TO DEFENDANT
South Carolina Department of Labor,	)	
Licensing and Regulation, South Carolina	)	
Board of Physical Therapy,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	
South Carolina Chapter, American	)	
Physical Therapy Association, Joseph M.	)	
McKowen, PT, Sabrina Queen Bridges,	)	
PTA, and Amalia W. Kirby (PTA),	)	
	)	
Defendants-Intervenors.	)	

To: ELIZABETH CRUM, ESQUIRE, COUNSEL FOR PLAINTIFFS

The defendant, South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Physical Therapy, without waiving any objections to admissibility of these Requests to Admit or the referenced documents, responds to plaintiff's Second Requests to Admit pursuant to Rule 36 of the South Carolina Rules of Civil Procedure as follows:

REQUESTS TO ADMIT

1. Bates page Joseph v. SDLLR, et al. 01285 is a true and accurate copy of the unredacted portions of an e-mail sent on May 26, 2011 by Marilyn Swygert, Chair of the South Carolina Board of Physical Therapy Examiners (Board) to Dargan Ervin, a member of the Board.

RESPONSE: This defendant admits Bates Stamp 01285 is an authentic copy of unredacted portions of an email from Dargan Ervin to Sara McCartha, but states that portions of the email have been redacted.

2. Bates page Joseph v. SDLLR, et al. 01285 is an email sent from Dargan Ervin to Sara McCartha.

RESPONSE: This defendant admits Bates Stamp 01285 is an authentic copy of unredacted portions of an email from Dargan Ervin to Sara McCartha, but states that portions of the email have been redacted.

3. Bates page Joseph v. SDLLR, et al. 01288 is a true and accurate copy of a letter forwarded to Dargan Ervin for input regarding the content of the letter purporting to be from W. James Evans, MD dated March 8, 2011, addressed "To Whom It May Concern" (Evans Letter).

RESPONSE: Admitted.

4. Bates page Joseph v. SDLLR, et al. 01287 is a true and accurate copy of an e-mail Mr. Ervin sent to Mr. Jim Stoker attaching a copy of the Evans Letter. Mr. Ervin did not send a copy of Bates page Joseph v. SDLLR, et al. 01287 to any member of the Board.

RESPONSE: Admitted.

5. At the time Mr. Ervin sent the Evans Letter to Mr. Stoker, Mr. Stoker was president of the South Carolina Chapter, American Physical Therapy Association (SCAPTA).

RESPONSE: Admitted.

6. Gayle Lee, JD was the Director of Federal Payment Policy and Advocacy of the American Physical Therapy Association (APTA) at the time Mr. Ervin sent a copy of the Evans Letter to her, on or about March 11, 2011.

RESPONSE: Admitted.

7. The South Carolina Department of Labor, Licensing and Regulation refused to authorize the expenditure of LLR or Board funds to pay for any outside counsel to represent the Board in *Sloan v. South Carolina Board of Physical Therapy Examiners*, 370 S.C. 452, 636 S.E.2d 598 (*Sloan*).

RESPONSE: The defendant admits the content of Paragraph 7, but this paragraph is irrelevant to any issue in this case.

8. At the Board meeting on July 8, 2004, the Board discussed the process of forming a 501(c)(6) corporation for receipt of funds to pay for the defense of the *Sloan* case and Board members Mr. Ervin, Mr. Junkins, and Ms. Ellis-Witherspoon were named to the committee. Mr. Ervin was to pay invoices based on receipt of funds.

RESPONSE: The defendant admits the content of Paragraph 8, but this paragraph is irrelevant to any issue in this case.

9. The Board established the South Carolina Board of Physical Therapy Legal Defense Fund as an IRS 501(c)(6) corporation (Board Legal Defense Fund) in 2004 to pay for representation by outside counsel in the *Sloan* case.

RESPONSE: The defendant admits the content of Paragraph 9, but this paragraph is irrelevant to any issue in this case.

10. The Board's outside counsel in the *Sloan* case was paid entirely from private funds, including funds from the Board Legal Defense Fund.

RESPONSE: The defendant admits the content of Paragraph 10, but this paragraph is irrelevant to any issue in this case.

11. Documents provided by James Price Stoker, bates numbered 000010, 000030, 000070, 000089, 000090, 000091, 000100, 000102, 000103, 000104, 000107 through 000112, 000116, 000119, 000120, attached hereto, contain true and accurate copies of documents written by or received by Mr. Ervin or Ms. Swygert. Mr. Ervin's e-mail addresses are edervinjr@gmail.com or dervin@fsbpt.org and Ms. Swygert's e-mail address is mshwy1030@aol.com.

RESPONSE: The defendant admits that the documents referenced in Paragraph 11 were documents produced by Mr. Stoker at his deposition. The defendant further admits that the documents contain copies of numerous emails, some of which were created by Ms. Swygert and Mr. Ervin, and some which were created by other individuals. This defendant admits that Mr. Ervin's email address is edervinjr@gmail.com and Ms. Swygert's email address is mshwy1030@aol.com. This defendant further admits Mr. Ervin had an email address of dervin@fsbpt.org.

12. Documents provided by James Price Stoker, bates numbered 000113 through 000115, attached hereto, contain a true and accurate copy of the proposed amendment to the PT Act attached to Mr. Ervin's memorandum dated February 25, 1997 to the members of the South Carolina Senate.

RESPONSE: This defendant admits that Bates stamp 000113, 000114, and 000115 contains a bullet point summary of proposed amendments to the PT Act that was attached to letter from Dargan Ervin to members of the South Carolina Senate, but denies all other statements in Paragraph 12.

13. Documents provided by James Price Stoker, bates numbered 000117 and 000118 attached hereto, contain a true and accurate copy of the letter dated November 1, 1996 from William F. Mahon to E. Dargan Ervin.

RESPONSE: This defendant admits Bates No. 000117 and 000118 are authentic copies of a 1996 letter from William F. Mahon to Dargan Ervin, but denies this letter is relevant to this case.

14. Outside counsel Monteith P. Todd advised Ms. Swygert regarding the June 2, 2011 opinion letter she sent to Mr. Carpenter. Mr. Todd was paid for his advice regarding the June 2, 2011 opinion from the Board Legal Defense Fund.

RESPONSE: The defendant objects to Paragraph 14 because it seeks privileged attorney client information and communications and also seeks to require this defendant to stipulate to irrelevant information.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: Monty Todd

Monteith P. Todd
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Columbia, South Carolina

September 3, 2013

Attorneys for Defendant, South Carolina Department of
Labor, Licensing and Regulation, South Carolina
Board of Physical Therapy



South Carolina
DEPARTMENT OF HEALTH AND HUMAN SERVICES
Post Office Box 8206
Columbia, South Carolina 29202-8206
www.scdhhs.gov
December 3, 2012
MB# 12-047

MEDICAID BULLETIN

ALL

TO: All Providers

SUBJECT: Provider Enrollment and Screening

In the Medicaid Bulletin dated May 9, 2012, the South Carolina Department of Health and Human Services (SCDHHS) began the process of addressing provider enrollment regulations published by the Centers for Medicare and Medicaid Services (CMS). SCDHHS has addressed the CMS regulations and will implement the following on December 3, 2012:

- **Provider Enrollment Manual.** The provider enrollment manual is to be used for provider information and requirements regarding the Medicaid Provider Enrollment program. The manual is organized by sections and formatted to give a consistent standardized layout with ease of navigation and readability. Headings for each subsection appear on the left side of the page with the corresponding information on the right. The manual is organized as follows:

Section 1 – General Information and Administration
Section 2 – Enrollment and Screening Policies
Section 3 – Program Integrity
Section 4 – Administrative Services
Appendices

Please refer to <http://provider.scdhhs.gov> to access the Provider Enrollment Manual. The website is updated on the first of every month to reflect policy changes to the manual. Providers with access to the internet should check the SCDHHS website monthly to obtain information about any updates made to the manual.

To order a printed copy of the manual, contact the Provider Service Center at (888) 289-0709. Charges for printed manuals are based on actual costs of printing and mailing. The manual is not subject to copyright regulations and may be reproduced in its entirety.

- **Provider Enrollment and Screening Policies.** New policies were developed to implement regulations established by the Affordable Care Act (ACA), emphasizing stronger requirements for Medicaid Provider Enrollment and Screening. Please visit <http://provider.scdhhs.gov> to review these new policies in the Provider Enrollment Manual. Below is a list of the Provider Enrollment and Screening policies:

Policy 01-Temporary Moratorium
Policy 02-Denial of Enrollment
Policy 03-Provider Termination
Policy 04-Ordering/Referring
Policy 05-Credible Allegation of Fraud
Policy 06-Criminal Background

Policy 07-Revalidation of Enrollment
Policy 08-License Verification
Policy 09-Federal/State Database Check
Policy 10-Screening of Providers
Policy 11-Reactivation of Enrollment
Policy 12-Adding Location

Fraud & Abuse Hotline 1-888-364-3224

PltRespt01stRFP_001148

PLAINTIFFS' MSJ – EXHIBIT # 36

Medicaid Bulletin
Page 2

Policy 13-Pre and Post Enrollment Site Visits Policy 16-Electronic Signature
Policy 14-Application Fee Policy 18-Provider Appeals
Policy 15-Rejection of Enrollment

Policy 17-Electronic Funds Transfer (EFT) is an agency policy that was implemented on August 26, 2008 and will be enforced and required for enrollment on December 3, 2012.

• **Interactive Web Application.** This application is an automated provider enrollment web-based application that will enable prospective SC Medicaid providers to utilize a paperless application process. This new process will ensure the security of providers' information and is accessible from any computer that has Internet access. The web-based application will enable:

1. New enrollment for individuals and organizations.
2. Ordering/referring provider enrollment.
3. Existing providers to add a new location(s).

Please refer to <http://provider.scdhhs.gov> to access the web-based application online.

Effective November 30, 2012, SCDHHS will no longer accept paper applications. Applications received after this date will be returned to the provider with instructions to enroll utilizing the Interactive web application.

• **Application Fee.** SCDHHS will collect the applicable application fee of \$523.00 prior to executing a provider agreement whether upon an initial enrollment, reactivation, revalidation or an enrollment to add a new practice location. SCDHHS has contracted with SC.Gov Enterprise Payment System to facilitate collection of the application fee. Payments may be made by debit, credit or e-check. Paper checks will not be accepted.

The application fee will apply to: Business organizations and entities that enroll in South Carolina Medicaid with an Employer Identification Number (EIN). The application fee does not apply to:

1. Individual physicians (sole proprietors enrolling with an SSN and EIN are considered Individuals)
2. Non-physician practitioners
3. Providers who are enrolled in Medicare and/or enrolled in another State's Medicaid Agency or Children's Health Insurance Program (CHIP)
4. Providers who have already paid the applicable application fee to Medicare and/or another State's Medicaid or CHIP

Additional information is available at <http://provider.scdhhs.gov> in the Provider Enrollment Manual.

• **Pre and Post Site Visits.** SCDHHS will conduct pre-enrollment and post-enrollment site visits of providers designated as "moderate" or "high" categorical risks to the Medicaid program.

MODERATE RISK PROVIDERS	
Private Mental Health Centers	Labs (Portable X-Ray)
Ambulance	Comprehensive Outpatient Rehabilitative Facility (CORF)
Physical Therapist	Community Long Term Care
Hospice	Private Rehabilitative Behavioral Health
HIGH RISK PROVIDERS	
Durable Medical Equipment	Home Health

Fraud & Abuse Hotline 1-888-364-3224

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Page 3

Please Note: Currently enrolled Durable Medical Equipment and Home Health providers are moderate categorical risk level.

The purpose of the site visit is to verify accuracy of the information submitted to SCDHHS and to ensure compliance with Federal and State enrollment requirements. Any enrolling and/or enrolled provider must permit SCDHHS, its agents or designated contractor, to conduct unannounced on-site inspections of any and all provider locations. Any enrolling and/or enrolled providers that fail to permit access for site visits will be denied enrollment or terminated from the Medicaid program. Please refer to the provider enrollment manual at <http://provider.scdhhs.gov> for additional information.

- **Ordering/Referring Providers.** All ordering/referring providers are required to be enrolled with SC Medicaid if they order and/or refer services for Medicaid beneficiaries. If your ordering/referring provider type is found on the list of SC Medicaid provider types at <http://provider.scdhhs.gov>, you may enroll immediately.

If your ordering/referring provider type is not found on the list of SC Medicaid provider types, SCDHHS will provide future guidance on the next step for enrolling ordering/referring providers. Residents or interns practicing under the supervision of a licensed professional may utilize the National Provider Identifier (NPI) of the supervising physician on claims as the ordering/referring provider for reimbursement purposes.

Over the next six (6) months, SCDHHS will provide further guidance and instruction relative to provider enrollment for professionals, prescribers and/or providers rendering Medicaid services. Guidance and instruction will come in the form of a follow-up bulletin. In the interim, SCDHHS recommends that all individuals providing, prescribing or rendering Medicaid services obtain an NPI which will be required for future provider enrollment. Providers can apply at <https://nppes.cms.hhs.gov/NPPES> for their NPI free of charge.

Furthermore, the NPI of the ordering/referring provider or other professional must be included on any Medicaid claim for payment based on an order or referral from that physician or other professional. For paper and electronic claims, providers can reference the following table:

Claim Form	Field Number	Field Name	Special Note
CMS-1500 (08/05)	17	Name of Referring Provider or Other Source	Enter the name of Referring or Ordering Provider
	17B	NPI	Enter the NPI of Referring or Ordering Provider
UB-04	78	Other NPI	Enter the NPI of Referring or Ordering Provider
		Last	Enter the Last Name of Referring or Ordering Provider
		First	Enter the First Name of Referring or Ordering Provider
837I	2310F	Referring Provider	Enter the NPI of Referring or Ordering Provider
837P	2310A	Referring Provider	Enter the NPI of Referring or Ordering Provider

Fraud & Abuse Hotline 1-888-364-3224

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Page 4

Providers may refer to the South Carolina Companion Guides online at <http://provider.scdhhs.gov> for additional information regarding placement of the ordering or referring NPI on electronic claims.

- **Provider Policy Manual.** SCDHHS has been sending a CD copy of the manual with each new enrollment, but it is not required. Therefore, we will discontinue the practice with enrollments received on or after December 3, 2013. Please visit <http://provider.scdhhs.gov> to view the Provider Policy Manual.

The web site is updated on the first of every month to reflect policy changes to the manual. Providers with access to the internet should check the SCDHHS website monthly to access updates to the manual.

To order a printed copy of the manual, contact the Provider Service Center at (888) 289-0709. Charges for printed manuals are based on actual costs of printing and mailing. The manual is not subject to copyright regulations and may be reproduced in its entirety.

SCDHHS' goal is to continue to enhance the integrity of the Medicaid program while streamlining the enrollment process and complying with federal requirements. Currently enrolled Medicaid providers do not have to re-enroll or re-validate their existing enrollment at this time. Providers, including ordering/referring, enrolled or reactivated on or after December 3, 2012, will be screened according to the new provider enrollment and screening regulations.

If you have any questions regarding the provider enrollment and screening regulations, please contact the Provider Service Center at (888) 289-0709, Option 4. To review Frequently Asked Questions, please visit <http://provider.scdhhs.gov> on our website. Thank you for your continued support of the South Carolina Medicaid program.

/s/
Anthony E. Keck
Director

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

-----x
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KRISTIN JOSEPH, P.T.,
THOMAS N. JOSEPH, M.D., AND
WILLIAM G. MCCARTHY, M.D.,

Plaintiffs,

vs.

C/A No.
2012-CP-40-2632

SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING, AND REGULATION,
SOUTH CAROLINA BOARD OF PHYSICAL
THERAPY,

Defendant,

and

SOUTH CAROLINA CHAPTER, AMERICAN
PHYSICAL THERAPY ASSOCIATION,
JOSEPH M. MCKOWEN, P.T.,
SABRINA QUEEN BRIDGES, P.T.A.,
AND AMALIA W. KIRBY, P.T.A.,

Defendants-Intervenors.

-----x

Wednesday, October 30, 2013

McLean, Virginia

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Page 2

1 Deposition of

2

JOHN P. STEARNS,

3 the witness, called for examination by counsel

4 for the plaintiffs, pursuant to notice, held at

5 the offices of N. Thomas Connally, Esq., Hogan Lovells,

6 7930 Jones Branch Drive, Ninth Floor, McLean, Virginia,

7 beginning at 1:05 p.m., before Malynda D. Whiteley, a

8 Registered Professional Reporter and a Notary Public in

9 and for the State of Virginia, when were present on

10 behalf of the respective parties:

11

12

13

A P P E A R A N C E S

14 For the Plaintiffs (via speakerphone):

15 M. ELIZABETH CRUM, ESQUIRE

16 McNair Attorneys

17 Post Office Box 11390

18 Columbia, South Carolina 29211

19 (803) 799-9800

20 lcrum@mcnair.net

21

22

23

24

25

1 A P P E A R A N C E S (Continued)

2 For the Defendant South Carolina Department of
3 Labor, Licensing, and Regulation,
4 South Carolina Board of Physical
5 Therapy (via speakerphone):

6 MONTEITH P. TODD, ESQUIRE
7 Sowell Gray
8 1310 Gadsden Street
9 Columbia, South Carolina 29211
10 (803) 929-1400
11 mtodd@sowellgray.com

12 For the Defendants-Intervenors South Carolina Chapter,
13 American Physical Therapy Association,

14 N. THOMAS CONNALLY, ESQUIRE
15 MARQUES P. RICHESON, ESQUIRE
16 Hogan Lovells
17 7930 Jones Branch Drive
18 Ninth Floor
19 McLean, Virginia 22102
20 (703) 610-6100
21 tom.connally@hoganlovells.com
22 marques.richeson@hoganlovells.com
23
24
25

1 A P P E A R A N C E S (Continued)

2 For the Defendants-Intervenors South Carolina Chapter,
3 American Physical Therapy Association (via
 speakerphone):

4 JOHN C. BRADLEY, JR., ESQUIRE
5 Moore, Taylor & Thomas, P.A.
6 1700 Sunset Boulevard
7 Post Office Box 5709
8 West Columbia, South Carolina 29171
9 (803) 796-9160
10 john@mttlaw.com

11

12 For Office of Advice Counsel South Carolina Department
13 of Labor, Licensing, and Regulation (via speakerphone):

14 SARA MCCARTHA, ESQUIRE
15 KATHERINE B. BARROLL, ESQUIRE
16 Department of Labor, Licensing, and Regulation
17 110 Centerview Drive
18 Columbia, South Carolina 29211
19 (803) 896-4311
20 sara.mccartha@llr.sc.gov
21 kate.barroll@llr.sc.gov

22

23

24

25

1 A P P E A R A N C E S (Continued)

2 For Defendants-Intervenors Joseph M. McKowen, P.T.,
3 Sabrina Queen Bridges, P.T.A., and Amalia W. Kirby,
P.T.A. (via speakerphone):

4 EMILY W. MEDLIN, ESQUIRE

5 Devlin & Parkinson, P.A.

6 27 Cleveland Street

7 Suite 201

8 Post Office Box 10387

9 Greenville, South Carolina 29603-0387

10 (864) 242-4050

11 ewhitney@devlinparkinson.com

12

13

14 ALSO PRESENT:

15 John Bennett, Esquire, American Board of
16 Physical Therapy

17

18

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1 would have been within the past year. I frequently work
2 with physician groups through many of my engagements.

3 Q Do you remember what kind of physician group
4 it was?

5 A I don't, no.

6 Q Okay.

7 A It would have been in the context of a larger
8 engagement.

9 Q Okay. Do you have any idea what percentage of
10 the average physicians' group that employed physical
11 therapists -- what percentage of their income would come
12 from physical therapy services as opposed to the
13 services provided by the physician?

14 A I've never seen an average published on that.
15 And I would think it would vary widely depending on the
16 size of the practice.

17 Q Do you have any idea what that might be?

18 A I don't.

19 Q Okay. Is it safe to say that a physical
20 therapy group derives a hundred percent of its income
21 from practices -- practice of physical therapy?

22 A A group practice, I would say it's very
23 likely. It's possible they could have other lines of
24 business. But I would say it's very likely that the
25 typical therapy practice derives all of its revenue from

Page 24

1 therapy services.

2 Q Mr. Stearns, you were contacted to be an
3 expert --

4 AUTOMATED TELEPHONE VOICE: Joining the
5 meeting:

6 MR. TODD: Monty Todd.

7 MS. CRUM: Monty, thanks. This is Liz.

8 If you have --

9 MR. TODD: Hi, Liz.

10 MS. CRUM: Hi. If you have an objection or
11 something, please object and state your same so that the
12 court reporter will know who you are.

13 MR. TODD: Okay. Actually I'm in a train
14 station. I'm going to put you on mute so I'm not a
15 nuisance.

16 MS. CRUM: Okay.

17 MR. TODD: And if I am nuisance with the
18 background noise, let me know; and I'll hang up.

19 MS. CRUM: Okay.

20 BY MS. CRUM:

21 Q Okay. When you were contacted at some point,
22 probably in August, you were asked to give opinions in
23 this case; correct?

24 A I was told that's what the ultimate purpose of
25 my engagement would be, yes.

1 "inter-professional referral" in that context?

2 THE COURT REPORTER: Excuse me. I'm --

3 MR. CONNALLY: Liz, it's Tom. I think the
4 reporter may have gotten a bit confused with "inter" and
5 "intra".

6 THE COURT REPORTER: Does the letter say
7 "inter"? The first time she said "intra"; correct? And
8 you answered with question with "intra".

9 MS. CRUM: I said "inter".

10 THE COURT REPORTER: But the letter says
11 "inter"?

12 THE WITNESS: Correct.

13 MS. CRUM: Correct.

14 THE COURT REPORTER: I wanted to be sure of
15 what I heard with the speakerphone. Thank you.

16 A So before this case I've not routinely used
17 the terms "inter-" or "intra-professional".

18 BY MS. CRUM:

19 Q Have you seen them used before this case --

20 A Not in routine --

21 Q -- in the context --

22 A -- practice. Not that I recall. And
23 certainly not in routine practice, no.

24 Q Okay. Thank you.

25 Now, I apologize I'm trying to read something

Page 52

1 A -- I believe a physical therapist could be a
2 person.

3 Q What else could a physical therapist be other
4 than a person under the South Carolina PT Act?

5 A I don't know.

6 Q Is a physical therapist's assistant a person,
7 under your understanding of the South Carolina Physical
8 Therapy Act?

9 A Yes, that's my understanding.

10 Q Do you know whether or not physicians licensed
11 in South Carolina can provide physical therapy services?

12 A Based on my initial reading of the Medical
13 Practice Act, they can provide therapeutic procedures
14 that are listed commonly as physical therapy. Excuse
15 me. Procedures, yes.

16 Q Look at page 1320 through 1323.

17 A Okay.

18 Q This is entitled "A Provider's Self-Referral,
19 Chapter 113".

20 How, if at all, did the South Carolina Act
21 form a basis of any of the opinions you've given here
22 today?

23 A Well, I printed it out because it was
24 referenced in the Sloan decision and I mainly wanted to
25 see what it said. It does define "referral" for the

1 A No, not -- not in its own regulations.

2 Q On the second document that you all sent this
3 morning was the South Carolina Physician Practice Act.

4 MR. CONNALLY: Correct. It's Tom, Liz. It's
5 labeled Stearns 1621 through Stearns 1701.

6 (Document presented.)

7 MR. CONNALLY: The witness has it.

8 BY MS. CRUM:

9 Q Okay. Mr. Stearns, would you please tell me
10 by section number what, if any, sections in here, in the
11 Physician and Miscellaneous Healthcare Professionals
12 Act, you relied on as the basis of any of your opinions
13 this afternoon.

14 (The witness reviewed document.)

15 A It's on page 1627, which is also 7 of 81.

16 Q Can you just give me the section number,
17 please, sir.

18 A Now I need to back up. Section 40-47-20.
19 It's Definitions.

20 Q Okay.

21 A I'm looking at No. 36(c).

22 Q Okay. Under the Practice of Medicine?

23 A Yes. Practice of Medicine includes, "Correct
24 or treat in any manner, by any means or methods,
25 disease, illness, pain, wounds, fracture, infirmity,

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1 defects." So that whole paragraph C there.

2 Q And which one of your opinions did you rely on
3 for that definition?

4 A It's really just -- it was background. I
5 noticed in some of the depositions that I received
6 Monday afternoon that there was some discussion of the
7 Physician Practice Act, and I did not know what the
8 Physician Practice Act said.

9 So I mainly pulled it out for background
10 information on that and what the role of a physician was
11 and what the scope of the physician's practice was.

12 Q Okay. So is it accurate to say that you
13 looked at that to help determine what your opinion was
14 as to the clinical physician practice?

15 A Yes.

16 Q What else?

17 A I read through this very quickly. I believe
18 that was the main section that I looked at.

19 (The witness reviewed document.)

20 A I believe that was it.

21 Q Do you need to finish looking through that?

22 A No, I think I've looked through it enough for
23 now. I believe that's the section I looked at.

24 Q You said you got depositions on Monday.

25 Have you reviewed the depositions that you

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1 her deposition? Anything you relied upon in forming
2 your opinions?

3 A Ms. Witherspoon is also a PT; so, again,
4 similar to the other physical therapists: How she
5 manages her referrals, her scheduling; how she manages
6 her PT assistants; and her discussion on coverage.

7 Q Anything else?

8 A Not that I can recall at the moment.

9 Q Okay. In your opinion -- well, first off,
10 what is your definition of "coverage" for a healthcare
11 provider?

12 A So coverage, in my experience, is it happens a
13 couple of different scenarios.

14 One is where a -- and I'll just use it for
15 therapists -- when a therapist is absent or otherwise
16 unavailable for a scheduled treatment, another therapist
17 may step in and perform the treatment that's developed
18 by the evaluating therapist. In that instance it's
19 primarily temporary; and, like I said, they're stepping
20 in to take over for some sort of unavailability of the
21 primary therapist.

22 There could be a longer-term coverage if, for
23 example, a therapist went out on maternity leave or some
24 other form of disability or terminated their employment.

25 The patients on the caseload would still stay

1 active, so initially other therapists would step in to
2 cover those patients and provide those treatments. And
3 when the time came around for a reassessment or
4 reevaluating, that new therapist would then establish
5 the referral relationship with the physician and they
6 would no longer be covering. They then be would be the
7 primary therapist.

8 Q Okay. And is your definition of "coverage"
9 the same for a physician practice, for example?

10 A In my experience, it's very similar. If a
11 physician's unavailable for a patient calling with an
12 emergency, that another physician will take the call and
13 cover for that physician; or if a physician goes on
14 vacation, one of their colleagues or another physician
15 will do their hospital rounds, for example.

16 Q On maternity leave?

17 A Similar. If a physician goes on maternity
18 leave, other physicians will step in and cover that
19 physician's patients until they return. In my
20 experience, that's usually not very long.

21 Q One of the opinions you gave was that if the
22 plaintiffs' theory of referral was adopted -- and
23 correct me if I'm misstating it. Okay?

24 A Yes.

25 Q -- if the plaintiffs' theory of referral was

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1 A Not directly. I think the Sloan decision is
2 what it is. So, you know, there are components of it
3 defining what they considered as referral that helped
4 form my opinions.

5 I don't think the outcome of the Sloan case
6 directly informed my opinion. It is what it is.

7 Q And I think one other thing here. Do you know
8 whether or not the South Carolina Medicaid plan
9 prohibits a physician or physician group from employing
10 PTs and referring patients to the employed PT for
11 services?

12 A I don't know directly. My impression of
13 Medicaid plans is similar to Medicare. I don't think
14 that's something they would directly legislate through a
15 benefit like that. But I don't know.

16 Q Okay.

17 MS. CRUM: Give me just a second. I think
18 that's all I have. Let me make sure.

19 (Off the record.)

20 BY MS. CRUM:

21 Q Do you know whether or not orthopedists or any
22 physician who is performing physical therapy services
23 and it's within their scope of practice can bill
24 Medicare for performing the physical therapy services?

25 A They can bill, yes.

South Carolina General Assembly
118th Session, 2009-2010

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~~Indicates Matter Stricken~~
Indicates New Matter

S. 1031

STATUS INFORMATION

General Bill

Sponsors: Senators Hayes, Reese, O'Dell, Jackson, Rose, Coleman, Nicholson, Ford, Elliott, Bright, Campbell, Massey and Matthews

Document Path: I:\council\bill\11226ac09.docx

Companion/Similar bill(s): 4329

Introduced in the Senate on January 12, 2010

Currently residing in the Senate

Summary: Physical therapists

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/12/2010	Senate	Introduced and read first time SJ-61
1/12/2010	Senate	Referred to Committee on Medical Affairs SJ-61
3/9/2010	Senate	Committee report: Majority favorable, minority unfavorable Medical Affairs SJ-14

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VERSIONS OF THIS BILL

[1/12/2010](#)

[3/9/2010](#)

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

Indicates New Matter

COMMITTEE REPORT

March 9, 2010

S. 1031

Introduced by Senators Hayes, Reese, O'Dell, Jackson, Rose, Coleman, Nicholson, Ford, Elliott, Bright, Campbell, Massey and Matthews

S. Printed 3/9/10--S.

Read the first time January 12, 2010.

THE COMMITTEE ON MEDICAL AFFAIRS

To whom was referred a Bill (S. 1031) to amend Section 40-45-110, Code of Laws of South Carolina, 1976, relating, among other things, to licensure of physical therapists and grounds for sanctions, etc., respectfully

REPORT:

That they have duly and carefully considered the same and recommend that the same do pass:

Majority favorable. Minority unfavorable.

ROBERT W. HAYES, JR. KEVIN L. BRYANT

For Majority. RALPH ANDERSON

For Minority.

A BILL

TO AMEND SECTION 40-45-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING, AMONG OTHER THINGS, TO LICENSURE OF PHYSICAL THERAPISTS AND GROUNDS FOR SANCTIONS AGAINST LICENSEES, SO AS TO REVISE THE PROHIBITION AGAINST A LICENSEE WHO IS INVOLVED IN THE DIVIDING, TRANSFERRING, ASSIGNING, REBATING, OR REFUNDING OF FEES RECEIVED FOR PROFESSIONAL SERVICES BY CERTAIN MEANS BY DELETING THE REFERENCE TO "WAGES", AS A MEANS OF ENGAGING IN THE PROHIBITED CONDUCT, AND TO FURTHER SPECIFY ARRANGEMENTS THAT MAY EXIST BETWEEN A PHYSICAL THERAPIST AND A PHYSICIAN WHICH MAY NOT BE CONSIDERED CONDUCT SUBJECT TO SANCTIONS BY THE BOARD OF PHYSICAL THERAPY EXAMINERS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 40-45-110(A) of the 1976 Code, is amended to read:

http://www.scstatehouse.gov/sess118_2009-2010/bills/1031.htm

12/11/2013

"(A) In addition to other grounds provided for in Section 40-1-110, the board, after notice and hearing, may restrict or refuse to grant a license to an applicant and may refuse to renew the license of a licensed person, and may suspend, revoke, or otherwise restrict the license of a licensed person who:

- (1) requests, receives, participates, or engages directly or indirectly in the dividing, transferring, assigning, rebating, or refunding of fees received for professional services or profits by means of a credit or other valuable consideration including, but not limited to, ~~wages~~, an unearned commission, discount, or gratuity with a person who referred a patient, or with a relative or business associate of the referring person; Notwithstanding any other provision of this section or any regulation promulgated by the board, a person licensed under this chapter, who has a bona fide employment or independent contract with a physician, a physician group, or an entity with which a physician has a legal compensation arrangement, including fair market value wages, compensation, benefits, or rents for services or property provided, must not be deemed to be engaged in conduct that is subject to licensure denial, suspension, revocation, restriction, or any other disciplinary action or penalty under this chapter by virtue of such employment or contract, or by virtue of the provision of physical therapy services pursuant to a referral from the employing or contracting physician as provided for in Section 44-113-30(A)(1).
- (2) has treated or undertaken to treat human ailments otherwise than by physical therapy or has practiced physical therapy and failed to refer to a licensed medical doctor or dentist any patient whose medical condition should have been determined at the time of evaluation or treatment to be beyond the scope of practice of a physical therapist;
- (3) knowingly aided, assisted, procured, or advised a person to practice physical therapy contrary to this chapter or to regulations promulgated by the board pursuant to this chapter or knowingly performed an act which aids, assists, procures, or advises an unlicensed person to practice physical therapy;
- (4) in the absence of a referral from a licensed medical doctor or dentist, provides physical therapy services beyond thirty days after the initial evaluation and/or treatment date without the referral of the patient to a licensed medical doctor or dentist;
- (5) changes, or in any way modifies, any specific patient care instructions or protocols established by an appropriate health care provider without prior consultation with and approval by the appropriate health care provider."

SECTION 2. This act takes effect upon approval by the Governor.

---XX---

This web page was last updated on Monday, October 10, 2011 at 12:17 P.M.

South Carolina General Assembly
118th Session, 2009-2010

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Indicates New Matter

H. 4329

STATUS INFORMATION

General Bill

Sponsors: Reps. Bingham, Gunn, Simrill, Mitchell, Gilliard, Stewart, Barfield, Brady, A.D. Young, Anderson, Millwood, J.R. Smith, Bales, Cole, Delleney, Hamilton, Harrison, Hart, Harvin, Hearn, Horne, Hosey, Kelly, Littlejohn, Parker, Weeks, Williams, T.R. Young, Viers, Sellers and Alexander
Document Path: l:\council\bill\11344ac09.docx

Companion/Similar bill(s): 1031

Introduced in the House on January 13, 2010

Currently residing in the House Committee on **Medical, Military, Public and Municipal Affairs**

Summary: Physical therapists

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/13/2010	House	Introduced and read first time <u>HJ-44</u>
1/13/2010	House	Referred to Committee on Medical, Military, Public and Municipal Affairs <u>HJ-44</u>
1/14/2010	House	Member(s) request name removed as sponsor: V.S.Moss
1/19/2010	House	Member(s) request name removed as sponsor: Allison, Wylie
1/20/2010	House	Member(s) request name removed as sponsor: Erickson
1/21/2010	House	Member(s) request name removed as sponsor: Willis, Hutto, Haley, Vick, Clemmons, Hardwick, Herbkersman
1/28/2010	House	Member(s) request name removed as sponsor: Sellers, Knight
2/3/2010	House	Member(s) request name added as sponsor: Sellers
2/4/2010	House	Member(s) request name added as sponsor: Alexander

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VERSIONS OF THIS BILL

1/13/2010

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

A BILL

TO AMEND SECTION 40-45-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING, AMONG OTHER THINGS, TO LICENSURE OF PHYSICAL THERAPISTS AND GROUNDS FOR SANCTIONS AGAINST LICENSEES, SO AS TO REVISE THE PROHIBITION AGAINST A LICENSEE WHO IS INVOLVED IN THE DIVIDING, TRANSFERRING, ASSIGNING, REBATING, OR REFUNDING OF FEES RECEIVED FOR PROFESSIONAL SERVICES BY CERTAIN MEANS BY DELETING THE REFERENCE TO "WAGES", AS A MEANS OF ENGAGING IN THE PROHIBITED CONDUCT, AND TO FURTHER SPECIFY ARRANGEMENTS THAT MAY EXIST BETWEEN A PHYSICAL THERAPIST AND A PHYSICIAN WHICH MAY NOT BE CONSIDERED CONDUCT SUBJECT TO SANCTIONS BY THE BOARD OF PHYSICAL THERAPY EXAMINERS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 40-45-110(A) of the 1976 Code, is amended to read:

"(A) In addition to other grounds provided for in Section 40-1-110, the board, after notice and hearing, may restrict or refuse to grant a license to an applicant and may refuse to renew the license of a licensed person, and may suspend, revoke, or otherwise restrict the license of a licensed person who:

(1) requests, receives, participates, or engages directly or indirectly in the dividing, transferring, assigning, rebating, or refunding of fees received for professional services or profits by means of a credit or other valuable consideration including, but not limited to, ~~wages~~; an unearned commission, discount, or gratuity with a person who referred a patient, or with a relative or business associate of the referring person; Notwithstanding any other provision of this section or any regulation promulgated by the board, a person licensed under this chapter, who has a bona fide employment or independent contract with a physician, a physician group, or an entity with which a physician has a legal compensation arrangement, including fair market value wages, compensation, benefits, or rents for services or property provided, must not be deemed to be engaged in conduct that is subject to licensure denial, suspension, revocation, restriction, or any other disciplinary action or penalty under this chapter by virtue of such employment or contract, or by virtue of the provision of physical therapy services pursuant to a referral from the employing or contracting physician as provided for in Section 44-113-30(A)(1).

(2) has treated or undertaken to treat human ailments otherwise than by physical therapy or has practiced physical therapy and failed to refer to a licensed medical doctor or dentist any patient whose medical condition should have been determined at the time of evaluation or treatment to be beyond the scope of practice of a physical therapist;

(3) knowingly aided, assisted, procured, or advised a person to practice physical therapy contrary to this chapter or to regulations promulgated by the board pursuant to this chapter or knowingly performed an act which aids, assists, procures, or advises an unlicensed person to practice physical therapy;

(4) in the absence of a referral from a licensed medical doctor or dentist, provides physical therapy services beyond thirty days after the initial evaluation and/or treatment date without the referral of the patient to a licensed medical doctor or dentist;

(5) changes, or in any way modifies, any specific patient care instructions or protocols established by an appropriate health care provider without prior consultation with and approval by the appropriate health care provider."

SECTION 2. This act takes effect upon approval by the Governor.

---XX---

1 STATE OF SOUTH CAROLINA)
2) THE COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND)
4
5 KRISTEN JOSEPH, PT,) C.A. NO.: 12-CP-40-2632
6 THOMAS N. JOSEPH, MD, AND)
7 WILLIAM G. MCCARTHY, MD,)
8 Plaintiffs,)
9 v.)
10 SOUTH CAROLINA DEPARTMENT)
11 OF LABOR, LICENSING AND)
12 REGULATION, SOUTH CAROLINA) Deposition of
13 BOARD OF PHYSICAL THERAPY,) THOMAS N. JOSEPH, M.D.
14 Defendant.)
15 and) June 17, 2013
16 SOUTH CAROLINA CHAPTER,)
17 AMERICAN PHYSICAL THERAPY)
18 ASSOCIATION, JOSEPH M.)
19 MCKOWEN, PT, SABRINA QUEEN)
20 BRIDGES, PTA, AND AMALIA W.)
21 KIRBY (PTA),)
22 Defendants-Intervenors)
23 _____
24
25

1 Deposition on oral examination of THOMAS N. JOSEPH,
2 M.D., reported by Lisa F. Huffman, Verbatim Court
3 Reporter and Notary Public in and for the State of South
4 Carolina; said deposition taken pursuant to notice of
5 deposition, by agreement and in accordance with South
6 Carolina Rules of Civil Procedure, at The McNair Law
7 Firm, 1221 Main Street, Suite 1800, Columbia, South
8 Carolina, on June 17, 2013, at the hour of 9:01 a.m.

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APPEARANCES

M. ELIZABETH CRUM, ESQUIRE

The McNair Law Firm

1221 Main Street, Suite 1800

Columbia, South Carolina 29201

ATTORNEY FOR PLAINTIFFS, KRISTIN JOSEPH, PT; THOMAS N.
JOSEPH, M.D.; AND WILLIAM G. MCCARTHY, M.D.

EMILY T. WHITNEY, ESQUIRE

Devlin & Parkinson, P.A.

Post Office Box 10387

Greenville, South Carolina 29203

ATTORNEY FOR DEFENDANTS, JOSEPH M. MCKOWEN, PT; SABRINA
QUEEN BRIDGES, PTA; AND AMALIA W. KIRBY (PTA)

JOHN C. BRADLEY, ESQUIRE

Moore, Taylor & Thomas, P.A.

1700 Sunset Boulevard

West Columbia, South Carolina 29169

ATTORNEY FOR DEFENDANT, SOUTH CAROLINA CHAPTER, AMERICAN
PHYSICAL THERAPY ASSOCIATION

1 MONTEITH P. TODD, ESQUIRE
2 Sowell, Gray, Stepp & Laffitte, LLC
3 1310 Gadsden Street
4 Columbia, South Carolina 29201
5 ATTORNEY FOR DEFENDANT, SOUTH CAROLINA DEPARTMENT OF
6 LABOR, LICENSING AND REGULATION, SOUTH CAROLINA BOARD OF
7 PHYSICAL THERAPY

8
9 Also Present:

10 Sara McCartha

11 Kristin T. Joseph, PT
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* * * * *

1 S T I P U L A T I O N S

2 It is hereby stipulated and agreed by and
3 between counsel for the respective parties that the
4 Witness will not waive the reading and signing of the
5 deposition transcript.

6 Whereupon,

7 THOMAS N. JOSEPH, M.D.,
8 having been first duly sworn,
9 was examined and testified as follows:

10 D I R E C T E X A M I N A T I O N

11 (By Mr. Todd)

12 Q. Dr. Joseph, my name's Monty Todd. We met about two
13 minutes ago, and I represent the South Carolina
14 Board of Physical Therapy in a lawsuit that you've
15 filed against it. I'm assuming being an
16 orthopedist, you've given a lot of depositions
17 before.

18 A. Yes, sir.

19 Q. Have you ever given a deposition where you were a
20 party to the lawsuit?

21 A. No, sir.

22 Q. Have you given depositions where you were an expert
23 witness in the case?

24 A. Yes, sir.

25 Q. And were you an expert witness for the plaintiff or

THOMAS N. JOSEPH, M.D.

Page 11

1 Q. What training have you received?

2 A. As a resident in orthopedic surgery, that's part of
3 standard orthopedic training.

4 Q. Have you ever -- do you ever perform physical
5 therapy on your patients?

6 A. Absolutely.

7 Q. What do you do?

8 A. Often.

9 Q. Do you bill at the physical therapy rate?

10 A. No, sir.

11 Q. Why not?

12 A. Because we don't have the time to meet billing
13 requirements.

14 Q. What do you mean by that?

15 A. We do not provide enough to -- the physical therapy
16 that we perform is usually a brief physical
17 therapy. Most of the time in the context of
18 providing patients information in how to perform
19 physical therapy properly so they can do it on
20 their own. Sometimes patients don't have enough
21 money to go to physical therapy. Sometimes they
22 don't have insurance. So usually the physical
23 therapy that we do is educational, for the most
24 part. It's very -- it's fairly brief.

25 Q. So when you say --

THOMAS N. JOSEPH, M.D.

Page 12

- 1 A. It's not as extensive as the physical therapist who
2 would do physical therapy for 30 minutes, 45
3 minutes, an hour, which would be more billable, as
4 far as I know. We -- we don't bill for physical
5 therapy services.
- 6 Q. Have you ever billed for physical therapy?
- 7 A. No, sir.
- 8 Q. Do you know of any orthopedist who bills for
9 physical therapy services?
- 10 A. Do I know of any? No. Not personally.
- 11 Q. Now let me get a little better understanding. When
12 you say the physical therapy you do is brief and
13 educational --
- 14 A. Brief. It has an educational component to it, like
15 all physical therapy does.
- 16 Q. And when you say it's educational, what does that
17 mean?
- 18 A. It's not only am I performing it on them, I also
19 show them how to do it so that they can do it on
20 their own.
- 21 Q. And this is a general question because I'm assuming
22 that there's lots of body parts and there's lots of
23 different physical therapy. But what would be the
24 type of brief physical therapy that you would do,
25 just an example.

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803-256-4500

1 specific details, although we have printouts of the
2 actual agenda of those meetings.

3 Q. Now the meeting where -- I don't know, somehow you
4 got selected -- or were you selected or did you
5 volunteer?

6 A. Good question. I don't recall.

7 Q. Who was at the meeting where it was decided that
8 you would be the plaintiff?

9 A. I don't recall.

10 Q. Was it a South Carolina Medical Association
11 meeting? An orthopedic --

12 A. South Carolina Orthopaedic Association meeting, I'm
13 certain.

14 Q. Who selected Ms. Crum as the attorney?

15 A. You know, I don't know that either.

16 Q. What role does the South Carolina Orthopaedic
17 Association have in this case?

18 A. What role does the South Carolina Orthopaedic
19 Association have?

20 Q. Yes, sir.

21 A. Financial. They help to finance the case.

22 Q. And are they paying all of the attorney's fees as
23 far as you know?

24 A. As far as I know.

25 Q. Is any other association paying the attorney's

1 not. I don't know what the future could hold for
2 me.

3 Q. Have you been in any discussions with any groups
4 outside of South Carolina about accepting
5 employment?

6 A. No, sir.

7 Q. You been involved in any studies involving the
8 provision of physical therapy?

9 A. Involved in any studies?

10 Q. Yes, sir.

11 A. Not that I can recall.

12 Q. Have you had any -- have you ever -- well, let me
13 back up. When you refer a case to a physical
14 therapist, general question, how do you make that
15 referral? And the question's so general, I'm going
16 to give you a little background. It may be too
17 general for you to answer. Do you write the
18 referral, "evaluate and treat"? Or do you write a
19 referral and set forth the treatment that you want?
20 Or does it vary from case to case?

21 A. I usually do both, but it does vary from case to
22 case.

23 Q. So with one patient it may be "evaluate and treat"
24 and leave it to the physical therapist?

25 A. I -- I -- I always give a diagnosis. And I always

THOMAS N. JOSEPH, M.D.

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- 1 give recommendations about what I want, with some
2 flexibility usually.
- 3 Q. Do you set forth the number of visits?
- 4 A. I usually do, yes.
- 5 Q. And how do you determine the number of visits?
- 6 A. Based on my estimate of how much they would
7 probably need in other similar situations by other
8 similar patients.
- 9 Q. Do you understand the role or the relationship
10 between a physical therapist and a physical
11 therapist assistant?
- 12 A. I understand there is a relationship and they help
13 one another out, but I'm not -- I'm not a physical
14 therapist or physical therapist assistant, so not
15 much. I assume the physical therapist assistant
16 assists physical therapists.
- 17 Q. Do you know what supervision is required by the
18 physical therapist of the physical therapist
19 assistant?
- 20 A. I don't.
- 21 Q. Do you know under what circumstances the physical
22 therapist's assistant can provide services?
- 23 A. I don't know the laws in that regard.
- 24 Q. Now are you a member of -- you're a member of the
25 South Carolina Orthopaedic Association. Are you --

1 on something unrelated. Do I have to?

2 Q. No. We'll go with it's unrelated. Do you know
3 whether or not there's any effort in the
4 legislature to oppose direct access during that 30
5 days to physical therapist, by the orthopedic
6 association?

7 A. I don't know. I don't know.

8 Q. Have you ever filed a complaint against any
9 physical therapist with the South Carolina Board of
10 Physical Therapist?

11 A. Not to my knowledge, no.

12 Q. If a Court were to say to physical therapists that
13 they cannot have another physical therapist cover
14 for them while they were away on vacation or called
15 away for a sick child, how would that -- how would
16 that affect you?

17 MS. CRUM: Object to the form of the
18 question. You still have to answer.

19 Q. Would that have any impact on your practice?

20 A. Anything that impacts patients would impact me in a
21 sense, but it wouldn't impact me directly. It
22 would inconvenience patients because they would
23 have to come back when the patient's child was well
24 or whenever they got over their flu.

25 Q. You're a foot and ankle specialist?

1 STATE OF SOUTH CAROLINA)
2) THE COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND)
4
5 KRISTEN JOSEPH, PT,) C.A. NO.: 12-CP-40-2632
6 THOMAS N. JOSEPH, MD, AND)
7 WILLIAM G. MCCARTHY, MD,)
8 Plaintiffs,)
9 v.)
10 SOUTH CAROLINA DEPARTMENT)
11 OF LABOR, LICENSING AND)
12 REGULATION, SOUTH CAROLINA) Deposition of
13 BOARD OF PHYSICAL THERAPY,) WILLIAM G. MCCARTHY, M.D.
14 Defendant.)
15 and) June 17, 2013
16 SOUTH CAROLINA CHAPTER,)
17 AMERICAN PHYSICAL THERAPY)
18 ASSOCIATION, JOSEPH M.)
19 MCKOWEN, PT, SABRINA QUEEN)
20 BRIDGES, PTA, AND AMALIA W.)
21 KIRBY (PTA),)
22 Defendants-Intervenors)
23 _____
24
25

1 Deposition on oral examination of WILLIAM G.
2 MCCARTHY, M.D., reported by Lisa F. Huffman, Verbatim
3 Court Reporter and Notary Public in and for the State of
4 South Carolina; said deposition taken pursuant to notice
5 of deposition, by agreement and in accordance with South
6 Carolina Rules of Civil Procedure, at The Center for
7 Orthopaedic Surgery, 118 Professional Park Drive, Rock
8 Hill, South Carolina, on June 17, 2013, at the hour of
9 4:27 p.m.

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APPEARANCES

ARIAIL B. KIRK, ESQUIRE

The McNair Law Firm

1221 Main Street, Suite 1800

Columbia, South Carolina 29201

ATTORNEY FOR PLAINTIFFS, KRISTIN JOSEPH, PT; THOMAS N.
JOSEPH, M.D.; AND WILLIAM G. MCCARTHY, M.D.

EMILY T. WHITNEY, ESQUIRE

Devlin & Parkinson, P.A.

Post Office Box 10387

Greenville, South Carolina 29203

ATTORNEY FOR DEFENDANTS, JOSEPH M. MCKOWEN, PT; SABRINA
QUEEN BRIDGES, PTA; AND AMALIA W. KIRBY, (PTA)

JOHN C. BRADLEY, ESQUIRE

Moore, Taylor & Thomas, P.A.

1700 Sunset Boulevard

West Columbia, South Carolina 29169

ATTORNEY FOR DEFENDANT, SOUTH CAROLINA CHAPTER, AMERICAN
PHYSICAL THERAPY ASSOCIATION

1 MONTEITH P. TODD, ESQUIRE
2 Sowell, Gray, Stepp & Laffitte, LLC
3 1310 Gadsden Street
4 Columbia, South Carolina 29201
5 ATTORNEY FOR DEFENDANTS, SOUTH CAROLINA DEPARTMENT OF
6 LABOR, LICENSING AND REGULATION, SOUTH CAROLINA BOARD OF
7 PHYSICAL THERAPY

8
9 Also Present:

10 Sara McCartha
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WILLIAM G. MCCARTHY, M.D.

Page 21

1 relationship is between a physical therapist and a
2 physical therapy assistant?

3 A. The assistant's supposed to work under the
4 direction of the physical therapist.

5 Q. Do you know whether or not the physical therapist
6 has to be present when the physical therapy
7 assistant is doing the hands-on care or not?

8 A. I couldn't answer that.

9 Q. What relief are you looking to get out of this
10 lawsuit? What would you like for the Court to do?

11 A. To grant us the ability to employ physical
12 therapists again, like we did in the past.

13 Q. Anything else that you're looking for out of this
14 lawsuit?

15 A. No, sir.

16 Q. Do you have any training in physical therapy?

17 A. As part of our training in orthopedics, you
18 certainly learn exercise programs that are
19 prescribed for injuries or post-surgical care. As
20 part of our training, we did have interaction with
21 physical therapists on a regular basis.

22 Q. In your practice today, do you perform physical
23 therapy on your patients?

24 A. Well, as I discussed earlier, oftentimes we will
25 get patients who do not have the resources or don't

WILLIAM G. MCCARTHY, M.D.

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- 1 want to incur the expense of going to physical
2 therapy, and instruct them in -- in exercises and
3 give them certain handouts to illustrate those to
4 them.
- 5 Q. When you do that, you're basically educating them
6 in the exercises that they need to do?
- 7 A. Yes, sir.
- 8 Q. And do you bill for that as a physical therapy
9 service?
- 10 A. No, sir.
- 11 Q. Do you know of any orthopedist who practices
12 primarily in the area of physical therapy?
- 13 A. None that I know of, sir.
- 14 Q. Do you know of any orthopedist who perform and bill
15 for physical therapy services?
- 16 A. Not that I know of.
- 17 Q. Now, are you on the South Carolina Orthopaedic
18 Association executive committee?
- 19 A. No.
- 20 Q. Have you ever held any leadership positions in the
21 South Carolina Orthopaedic Association?
- 22 A. No, sir.
- 23 Q. Am I getting the names right? Is that it?
- 24 A. Yes.
- 25 Q. What about the American Academy of Orthopaedics, is

WILLIAM G. MCCARTHY, M.D.

Page 25

- 1 legislative or the Senate subcommittee?
- 2 A. Our orthopedic association was looking for
- 3 physicians to testify in front of the subcommittee,
- 4 and so I volunteered.
- 5 Q. Any other orthopedists there testifying?
- 6 A. There was, excuse me, and I cannot recall his name.
- 7 He was from Columbia, as I recall.
- 8 Q. Do you know Dr. Joseph?
- 9 A. I do.
- 10 Q. How do you know him?
- 11 A. I met him as part of being a part of the lawsuit.
- 12 Q. Are you having to pay attorney's fees yourself?
- 13 A. No, sir.
- 14 Q. Attorney's fees are being paid by the orthopedic
- 15 association?
- 16 A. Yes, sir.
- 17 Q. With a grant from the American Academy of
- 18 Orthopaedics?
- 19 A. I believe so.
- 20 Q. Do you know whether any other entities are helping
- 21 pay for the attorney's fees?
- 22 A. Not that I'm aware of.
- 23 Q. Other than testifying before the subcommittee, any
- 24 other efforts by you to have the statute that was
- 25 interpreted in Sloan amended?

WILLIAM G. MCCARTHY, M.D.

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1 patient for this number of times and provide this
2 physical therapy"? Or is it somewhere in-between?

3 MS. KIRK: I Object to the form.

4 Q. Or does it vary from patient to patient?

5 A. It varies from patient to patient.

6 Q. It could be anywhere within that sort of spectrum?

7 A. It may range from a one time evaluation and given a
8 home exercise program to -- certain surgeries have
9 protocols that are set up for their physical
10 therapy. So it varies from patient to patient.

11 Q. And there will be times when the patient has to go
12 back for more than one visit, I'm assuming. More
13 than one physical therapy visit for certain --

14 A. Yes, sir.

15 Q. If the physical therapist -- if the patient is
16 supposed to see a physical therapist at two o'clock
17 on a Tuesday and that physical therapist is called
18 away to tend to a sick child or has to go to a
19 funeral, do you have any problem with another
20 physical therapist who works in your office seeing
21 that patient?

22 A. No, sir.

23 Q. Have you ever had to file a complaint against any
24 physical therapist with the South Carolina Board of
25 Physical Therapy?

1 STATE OF SOUTH CAROLINA)
2) THE COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND)
4
5 KRISTEN JOSEPH, PT,) C.A. NO.: 12-CP-40-2632
6 THOMAS N. JOSEPH, MD, AND)
7 WILLIAM G. MCCARTHY, MD,)
8 Plaintiffs,)
9 v.)
10 SOUTH CAROLINA DEPARTMENT)
11 OF LABOR, LICENSING AND)
12 REGULATION, SOUTH CAROLINA Deposition of
13 BOARD OF PHYSICAL THERAPY, KRISTIN JOSEPH, PT
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15 and) June 17, 2013
16 SOUTH CAROLINA CHAPTER,)
17 AMERICAN PHYSICAL THERAPY)
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20 BRIDGES, PTA, AND AMALIA W.)
21 KIRBY (PTA),)
22 Defendants-Intervenors)
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1 Deposition on oral examination of KRISTIN JOSEPH,
2 PT, reported by Lisa F. Huffman, Verbatim Court Reporter
3 and Notary Public in and for the State of South
4 Carolina; said deposition taken pursuant to notice of
5 deposition, by agreement and in accordance with South
6 Carolina Rules of Civil Procedure, at The McNair Law
7 Firm, 1221 Main Street, Suite 1800, Columbia, South
8 Carolina, on June 17, 2013, at the hour of 10:39 a.m.

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23
24
25

APPEARANCES

M. ELIZABETH CRUM, ESQUIRE

The McNair Law Firm

1221 Main Street, Suite 1800

Columbia, South Carolina 29201

ATTORNEY FOR PLAINTIFFS, KRISTIN JOSEPH, PT; THOMAS N.
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9 Also Present:
10 Sara McCartha
11 Thomas N. Joseph, M.D.

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KRISTIN T. JOSEPH, PT

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1 A. Nine and eleven.

2 MS. CRUM: Let me note for the record,
3 you did not ask that of Dr. Joseph.

4 MR. TODD: I didn't want to put him on
5 the spot. He might get the ages wrong. No,
6 I'm just kidding. I figured it would be
7 better to ask mama.

8 Q. So a five year gap.

9 A. That's correct.

10 Q. And you started with First Physical Therapy in
11 2007?

12 A. I believe that's the correct date.

13 Q. Who do you practice with at First Physical Therapy?

14 A. Another physical therapist. Do you need his name?

15 Q. Please.

16 A. James Mullinax.

17 Q. James?

18 A. James Mullinax.

19 Q. Did he already have a practice established when you
20 started working for him? Or did y'all form the
21 practice?

22 A. I did not form -- he -- First Physical Therapy -- I
23 think this was the fourth office that they opened
24 in Camden.

25 Q. They have an office in Camden? Or they have four

KRISTIN T. JOSEPH, PT

Page 16

1 offices in --

2 A. No, they have four offices, to my knowledge, in the
3 state, one of them which is in Camden.

4 Q. Do you know who owns -- do you have any ownership
5 interest --

6 A. I do not have any ownership, no.

7 Q. Do you know who owns First Physical Therapy?

8 A. Yes.

9 Q. Who?

10 A. My boss' name is Jitendra -- we call him Jay --
11 Mehta, M-E-H-T-A.

12 Q. Is that a he or a she?

13 A. He.

14 Q. And is he a physical therapist?

15 A. No, he is not.

16 Q. Does he have any professional degree?

17 A. Just a businessman, I assume.

18 Q. Who is in the Camden office of First Physical
19 Therapy?

20 A. James Mullinax. We have a physical therapy
21 assistant, Al Gato, G-A-T-O, and myself. We're the
22 primary therapists in that office.

23 Q. How do you get patients? How do you have patients
24 coming to see you?

25 A. Patients are referred by doctors in Camden. We get

KRISTIN T. JOSEPH, PT

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1 to be there for the administrative part of your
2 job?

3 A. Approximately ten hours.

4 Q. And then how is it determined which patients you
5 see?

6 A. Whatever time a patient is scheduled, they set a --
7 for an initial evaluation is nine o'clock, it
8 depends on which therapist is available, who has an
9 open slot.

10 Q. Are you scheduled to be in at a certain time for
11 patient care?

12 A. Yes.

13 Q. What are those times?

14 A. From 8:30 until one usually, I'm available to treat
15 patients during that time.

16 Q. Every --

17 A. Every day.

18 Q. -- Monday through Friday?

19 A. That's correct.

20 Q. Do you typically go into the office every morning?

21 A. It varies from week to week.

22 Q. And does it vary based on child care issues and --

23 A. It varies based --

24 Q. -- family issues?

25 A. -- on our patient load. The therapist that I work

1 Q. Who decides -- if you have a patient, do you decide
2 whether or not the PTA will provide some
3 assistance?

4 A. Yes.

5 Q. And so then you would supervise that PTA when he or
6 she is providing the assistance.

7 A. That's correct.

8 Q. So it would be -- PTA would be acting under your
9 direction.

10 A. That's the way I understand the laws to be.

11 Q. What have you done to prepare for this deposition,
12 other than meeting with Ms. Crum?

13 A. I read through the material that was provided to
14 us.

15 Q. And what are those materials?

16 A. The position statement and the -- the Declaration
17 of Action and Complaint.

18 Q. Anything else?

19 A. I don't think so.

20 Q. You've got a lot of notes in front of you.

21 A. I do.

22 Q. Now, are those your notes that you made to prepare
23 for this deposition?

24 A. That's correct.

25 MS. CRUM: We have discussed those. They

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Kristin Joseph P.T., Thomas N. Joseph,
M.D., and William G. McCarthy, M.D.,)

Plaintiffs,)

vs.)

South Carolina Department of Labor,
Licensing and Regulation, South Carolina
Board of Physical Therapy,)

Defendant,)

and)

South Carolina Chapter, American
Physical Therapy Association, Joseph M.
McKowen, PT, Sabrina Queen Bridges,
PTA, and Amalia W. Kirby, PTA,)

Defendant-Intervenors.)

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 2012-CP-40-2632

AFFIDAVIT OF JOHN STEARNS

Introduction, Background, and Expertise

1. My name is John Stearns. I am a Director with Navigant Consulting Inc. I have been retained by the South Carolina Chapter of the American Physical Therapy Association ("SCAPTA") to render expert opinions in the above captioned matter.
2. A copy of my curriculum vitae is attached to this report in Appendix A.
3. I have been a licensed physical therapist since 1985. My education and training included a number of internships and work experiences in a number of patient care settings including inpatient, outpatient, and long term care rehabilitation. During the time from 1985 to 1993, I held various clinical and managerial positions in the rehabilitation department of an acute care hospital. I managed a large outpatient department of the hospital that functioned very much like a physical therapy group practice with regard to scheduling of patients and relationships with physicians.
4. During the time from 1994 to 1999, I worked for a long term care company called Integrated Health Services based in Maryland. I held a variety of positions in clinical operations and management for skilled nursing facilities and home health agencies. As part of my responsibilities, I was responsible for managing the rehabilitation services for the Medicare, long term care, and subacute care units of over 350 long term care facilities throughout the United States. I was also responsible for contract rehabilitation vendor contracting, billing compliance, and implementation of the Medicare Prospective Payment System for skilled nursing facilities.
5. While at the acute care hospital I was promoted first to a supervisory position and ultimately to Department Director. I also started the process of obtaining my Masters of Business Administration degree, which was completed in 1995. While I was at Integrated Health Services, I was promoted first to an Assistant Vice President role and ultimately was promoted to Vice President of Rehabilitation Services.
6. During the time from 2000 to present, I provided consulting services to a wide variety of healthcare companies, including outpatient group therapy practices, long term care companies, ancillary therapy companies, durable medical equipment companies, home health & hospice companies and private insurance companies. The nature of my consulting services has varied

and has included operational, strategy, regulatory, dispute, compliance, and investigation services.

7. During the time from 2000 to present, as part of my consulting services to long term care and other healthcare companies, I have regularly interacted with a wide array of Medicare Administrative Contractors ("MACs") (formerly known as Fiscal Intermediaries ("FIs")) as well as state and federal entities across the country related to claim processing. A MAC is typically an insurance company that contracts with the Centers for Medicare and Medicaid Services to administer claims processing for all types of providers. They are also tasked with interpreting Medicare guidance and issuing coverage policies for procedures and services. The claim processing issues I have worked on with a MAC on behalf of my clients include: claim denial, regional coverage decision, provider focused reviews and full reviews, MAC and safeguard contractor inquiries and investigations, voluntary disclosures and other types of MAC / provider interactions.
8. Based on my education, training, and experience I have expertise in the management, operation, compliance, and reimbursement practices of health care facilities including physical therapy group practices.
9. I have been asked to review the facts of the above captioned case, relevant statute and regulations, background materials provided to me by counsel (including the pleadings and deposition transcripts listed in Appendix B), as well as any other relevant materials that I could identify, in order to render an opinion as to the application and impact of certain rules and regulations relating to physical therapy services.
10. During the course of my work on this matter I have reviewed a variety of documents. A list of the material I considered in reaching my opinions is attached to this report in Appendix B.
11. Based on my work completed to date, and based on information currently available and known to me, I have developed certain expert opinions that are set forth below.

Summary of Opinions

12. Based on my training and experience expressed herein and in Appendix A, and my review of the relevant material identified herein and in Appendix B, I have the following opinions summarized below and discussed in paragraphs 34 through 39 below.
 - a. Within a group physical therapy practice where a patient may be evaluated by one therapist and subsequently treated by another, the transition of the patient's therapy from one therapist to another is not a referral. Unlike a referral from a physician to a therapist, the transition of care from one physical therapist to another physical therapist does not create a new course of treatment or authorize additional treatment.
 - b. If the Physical Therapy Practice Act is interpreted to prohibit physical therapists from practicing together in a group practice owned by one or more physical therapists, this would create terrible inefficiencies, inconvenience, and barriers to care for patients in need of physical therapy services.
 - c. A physical therapist is not making a referral to a physical therapist assistant when directing that physical therapist assistant in the provision of physical therapy services. No new course of treatment is created nor is any additional treatment authorized by this legally required supervision.
 - d. If the Physical Therapy Practice Act is interpreted to prohibit physical therapist assistants from working for physical therapists, physical therapist assistants will, as a practical matter, not be able to work in South Carolina. This likely would result in substantial increases in the cost of physical therapy services and create inefficiencies and barriers to care for patients in need of physical therapy services.
 - e. Physical therapists cannot "cover" for physicians.

Amended Complaint and Motion to Dismiss

13. The Amended Complaint alleges nine causes of action.¹ I understand that counts seven through nine of the Amended Complaint have been dismissed.²

14. I understand the claims asserted in the amended complaint involve the following contentions, which relate to my opinions:

- a. "... PTs should be prohibited from being employed by or receiving wages or remuneration from physical therapists or from physical therapy groups from whom they receive patient referrals."³
- b. "... [T]he PT Board must discipline PTs for entering into employment arrangements with physical therapists and entities owned in whole or in part by a physical therapist."⁴
- c. "... [T]here is no difference between a PT's receiving a patient for treatment from a physician or physician group employing the PT than a PT receiving a patient for treatment from a physical therapist or physical therapy group employing the PT."⁵
- d. "... [A] PT seeing a patient at the request of a physician in the same group does not constitute a 'referral,' but is rather a PT providing coverage for a physician or other member of the group."⁶

15. My understanding is that the *Sloan* decision interprets the South Carolina Physical Therapy Practice Act (the "PT Act") to prohibit physical therapists from accepting referrals from physicians or physician groups that employ the physical therapist.⁷

¹ Amended Declaratory Judgment Action/Complaint C/A No. 2012-CP-40-2632, paragraphs 35-87

² Order Denying SCDLLR Motion to Dismiss as to Causes of Action One Through Six and Granting Partial Summary Judgments to Causes of Action Seven Through Nine.

³ Amended Declaratory Judgment Action/Complaint ¶ 44.

⁴ Amended Declaratory Judgment Action/Complaint ¶¶ 45, 50.

⁵ Amended Declaratory Judgment Action/Complaint ¶ 52.

⁶ Amended Declaratory Judgment Action/Complaint ¶ 54.

Relevant Statutes and Regulations

16. The PT Act provides that:

- a. A physical therapist is professionally and legally responsible for patient care given by a physical therapist assistant... under the physical therapist's supervision. A physical therapist may delegate to and supervise selected acts, tasks, or procedures which fall within the practice of physical therapy but do not exceed the education or training of a physical therapist assistant....⁸
- b. A physical therapist assistant shall function under the supervision of a licensed physical therapist. A person licensed under this chapter as a physical therapist assistant shall perform duties only after the initial evaluation of the patient is conducted by a licensed physical therapist. A patient plan of care may not be altered without the prior written, dated, and signed approval of a licensed physical therapist. A patient must be reevaluated and the plan of care must be reapproved by a physical therapist licensed in this State every eighth treatment day or every sixty calendar days, whichever comes first.⁹
- c. A physical therapist may not continue treatment after the initial thirty (30) days has expired unless the physical therapist receives a referral orally or in writing by a licensed medical doctor or dentist.¹⁰
- d. In addition to other grounds provided for in Section 40-1-110, the board, after notice and hearing, may restrict or refuse to grant a license to an applicant and may refuse to renew the license of a licensed person, and may suspend, revoke, or otherwise restrict the license of a licensed person who requests, receives, participates, or engages directly or indirectly in the dividing, transferring, assigning, rebating, or refunding of fees received for professional services or profits by means of a credit or other valuable

⁷ *Sloan v. S.C. Bd. of Physical Therapy Examiners*, 636 S.E.2d 598 (S.C. 2006).

⁸ South Carolina Code § 40-45-300(A).

⁹ South Carolina Code § 40-45-300(B).

¹⁰ South Carolina Code § 40-45-110(A)(4).

consideration including, but not limited to, wages, an unearned commission, discount, or gratuity with a person who referred a patient, or with a relative or business associate of the referring person.¹¹

17. My understanding of these provisions is that:

- a. Physical therapist assistants may only provide services under the supervision of a licensed physical therapist;
- b. The physical therapist must direct the care of the patient for services provided by physical therapist assistants;
- c. After an initial 30-day period, a licensed medical doctor or dentist must provide a referral for continued physical therapy services; and
- d. Physical therapists and physical therapist assistants may not accept referrals from a licensed medical doctor or dentist with whom they have a financial or employment relationship.

18. Medicare regulations state that:

- a. Outpatient therapy services furnished to a beneficiary by a provider or supplier are payable only when a plan for furnishing such services has been established by a physician/non-physician practitioner or by the therapist providing such services and is periodically reviewed by a physician/ non-physician practitioner and services are or were furnished while the individual is or was under the care of a physician.¹²
- b. An order (sometimes called a referral) for therapy service, if it is documented in the medical record, provides evidence of both the need for care and that the patient is under the care of a physician. However, the certification requirements are met when the physician certifies the plan of care. If the signed order includes a plan of care, no further

¹¹ South Carolina Code § 40-45-110(A)(1).

¹² Medicare Benefit Policy Manual, Chapter 15, §220.1 - Conditions of Coverage and Payment for Outpatient Physical Therapy, Occupational Therapy, or Speech-Language Pathology Services.

certification of the plan is required. Payment is dependent on the certification of the plan of care rather than the order, but the use of an order is prudent to determine that a physician is involved in care and available to certify the plan.¹³

- c. Medicare regulations provide that PTAs can't obtain reimbursement on their own and their services are considered to be part of the services performed and billed by a physical therapist.¹⁴

19. My understanding of these regulations, based on my experience, is that, for Medicare beneficiaries, physical therapy services must be approved by the patient's physician. A referral, or order, may be used to demonstrate that the patient is under the care of a physician.

Reimbursement Practices of Commercial Health Insurers

20. In my experience, most commercial payors require a physician referral before they will reimburse for services of a physical therapist (PT).¹⁵

21. Similarly, in my experience, commercial payors will not accept reimbursement requests from physical therapists assistants.

The Sloan Decision and Referring Physicians

22. In practice, under the PT Act, Medicare regulations and the typical payment practices of private insurers, the referring physician acts as a gatekeeper for physical therapy services, authorizing reimbursable care through the referral process.

23. *Sloan* addressed the situation in which the gatekeeping physician also had a financial interest in the physical therapy services that were the subject of his/her referral.¹⁶

¹³ Medicare Benefit Policy Manual, Chapter 15, §220.1.1 - Outpatient Therapy Must be Under the Care of a Physician/Nonphysician Practitioners (NPP) (Orders/Referrals and Need for Care).

¹⁴ Medicare Benefit Policy Manual, Chapter 15, §230.1(C) - Services of Physical Therapy Support Personnel.

¹⁵ See, e.g., Personal Blue Limited Benefits Health Insurance Coverage, Page 23; United Healthcare - Mid-Atlantic Health Plan Referral Protocol.

Physical Therapists in Private Practice

24. In my experience, group physical therapy practices are structured in a consistent manner. The physical therapist owner or owners employ both professional staff (physical therapists and physical therapist assistants), non-professional support staff (physical therapy aides or technicians), and administrative staff. The owners may or may not carry a schedule of patients for whom they personally provide treatment.
25. Patients typically seek out physical therapy services after seeing a physician. Some may have recently been discharged from a hospital or nursing home. Others have seen a physician in the community for some condition, injury, or illness. If a physician determines that physical therapy treatments are necessary, they typically write a prescription for physical therapy services. Plaintiffs Dr. Joseph and Dr. McCarthy, practicing orthopedic physicians, describe this process in their respective depositions.^{17, 18} The patient then presents to the physical therapy office of their choosing in person or over the phone for scheduling and treatment. Mr. McKowen, a practicing physical therapist, described a similar process in his deposition.¹⁹
26. Scheduling --matching patients with physical therapists -- is typically performed by administrative personnel. No one would consider this scheduling process a "referral" from the administrative scheduler to the physical therapists. Such an interpretation of "referral" would mean that physical therapists could not employ administrative personnel to answer their phones and make their appointments.
27. In a group practice, selection of the therapist that will provide the initial evaluation and first treatment is usually based on the patient's available time for an appointment matched with an open slot in a therapist's schedule as identified by the administrative scheduler. In certain circumstances where specific training or a specific skillset is beneficial, for example, hand therapy, a specific therapist may be designated to treat a patient. However, the most common

¹⁶ *Sloan v. S.C. Bd. of Physical Therapy Exam'rs*, 636 S.E.2d 598 (S.C. 2006).

¹⁷ Deposition of Thomas N. Joseph, MD, June 17, 2013; Transcript pages 28-29.

¹⁸ Deposition of William G. McCarthy, MD, June 17, 2013; Transcript page 14.

¹⁹ Deposition of Joseph Mark McKowen, June 14, 2013; Transcript page 16-17.

scheduling practice is to identify any available therapist with an open schedule slot. Mr. Stoker, Ms. Swygert, and Ms. Witherspoon, all practicing physical therapists, and Mr. Junkins, a practicing physical therapist assistant, describe this scheduling process in their respective depositions.^{20, 21, 22, 23}

28. The physical therapist who creates the plan of care, as prescribed or authorized by the referring physician, is the person who accepts the referral relationship with the physician.

29. In my experience, and given the regulations and payment practices addressed above, physical therapists do not make referrals to other physical therapists working in their group practice. They may collaborate and coordinate to deliver quality care, and to accommodate patient needs and schedules, but they cannot themselves “refer” a patient to another physical therapist for a new course of treatment (or additional treatments not already authorized) without physician approval.

30. From time to time, a physical therapist treating the patient may be temporarily unavailable to perform a treatment as scheduled or a patient may request a change in appointment times. In those instances, another physical therapist or physical therapist assistant may provide the scheduled treatment according to the treatment plan already established. This is frequently referred to as “coverage.” Mr. McKowen, Mr. Ervin, Ms. Swygert, and Mr. Stoker, all practicing physical therapists, described this practice in their respective depositions.^{24, 25, 26, 27}

31. In my experience, there are some instances where the physical therapist who established the treatment plan and referral relationship with the referring physician may be unavailable for a

²⁰ Deposition of James Price Stoker, May 23, 2013; Transcript pages 39-41.

²¹ Deposition of Roy Christopher Junkins, May 1, 2013; Transcript page 44.

²² Deposition of Marilyn M. Swygert, May 13, 2013; Transcript pages 26-27.

²³ Deposition of Cynthia Witherspoon, June 7, 2013; Transcript pages 14-15.

²⁴ Deposition of Joseph Mark McKowen, June 14, 2013 – Transcript page 16.

²⁵ Deposition of E. Dargan Ervin, Jr., May 13, 2013 – Transcript page 21.

²⁶ Deposition of Marilyn M. Swygert, May 13, 2013; Transcript page 27.

²⁷ Deposition of James Price Stoker, May 23, 2013; Transcript page 47.

longer period of time (or a patient may request a change in appointment times or office location). In those instances, it is my experience that a new physical therapist will initially provide the scheduled treatment according to the treatment plan already established. When the time comes for reassessment of the patient's condition and progress, the covering therapist will perform a reassessment, determine if the goals or treatment approach needs to be modified, and communicate with the referring physician. At that point, the referral relationship is established between the new physical therapist and the referring physician.

32. In my experience, and given the regulations and payment practices addressed above, physical therapists do not make referrals to physical therapist assistants employed in their group practice. Physical therapist assistants are required by law to work at the direction and under the supervision of physical therapists and cannot submit, on their own, reimbursement requests to government or commercial payors.

33. Many physical therapy practices also employ physical therapist assistants. Patients are typically assigned to physical therapist assistants after a physical therapist has evaluated the patient and developed a plan of care. Mr. McKowen, a practicing physical therapist, and Ms. Bridges, Ms. Kirby, and Mr. Junkins, all practicing physical therapist assistants, also described this in their respective affidavits.^{28, 29, 30, 31} The physical therapist may or may not treat the patient on the same day as the physical therapist assistant. The physical therapist retains responsibility for supervising the physical therapist assistant treatments, periodically reassessing the patient, and updating the plan of care as needed.³²

²⁸ Affidavit of Joseph M. McKowen, April 30, 2013; Paragraph 5.

²⁹ Affidavit of Sabrina Queen Bridges, May 1, 2013; Paragraph 2-3.

³⁰ Deposition of Roy Christopher Junkins, May 1, 2013; Transcript pages 44-45.

³¹ Affidavit of Amalia W. Kirby, April 29, 2013; Paragraph 2-3.

³² South Carolina Code §40-45-300(B).

Opinions

34. Within a group physical therapy practice where a patient may be evaluated by one therapist and subsequently treated by another, the transition of the patient's therapist does not constitute a referral.

- a. In my experience, the transition of a patient from one physical therapist to another, sometimes called the "PT to PT handoff," does not constitute a referral. In most cases the handoff occurs as a function of scheduling and/or patient request/convenience. In all of these instances, the handoff does not create additional care. In contrast, a physician referral for therapy services directs a patient to a specialist and authorizes a new course of treatment by a physical therapist beyond the treatment of the referring physician.
- b. In my experience, patients are scheduled with therapists based on mutual availability. Typically, a patient scheduled with a particular therapist is treated by that same therapist for their entire episode of care. Occasionally, the patient will request a treatment time that is not compatible with the therapist's availability or a therapist may become unavailable for a long period of time (e.g. maternity leave, transfer to a different office, or termination of employment). Mr. McKowen, a practicing physical therapist, also noted this occurrence in his affidavit.³³ In my experience and in this instance, the handoff of the patient from one therapist to another is a simple matter of scheduling. The new therapist does not perform a new evaluation or change the plan of care unless there is some need to do so. If, during the course of providing authorized treatment, either the original physical therapist or a new treating physical therapist sees a need to change the plan of care, and that change exceeds or alters the care currently authorized by the referring physician, the referring physician would be contacted to approve the new plan of care.
- c. In my experience, there are also occasions where a therapist may be absent from the clinic temporarily or otherwise unavailable for a particular treatment session. In this instance, the handoff of the patient from one therapist to another is also a simple matter

³³ Affidavit of Joseph M. McKowen, April 30, 2013; Paragraph 7.

of scheduling. The new therapist does not perform a new evaluation or change the plan of care unless there is some need to do so. If, during the course of providing authorized treatment, either the original physical therapist or a new treating physical therapist sees a need to change the plan of care, and that change exceeds or alters the care currently authorized by the referring physician, the referring physician would be contacted to approve the new plan of care.

35. If the physical therapist to physical therapist handoff is considered to be a referral, this would create additional barriers to care for patients, resulting from restricted access to healthcare..

- a. If the physical therapist to physical therapist handoff within a group practice is considered to be a referral, physical therapists would essentially be forced to create sole practitioner businesses in order to continue their private practice. Requiring every physical therapist wanting to work in a private practice to practice by him or herself would create terrible inefficiencies and increase the cost of care and level of patient inconvenience. The ability to share facilities, personnel, and other resources is critical to the economic viability of most group physical therapy practices. Likewise, the availability of more than one physical therapist in a practice eases the challenge of scheduling for efficient and frequent professional collaboration and enhances patient convenience.
- b. Even if solo practice were economically viable, which would be unlikely in most instances, a majority of physical therapists working in the group practice setting would not want to become small business owners.
- c. If physical therapists could not work in a group practice and could not or did not want to become small business owners, it is possible that many physical therapists would be forced to make a career change. This likely would result in a scarcity of physical therapists in South Carolina, potentially increasing costs, hindering access to care, and creating burden and inconvenience for patients..

36. Within a group therapy practice where a physical therapist assistant may be assigned patient treatment tasks as part of a plan of care, the handoff from the physical therapist to physical therapist assistant is not a referral.

- a. Physical therapist assistants work under the direction and supervision of a physical therapist. A physical therapist assistant cannot develop a plan of care or perform an evaluation to determine care needs.³⁴ The physical therapist assistant simply carries out treatments that are designed by the physical therapist in response to a referral from a physician. The physical therapist retains responsibility for supervising the physical therapist assistant treatments, periodically reassessing the patient, and updating the plan of care as needed.³⁵
- b. In my experience, a physical therapist assistant may provide feedback about the patient's performance or limitations while carrying out the technical aspects of a plan of care designed by the therapist. However, the physical therapist is responsible for assessing the care plan on an ongoing basis and does not turn over responsibility for the patient to the physical therapist assistant.³⁶ In this relationship, the physical therapist assistant neither develops a plan of care nor creates any additional care.

37. If the physical therapist to physical therapist assistant handoff is considered to be a referral, physical therapist assistants would not be allowed to work in group physical therapy practice settings South Carolina.

- a. Physical therapist assistants must work under the direction of a physical therapist.³⁷ If the physical therapist to physical therapist assistant handoff is considered to be a referral for purposes of the PT Act, as Plaintiffs contend, then physical therapy assistants could not work for a group practice where they receive directions from physical therapists. But, as a condition of their licenses, physical therapist assistants have to work at the direction and under the supervision of a physical therapist.
- b. Furthermore, physical therapist assistants cannot submit reimbursement requests to obtain payment for physical therapy services from government and private payors.

³⁴ South Carolina Code § 40-45-300(B).

³⁵ South Carolina Code § 40-45-300(B).

³⁶ South Carolina Code § 40-45-300(B).

³⁷ South Carolina Code of Laws, Unannotated § 40-45-300(B)

- c. As a practical matter, this means that physical therapist assistants cannot work on their own, but rather must work in a setting where (1) a physical therapist can direct and supervise them, and (2) physical therapists can submit reimbursement requests for their services to government and private payors.

38. If physical therapist assistants are not allowed to work in outpatient therapy practices, this would create barriers to care for patients, resulting from restricted access to healthcare.

- a. Physical therapist assistants provide cost efficient services in many healthcare settings. The average hourly wage of a physical therapist assistant in South Carolina in May 2012 was \$24.53.³⁸ The average hourly wage of a physical therapist in South Carolina in May 2012 was \$35.97.³⁹ Based on this data, physical therapist assistant's wages are 32% less costly.
- b. Currently, a typical Medicare outpatient physical therapy treatment that consists of hot pack, electrical current therapy, therapeutic exercise, and massage (approximately one hour of care) would pay \$70.85 in South Carolina.⁴⁰
- c. Mr. McKowen, a practicing physical therapist, stated in his affidavit and deposition that if he were unable to use physical therapists in his business the economic consequences would be severe.^{41, 42}
- d. The use of a physical therapist assistant can provide additional revenue margin to cover overhead expenses associated with running an outpatient physical therapy practice. If physical therapy practices were not allowed to employ physical therapist assistants, outpatient therapy practices may be disinclined to accept patients (particularly Medicare and Medicaid patients) whose insurance may pay lower reimbursement rates.

³⁸ <http://www.bls.gov/oes/current/oes312021.htm>

³⁹ <http://www.bls.gov/oes/current/oes291123.htm>

⁴⁰ American physical Therapy Association - Medicare Outpatient Therapy Claim Pricer 2013.

⁴¹ Affidavit of Joseph M. McKowen, April 30, 2013; Paragraph 6

⁴² Deposition of Joseph Mark McKowen, June 14, 2013 -- Transcript page 7, 11, 12

- e. If physical therapist assistants were not able to work in a group physical therapy setting, it is possible that many physical therapist assistants would be forced to make a career change. This likely would result in a scarcity (if not elimination) of physical therapist assistants in South Carolina. The inability to use PTAs to deliver physical therapy services would increase costs of care, hinder access to care, and create burden and inconvenience for patients.

39. A physical therapist cannot provide coverage for a physician.

- a. My understanding of the South Carolina Medical Practice Act is that physicians may provide therapeutic services that are similar in nature to those provided by physical therapists.⁴³
- b. In my experience and as a practical matter, I am not aware of physicians providing therapeutic services that are similar in nature to those provided by physical therapists on an ongoing or consistent basis.
- c. In his deposition, Dr. Joseph, a Plaintiff in this case and a practicing orthopedic physician, stated that when he performs physical therapy services, they are brief and instructional in nature and not the same as would be provided by physical therapists. He also stated that he was not aware of any other physicians that provided physical therapy treatments in the same manner as would be provided by physical therapists.⁴⁴
- d. Dr. McCarthy, a Plaintiff in this case and a practicing orthopedic physician, in his deposition stated that when he performs physical therapy services, they are brief and instructional in nature. He also stated that he was not aware of any other physicians that provided physical therapy treatments in the same manner as would be provided by physical therapists.⁴⁵

⁴³ South Carolina Medical Practice Act, Chapter 47, §40-47-11(36).

⁴⁴ Deposition of Thomas N. Joseph, MD, June 17, 2013; Transcript pages 11-13.

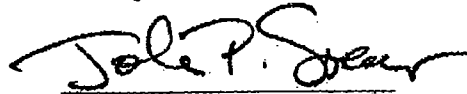
⁴⁵ Deposition of William G. McCarthy, MD, June 17, 2013; Transcript pages 21-22.

e. My understanding of the PT Act is that physical therapists provide therapeutic services as part of the practice of physical therapy. Physical therapists are not authorized to practice medicine.⁴⁶

f. Hypothetically, if a physical therapist was employed by a physician, the therapist could not provide coverage for a physician because the physical therapist cannot practice medicine.

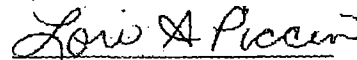
40. It is my understanding that parties to this litigation may still be in the process of gathering data pertinent to my opinions. Consequently, while I have reviewed relevant documents and material available and known to me as of the date of this affidavit, I reserve the right to supplement and or amend my opinions based on additional information that may be produced in this matter..

Being first duly sworn on DECEMBER 12, 2013, John P. Stearns swears and affirms that the facts stated herein are true and correct to the best of his knowledge and belief.



John P. Stearns

Personally appeared before me:



Notary Public

My commission expires:



⁴⁶ South Carolina Code §40-45-310.

Appendix A

John P. Stearns

John P. Stearns
Director

Navigant Consulting
1180 Peachtree Street
Suite 1900
Atlanta, Georgia 30309
Cell: 678.488.7177
Tel: 404.602.5028
Office Fax: 404.575.4213

jstearns@navigantconsulting.com

Professional History

- Navigant Consulting, Inc.
- Ernst & Young LLP
- Integrated Health Services, Inc
- Sinai Hospital of Baltimore

Education

- B.S. in Physical Therapy, Northeastern University
- MBA, University of Baltimore

Mr. Stearns is a Director with NCI's healthcare team and specializes in providing financial, economic, investigative, clinical, operational, and industry expertise assistance to health sciences providers, payers, physicians and the health law community. Mr. Stearns has over 25 years of progressive management experience in acute and post acute care. He is well versed in Medicare reimbursement, fraud and abuse issues, and ancillary operations. As a Vice President of Clinical Services, he oversaw the clinical aspects of rehabilitation for a national long term care and home health company. In the course of his work experience, he has developed complex financial models and analyzed large volumes of coding, billing, and reimbursement data in a wide variety of industry areas including direct patient care providers, DME suppliers, and other service providers. He has also led Independent Review Organization engagements involving large scale medical records sampling and review for patient care providers and a third party billing company. As a licensed physical therapist, John has practical work experience in the acute hospital setting including inpatient and outpatient rehabilitation, brain injury rehabilitation, and intensive care.

Professional Experience

The following is a brief list of recent representative engagements:

Investigations

Engagement Director for a DOJ investigation of Intensive Outpatient Psychiatric services provided over a three year period. Our work was used to select and analyze a sample of claims for compliance with Medicare regulations. The review included coding of claims and medical necessity of services and was used as part of the settlement negotiation.

Engagement Director for an independent investigation of ambulance services to dialysis patients as part of the defense of a qui tam investigation. The results of our work resulted in the case being dismissed on summary judgment.

Engagement Director for several investigations of payments to several large hospitals on outliers as paid based on cost to charge ratios as set by the Fiscal Intermediary. The analysis focused on cost report analysis, comparisons of key operating statistics to other hospitals, and analysis of the impact of charges on total revenues for the hospital.

Engagement Director of defense of an OIG investigation of Skilled Nursing Facility billing practices focusing on high therapy RUG classifications. Our analysis included focused review of key SNF cost report statistics and comparison to other providers.

Engagement Manager for a complex investigation that focused on organ transplants and Medicare cost reports for organ related costs as reported on the hospitals cost reports.

Engagement Director for an investigation of Medical Director costs claimed on cost reports including an analysis of reimbursement impact in the Long Term Acute Care setting.

Engagement Director for a review of physician organizational compliance for a large hospital system. The engagement focused on physician compliance controls, physician contractual arrangements, and physician practice acquisitions.

Engagement Director for a compliance controls review at a four hospital system including operational controls around billing and coding, joint venture arrangements with physician ownership, and internal audit planning.

Engagement Director for an independent investigation of a nine hospital chain's outpatient services in defense of an OIG investigation. The results of our work significantly reduced the settlement amount and allowed the hospitals to settle without any integrity agreements.

Hospice Reviews

Engagement Director for a review of GIP level of care claims following the OIG self-disclosure protocol. The results of our work were used to support the submission of a several million dollar overpayment.

Engagement Director for several compliance and operational reviews related to a third party's acquisition of Home Health, Skilled Nursing Facility, Hospice, and Long Term Acute Hospital providers. Compliance reviews focused on internal compliance controls and testing of billing and coding compliance with patient assessment instruments and medical record documentation. Hospice specific analyses related to documentation compliance controls (including benefit election and initial plan of care) and level of care classification. The results of our work were used to strengthen compliance related policies and procedures.

Engagement Director for a review of a regional hospice chain's internal audit procedures. The results of our work were used to develop a compliance oriented internal audit workplan.

Engagement Director for a restatement of hospice caps including estimates of financial impact of revised calculations and analysis of large data reconstruction efforts by a third party.

Compliance Reviews

Engagement Director for a review of IRF claims subject to MAC and RAC audits. In addition to analyzing technical requirements of IRF documentation, we also analyzed the medical necessity of admission for claims requested by the MAC and RAC as well as claims that were held by the provider. We also analyzed a full year of diagnosis codes submitted as part of the annual 60% threshold process to determine if diagnosis codes were in fact billed correctly.

Engagement Director for a review of IRF claims as part of a due diligence effort between two hospitals. The review focused on the medical necessity of IRF admissions. The results of our work were used by counsel in responding to due diligence regulatory analyses.

Engagement Director for a review of Inpatient Rehabilitation claims that were denied as part of the Recovery Audit Contractor efforts in California. The results of our reviews were used to revise admission policies, Case Management roles and functions, and internal compliance functions. We also provided assistance in the hospital's appeal process for denied claims by initially authoring appeal letters and training facility managers in claim selection and documentation/regulatory requirement review.

Engagement Director for a review of compliance with Medicare regulations for an outpatient physical therapy clinic. The results of our work were used to calculate moneys owed to Medicare as part of the dissolution of the joint venture ownership of the clinic.

Engagement Director for a review of compliance with Medicare and Tricare regulations for an outpatient rehabilitation agency. The results of our work were used by the client to develop internal policies and procedures.

Engagement Director for the development of a compliance audit program for a regional hospice chain. The results of our work were used to increase and focus the internal audit efforts of the company.

Engagement Director for a review of billing and medical record documentation for skilled nursing facilities across multiple states. The results of our work were used by the providers to improve internal review and compliance functions.

Independent Review Organization

Engagement Director for several Independent Review Organization engagements according to Corporate Integrity Agreement requirements for a number of provider types:

- Skilled Nursing Facilities
- Hospitals
- Physician third party billing company
- Durable Medical Equipment (wheelchairs).

These engagements required development of sampling and testing protocols that were acceptable to the Office of the Inspector General as well as annual reporting of findings. Analyses performed include:

- Unallowable Cost Reviews
- Claims testing including billing and coding
- Arrangements reviews
- Billing and Coding Process Reviews (Systems Reviews)

Due Diligence

Engagement Director for billing and compliance reviews for a company's acquisition of DME operations that included oxygen and oxygen equipments, wheelchairs, enteral nutrition, and traditional DME products such as nebulizers, assistive devices, and hospital beds.

Engagement Director for billing and compliance review of claims and operations for an air ambulance company. The results of our work were used to inform the company's analysis of revenues during the valuation and offer process.

Engagement Director for compliance and operational reviews of a regional chain of outpatient physical therapy clinics. Compliance reviews focused on internal compliance controls and testing of billing and coding compliance with applicable regulations and medical record documentation.

Engagement Director for several compliance and operational reviews related to a third party's acquisition of Home Health, Skilled Nursing Facility, Hospice, and Long Term Acute Hospital providers. Compliance reviews focused on internal compliance controls and testing of billing and coding compliance with patient assessment instruments and medical record documentation.

Durable Medical Equipment

Independent Review Organization required by a Corporate Integrity Agreement for a national provider of power wheelchairs. Our work included testing of documentation support for power wheelchairs as well as a review of billing and coding system controls.

Engagement Director for an annual review of billing and coding compliance for orthopedic devices, bone growth stimulators, and TENS devices.

Engagement Director for an internal investigation of a durable medical equipment provider where fraud and criminal behavior was suspected. The results of our work were used in a self-disclosure to the OIG.

Engagement director for an investigation of durable medical equipment documentation including support for billed equipment, accuracy of coding, and sufficiency of Certificates of Medical Necessity.

Disputes

Engagement Director for an assessment of nursing home documentation related to a Department of Justice investigation. Authored expert report related to a contracted therapy provider's documentation and level of responsibility for the allegations made by the Department of Justice.

Engagement Director for an assessment of therapy utilization and rehabilitation hospital operations in connection with a dispute over contracted rehabilitation services.

Engagement Director for an analysis of managed care contracts and payments to providers in connection with a dispute regarding incorrect billing by the hospital providers.

Restructuring/Operational Analysis

Engagement Director for an internal review of home health services for a national home health chain in connection with a restructuring. The results of our engagement were used as a basis to resubmit both overpayments and underpayments to Medicare and enhance the audit function of the Compliance Department.

Engagement Director for an internal analysis of hospital and SNF Operations. Analyses included evaluating demand for long term care and senior housing and analysis of outlier payments compared to SNF PPS payments for certain long stay diagnoses.

Engagement Director for an analysis of historical payments and payment calculations for a multi-state hospice operator in preparation for the company's IPO. The results of our work identified a multimillion dollar billing system error that was self-disclosed to the fiscal intermediary.

Engagement Director for the development of consolidation scenarios and impact analyses of the consolidation of a multi-campus hospital system with acute care, skilled nursing, inpatient rehabilitation, outpatient/wellness, and long term care services. This engagement required in-depth analyses of cost savings opportunities, future reimbursement changes, population-based demand, and outpatient service expansion.

Engagement Director for the analysis of contract rehabilitation services for a large multi-state SNF operator in preparation for their emergence from bankruptcy. This engagement required detailed analysis of direct and indirect staffing costs.

Policy and Procedure Development

Engagement Director for the development of policies and procedures related to group therapy for an outpatient physical therapy chain. Educational modules related to the policy and procedure development were also provided to the client.

Testimony Experience

- The Guardian Life Insurance Company of America v. California Pacific Medical Center – JAMS Case Number 1100063412

Invited Lectures

2013 Arizona Health Care Association, SNF Therapy Compliance Issues

2013 American Healthcare Association, Long Term Care and the Law, SNF Compliance Programs

Appendix B: Documents Reviewed and Considered

- Amended Declaratory Judgment Action/Complaint C/A No. 2012-CP-40-2632
- Deposition of Kristin Joseph, PT, June 17, 2013
- Affidavit of Joseph M. McKowen, April 30, 2013
- Deposition of Joseph Mark McKowen, June 14, 2013
- Order Denying SCDLLR Motion to Dismiss as to Causes of Action One Through Six and Granting Partial Summary Judgment as to Causes of Action Seven Through Nine, September 17, 2012
- Memorandum in support of Motion to Dismiss, August 3, 2012
- Affidavit of Sabrina Queen Bridges, May 1, 2013
- Affidavit of Amalia W. Kirby, April 29, 2013
- 370 S.C. 452, 636 S.E.2d 598, Supreme Court of South Carolina
- Code of Laws of South Carolina 1976 Annotated, Title 40. Professions and Occupations, Chapter 45.
- Deposition of James Price Stoker, May 23, 2013
- Deposition of Thomas N. Joseph, M.D., June 17, 2013
- Deposition of Cynthia Witherspoon, June 7, 2013
- Deposition of E. Dargan Ervin, Jr., May 13, 2013
- Deposition of Roy Christopher Junkins, May 1, 2013
- Deposition of Marilyn M. Swygert, May 13, 2013
- Deposition of William G. McCarthy, M.D., June 17, 2013
- Deposition of Darlene P. Pope, May 1, 2013
- South Carolina Code of Regulations, Chapter 101. Department of Labor, Licensing and Regulation-- State Board of Physical Therapy Examiners (Statutory Authority: 1976 Code Section 40-45-10, et seq.)
- South Carolina Code of Laws, Chapter 113 - Provider Self Referral
- 11 Part B Billing Scenarios for PTs and OTs, September 2009
- Report To Congress - Standards For Supervision Of Physical Therapist Assistants (PTAs) And The Effects Of Eliminating The "Personal" PTA Supervision Requirement On The Financial Caps For Medicare Therapy Services
- Transmittal 88, Change Request 5921, May 7, 2008: Therapy Personnel Qualifications and Policies Effective January 1, 2008
- Transmittal 165, Change Request 8005, December 21, 2012: Implementing the Claims-Based Data Collection Requirement for Outpatient Therapy Services -- Section 3005(g) of the Middle Class Tax Relief and Jobs Creation Act (MCTRJCA) of 2012
- Medicare State Operations Manual; Appendix B - Guidance to Surveyors: Home Health Agencies

- Medicare State Operations Manual; Appendix E - Guidance to Surveyors: Outpatient Physical Therapy or Speech Pathology Services
- South Carolina Department of Labor Licensing and Regulation - South Carolina Board of Physical Therapy - Frequently Asked Questions
- South Carolina Code of Laws, Unannotated; Title 40 - Professions and Occupations Chapter 45. Physical Therapists
- South Carolina Code of Laws, Unannotated; Chapter 101. - Department Of Labor, Licensing And Regulation-- State Board Of Physical Therapy Examiners
- CMS Presentation: Physical, Occupational, and Speech Therapy Services - September 5, 2012
- Schedule of Benefits for Personal BlueSM Basic
- United Healthcare Mid-Atlantic Health Plan Referral Protocol
- United Healthcare Physician, Health Care Professional, Facility and Ancillary Provider - 2012 Administrative Guide For Commercial and Medicare Advantage Products
- Medicare Benefit Policy Manual Chapter 15 – Covered Medical and Other Health Services
- South Carolina Code of Laws, Title 40. Professions And Occupations - Chapter 47. Physicians, Surgeons And Osteopaths
- Bureau of Labor Statistics – Average PT and PTA Salaries in South Carolina
 - o <http://www.bls.gov/oes/current/oes312021.htm>
 - o <http://www.bls.gov/oes/current/oes291123.htm>

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KRISTIN JOSEPH, P.T.,
THOMAS N. JOSEPH, M.D., AND
WILLIAM G. MCCARTHY, M.D.,

Plaintiffs,

vs.

C/A No.
2012-CP-40-2632

SOUTH CAROLINA DEPARTMENT OF
LABOR, LICENSING, AND REGULATION,
SOUTH CAROLINA BOARD OF PHYSICAL
THERAPY,

Defendant,

and

SOUTH CAROLINA CHAPTER, AMERICAN
PHYSICAL THERAPY ASSOCIATION,
JOSEPH M. MCKOWEN, P.T.,
SABRINA QUEEN BRIDGES, P.T.A.,
AND AMALIA W. KIRBY, P.T.A.,

Defendants-Intervenors.

Wednesday, October 30, 2013

McLean, Virginia

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1 Deposition of
2 JOHN P. STEARNS,
3 the witness, called for examination by counsel
4 for the plaintiffs, pursuant to notice, held at
5 the offices of N. Thomas Connally, Esq., Hogan Lovells,
6 7930 Jones Branch Drive, Ninth Floor, McLean, Virginia,
7 beginning at 1:05 p.m., before Malynda D. Whiteley, a
8 Registered Professional Reporter and a Notary Public in
9 and for the State of Virginia, when were present on
10 behalf of the respective parties:

11

12

13 A P P E A R A N C E S

14 For the Plaintiffs (via speakerphone):

15 M. ELIZABETH CRUM, ESQUIRE

16 McNair Attorneys

17 Post Office Box 11390

18 Columbia, South Carolina 29211

19 (803) 799-9800

20 lcrum@mcnair.net

21

22

23

24

25

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1 A P P E A R A N C E S (Continued)

2 For the Defendant South Carolina Department of
3 Labor, Licensing, and Regulation,
4 South Carolina Board of Physical
5 Therapy (via speakerphone):

6 MONTEITH P. TODD, ESQUIRE

7 Sowell Gray

8 1310 Gadsden Street

9 Columbia, South Carolina 29211

10 (803) 929-1400

11 mtodd@sowellgray.com

12

13

14 For the Defendants-Intervenors South Carolina Chapter,
15 American Physical Therapy Association,

16

17 N. THOMAS CONNALLY, ESQUIRE

18

19 MARQUES P. RICHESON, ESQUIRE

20

21 Hogan Lovells

22

23 7930 Jones Branch Drive

24

25 Ninth Floor

26

27 McLean, Virginia 22102

28

29 (703) 610-6100

30

31 tom.connally@hoganlovells.com

32

33 marques.richeson@hoganlovells.com

34

35

36

37

38

39

40

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1 A P P E A R A N C E S (Continued)

2 For the Defendants-Intervenors South Carolina Chapter,
3 American Physical Therapy Association (via
speakerphone):

4 JOHN C. BRADLEY, JR., ESQUIRE
5 Moore, Taylor & Thomas, P.A.
6 1700 Sunset Boulevard
7 Post Office Box 5709
8 West Columbia, South Carolina 29171
9 (803) 796-9160
10 john@mttlaw.com

11

12 For Office of Advice Counsel South Carolina Department
13 of Labor, Licensing, and Regulation (via speakerphone):

14 SARA MCCARTHA, ESQUIRE
15 KATHERINE B. BARROLL, ESQUIRE
16 Department of Labor, Licensing, and Regulation
17 110 Centerview Drive
18 Columbia, South Carolina 29211
19 (803) 896-4311
20 sara.mccartha@llr.sc.gov
21 kate.barroll@llr.sc.gov

22

23

24

25

1 A P P E A R A N C E S (Continued)

2 For Defendants-Intervenors Joseph M. McKowen, P.T.,
3 Sabrina Queen Bridges, P.T.A., and Amalia W. Kirby,
P.T.A. (via speakerphone):

4 EMILY W. MEDLIN, ESQUIRE

5 Devlin & Parkinson, P.A.

6 27 Cleveland Street

7 Suite 201

8 Post Office Box 10387

9 Greenville, South Carolina 29603-0387

10 (864) 242-4050

11 ewhitney@devlinparkinson.com

12

13

14 ALSO PRESENT:

15 John Bennett, Esquire, American Board of
16 Physical Therapy

17

18

19

20

21

22

23

24

25

John P. Stearns 10/30/2013

40

1 occupational therapy.

2 Actually there's a section in here -- well,
3 there is a section in here on physical therapists in
4 private practice, but it mainly relates to billing for
5 Medicare. It's not directly related to this case.

6 Q And so am I understanding correctly that you
7 in your -- in the opinions you relied on the information
8 contained in pages --?

9 I'm sorry. What was the first page? I know
10 you went through page 1096.

11 A Yeah. The discussion on plans of care starts
12 on page 1069.

13 Q Okay. Were you looking for other pages or
14 just giving the beginning page?

15 A I was just giving you the beginning page.

16 Q Okay. Thank you.

17 Now, how did this information assist you in
18 forming your opinions?

19 A Well, as we discussed, it talks to supervision
20 requirements of a physical therapy assistant, which is
21 consistent with the other documents we've discussed.

22 And this also talks about the physician's
23 responsibility in providing approval of the therapy plan
24 of care and the interaction of the physician and the
25 therapist for Medicare purposes.

1 purposes of this statute.

2 Q Okay. And how did you rely on this as the
3 basis for any of the opinions that you gave here today?

4 A For me this was really just background
5 information.

6 Q Did it go to any of your opinions?

7 A On page 1321, Section 12 would go to the
8 definition of "referral," yes.

9 Q Okay. And how does that bolster your opinion
10 with regard to whether a referral applies from PT to PT
11 or PT to PTA?

12 A I'm sorry. Say that again.

13 Q How does the definition of "referral" in the
14 South Carolina Provider Self-Referral Act bolster your
15 opinion that a PTA sending a patient to another PTA or a
16 PTA sending a patient -- or a PT -- I'm sorry -- sending
17 a patient to a PTA does not constitute a referral?

18 MR. CONNALLY: Objection to form.

19 A My understanding of this definition is that
20 this is sending a patient from one healthcare provider
21 to another outside the professional's office or group.

22 I think basic to that, within a group PT
23 practice they are not doing that. There may be a
24 hand-off within the group for any number of reasons.
25 But they're not actually forwarding patients within the

1 group to establish a new plan of care, a new episode of
2 care, or create additional care.

3 BY MS. CRUM:

4 Q What are you relying on in the definition on
5 page 1321 of the definition for "referral" to say that
6 it is your understanding that this is sending a patient
7 from -- to a provider outside of the group?

8 MR. CONNALLY: Objection to form.

9 A In paragraph 12, Section A --

10 BY MS. CRUM:

11 Q Uh-huh.

12 A -- it's a simple reading of the sentence. "A
13 referral means the forwarding of a patient by a
14 healthcare provider to another healthcare provider or to
15 an entity outside of the healthcare professional's
16 office or group practice."

17 Q Okay. Anything else that you're relying on?

18 A Other than that whole paragraph 12, I don't
19 believe so, not in this.

20 Q All right. Turn to pages 1324 through 1385.

21 A Okay.

22 Q Can you tell me what this is?

23 A This was a presentation that was on the CMS
24 website primarily talking about therapy services in
25 general. But the sections I was interested in were

1 adopted in this case, it could have a negative impact on
2 patients. Did I accurately state that?

3 A Yes.

4 Q Okay. What would be, in your opinion, the
5 negative impact on patients?

6 A I think there's a couple of impacts, and they
7 arise mainly from access to care on one hand and quality
8 of care on another.

9 So if the plaintiffs' position were adopted
10 and my understanding of the plaintiffs' position were
11 adopted and PT group practices were not allowed to exist
12 because the PT-to-PT hand-off would be deemed not
13 allowed under the Practice Act or in the interpretation
14 of the Practice Act, it would -- it could create a
15 situation where physical therapy group practices would
16 have to disband into a number of individual
17 group practices -- individual therapy practices.

18 And I know many, many therapists. And there
19 are a significant percentage of them, in my opinion,
20 that would not want to be sole business owners or small
21 business owners and open up their own practice. They,
22 quite frankly, don't want the administrative headaches
23 and all the management that comes with owning a
24 practice.

25 So they would either seek to find employment

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1 in another setting; and absent the ability to do that,
2 they may actually leave the practice altogether.

3 The end result of that would be a situation
4 where there is actually less availability of therapy
5 services to patients who need those services. So it
6 would create a barrier to access for those patients.

7 Also from a quality of care perspective, if a
8 number of sole practitioners was the only way to
9 practice, in my opinion, the quality of care might go
10 down.

11 You know, I've seen sole practitioners and
12 I've seen group practices in many settings. And there's
13 great value to the quality of care by having a group
14 practice. Professional collegiality conferring on
15 symptoms, on literature, and what have you, just
16 exponentially adds to the value of the service provided
17 to the patient.

18 And if the position were that PTs could only
19 operate in sole private practices, that collegiality and
20 that camaraderie is gone and your ability to act with
21 your peers like that is very limited. So ultimately you
22 start affecting the quality of the service that you're
23 able to provide. Another consequence of the
24 plaintiffs' position might also be that physical therapy
25 assistants aren't allowed to work. I think we've

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1 already talked about physical therapy assistants only
2 being able to work and operate under the supervision of
3 a physical therapist.

4 And if the plaintiffs' position were to be
5 interpreted that a PT could not hand off a patient to a
6 physical therapy assistant, basically physical therapy
7 assistants couldn't work.

8 That would be a negative impact on the
9 practice of physical therapy. It would also affect
10 access to care because the physical therapy assistant is
11 a very cost-efficient addition to a group practice.

12 So if the physical therapy assistant were not
13 allowed to be part of that practice -- and I think this
14 is supported by at least one of the deposition
15 testimonies -- the cost of care would rise to the point
16 where a number of therapists might have to look at the
17 treatment they're going to provide to a patient and say,
18 "I'm not going to get reimbursed enough for this
19 treatment to cover my cost, so why would I have this
20 patient on my caseload?" So that's another barrier to
21 care.

22 From a quality of care perspective, frequently
23 in group practices physical therapists get caught up and
24 called away for new evaluations; and they may not be
25 able to consistently treat a patient on a day-to-day

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1 basis.

2 And that's where the physical therapy
3 assistant comes in. They are the ones who interact
4 usually on an every-visit, consistent basis. They get
5 to know the patient, and they're delivering consistent
6 care; whereas, the physical therapist might be drawn
7 away periodically.

8 And it's just the nature of the business you
9 might not be able to do that. So the physical therapist
10 actually adds a dimension of quality to the delivery of
11 physical therapy services.

12 And I'm sorry. That was a mouthful.

13 Q No. That's okay. You spoke slow enough that
14 I could understand it, and I appreciate that.

15 Anything else with regard to the negative
16 impact on patients if your understanding of the
17 plaintiffs' position were adopted?

18 A I think that's the lion's share of it. I
19 think that's all.

20 Q Just one other thing. Have you read the Sloan
21 case?

22 A Briefly. I find those documents difficult to
23 follow. But I did read through it, yes.

24 Q Did you rely on any part of the Sloan case as
25 to forming the basis of any of your opinions today?

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND FIFTH JUDICIAL CIRCUIT
3
4 Kristin Joseph, P.T., Thomas N. Joseph, M.D.,
5 and William G. McCarthy, M.D.,
6 Plaintiffs,
7 v. C/A No. 2012-CP-40-2632
8 South Carolina Department of Labor,
9 Licensing and Regulation, South Carolina
10 Board of Physical Therapy,
11 Defendant.

12 D E P O S I T I O N

13 WITNESS: JOSEPH MARK MCKOWEN
14 DATE: Friday, June 14, 2013
15 TIME: 11:00 a.m.
16 LOCATION: Physical Therapy Inc.
17 1445 North Limestone Street
18 Gaffney, South Carolina
19 TAKEN BY: Attorneys for the Plaintiffs
20 REPORTED BY: NISHA GORDON
21 Court Reporter

22 -----
23 COMPUSCRIPTS, INC.
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1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFF

3 KRISTIN JOSEPH, P.T., THOMAS N. JOSEPH, M.D.,
4 AND WILLIAM G. MCCARTHY, M.D.:

5 McNAIR LAW FIRM, P.A.

6 BY: ARIAIL B. KIRK, ATTORNEY AT LAW

7 1221 Main Street

8 Suite 1800

9 Columbia, South Carolina 2201

10 (803) 799-9800

11 akirk@mcnair.net

12 ATTORNEYS FOR THE DEFENDANT

13 JOSEPH M. MCKOWEN:

14 DEVLIN & PARKINSON, P.A.

15 BY: EMILY T. WHITNEY, ATTORNEY AT LAW

16 27 Cleveland Street

17 Suite 201

18 Greenville, South Carolina 29601

19 (864) 242-3252

20 ewhitney@devlinparkinson.com

21 ATTORNEYS FOR THE DEFENDANT

22 SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING
23 AND REGULATION, SOUTH CAROLINA BOARD OF PHYSICAL
24 THERAPY:

25 SOWELL GRAY STEPP & LAFFITTE, LLC

BY: ALEX E. DAVIS, ATTORNEY AT LAW

1310 Gadsden Street

Columbia, South Carolina 29211

(803) 929-1400

adavis@sowellgray.com

ATTORNEYS FOR THE DEFENDANT

SOUTH CAROLINA CHAPTER, AMERICAN PHYSICAL
THERAPY ASSOCIATION:

MOORE, TAYLOR & THOMAS, P.A.

BY: JOHN C. BRADLEY, JR., ATTORNEY AT LAW

1700 Sunset Boulevard

West Columbia, South Carolina 29169

(803) 796-9160

john@mttlaw.com

(INDEX AT REAR OF TRANSCRIPT)

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Joseph Mark McKowen 6/14/2013

5

1 Q. Okay. How many physical therapists are
2 employed here?

3 A. I have myself, and then I have three PRN
4 PTs, part-time PTs.

5 Q. Do you have any PTAs that are employed with
6 you?

7 A. I have two full-time PTAs, and then I have
8 three full-time PTAs doing home health.

9 Q. What kind of home health do you do?

10 A. We have a contract with Gentiva Home Health
11 company, and I contract those PTAs to them.

12 Q. So you don't operate that home health
13 agency.

14 A. No.

15 Q. Okay. Do you own any other businesses?

16 A. I own 30 percent of Cherokee Rehab, which
17 is a contract company that holds a contract with
18 Peachtree Center, a skilled nursing facility here in
19 Gaffney.

20 Q. Does Cherokee have a location, or is the
21 rehab care provided in-house at Peachtree?

22 A. It's in-house at Peachtree.

23 Q. Who are your partners in that business?

24 A. John Hudson, a physical therapist.

25 Q. It's just one?

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Joseph Mark McKowen 6/14/2013

7

1 physical therapist assistants would be detrimental, and
2 I was concerned about that.

3 Q. Can you elaborate on that? What do you
4 mean by "detrimental"?

5 A. If I wasn't be able to use physical therapy
6 assistants, I wouldn't be able to stay open.
7 Financially I couldn't make it if I had to replace those
8 staff members with licensed PTs.

9 Q. Okay. Can you define "refer" to me?

10 A. Referral and refer in my practice is when I
11 have a new patient come in from a referring physician.
12 They come in with a piece of paper that's the referral
13 with their diagnosis and recommended treatments on it.
14 So that's what we refer to as a referral.

15 Q. Okay. How do you define "direct," to
16 direct a patient in the context of directing a patient?

17 A. I don't know if I ever use direct. I don't
18 know if I would use direct.

19 Q. What word would you use?

20 A. In what context? I'm not sure.

21 Q. To send a patient. I mean, is that the
22 same thing as a referral or is it something different?

23 A. Yeah. I think that would be different --

24 Q. Okay.

25 A. -- direct.

Joseph Mark McKowen 6/14/2013

10

1 object. The court reporter just has to note them as
2 she's going along.

3 A. I wouldn't say it's a referral.

4 Q. Why not?

5 A. Because the referral already comes from the
6 physician. I'm not generating a new referral.

7 Q. Do you have patients walk in?

8 A. No.

9 Q. You don't see any self-referred patients?

10 A. No.

11 Q. Why is that?

12 A. I can't get reimbursed from them.

13 Q. What kind of insurance do you take?

14 A. Pretty much all the insurance, Medicare,
15 BlueCross BlueShield, workmen's comp are the big three,
16 and then all commercial insurance.

17 Q. Do you take Medicaid?

18 A. We take Medicaid for patients under the age
19 of 21.

20 Q. Do you have many Medicaid patients?

21 A. Not many. I'm not sure what percentage
22 but...

23 Q. Do you take TRICARE?

24 A. Yes.

25 Q. Besides Medicare, Medicaid, and TRICARE,

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Joseph Mark McKowen 6/14/2013

15

1 Carolina Association of Physical Therapy?

2 A. No.

3 Q. Are you a member of any professional
4 organizations?

5 A. No.

6 Q. Okay. Why don't you believe that your
7 interests are adequately represented by the Board in
8 this case?

9 MR. BRADLEY: Object to the form.

10 MS. WHITNEY: Objection.

11 MR. DAVIS: Objection.

12 THE WITNESS: Ask it again.

13 BY MS. KIRK:

14 Q. Why don't you believe your interests are
15 adequately represented by the Board in this case?

16 A. I feel more like I have to look out for my
17 own interests. I mean, I just want to be sure that I'm
18 involved in this.

19 Q. And why is that?

20 A. I feel like I wouldn't be able to make a
21 living. My family's in jeopardy. My ability to make a
22 living would be in jeopardy.

23 Q. Where did most of your referrals come from?

24 A. There's probably 15 different referral
25 sources. My -- there's one orthopaedic surgeon in town,

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1 STATE OF SOUTH CAROLINA
 2 COUNTY OF RICHLAND
 3
 4 KRISTIN JOSPEH, P.T., THOMAS N. JOSEPH, M.D.,
 5 AND WILLIAM G. MCCARTHY, M.D.,
 6 Plaintiff(s),
 7 vs. Case No.: 2012-CP-40-2632
 8 SOUTH CAROLINA DEPARTMENT OF LABOR,
 9 LICENSING AND REGULATION, SOUTH CAROLINA
 10 BOARD OF PHYSICAL THERAPY,
 11 Defendant(s).

12 D E P O S I T I O N

13 WITNESS: JAMES PRICE STOKER
 14 DATE: Thursday, May 23, 2013
 15 TIME: 12:06 p.m.
 16 LOCATION: McNair Law Firm
 17 Poinsett Plaza
 18 104 South Main Street
 19 Suite 700
 20 Greenville, South Carolina
 21 TAKEN BY: Attorney for the Plainiffs
 22 REPORTED BY: JEANNE M. McLAREN
 23 Registered Merit Reporter
 24 -----
 25

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1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS
KRISTIN JOSEPH, P.T., THOMAS N. JOSEPH, M.D.,
3 AND WILLIAM G. MCCARTHY, M.D.:

4 MCNAIR LAW FIRM
BY: M. ELIZABETH CRUM, ESQUIRE
5 1221 Main Street, Suite 1800
Columbia, South Carolina 29201
6 lcrum@mcnair.net
803.799.9800

7

8 ATTORNEYS FOR THE DEFENDANT
SOUTH CAROLINA BOARD OF PHYSICAL THERAPY:

9

SOWELL, GRAY, STEPP & LAFFITTE
10 BY: MONTEITH P. TODD, ESQUIRE
1310 Gadsden Street
11 Columbia, South Carolina 29201
mtodd@sowellgray.com
12 803.929.1400

13

14 ALSO PRESENT:

15 JOHN C. BRADLEY, JR., ESQUIRE, FOR SCAPTA
16 EMILY T. WHITNEY, ESQUIRE

17

18 (INDEX AT REAR OF TRANSCRIPT)

19

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1 therapy.

2 Q. Do you have any affiliation with Clemson
3 University?

4 A. No, ma'am.

5 Q. You're one of the owners of -- can I say "CSM"?

6 A. CSMR, sure.

7 Q. CSMR.

8 A. Sure. That's fine.

9 Q. Are you one of the owners of CSMR?

10 A. Yes, ma'am.

11 Q. How many owners are there?

12 A. Four.

13 Q. Who are the other three?

14 A. Stuart Hunter, Neil Richardson and Kelson Colbo.

15 Q. How do you spell that last one?

16 A. Kelson, K-e-l-s-o-n; Colbo, C-o-l-b-o.

17 Q. Are each one of them also physical therapists?

18 A. Yes.

19 Q. Okay. Are all four of you licensed in
20 South Carolina?

21 A. Yes.

22 Q. Are there other states that you are licensed in?

23 A. I am licensed in North Carolina.

24 Q. Okay. Are there other states that your partners
25 are licensed in?

1 with lymphedema --

2 A. Um-hum.

3 Q. -- does CSMR attempt to get that patient to a
4 physical therapist who specializes or certified in
5 lymphedema therapy?

6 A. We do. We try to consult with each other at any
7 point in time to provide the best patient care that we can.

8 Q. Would that include directing the patient to the
9 specific physical therapist that has that appropriate
10 certification?

11 A. I don't recall ever doing that. Many times we
12 would actually co-treat, work together.

13 Q. Okay.

14 A. So if there is -- if there's a portion of their
15 plan of care that can enhance their overall recovery, then,
16 yes, we try to do whatever -- the best we can to help them.

17 Q. Okay. Does the patient always see the same
18 physical therapist?

19 A. No, ma'am.

20 Q. Why not?

21 A. Primarily because of the patient's scheduling.
22 It's just when they're available and what's -- what's
23 available on our schedule.

24 Q. Do you oversee any physical therapy assistants?

25 A. We do. We do employ physical therapy assistants.

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF RICHLAND
4 KRISTIN JOSEPH, P.T., THOMAS N. JOSEPH, M.D.,
5 AND WILLIAM G. MCCARTHY, M.D.,
6 Plaintiff(s),
7 vs. Case No.: 2012-CP-40-2632
8 SOUTH CAROLINA DEPARTMENT OF LABOR,
9 LICENSING AND REGULATION, SOUTH CAROLINA
10 BOARD OF PHYSICAL THERAPY,
11 Defendant(s).

12 D E P O S I T I O N

13 WITNESS: MARILYN M. SWYGERT
14 DATE: Monday, May 13, 2013
15 TIME: 3:10 p.m.
16 LOCATION: McNair Law Firm
17 1221 Main Street, 18th Floor
18 Columbia, South Carolina
19 TAKEN BY: Attorneys for the Plaintiffs
20 REPORTED BY: SHERI L. BYERS
21 Registered Professional Reporter
22 -----

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1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS
3 KRISTIN JOSEPH, P.T., THOMAS N. JOSEPH, M.D.,
4 AND WILLIAM G. MCCARTHY, M.D.:

5 MCNAIR LAW FIRM
6 BY: M. ELIZABETH CRUM, ESQUIRE
7 1221 Main Street, Suite 1800
8 Columbia, South Carolina 29201
9 lcum@mcnair.net
10 803.799.9800

11 ATTORNEYS FOR THE DEFENDANT
12 SOUTH CAROLINA BOARD OF PHYSICAL THERAPY:

13 SOWELL, GRAY, STEPP & LAFFITTE
14 BY: MONTEITH P. TODD, ESQUIRE
15 1310 Gadsden Street
16 Columbia, South Carolina 29201
17 mtodd@sowellgray.com
18 803.929.1400

19 ATTORNEYS FOR THE DEFENDANT
20 SOUTH CAROLINA DEPARTMENT OF LABOR,
21 LICENSING AND REGULATION:

22 SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING
23 AND REGULATION
24 BY: SARA MCCARTHA, ADVICE COUNSEL
25 OFFICE OF ADVICE COUNSEL
110 Centerview Drive
Columbia, South Carolina 29210
sara.mccartha@llr.sc.gov

21 ALSO PRESENT:

22 JOHN C. BRADLEY, JR., ESQUIRE, FOR SCAPTA
23
24

25 (INDEX AT REAR OF TRANSCRIPT)

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Marilyn M. Swygert 5/13/2013

15

1 Q. Any reasons other than the ones you've
2 already given us that you can think of?

3 A. I'm sure there are, but I just can't think of
4 them right off the bat.

5 Q. When I try to think of things, I never can
6 think of them and I think of them later.

7 A. Yes.

8 Q. So when you quit thinking about it, if you
9 happen to think of it during the deposition, would you
10 stop me and say, "I thought of something" and tell me?

11 A. I will.

12 MS. CRUM: Okay. Thank you.

13 (PLF. EXH. 2, Charleston Physical Therapy Web
14 Site, was marked for identification.)

15 BY MS. CRUM:

16 Q. Ms. Swygert, I will represent to you this is
17 supposed to be a printout of your Web site. Could you
18 take a look at it and see if I've got it right.

19 A. Yes.

20 Q. Okay. You are one of the owners of
21 Charleston Physical Therapy, correct?

22 A. Yes, ma'am.

23 Q. Are you one of the founders?

24 A. Yes.

25 Q. When did you -- it says right here 1982, you

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Marilyn M. Swygert 5/13/2013

16

1 founded?

2 A. Correct.

3 Q. Is Mr. McGrady still your partner?

4 A. Yes, he is.

5 Q. How do you market your services, Charleston
6 Physical Therapy services?

7 A. We actually don't do a lot of marketing
8 except we do a lot of relationship building with our --
9 the community and with our physicians and a little bit
10 with industry.

11 Q. Describe to me what you mean by "relationship
12 building."

13 A. Well, we were one of the first therapy
14 services to be offered outside the hospital west of the
15 Ashley, and so we have a long history of collaboration
16 and communication with the physicians in the area. So
17 we've built our relationships I guess over the years of
18 treating their patients and their being satisfied with
19 our services.

20 Q. How do you normally communicate with the
21 physicians?

22 A. By phone or in writing.

23 Q. Letters, e-mails, fliers?

24 A. Usually letters and verbal communication. I
25 haven't started e-mailing them yet.

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Marilyn M. Swygert 5/13/2013

26

1 A. The initial evaluation meaning that's
2 performed by the therapist?

3 Q. Yes, ma'am. Because I was looking at your
4 Web site, and you said there was an initial one-hour
5 evaluation.

6 A. Okay. That means that when the patient comes
7 in they're seen for an initial evaluation, which
8 typically takes an hour. And then according to what
9 the therapist that sees them determines in
10 coordination, if they have a referral with what the
11 physician has requested, they're then put on that
12 therapist's schedule for the next visits.

13 Q. Does a physician typically request a specific
14 physical therapist?

15 A. Sometimes they have.

16 Q. What's typical?

17 A. That they don't.

18 Q. Okay. So when a physician does not request a
19 specific physical therapist, how is a patient assigned
20 to a physical therapist for treatment?

21 A. The admin staff -- the office staff calls
22 them and schedules them according to their -- their --
23 their time, you know, if they work. They put them in
24 wherever the opening is that best suits their time.

25 Q. And when you say "their," you're talking

Marilyn M. Swygert 5/13/2013

27

1 about the patient's need?

2 A. Yes, patient's needs.

3 Q. Okay. What is the concept of coverage within
4 a PT physical therapy practice?

5 A. Coverage of the patient or coverage of an
6 office or --

7 Q. Either one.

8 A. Well, I'm not sure if I understand what
9 you're asking.

10 Q. As a PT board member, would you define
11 coverage in health care professions to mean having
12 another professional with the appropriate credentials
13 take call and see patients for a health care provider
14 who is unavailable for whatever the reason?

15 A. Yes. Like in the example of today patients
16 that were on my schedule are now being covered by other
17 therapists.

18 Q. That would be -- yes, ma'am.

19 A. Is that what you mean?

20 Q. Yes, ma'am.

21 A. Okay.

22 Q. And does that definition apply equally to
23 other health care professionals in your opinion?

24 A. Yes.

25 Q. Okay. I think you said you got on the board

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1 STATE OF SOUTH CAROLINA
 2 COURT OF COMMON PLEAS
 3 COUNTY OF RICHLAND
 4 KRISTIN JOSEPH, P.T., THOMAS N. JOSEPH, M.D.,
 5 AND WILLIAM G. MCCARTHY, M.D.,
 6 Plaintiff(s),
 7 vs. Case No.: 2012-CP-40-2632
 8 SOUTH CAROLINA DEPARTMENT OF LABOR,
 9 LICENSING AND REGULATION, SOUTH CAROLINA
 10 BOARD OF PHYSICAL THERAPY,
 11 Defendant(s).

12 D E P O S I T I O N

13 WITNESS: E. DARGAN ERVIN, JR.
 14 DATE: Monday, May 13, 2013
 15 TIME: 9:06 a.m.
 16 LOCATION: McNair Law Firm
 17 1221 Main Street, 18th Floor
 18 Columbia, South Carolina
 19 TAKEN BY: Attorneys for the Plaintiffs
 20 REPORTED BY: SHERI L. BYERS
 21 Registered Professional Reporter
 22 - - - - -
 23 COMPUSCRIPTS, INC.
 24 A Full-Service Court Reporting Agency
 25 Post Office Box 7172
 Columbia, South Carolina 29202
 803-988-0086
 1-888-988-0086
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1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS
3 KRISTIN JOSEPH, P.T., THOMAS N. JOSEPH, M.D.,
4 AND WILLIAM G. MCCARTHY, M.D.:

5 MCNAIR LAW FIRM
6 BY: ARIAIL B. KIRK, ESQUIRE
7 1221 Main Street, Suite 1800
8 Columbia, South Carolina 29201
9 akirk@mcnair.net
10 803.799.9800

11 ATTORNEYS FOR THE DEFENDANT
12 SOUTH CAROLINA BOARD OF PHYSICAL THERAPY:

13 SOWELL, GRAY, STEPP & LAFFITTE
14 BY: MONTEITH P. TODD, ESQUIRE
15 1310 Gadsden Street
16 Columbia, South Carolina 29201
17 mtodd@sowellgray.com
18 803.929.1400

19 ATTORNEYS FOR THE DEFENDANT
20 SOUTH CAROLINA DEPARTMENT OF LABOR,
21 LICENSING AND REGULATION:

22 SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING
23 AND REGULATION
24 BY: SARA MCCARTHA, ADVICE COUNSEL
25 OFFICE OF ADVICE COUNSEL
110 Centerview Drive
Columbia, South Carolina 29210
sara.mccartha@llr.sc.gov

21 ALSO PRESENT:

22 JOHN C. BRADLEY, JR., ESQUIRE, FOR SCAPTA
23
24

25 (INDEX AT REAR OF TRANSCRIPT)

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Edwin Dargan Ervin 5/13/2013

21

1 A. Yes.

2 Q. -- Atlantic joined and became additional
3 locations of?

4 A. Yes.

5 Q. Okay. What is your understanding of the
6 board's definition of "coverage"?

7 A. I don't know that we've ever, you know, had a
8 definition of coverage. I mean, my understanding is
9 like I'm here today, so I have two PT assistants who
10 are covering my patients back in North Myrtle Beach.
11 But it's just, you know, from my personal experience is
12 we have therapists who are going to look at my
13 patients, look at my documentation, and continue the
14 care that keeps them moving towards their goal.

15 Q. Okay. Can you explain to me the difference
16 between a referral of a patient and coverage of a
17 patient.

18 A. Looking at Sloan, referral would be
19 intra-professional. I mean, you have a physician
20 who -- or a nurse practitioner or a PA who, you know,
21 determines that physical therapy is going to help with
22 whatever problem the patient has and then says, "I'm
23 referring you or sending you over to the physical
24 therapists where coverage is."

25 You know, I've evaluated a patient, I

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Edwin Dargan Ervin 5/13/2013

23

1 there are therapists who want me to see total knee
2 replacement patients just because I can relate to them,
3 I can talk to them. And I think it's sometimes good to
4 have another set of eyes as a physical therapist, I may
5 have missed something. But it's consultation but not a
6 referral because, again, that's coming from, you know,
7 someone outside the profession I see as a referral.

8 Q. Is there any situation or an example you can
9 give me of a PT referring to another PT?

10 MR. TODD: Objection.

11 MS. KIRK: You can still answer.

12 THE WITNESS: I mean, if someone leaves town.
13 I refer folks to -- but, again, they walk in there with
14 that physician's order, I make sure before they leave
15 they have the same referral that I got. But in North
16 Myrtle Beach we have a large number of transients. We
17 have folks from Canada, folks from Ohio. And they go
18 home when the weather turns hot. And so they have to
19 pick up their care there, but, you know, I make sure
20 they have their order that they came from the physician
21 with when they came to see me before they go.

22 BY MS. KIRK:

23 Q. Okay. You say that 99 percent of your
24 patients have physician orders, how does the other 1
25 percent of patients access your services?

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Edwin Dargan Ervin 5/13/2013

25

1 you know, we would see individuals if they didn't have
2 insurance for a period of time, making sure, you know.
3 But as far as the indigent policy was is we would, you
4 know, provide some treatment and allow them a chance to
5 pay something, a dollar, two dollars, or sometimes we'd
6 even just write off. Typically, we would see the
7 indigent care, absolutely.

8 Q. Did Atlantic Physical Therapy accept
9 Medicaid?

10 A. We accepted Medicaid. The South Carolina
11 Medicaid regulations prohibit practices like Atlantic
12 from seeing anyone over the age of 21. So the
13 adolescent Medicaid, absolutely. We took and saw
14 Medicaid patients.

15 Q. I assume that Medicare is accepted as well?

16 A. Uh-huh.

17 Q. Do you believe that physical therapists refer
18 to physical therapy assistants?

19 A. No. We supervise physical therapist
20 assistants.

21 Q. How do you supervise PTAs?

22 A. I mean, it can go from reading the notes to
23 being in the room to, you know, periodic chart reviews.
24 It's more of responsibility where the physical
25 therapist assistant knows if they have questions, they

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 12-CP-40-2632

AFFIDAVIT

Defendant.

3. The APTA has more than 85,000 members throughout the United States. SCAPTA's membership includes over 700 PTs, over 100 PTAs, and over 200 physical therapy

students. SCAPTA's PT members, all of whom either live or work in South Carolina, account for about 24% of the licensed PTs in the State. SCAPTA is the only representative organization for PTs and PTAs in the State.

4. In 2003, serious concerns expressed over physician-owned physical therapy practices prompted the unanimous passage of a resolution opposing physician ownership of physical therapy services by the APTA House of Delegates.

5. In 2004, the Attorney General issued an opinion regarding the meaning of the existing statute prohibiting physician ownership of physical therapy services.

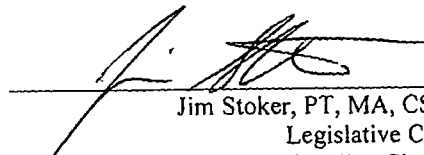
6. In *Sloan v. South Carolina Board of Physical Therapy Examiners*, 370 S.C. 452, 636 S.E.2d 598 (2006), SCAPTA moved to intervene and the circuit court granted SCAPTA's motion.

7. PTs often coordinate in a group practice setting to accommodate their patients' scheduling needs and/or to enable patients to obtain services at a more convenient location.

8. Many SCAPTA members are PTs who employ, or are employed by businesses that employ, PTAs to whom they sometimes send or direct patients.

9. PTAs are required by statute to work under the direction and supervision of PTs.

10. SCAPTA has members who take advantage of the South Carolina Professional Corporation Supplement, which allows PTs to form a professional corporation for the purpose of rendering physical therapy services and which allows such a professional corporation to provide such services through two or more licensed individuals.



Jim Stoker, PT, MA, CSCS
Legislative Chair
South Carolina Chapter
American Physical Therapy Association

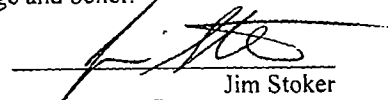
STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

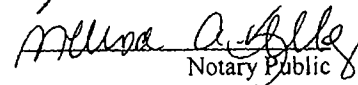
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SUBSCRIBED AND SWORN

Being first duly sworn on April 24, 2013, Jim Stoker swears and affirms that the facts stated herein are true and correct to the best of her knowledge and belief.


Jim Stoker

Personally appeared before me: Melissa A. Kelley


Notary Public

My commission expires:

9/25/2018

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
)
)
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Kristin Joseph, PT, Thomas N. Joseph, MD,)
and William G. McCarthy, MD,)
)

Civil Action No. 12-CP-40-2632

)
)
)
Plaintiffs,)
)

**AFFIDAVIT OF JOSEPH M.
MCKOWEN**

)
)
)
v.)
)

South Carolina Department of Labor,)
Licensing and Regulation, South)
Carolina Board of Physical Therapy,)
)

)
)
)
Defendant.)
)
)
_____)

COMES NOW Applicant for Intervention Joseph M. McKowen, PT, who swears and affirms as follows:

1. I am a physical therapist licensed by the South Carolina Board of Physical Therapy Examiners to practice physical therapy.
2. I am the sole owner of Physical Therapy, Inc., a physical therapy practice based in Gaffney, South Carolina.
3. I employ both physical therapists and physical therapist assistants as part of my practice.
4. The physical therapist employees in my practice primarily examine and evaluate patients in order to develop a suitable plan of care.
5. After a physical therapist in my practice has evaluated the patient and developed a suitable plan of care, he or she ordinarily directs the patient to a physical therapist assistant, who takes the patient through the requisite interventions (e.g., therapeutic exercises).

6. My practice relies heavily on the work of physical therapy assistants. If I were unable to use physical therapist assistants in my business the economic consequences would be severe.

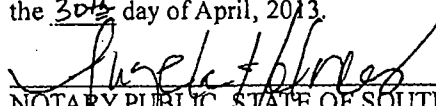
7. On occasion, physical therapists in my practice send or direct a patient to another physical therapist in the practice who is located in an office more convenient for the patient or whose schedule better accommodates the patient's schedule.

FURTHER, AFFIANT SAYETH NOT.



Joseph M. McKowen, PT
Physical Therapy, Inc.

Sworn to and subscribed before me on this
the 30th day of April, 2013.



NOTARY PUBLIC, STATE OF SOUTH CAROLINA
My Commission Expires: 3-30-2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Kristin Joseph, PT, Thomas N. Joseph, MD,)
and William G. McCarthy, MD,)

Civil Action No. 12-CP-40-2632

Plaintiffs,)

AFFIDAVIT OF AMALIA W. KIRBY

v.)

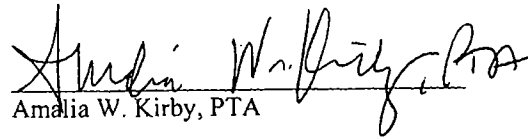
South Carolina Department of Labor,)
Licensing and Regulation, South)
Carolina Board of Physical Therapy,)

Defendant.)
_____)

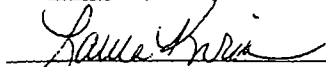
COMES NOW Applicant for Intervention Amalia W. Kirby, PTA, who swears and affirms as follows:

1. I am a physical therapist assistant licensed by the South Carolina Board of Physical Therapy Examiners.
2. It is my understanding that I am required by South Carolina law to practice under the direction and supervision of a physical therapist and that I cannot practice on my own without violating the law.
3. I am currently working as a prn ("pro re nata" or "as needed") physical therapist assistant through multiple companies in South Carolina. I always work under the direction and supervision of a licensed physical therapist. The physical therapists who direct and supervise my work are employed by the same company that employs me.

FURTHER, AFFIANT SAYETH NOT.


Amalia W. Kirby, PTA

Sworn to and subscribed before me on this
the 29th day of April, 2013.



NOTARY PUBLIC, STATE OF SOUTH CAROLINA
My Commission Expires: 6-8-15

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Kristin Joseph, PT, Thomas N. Joseph, MD,)
and William G. McCarthy, MD,)

Civil Action No. 12-CP-40-2632

Plaintiffs,)

**AFFIDAVIT OF SABRINA QUEEN
BRIDGES**

v.)

South Carolina Department of Labor,)
Licensing and Regulation, South)
Carolina Board of Physical Therapy,)

Defendant.)

COMES NOW Applicant for Intervention Sabrina Queen Bridges, PTA, who swears and affirms as follows:

1. I am a physical therapist assistant licensed by the South Carolina Board of Physical Therapy Examiners.

2. It is my understanding that I am required by South Carolina law to practice under the direction and supervision of a physical therapist and that I cannot practice on my own without violating the law.

3. I work in Greenville, South Carolina, at The Care Center, Inc. I always work under the direction and supervision of a licensed physical therapist. The physical therapists that direct and supervise my work are employed by the same company that employs me.

FURTHER, AFFIANT SAYETH NOT.

Sabrina Queen Bridges PTA
Sabrina Queen Bridges, PTA

Sworn to and subscribed before me on this
the 1 day of May, 2013.

Marilyn W Howard
NOTARY PUBLIC, STATE OF SOUTH CAROLINA
My Commission Expires: 2/4/19

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

KRISTIN JOSEPH, P.T., THOMAS N. JOSEPH, M.D.,
AND WILLIAM G. MCCARTHY, M.D.,

Plaintiff(s),
vs.

Case No.: 2012-CP-40-2632

SOUTH CAROLINA DEPARTMENT OF LABOR,
LICENSING AND REGULATION, SOUTH CAROLINA
BOARD OF PHYSICAL THERAPY,

Defendant(s).

D E P O S I T I O N

WITNESS: ROY CHRISTOPHER JUNKINS

DATE: Wednesday, May 1, 2013

TIME: 1:55 p.m.

LOCATION: McNair Law Firm
1221 Main Street, 18th Floor
Columbia, South Carolina

TAKEN BY: Attorneys for the Plaintiffs

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

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1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS
3 KRISTIN JOSEPH, P.T., THOMAS N. JOSEPH, M.D.,
4 AND WILLIAM G. MCCARTHY, M.D.:

5 MCNAIR LAW FIRM
6 BY: M. ELIZABETH CRUM, ESQUIRE
7 1221 Main Street, Suite 1800
8 Columbia, South Carolina 29201
9 lcrum@mcnair.net
10 803.799.9800

11 ATTORNEYS FOR THE DEFENDANT
12 SOUTH CAROLINA BOARD OF PHYSICAL THERAPY:

13 SOWELL, GRAY, STEPP & LAFFITTE
14 BY: MONTEITH P. TODD, ESQUIRE
15 1310 Gadsden Street
16 Columbia, South Carolina 29201
17 mtodd@sowellgray.com
18 803.929.1400

19 ATTORNEYS FOR THE DEFENDANT
20 SOUTH CAROLINA DEPARTMENT OF LABOR,
21 LICENSING AND REGULATION:

22 SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING
23 AND REGULATION
24 BY: SARA MCCARTHA, ADVICE COUNSEL
25 OFFICE OF ADVICE COUNSEL
110 Centerview Drive
Columbia, South Carolina 29210
sara.mccartha@llr.sc.gov

ALSO PRESENT:

JOHN C. BRADLEY, JR., ESQUIRE, FOR SCAPTA

(INDEX AT REAR OF TRANSCRIPT)

1 Clinic?

2 A. That's a partnership we have with Rich Hamel
3 in Anderson. He owns 50 percent, and we own 50
4 percent.

5 Q. And who is Rich Hamel?

6 A. He's a physical therapist that we went into
7 business with.

8 Q. Okay. Which one of these offices or office
9 do you work out of?

10 A. The one on Pendleton Street, the very first
11 one in Easley.

12 Q. Easley?

13 A. Yes, ma'am.

14 Q. Okay. If you look at the next page, please,
15 sir. Are these the services that you -- physical
16 therapy services that you currently provide? And when
17 I say "you," I'm talking about Doshier.

18 A. Okay. That looks to be correct.

19 Q. Okay. Which one of the physical therapy
20 services do you personally provide?

21 A. Well, under the direction and supervision of
22 a PT, pretty much everything you see. I don't do the
23 foot evaluations and the biomechanics. The custom
24 splinting and orthotics, I do not do. But pretty much
25 the rest of them I assist in.

1 A. I'm not. The therapist is.

2 Q. The therapist?

3 A. I work under the direction of the therapist.

4 Q. So you can't independently bill?

5 A. No, ma'am.

6 Q. So when you were working under the direction
7 of a therapist, the therapist is actually billing?

8 A. Yes.

9 Q. Okay.

10 A. Because it's their plan of care.

11 Q. Do you know whether or not Doshier has, as a
12 group, a provider contract with South Carolina
13 Department of Health and Human Services?

14 A. I don't know, to be honest with you.

15 Q. Okay. Do you know whether or not Doshier PTs
16 have individual provider contracts?

17 A. No, ma'am, not individual. Well, see, I'm
18 not sure. Our other partner, Kathy, handles all that.
19 I know our therapists have to be credentialed to
20 provide physical therapy. I don't know if that means
21 they have individual contracts or if they're
22 credentialed through your company. That's not part of
23 the company I deal with, so I'm not sure.

24 Q. What part of the company do you deal with?

25 A. Mainly just running -- you know, I deal with

1 referral of a patient and coverage of a patient?

2 A. Again, to me, referral would be that you were
3 sending a patient to a specialist to help them with a
4 certain problem they have. Coverage is, within our
5 practice, where we're just covering for somebody who is
6 out to continue the care that that patient has been
7 getting.

8 Q. Okay. When a patient comes in to Doshier to
9 receive physical therapy treatment, walk me through the
10 steps -- assume the patient is a self-referred patient.

11 A. Okay.

12 Q. Walk me through the steps that the patient
13 would go through to be assigned to a PT and seek and
14 get treatment.

15 A. Okay. In our practice, when they come in for
16 their first appointment, the -- actually, go back.
17 They will call to make an appointment. The secretary
18 will look at the schedule, see who has an open slot and
19 will put the patient in that open slot of the
20 therapist. When they come in to be seen that day, that
21 therapist will bring them back, do their evaluation,
22 and treat them that day.

23 Q. Okay. So how do you end up treating
24 patients?

25 A. We work as teams. We have a PT and a PTA.

1 We have two teams, actually. Two PTs and two PTAs.

2 And so the second visit when they come back, if the
3 therapist is busy with other patients, then I'll be
4 assigned that patient under -- you know, when we have
5 schedules of patients together as a team. So that's
6 how I get them.

7 Q. Okay. Do you always work with the same PT in
8 the team?

9 A. Always do unless that one is out, then I may
10 help the other therapist if that one is out.

11 Q. I think I asked you this, but do you all
12 receive referrals from occupational therapists?

13 A. No, ma'am.

14 Q. Speech therapists?

15 A. No, ma'am.

16 Q. Other PTs?

17 A. No. We don't receive -- no, ma'am.

18 Q. Does Dosher generally follow the APTA
19 standards, policies, and procedures that were approved
20 in 2012?

21 A. We try to.

22 Q. Okay. And I think you have already testified
23 that you didn't deal with the side of the business
24 regarding Medicaid or Medicare; is that right?

25 A. No. Our department, Kathy Gaines, handles

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF RICHLAND

KRISTIN JOSEPH, P.T., THOMAS N. JOSEPH, M.D.,
AND WILLIAM G. MCCARTHY, M.D.,

Plaintiff(s),
vs.

Case No.: 2012-CP-40-2632

SOUTH CAROLINA DEPARTMENT OF LABOR,
LICENSING AND REGULATION, SOUTH CAROLINA
BOARD OF PHYSICAL THERAPY,

Defendant(s).

D E P O S I T I O N

WITNESS: DARLENE P. POPE

DATE: Wednesday, May 1, 2013

TIME: 9:07 a.m.

LOCATION: McNair Law Firm
1221 Main Street, 18th Floor
Columbia, South Carolina

TAKEN BY: Attorneys for the Plaintiffs

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

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1 APPEARANCES:

2 ATTORNEYS FOR THE PLAINTIFFS
3 KRISTIN JOSEPH, P.T., THOMAS N. JOSEPH, M.D.,
AND WILLIAM G. MCCARTHY, M.D.:

4 MCNAIR LAW FIRM
5 BY: M. ELIZABETH CRUM, ESQUIRE
1221 Main Street, Suite 1800
Columbia, South Carolina 29201
6 lcrum@mcnair.net
803.799.9800

7
8 ATTORNEYS FOR THE DEFENDANT
SOUTH CAROLINA BOARD OF PHYSICAL THERAPY:

9 SOWELL, GRAY, STEPP & LAFFITTE
10 BY: MONTEITH P. TODD, ESQUIRE
1310 Gadsden Street
Columbia, South Carolina 29201
11 mtodd@sowellgray.com
803.929.1400

12

13

14 ALSO PRESENT:

15 JOHN C. BRADLEY, JR., ESQUIRE, FOR SCAPTA

16

17

18 (INDEX AT REAR OF TRANSCRIPT)

19

20

21

22

23

24

25

1 Q. Was it around the time -- around May 3rd of
2 2011?

3 A. I'm not sure if I actually saw the letter
4 then or just was told of the letter. But I knew of the
5 letter around that time.

6 Q. Okay. Let's look down into the third full
7 paragraph. A physical therapist can see a patient for
8 30 days without a physician referral, can't they?

9 A. Correct.

10 Q. Is that called direct access?

11 A. Yes. As long as the insurance allows it.

12 Q. Or they pay self-pay?

13 A. Well, a Medicare patient, you cannot see
14 under direct access.

15 Q. I wasn't asking about Medicare. I was just
16 asking is there a window of 30 days that patients can
17 see a PT without a medical referral, a physician
18 referral?

19 A. As long as the insurance allows direct
20 access.

21 Q. Okay. Either the insurance allows direct
22 access or the patient is a self-pay patient?

23 A. Okay.

24 Q. Is that correct?

25 A. Yes.

1 Q. Okay. Now, you mentioned Medicare. Medicare
2 and Medicaid require a physician order before they will
3 reimburse for PT; is that correct?

4 A. Yes.

5 Q. You work with Sports South, Inc.?

6 A. Sports Spine & Industrial.

7 Q. Sports Spine and Sports South. I think I
8 watched the Braves game last night. I know I did.
9 Sorry.

10 Okay. Can I call it SSI?

11 A. Yes.

12 Q. And you're a part owner of SSI?

13 A. Yes.

14 Q. Does SSI take Medicaid?

15 A. Under 21.

16 Q. Under 21. So you take -- under 21, does
17 Medicaid -- in South Carolina, does Medicaid actually
18 reimburse for PT in patients over 21, 21 or over?

19 A. Not in an outpatient facility unless it's in
20 a hospital.

21 Q. Okay. When you say, "not in an outpatient
22 facility unless it's in a hospital," do you mean that a
23 patient could go to a hospital-based outpatient center
24 and get PT?

25 A. That's my understanding.

1 physical therapist in the practice of physical therapy
2 and whose activities are supervised and directed by a
3 physical therapist whose license is in good standing?

4 A. Can you say that again, I'm sorry.

5 Q. Sure. Am I correct that a physical therapist
6 is a person who is licensed by the board to assist the
7 physical therapist in the practice of physical therapy
8 and whose activities are supervised and directed by a
9 physical therapist whose license is in good standing?

10 A. I believe you said a physical therapist is --
11 did you mean a physical therapist assistant?

12 Q. I did. I'm sorry. A physical therapist
13 assistant is a person licensed by the board who is
14 supervised by a physical therapist whose license is in
15 good standing?

16 A. Yes.

17 Q. I got it. Thank you.

18 And you said you all have a PTA in the Greer
19 office?

20 A. Yes.

21 Q. Is a physical therapy assistant assigned to a
22 specific PT for supervision?

23 A. Not in our situation. It's -- she's
24 supervised by whoever's --

25 Q. Whichever PT happens to be there?

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Kristin Joseph P.T., Thomas N. Joseph,)
M.D., and William G. McCarthy, M.D.,)
)
Plaintiffs,)
)
vs.)
)
South Carolina Department of Labor,)
Licensing and Regulation, South Carolina)
Board of Physical Therapy,)
)
Defendant,)
)
and)
)
South Carolina Chapter, American)
Physical Therapy Association, Joseph M.)
McKowen, PT, Sabrina Queen Bridges,)
PTA, and Amalia W. Kirby, PTA,)
)
Defendant-Intervenors.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 2012-CP-40-2632

SUPPLEMENTAL AFFIDAVIT
OF JOHN STEARNS

Introduction, Background, and Expertise

1. My name is John Stearns. I am a Director with Navigant Consulting Inc. I have been retained by the South Carolina Chapter of the American Physical Therapy Association (“SCAPTA”) to render expert opinions in the above captioned matter.
2. I have previously submitted an affidavit, dated December 12, 2013, in this matter which describes my background and qualifications.
3. I have been asked to review the Memorandum in Support of Plaintiff’s Motion for Summary Judgment.
4. During the course of my work in this case I have reviewed a variety of documents. In addition to those documents previously identified in my December 12, 2013 affidavit, a list of the material I considered in reaching my opinions herein is attached hereto as Appendix A.
5. Based on my work completed to date, and based on information currently available and known to me, I have developed certain additional expert opinions that are set forth below.

Memorandum in Support of Plaintiff’s Motion for Summary Judgment

6. The Memorandum in Support of Plaintiff’s Motion for Summary Judgment discussed an Office of Inspector General (“OIG”) Report that focused on questionable billing practices in the outpatient therapy setting.¹
7. The Plaintiffs’ Memorandum also discussed a Federal Register publication that characterized practitioners into levels of risk for purposes of new provider screening procedures.² This CMS risk characterization was supported, in part, by the OIG report.³
8. The Summary section of the Plaintiffs’ Memorandum also states “The Centers for Medicare and Medicaid Services (CMS) has recently determined that PTs constitute a higher risk for

¹ Memorandum in Support of Plaintiff’s Motion for Summary Judgment, pgs. 24-25.

² Memorandum in Support of Plaintiff’s Motion for Summary Judgment, pgs.24-25, 32-33

³ Federal Register, Vol. 76, No. 22, Feb. 2, 2011, pg. 5874

making prohibited referrals for profit than do physicians.”⁴ As addressed below, this is not correct.

9. The Plaintiffs’ Memorandum also states “The risk of abuse from outpatient PT group owners is greater than any abuse from physician owned physical therapy services (POPTS). PT owned physical therapy services or groups generally make 100% of their/its income from provision of PT services, whereas physicians/physician groups do not. This increased risk of abuse is particularly worrisome in light of the fact that CMS has classified PTs and PT groups in the moderate risk category for fraud, waste and abuse for screening for the Medicare and Medicaid programs.”⁵ As addressed below, in my opinion, these assertions are mistaken and are not supported by any CMS report or other document of which I am aware.

The Office of Inspector General Report

10. The OIG released a report dated December 10, 2010 titled “Questionable Billing For Medicare Outpatient Therapy Services.”⁶
11. The report identified 20 counties that had in 2009 (1) the highest average Medicare payment per beneficiary and (2) more than \$1 million in total Medicare payments for outpatient therapy (i.e., high-utilization counties). Miami-Dade County, Florida, is reviewed separately because it had the highest average Medicare payments per beneficiary among the high-utilization counties and the highest total Medicare payments for outpatient therapy in 2009. Additionally, prior OIG work has demonstrated that Miami-Dade County is a high-risk area for Medicare fraud.⁷
12. The report focused on the following six questionable billing characteristics that may indicate fraud:
 - a. services for which providers indicated that an annual cap would be exceeded,

⁴ Memorandum in Support of Plaintiff’s Motion for Summary Judgment, pg. 2

⁵ Memorandum in Support of Plaintiff’s Motion for Summary Judgment, pgs. 32-33

⁶ Office of Inspector General; OEI-04-09-00540

⁷ Office of Inspector General; OEI-04-09-00540. Page i

- b. beneficiaries whose providers indicated that an annual therapy cap would be exceeded on the beneficiaries' first date of service,
- c. payments for beneficiaries who received outpatient therapy from multiple providers,
- d. payments for therapy services provided throughout the year,
- e. payments for services that exceeded an annual cap, and
- f. providers who were paid for more than 8 hours of outpatient therapy provided in a single day.⁸

13. The report noted that outpatient therapy may be provided in a variety of settings. In addition to covering services provided in physicians' and therapists' offices, Medicare covers outpatient therapy provided by hospitals, skilled nursing facilities, outpatient rehabilitation facilities, comprehensive outpatient rehabilitation facilities, and home health agencies.⁹

14. I note that the report did not distinguish between physical therapist-owned practices and physician-owned physical therapy practices. In my opinion, it is likely that the findings from the OIG report applied to physician owned-physical therapy practices as well as physical therapist-owned practices and other types of providers. No distinction was made between provider types in the OIG report. Nor was there any focus on physician-to-PT referrals or PT-to-PT or PT-to-PTA handoffs.

15. The report focuses on high utilization counties, none of which are in South Carolina. The primary focus is on Miami-Dade County which, in my experience, is known to be a high risk area for all types of fraud, abuse, and waste.

16. My understanding of the questionable billing characteristics that may indicate fraud is that they focus on high volumes of therapy services and not on the referrals for services.

⁸ Office of Inspector General; OEI-04-09-00540. Page i

⁹ Office of Inspector General; OEI-04-09-00540. Page 2

The February 2, 2011 Federal Register

17. One comment in the Federal Register stated “We will assign occupational therapists, speech language pathology, and rehabilitation agencies to the ‘limited’ level of risk because we do not have evidence of program integrity risk that suggest that these entities should be assigned to the moderate or high levels of screening. However, we will assign physical therapists (including physical therapy groups) to the moderate screening level. We believe this classification is supported, in part, by a recent OIG report entitled ‘Questionable Billing for Medicare Outpatient Therapy Services’ (December 2010) (<http://oig.hhs.gov/oei/reports/oei-04-09-00540.pdf>), which found, among other things, that Miami- Dade County had three times, and nineteen other counties had at least twice, the national level on five of six questionable billing characteristics. Law enforcement has also identified fraudulent billing schemes involving physical therapy.”¹⁰

18. The regulations discussed in this Federal Register state that “A Medicare contractor is required to screen all initial applications, including applications for a new practice location, and any applications received in response to a revalidation request based on a CMS assessment of risk and assignment to a level of ‘limited,’ ‘moderate,’ or ‘high.’”¹¹

19. The Federal Register also describes the screening methods for each risk level:

- a. **Limited screening level: Screening requirements.** When CMS designates a provider or supplier as a “limited” categorical level of risk, the Medicare contractor does all of the following:
 - i. Verifies that a provider or supplier meets all applicable Federal regulations and State requirements for the provider or supplier type prior to making an enrollment determination.
 - ii. Conducts license verifications, including licensure verifications across State lines for physicians or nonphysician practitioners and providers and suppliers

¹⁰ Federal Register, Vol. 76, No. 22, Feb. 2, 2011, pg. 5874

¹¹ Federal Register, Vol. 76, No. 22, Feb. 2, 2011, pg. 5963

that obtain or maintain Medicare billing privileges as a result of State licensure, including State licensure in States other than where the provider or supplier is enrolling.

- iii. Conducts database checks on a pre- and post-enrollment basis to ensure that providers and suppliers continue to meet the enrollment criteria for their provider/supplier type.

b. Moderate screening level: Screening requirements. When CMS designates a provider or supplier as a “moderate” categorical level of risk, the Medicare contractor does all of the following:

- i. Performs the “limited” screening requirements described in paragraph (a)(2) of this section.
- ii. Conducts an on-site visit.

20. Based on my reading of these requirements, the only difference between a “limited” screening for the group that physicians are categorized into and the “moderate” screening requirements for physical therapists is that the Medicare contractor must conduct an on-site visit. In my experience, on-site visits are used to verify that the provider has an actual business location with scheduled operating hours and staffing to conduct operations. Such visits are designed to prevent outright fraud, and are not aimed at overutilization. They do not address issues relating to physician-to-PT referrals or PT-to-PT and PT-to-PTA handoffs.

21. Based on my reading of the document, the risk categorization put forth does not include consideration of referrals and does not actually discuss “prohibited referrals” as claimed by Plaintiffs in the Memorandum in Support of their Motion for Summary Judgment.

Physician-Related Risks

22. Federal regulations state that a physician who has a direct or indirect financial relationship with an entity, or who has an immediate family member who has a direct or indirect financial

relationship with the entity, may not make a referral to that entity for the furnishing of designated health services for which payment otherwise may be made under Medicare.¹²

23. A 2009 OIG report titled "Prevalence and Qualifications of Nonphysicians Who Performed Medicare Physician Services" found that 49 percent of rehabilitation therapy services (including primarily therapeutic exercise, massage therapy, ultrasound therapy, therapeutic activities, and electrical stimulation) billed by physicians but performed by nonphysicians were furnished by staff, not trained as therapists, that the OIG found to be unqualified.¹³
24. A 1994 OIG report titled "Physical Therapy in Physician's Offices" found that almost four out of five cases reimbursed as physical therapy in physicians' offices do not represent true physical therapy services. The report also found that the great majority of independently practicing physical therapy services meet all Medicare coverage guidelines.¹⁴
25. My understanding of the Federal regulations is that physician referrals to entities owned by the physician and not subject to an in-office exception were deemed to be at risk for fraud abuse with the Medicare program. My understanding of the OIG reports is that physical therapy services provided by physicians are also at risk for fraud abuse with the Medicare program.

Opinions

26. Neither the February 2, 2011 Federal Register nor the OIG reports I reviewed determined that there was any greater risk of fraud or overutilization in physical therapist-owned practices than in physician-owned physical therapy practices. Nor am I aware of any research or governmental authority making any such finding. To the contrary, I am aware of research

¹² Title 42: Public Health, PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT, §411.353

¹³ Office of Inspector General; OEI-09-06-00430, Page 16

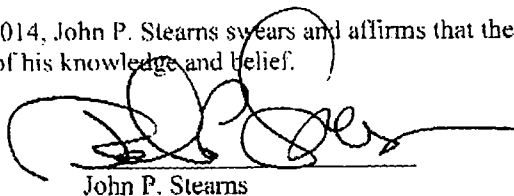
¹⁴ Office of Inspector General; OEI-02-90-00590, Page ii

concluding that there is a greater risk of overutilization and higher cost for physical therapy services where those services are provided by a physician-owned physical therapy practice.¹⁵

27. The risk categorization put forth by CMS does not imply that physician-owned physical therapy practices are less likely to commit fraud or abuse the Medicare benefit.
28. The patterns of fraud and abuse identified in Miami-Dade County and other high utilization localities are aberrant in my experience and it is inappropriate to assume that all physical therapy providers operate in a similar manner.
29. The patterns of fraud and abuse identified in Miami-Dade County and other high utilization localities likely apply to physician-owned physical therapy practices as well as other physical therapy providers.
30. I hold these opinions to a reasonable degree of professional certainty. It is my understanding that parties to this litigation may still be in the process of gathering data pertinent to my opinions. Consequently, while I have reviewed relevant documents and material available and known to me as of the date of this affidavit, I reserve the right to supplement and or amend my opinions based on additional information that may be produced in this matter.

¹⁵ Jean M. Mitchell & Elton Scott, "Physician Ownership of Physical Therapy Services," *JAMA*, Vol. 268, No. 15, pgs. 2055-2059 (1992); Alex Swedlow et al., "Increased Costs and Rates of Use in the California Workers' Compensation System as a Result of Self-Referral by Physicians," *New England Journal of Medicine*, Vol. 327, pgs. 1502-06 (1992).

Being first duly sworn on JAN 9, 2014, John P. Stearns swears and affirms that the facts stated herein are true and correct to the best of his knowledge and belief.



John P. Stearns

Personally appeared before me:

Lori A. Piccin
Notary Public

My commission expires:



Appendix A: Documents Reviewed and Considered

- Memorandum in Support of Plaintiff's Motion for Summary Judgment
- Federal Register, Vol. 76, No. 22, Feb. 2, 2011, pgs. 5862 ~ 5971
- Title 42: Public Health, PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT , §411.353
- Office of Inspector General; Questionable Billing For Medicare Outpatient Therapy Services OEI-04-09-00540
- Office of Inspector General; Prevalence and Qualifications Of Nonphysicians Who Performed Medicare Physician Services OEI-09-06-00430
- Office of Inspector General; Physical Therapy in Physician's Offices OEI-02-90-00590
- Jean M. Mitchell & Elton Scott, "Physician Ownership of Physical Therapy Services," *JAMA*, Vol. 268, No. 15, pgs. 2055-2059 (1992)
- Alex Swedlow et al., "Increased Costs and Rates of Use in the California Workers' Compensation System as a Result of Self-Referral by Physicians," *New England Journal of Medicine*, Vol. 327, pgs. 1502-1506 (1992).

Physician Ownership of Physical Therapy Services

Effects on Charges, Utilization, Profits, and Service Characteristics

Jean M. Mitchell, PhD, Elton Scott, PhD

Objective.—To evaluate the effects of physician ownership of freestanding physical therapy and rehabilitation facilities on utilization, charges, profits, and three measures of service characteristics for physical therapy treatments.

Design.—Statistical comparison by physician joint venture ownership status of freestanding physical therapy and comprehensive rehabilitation facilities providing physical therapy treatments in Florida.

Participants.—A total of 118 outpatient physical therapy facilities and 63 outpatient comprehensive rehabilitation facilities providing services in Florida during 1989. The data from the facilities were collected under a legislative mandate.

Main Outcome Measures.—Visits per patient, average revenue per patient, percent operating income, percent markup, profits per patient, licensed therapist time per visit, and licensed and nonlicensed medical worker time per visit.

Results.—Visits per patient were 39% to 45% higher in joint venture facilities. Both gross and net revenue per patient were 30% to 40% higher in facilities owned by referring physicians. Percent operating income and percent markup were significantly higher in joint venture physical therapy and rehabilitation facilities. Licensed physical therapists and licensed therapist assistants employed in non-joint venture facilities spend about 60% more time per visit treating physical therapy patients than licensed therapists and licensed therapist assistants working in joint venture facilities. Joint ventures also generate more of their revenues from patients with well-paying insurance.

Conclusion.—Our results indicate that utilization, charges per patient, and profits are higher when physical therapy and rehabilitation facilities are owned by referring physicians. With respect to service characteristics, joint venture firms employ proportionately fewer licensed therapists and licensed therapist assistants to perform physical therapy, so that licensed professionals employed in joint venture businesses spend significantly less time per visit treating patients. These results should be of interest to the medical profession, third-party payers, and policymakers, all of whom are concerned about the consequences of physician self-referral arrangements.

(JAMA. 1992;268:2055-2059)

From the Departments of Economics (Dr Mitchell) and Finance (Dr Scott), Florida State University, Tallahassee. Dr Mitchell is now with the Graduate Public Policy Program, Georgetown University, Washington, DC.

Reprint requests to Graduate Public Policy Program, Georgetown University, 3600 N St NW, Suite 200, Washington, DC 20007 (Dr Mitchell).

IT HAS BECOME common for physicians to invest in freestanding health care businesses to which they refer their patients, but at which they do not practice. Such financial arrangements, known as joint ventures, occur most frequently

among facilities that provide diagnostic testing or other ancillary services.¹ Anecdotal reports of high profits earned by joint ventures with referring physician owners have been the subject of front-page articles in major national newspapers.^{2,3} The costs and benefits of physician ownership of health care businesses have been discussed extensively in the medical literature.⁴⁻⁶ Federal and state policymakers have enacted and are considering further legislation designed to restrict the practice of physician self-referral.^{7,8}

See also p 2050.

Critics contend that physician ownership of freestanding health care businesses to which they refer patients creates a conflict of interest for referring physician investors. Critics further argue that the financial incentives that accompany such arrangements result in overutilization of services, higher costs to consumers, and reduced access for poor persons. Opponents also assert that these ownership arrangements create a captive referral system that significantly reduces or eliminates competition from non-joint venture providers.^{2,4,8}

Proponents argue that physician joint ventures benefit consumers. Potential benefits include sources of capital financing, risk diversification, increased access to new technological procedures, increased access to persons residing in medically underserved areas, and economies of scale and scope. Joint ventures may also enable physicians to better monitor the quality of services provided

to their patients.^{9,10}

Currently, conclusions as to the effects of physician joint ventures on utilization and costs are based on anecdotal evidence or limited analyses.^{11,12} This study evaluates the effects of physician ownership of freestanding physical therapy and rehabilitation facilities on charges, utilization, profitability, and on limited measures of service delivery. To date, no published research has examined the consequences of physician self-referral arrangements on the provision of physical therapy services.^{11,12} The data are from a comprehensive survey of health care facilities operating in Florida in 1989. During this time period, Florida law required that patients be referred by physicians to obtain physical therapy treatments.

METHODS

The results reported here are based on data collected for a study commissioned by the Florida legislature.¹ We designed questionnaires to obtain ownership, utilization, and financial data from all freestanding physical therapy and comprehensive rehabilitation facilities operating in Florida during 1989.¹³ Physician practices offering physical therapy services within the practice were not surveyed. The term *joint venture* is defined as any ownership or investment interest between referring physicians (or any health care professional who may make referrals) and freestanding facilities or businesses providing physical therapy services. We conducted an intensive telephone follow-up survey of all respondents to obtain missing data and to correct inconsistent information. We also contacted all nonrespondents to ascertain ownership status and why each had not complied with the mandated survey.

Measures of Utilization, Costs, and Charges

Utilization is measured as the mean number of visits per patient rendered by the facility, that is, total annual physical therapy visits provided at each facility divided by the number of physical therapy patients treated. Costs to consumers are measured by evaluating gross and net charges per unit of service adjusted for utilization rates. The combined effects of utilization and charges per visit are reflected by the average net charges or revenue per patient. *Gross charges or revenues* are defined as the total amount of dollars the facility billed to patients or third-party payers for services rendered; alternatively, gross revenues are equivalent to submitted charges. *Net charges or revenues* are defined as the amount of dollars ac-

tually collected for services provided or so-called allowed charges; net charges, before expenses, account for all contractual adjustments and other write-offs. We also examine total expense per visit and total expense per patient treated to determine the production costs to health care providers.

Profitability

In situations where normal economic forces of competition are constrained (or do not apply), businesses with market power may earn greater profits relative to other similar businesses by charging higher prices or by reducing quality to limit costs. Since this situation may occur when referring physicians own joint venture businesses, we evaluate firm profitability. Profits are determined by the quantities of and charges for services provided, as well as production costs. Profits represent a return to owners on their invested capital. Investors generally anticipate that such returns will compensate them for the degree of risk associated with the investment.

Proponents of joint ventures contend that physician owners could supervise the personnel and services more closely so that joint venture facilities might operate more efficiently and earn greater profits. Although this argument may apply to personnel employed in the physician's practice, it is not applicable to the joint venture physical therapy and rehabilitation facilities analyzed here. During our follow-up survey nearly all respondents indicated that the physician owners did not practice, supervise, or directly provide any services at the joint venture facilities.

Profit or operating income is defined as net revenues (charges reimbursed by third-party insurers and other payments for services) less operating expenses (exclusive of taxes). Operating expenses are classified as direct or fixed; direct operating expenses vary with the level of production, whereas fixed expenses are independent of volume. Fixed operating expenses include lease, rental payments, and depreciation.

An important indicator of firm profitability is percent operating income. For this measure, operating income is expressed relative to net revenues in percentage terms to adjust for differences in facility size. A related, alternative indicator of profitability is the percentage that net prices are marked up over the costs of production. *Markup* is defined as net operating income or profit before taxes expressed as a percentage of total operating expenses. A third measure of profitability is the average payment to owners per pa-

tient. This indicator is defined as total monetary compensation, excluding salaries, paid to the facility owners divided by the annual number of patients treated.

Service Characteristics

Physician joint ventures may also affect the manner in which patients are treated. If profits, rather than other concerns, motivate physicians to invest, then joint ventures could minimize the costs of providing services by reducing or avoiding normal expenses. One way to lower costs is to employ fewer licensed physical therapists and fewer licensed therapist assistants, and to hire instead lower wage workers to perform physical therapy (nonlicensed aides and exercise specialists). Costs can also be reduced by requiring physical therapists (or other workers) to treat patients for a shorter period of time. Both of these situations would reduce the average length of time each patient spends per visit with licensed physical therapists in physician-owned centers compared with non-joint venture facilities. Alternatively, if physician ownership improves provision of service, then the average length of time spent per licensed physical therapist for each visit should be comparable or even higher in physician-owned centers than in non-joint venture facilities. Systematic differences in the types of services provided might also explain differences in the amount of time spent per visit.

We evaluated the average number of minutes that licensed physical therapists spent per visit, the average number of minutes per visit spent by all licensed medical workers (licensed physical therapists and licensed assistants), and the number of minutes per visit spent by all medical workers (licensed and nonlicensed workers). The numerator for each variable that indicates the amount of time spent per visit by each category of labor is computed as follows: 1920 hours (2080 hours less 160 hours for sick leave and vacation) multiplied by 60 minutes multiplied by the number of full-time equivalent employees for the category. The number of full-time equivalent employees was adjusted to include part-time work, contract hours, and overtime.

Statistical Analyses

In the analyses presented in this article, facilities providing only physical therapy treatments are analyzed separately from those offering comprehensive rehabilitation services (physical therapy, occupational therapy, and speech pathology). The null hypothesis is that there are no differences (or that

Comparison of Joint Venture and Non-Joint Venture Physical Therapy and Rehabilitation Facilities

Variable	Physical Therapy Facilities					Rehabilitation Facilities				
	Joint Venture (n=43)		Non-Joint Venture (n=75)		P*	Joint Venture (n=28)		Non-Joint Venture (n=37)		P*
	Mean	SD	Mean	SD		Mean	SD	Mean	SD	
Physical therapy visits, No.	7967	4343	5344	4016	.0005	13085	7430	8813	11 802	.041
Physical therapy patients, No.	560	371	497	397	NS	922	557	862	1141	NS
Physical therapy visits per physical therapy patient, No.	16	5.7	11.2	2.5	.0005	14.3	2.4	10.3	3.2	.0005
Referrals from owners, %	53	36.4	...	...	.0005	52.6	35.2	...	...	.0005
Revenues and Expenses										
Gross revenue per patient, \$†	839	484	640	311	.001	1318	1062	937	460	.050
Net revenue per patient, \$	791	440	600	287	.006	1159	1049	833	419	.072
Total expense per patient, \$	617	389	532	280	NS	819	705	730	495	NS
Total expenses paid to licensed physical therapists, %	32.7	16.8	47.6	19.6	.0005	39.2	14.0	47.9	17.0	.024
Profitability										
Operating income, %	37.8	18.8	26.7	20.5	.002	44.7	19.4	26.8	20.4	.001
Markup, %	44.8	62.6	23.0	45.4	.028	69.0	71.9	23.4	39.3	.006
Payments to owners per patient, \$	78	134	44	123	.089	164	333	9	52	.013
Service Characteristics										
Time per visit with licensed physical therapist, min	28.5	14.9	49.0	28.3	.0005	36.2	17.9	62.0	35.7	.0005
Time per visit with licensed medical workers, min‡	37.4	14.8	60.1	37.3	.0005	49.5	24.8	89.6	45.2	.0005
Time per visit with all medical workers, min§	43.0	22.8	61.4	37.3	.0005	50.9	26.5	90.0	44.8	.0005

*NS indicates not statistically significant at $P < .05$.†The computations of revenues and expenses per patient for comprehensive rehabilitation facilities include all patients treated (physical therapy, occupational therapy, or speech pathology), regardless of the type of service each received because only gross revenues were reported by type of service. Note that gross revenue per physical therapy patient is 23% higher in joint venture rehabilitation facilities (\$928 vs \$751; $P < .045$).

‡Includes licensed physical therapists and licensed therapist assistants.

§Includes licensed and nonlicensed medical workers.

differences are beneficial to consumers) in the average values for joint venture and non-joint venture facilities. For each variable of interest, we computed univariate t statistics to test for differences in the mean values of the two ownership groups. Statistically significant differences indicate that the probability is .95 or more ($P < .05$) that some systematic influence produced the difference in the averages.

RESULTS

The response rate for physical therapy and rehabilitation facilities was nearly 84%; 262 of the 313 eligible facilities filed surveys with ownership information that enabled us to classify each as joint venture or non-joint venture. Thirty-two (63%) of the 51 nonrespondents reported an ownership arrangement involving referring physicians. Among the respondents, 19 provided only occupational therapy and speech pathology and were not analyzed because these services do not require a physician's referral. Another 62 facilities were excluded for one or more of the following reasons: the facility could not provide utilization and/or financial information, the facility operated for less than three fourths of the 1989 fiscal year, the facility rendered fewer than 1000 patient visits during 1989, or the facility treated only chil-

dren or was owned by a not-for-profit organization. The Table contains our results.

Utilization

Joint venture physical therapy clinics render on average about 50% more visits per year than their non-joint venture counterparts (7967 vs 5344; $P < .0005$). The difference in the mean number of physical therapy visits per patient is 16 for joint venture facilities and 11 for those physical therapy centers with no referring physician investors ($P < .0005$). Thus, patients treated for physical therapy at facilities owned by referring physicians averaged 45% or five more visits per patient than individuals treated at non-joint venture physical therapy centers.

The utilization results for comprehensive rehabilitation facilities mirror those of facilities providing only physical therapy. Joint venture rehabilitation facilities render close to 50% more physical therapy visits annually than similar non-joint venture facilities (13 085 vs 8813; $P = .05$). Again, the average number of physical therapy visits per physical therapy patient is 39% higher in joint venture facilities ($P < .0005$); visits per patient average 14.3 for joint venture facilities and 10.3 for non-joint venture facilities.

Charges and Expenses

Joint venture physical therapy clinics generate almost 32% more net revenue per patient than their non-joint venture counterparts; \$791 for joint ventures compared with \$600 for non-joint ventures ($P = .006$). Since non-joint venture facilities generate slightly higher revenue per visit, this significant difference in revenue per patient is attributable to the higher utilization rates of clinics with referring physician investors. Although joint ventures report significantly lower total expense per visit (\$38 for the joint ventures and \$52 for the non-joint ventures), average total expense per patient is about 16% higher in joint venture physical therapy clinics (\$617 vs \$531); the higher expense is to be expected given the higher number of visits per patient. Salaries and wages represent a similar proportion of total expenses for both ownership groups. Nonetheless, physician-owned centers allocate significantly less salaries and wages to licensed physical therapists; 33% for joint ventures compared with 48% for their non-joint venture counterparts ($P < .0005$). These results suggest that physician-owned centers provide more physical therapy services with fewer licensed therapists, which contributes to their lower average cost per visit.

The results for comprehensive rehabilitation facilities are similar. Net revenues and expenses are computed for all patients treated (physical therapy, occupational therapy, and speech pathology) because only gross revenues were reported by type of service. Both gross revenue and net revenue per patient are significantly higher in joint venture rehabilitation facilities; the difference for both measures is about 40%. Although not reported in the Table, gross revenue per physical therapy patient is about 23% higher in joint venture rehabilitation facilities (\$926 vs \$751; $P=.045$). While total expense per visit is significantly higher in non-joint venture facilities (\$63 vs \$42), total expense per patient is 12% higher in joint venture facilities and is not significant. Again, total salaries and wages account for a significantly smaller share of total expenses in joint ventures (39.2% vs 47.9%; $P=.024$).

Profitability

Both percent operating income and percent markup are significantly higher in physician-owned physical therapy centers. Percent operating income is 37.8% for joint ventures vs 26.7% for non-joint ventures ($P=.002$). The average markup for joint ventures is 44.8%, which is nearly twice the average markup of 23.0% for non-joint venture facilities ($P=.028$). The average monetary compensation to owners per patient in joint venture businesses, although only marginally significant ($P=.089$), is twice as much as the amount per patient received by the owners of non-joint venture businesses.

The results for comprehensive rehabilitation facilities show a similar pattern. Percent operating income is 67% higher for joint venture rehabilitation facilities (44.7% vs 26.8%; $P=.001$). The average markup is three times as much in joint venture facilities in comparison to their non-joint venture counterparts (69% vs 23.4%; $P=.006$). Finally, although the variation around the mean is large, the average payment to owners per patient treated is also significantly higher in joint venture facilities ($P=.013$).

Service Characteristics

Licensed physical therapists employed in joint venture physical therapy facilities spend on average about 28 minutes of their time per patient visit. In contrast, licensed physical therapists working in non-joint venture businesses average 72% more time per visit (an average of 48 minutes per visit) treating patients than licensed physical therapists employed by joint venture clinics ($P<.0005$).

A similar pattern emerges when the

numerator includes the total annual work time (in minutes) of licensed physical therapists and licensed therapist assistants. The time per visit with licensed medical workers averages 37 minutes in joint venture businesses compared with 60 minutes for their non-joint venture counterparts. Thus, patients receiving physical therapy services in non-joint venture facilities are treated for 62% more time per visit (over 22 minutes) by licensed therapists and licensed therapist assistants than patients receiving such services at joint venture businesses ($P<.0005$).

The inclusion of the total work time of other nonlicensed medical workers in the numerator increases the ratio in joint venture businesses by about 15%, but has a negligible effect on the ratios for non-joint venture physical therapy clinics. These findings suggest that nonlicensed workers are substituted for licensed workers in joint venture facilities, but not enough to equalize quantities of labor per visit at joint venture and non-joint venture facilities.

The results for comprehensive rehabilitation facilities are similar. Licensed physical therapists employed in non-joint venture facilities spend about 71% more time (25 minutes) per visit treating physical therapy patients than licensed physical therapists working in joint venture centers ($P<.0005$). Again, the comparisons of the measure including licensed assistants, as well as the variable accounting for the time of both licensed and nonlicensed medical workers, parallel the results for centers specializing in physical therapy.

Finally, although not reported in this article in detail, we analyzed data on revenue by source of payer to evaluate economic access. Our findings suggest that joint ventures treat relatively more patients with good insurance coverage. For example, joint venture comprehensive rehabilitation facilities generate significantly more revenues from Blue Cross and commercial insurers (44% vs 24.8%; $P<.05$) and from managed care payers (8.4% vs 1.7%; $P<.05$) than their non-joint venture counterparts. In contrast, non-joint venture rehabilitation centers generate significantly more revenue from Medicare (40% vs 20.5%; $P<.05$) and self-pay patients (8.4% vs 1%; $P<.05$) than similar facilities owned by referring physicians. These differences in payer class could contribute to the differences in utilization and revenue per patient between the two ownership groups.

COMMENT

This study reports the first empirical evidence as to the effects of physician

joint ventures on the provision of physical therapy services. These results should be of interest to the medical profession, third-party insurers, and policymakers—all of whom are concerned about conflict of interest, utilization, and cost consequences of physician self-referral arrangements.^{4,9,14-17}

Utilization measured by the average number of visits per patient is significantly higher in both joint venture physical therapy facilities and rehabilitation facilities. Average net revenue per patient, which indicates the ultimate cost to consumers, is significantly higher in joint venture facilities providing physical therapy. The higher revenue per patient is due to the higher number of visits per patient, although these visits involve less labor by licensed physical therapists. Our findings concerning service characteristics show that joint venture firms employ proportionately fewer licensed therapists and licensed therapist assistants to perform physical therapy. Furthermore, licensed therapists and licensed therapist assistants employed in joint venture businesses spend significantly less time per visit treating patients than licensed therapists working in non-joint venture facilities. Joint venture businesses also appear to be significantly more profitable, and they generate significantly more revenue from patients with good insurance than their non-joint venture counterparts.

Since 18% of the Florida population is elderly, compared with 12.5% nationally, one might speculate that our findings are due to the demographic characteristics of the Florida population. To assess whether the higher percentage of elderly influences the demand for physical therapy, we compared Florida with the United States for 10 aggregated Medicare diagnosis related group discharges that are likely to require physical therapy. For all 10 aggregated discharge categories that we examined, the number of Medicare discharges per 1000 beneficiaries was lower in Florida relative to elsewhere in the United States. For example, for back problems the ratio was 2.78 in Florida and 3.92 elsewhere.

We also considered the possibility that our results may be due to a greater incidence of occupational injuries and illnesses among working age persons. Incidence data from the Bureau of Labor Statistics show that in 1989 the number of injuries and illness per 100 full-time employees was 8.3 in Florida compared with 9.4 for the rest of the United States.¹⁸ Lost days of work due to occupational injuries in 1989 per 100 full-time employees were 69.6 in Florida compared with 82 elsewhere. Considering

these statistics, there is no reason to attribute the differences between joint venture and non-joint venture facilities to the health status of the population.

Two other factors should also reduce the demand for physical therapy services in outpatient clinics in Florida relative to elsewhere. First, annual pay in Florida is below the national average.¹⁹ Second, the percentage of the nonelderly population in Florida without health insurance exceeds the national average (22.9% for Florida vs 16.6% nationally).²⁰ Thus, while it is unlikely that the characteristics of the Florida population account for the differences we find by joint venture ownership, some of the differences may be attributed to payer class.

We obtained data from a 1988 salary survey conducted by *PT Forum* (a nationally distributed weekly newspaper

for physical therapists), which contained information on the incidence of physician-owned physical therapy services nationally. Of the 484 respondents who indicated they worked in a freestanding outpatient clinic, 23.6% reported the facility was physician-owned. State-specific figures were 25.3% for California, 25% for Florida, and 21.2% for Texas. These data reveal that, in many states, the proportion of therapists working in physician-owned clinics is comparable with Florida. Thus, while the economic and health characteristics of the Florida population are likely to reduce the demand for physical therapy services, relative to elsewhere the frequency of therapists working in physician-owned physical therapy clinics is similar to the national average.

In conclusion, although the actual distribution of injury and ailments that each

clinic treats is unknown, there is no reason to expect that patients treated at joint venture facilities have less severe health problems than patients treated at non-joint venture clinics. Detailed information on patient characteristics required to adequately control for case mix is rarely available at the firm level. Such a phenomenon could account for shorter duration visits in which therapists spend less time with patients. Yet, if joint ventures treat a less severe case mix, then these patients should also require fewer visits in order to recover from their injuries and ailments. On the contrary, our results show that patients treated in joint venture facilities have higher utilization rates and that the average visit length in joint ventures is shorter than the average visit length in non-joint venture businesses.

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INCREASED COSTS AND RATES OF USE IN THE CALIFORNIA WORKERS' COMPENSATION SYSTEM AS A RESULT OF SELF-REFERRAL BY PHYSICIANS

ALEX SWEDLOW, M.H.S.A., GREGORY JOHNSON, Ph.D., NEIL SMITHLINE, M.D.,
AND ARNOLD MILSTEIN, M.D., M.P.H.

Abstract Background. There is widespread concern that ownership by physicians of testing or treatment facilities to which they refer patients leads to overuse of such facilities. We determined the patterns of use of three services — physical therapy, psychiatric evaluation, and magnetic resonance imaging (MRI) — among physicians treating patients whose care was covered under workers' compensation. We then compared the rates of use among physicians who referred patients to facilities of which they were owners (self-referral group) with the rates among physicians who referred patients to independent facilities (independent-referral group).

Methods. We used a large data base to analyze claims under workers' compensation in California from October 1, 1990, through June 30, 1991, to determine the frequency and cost of these three selected services and determined whether the referring physicians were practicing self-referral or independent referral. We evaluated the cost per case for all three services, measured the frequency with which physical therapy was initiated, and evaluated the medical appropriateness of MRI.

Results. We found that physical therapy was initiated 2.3 times more often by the physicians in the self-referral

group (68 percent) than by those in the independent-referral group (30 percent; $P < 0.01$). The mean cost per case for physical therapy was significantly lower in the self-referral group ($\$404 \pm 102$) than in the independent-referral group ($\$440 \pm 167$; $P < 0.01$).

The mean cost of psychiatric evaluation services was significantly higher in the self-referral group than in the independent-referral group (psychometric testing, $\$1,165 \pm 728$ vs. $\$870 \pm 482$; $P < 0.01$; psychiatric evaluation reports, $\$2,056 \pm 1,063$ vs. $\$1,680 \pm 578$; $P < 0.01$). The total cost per case of psychiatric evaluation services was 26.3 percent higher in the self-referral group ($\$3,222 \pm 1,451$) than in the independent-referral group ($\$2,550 \pm 742$; $P < 0.01$).

Of all the MRI scans requested by the self-referring physicians, 38 percent were found to be medically inappropriate, as compared with 28 percent of those requested by physicians in the independent-referral group ($P < 0.05$). There was no significant difference in the cost per case between the two groups.

Conclusions. This study demonstrates that self-referral increases the cost of medical care covered by workers' compensation for each of the three types of service studied. (N Engl J Med 1992;327:1502-6.)

THERE is growing concern about conflict of interest in medicine in the United States.¹⁻⁶ Recent studies have focused on whether physicians' ownership of testing or treatment centers increases the number of tests and services performed.⁷⁻¹⁰ Research in Florida indicates that physician-owned facilities generate significantly higher rates of use and costs than independently owned facilities.^{7,8} Studies of physician ownership in California have found that the higher concentration of physician-owned magnetic resonance imaging (MRI) facilities in California has increased rates of use between 34 percent and 56 percent above the rates for the rest of the country.⁹ The study by Hillman et al. of diagnostic imaging demonstrated that physicians who referred patients to facilities of which they were owners (those who practiced self-referral) charged 4.4 to 7.5 times more per episode of care than other physicians.¹⁰ In response to these findings, the states of Florida, Michigan, and New Jersey have enacted legislation that restricts self-referral by physicians.

The American Medical Association (AMA) Council on Ethical and Judicial Affairs stated in December 1991: "In general, physicians should not refer patients to a health care facility outside their office practice at which they do not directly provide care or services

when they have an investment interest in the facility."¹¹ In June 1992, however, the AMA's House of Delegates adopted a new policy that allows doctors to make such referrals if patients are informed of the doctor's financial interest in the facility and of any available alternatives.¹² This reversal on the part of the AMA reflects the lack of consensus within organized medicine about physicians' ownership of medical facilities. There have also been two recent efforts by the federal government to limit self-referral on the part of physicians. Since January 1992, physicians have been prohibited from referring patients to clinical laboratories in which they have an ownership interest. In addition, the "safe harbor" regulations published in the *Federal Register* defined more clearly the investment, ownership, and reimbursement arrangements in which physicians may participate without fear of violating anti-kickback provisions of Medicare and Medicaid.¹³

To our knowledge, the effects of physician self-referral within the workers' compensation system have not been systematically analyzed. To investigate this issue, we evaluated a total of 6581 California workers' compensation cases for which claims were filed with a large workers' compensation insurance company during a nine-month period in 1990 and 1991. We analyzed the effect of physicians' self-referral on three high-cost medical services covered under workers' compensation: physical therapy, psychiatric evaluation, and MRI. We evaluated the cost per case for all three services, measured the frequen-

From the National Medical Audit unit, William Mercer, Inc., San Francisco (A.S., G.J., A.M.); and Current Health Concepts, Sausalito, Calif. (N.S.). Address reprint requests to Dr. Johnson at William Mercer, Inc., 3 Embarcadero Cir., Suite 1250, San Francisco, CA 94111.

cy with which physical therapy was initiated, and prospectively analyzed the medical appropriateness of MRI.

METHODS

This study was designed to compare the patterns of use of three services — physical therapy, psychiatric evaluation, and MRI — among physicians who refer patients to facilities of which they are owners (self-referral group) and physicians who refer patients to independent facilities (independent-referral group).

Since differences in case mix between physicians in the self-referral and independent-referral groups might account for differences in rates of use or cost, we classified all cases according to the Ambulatory Visit Groups (AVG) classification scheme,¹⁴ which we have modified for workers' compensation cases.¹⁵ The AVG system is analogous to the system of diagnosis-related groups currently used by Medicare to reimburse acute care hospitals. On the basis of the patient's diagnosis (the diagnostic code from the *International Classification of Diseases, 9th Revision, Clinical Modification*) and the medical-procedure codes of the California Relative Value Studies and *Current Procedural Terminology* for outpatient services in each case, the AVG system is used to assign that case to 1 (and only 1) of 571 groups.

Type of Referral

Throughout the study, self-referral was defined as a referral for a medical service made by a physician or clinic to an entity owned entirely or in part by the referring physician or clinic. Self-referral was defined by either of the following two patterns: referral services were provided under the same tax identification number as the primary service, or referral services were provided under a different tax identification number from the primary service, but one or more owners were common to both entities.

When services were delivered under different tax identification numbers, we searched commercially available data bases that list officers, stockholders, and partners of facilities (the California Fictitious Business Name Listing, the Executive Business Listing, and other state and national data bases on corporations and limited partnerships available from Information America, Atlanta). If this search failed to identify common ownership, we then directly telephoned the referring physician's office and inquired about common ownership.

Physical-Therapy and Psychiatric-Evaluation Services

We used one of California's largest data bases on workers' compensation claims (that of the Industrial Indemnity Co., San Francisco) to analyze the frequency and cost of physical-therapy and psychiatric-evaluation services provided to injured workers. The data base was selected because it was complete and contained information on a large number of patients distributed throughout California. Information about each case was stored longitudinally; thus, the data base contained claims information for all services provided to the injured worker during the entire nine-month period of the study.

Data on all patients covered by workers' compensation in California who received physical-therapy or psychiatric-evaluation services from October 1, 1990, through June 30, 1991, were analyzed. Our analysis compared the rates of use and costs of physical-therapy and psychiatric-evaluation services for physicians in the self-referral and independent-referral groups.

Since musculoskeletal injuries make up the majority of all workers' compensation medical cases, we were able to limit our evaluation of physical therapy to providers with substantial experience in treating industrial musculoskeletal injuries. We defined this degree of experience as the treatment of 10 or more cases of musculoskeletal injury during the study period. There were 76 providers who met this criterion; they treated 1257 cases of musculoskeletal injury. Using the method described above, we were able to determine in all instances whether the referring providers were in the self-referral group or the independent-referral group.

In California, patients covered by workers' compensation are most frequently referred for psychiatric-evaluation services to document a claim of "stress." This evaluation virtually always includes both psychometric testing and a psychiatric-evaluation report. (We documented this fact in a preliminary analysis of our data base.) We therefore limited our analysis of psychiatric-evaluation services to cases in which there was both psychometric testing and a psychiatric-evaluation report. Altogether, 1751 (99 percent) of the cases within the data base met this criterion. A random sample of 220 cases (13 percent) was selected for analysis of ownership. We were able to determine ownership and self-referral or independent-referral status in each of these cases.

MRI

We also compared the cost and appropriateness of MRI scans in the self-referral and independent-referral groups. Appropriateness of referral for an MRI scan was determined under a prospective precertification program. All physicians' requests for MRI scans (regardless of the body part to be examined) were referred by Industrial Indemnity to a national, independent utilization-review firm for precertification review of medical appropriateness. The firm's criteria for appropriateness were established by a panel of board-certified specialists in orthopedics, industrial medicine, and radiology. After initial development by an independent board-certified radiologist and the medical directors of the utilization-review firm and its parent (one of the three largest companies managing health maintenance organizations in the United States), the criteria were reviewed and revised by a panel of independent, practicing experts in managed care who were all board-certified in orthopedics, neurology, neurosurgery, or radiology.

On the basis of medical documentation of the patient's injuries and conversations with the physician who requested the MRI, the review firm gave an opinion on the medical appropriateness of the procedure before it was performed. The reviewers were blinded to the physician's relation with the MRI center.

The classification of a procedure as medically inappropriate could be appealed. To be certain that the reviewer's decision did not merely defer an appropriate scan to another date, cases in which the MRI was categorized as medically inappropriate were followed for an additional six months. In all cases in which a scan was approved within six months after the original request, the MRI was considered to be medically appropriate.

All 864 requests for MRI scans from January 1, 1991, through June 30, 1991, were evaluated. We were able to determine whether the physician had an ownership interest in the facility in 502 (58 percent) of these cases.

Statistical Analysis

Continuous variables are presented as means $\pm$ SD and were compared by two-tailed t-tests. The proportion of cases in each group was assessed by the chi-square test. For all analyses, a P value of less than 0.05 was considered to indicate statistical significance. Results were analyzed with use of the Crunch4 Statistical Package (Oakland, Calif.).

RESULTS

Physical Therapy

Table 1 shows the 1257 cases of musculoskeletal injury (whether or not the patients received physical therapy) according to AVG and type of provider (whether the provider practiced self-referral or independent referral). Four AVGs account for 92 percent of all cases; there was no significant difference in the distribution of AVGs between the self-referral and independent-referral groups.

As shown in Table 2, physical therapy was initiated more than twice as often by physicians in the self-referral group (in 68 percent of the cases) as by those

in the independent-referral group (30 percent; $P < 0.01$). The mean cost per case for physical therapy in the self-referral group ($\$404 \pm 102$) was significantly lower than that in the independent-referral group ($\$440 \pm 167$; $P < 0.01$).

Psychiatric-Evaluation Services

Table 1 classifies the random sample of 220 cases in which patients received both psychometric testing and psychiatric-evaluation services, according to AVG and provider type. There was no significant difference in the distribution of AVGs between the two types of providers. As Table 2 shows, the mean cost per case for psychiatric-evaluation services was 26 percent higher in the self-referral group ($\$3,222 \pm 1,451$) than in the independent-referral group ($\$2,550 \pm 742$; $P < 0.01$). This difference was due to the higher cost of psychometric testing ($\$1,165 \pm 728$ vs. $\$870 \pm 482$; $P < 0.01$) and the greater number of tests per case and to the higher costs of psychiatric-evaluation reports ($\$2,056 \pm 1,063$ vs. $\$1,680 \pm 578$; $P < 0.01$) (since psychometric tests are reimbursed according to the California Official Medical Fee Schedule, which pays the same amount for each psychometric test regardless of the test, the cost per case for these reports is directly proportional to the number of tests performed).

MRI Scans

Tables 1 and 2 show the results of our study of the medical appropriateness of MRI scans. A total of 502 requests for precertification were received from imaging centers in which ownership could be identified. In Table 1, these cases are classified according to AVG and provider type. There was no significant difference in the distribution of cases between the self-referral and independent-referral groups.

As shown in Table 2, 38 percent of the scans requested by physicians in the self-referral group were found to be medically inappropriate, as compared with 28 percent of those requested by physicians in the independent-referral group ($P < 0.05$). There was no significant difference in cost per MRI procedure between the two groups.

DISCUSSION

This study demonstrates that self-referral increases the cost of medical care under workers' compensation for each of the three types of service studied, but by a different mechanism in each instance: by substantially

Table 1. Distribution of AVGs and Mean Cost per Case in the Self-Referral and Independent-Referral Groups.*

AVG CODE AND CATEGORY	CASES		COST PER CASE	
	SELF-REFERRAL	INDEPENDENT REFERRAL	SELF-REFERRAL	INDEPENDENT REFERRAL
	no. (%)		mean $\pm$ SD (\$)	
Physical therapy				
824 Medical back problems†	632 (62)	135 (56)	406 $\pm$ 98	448 $\pm$ 131
825 Tendonitis	162 (16)	43 (18)	384 $\pm$ 119	451 $\pm$ 177
829 Strain of arm or shoulder	87 (9)	18 (8)	413 $\pm$ 88	360 $\pm$ 234
826 Wound or fracture of arm or shoulder	58 (6)	18 (8)	381 $\pm$ 122	401 $\pm$ 188
828 Trauma to fingers or toes†	42 (4)	12 (5)	416 $\pm$ 95	261 $\pm$ 200
Other‡	36 (4)	14 (6)	444 $\pm$ 111	789 $\pm$ 1
Total‡	1017 (100)	240 (100)	404 $\pm$ 102	440 $\pm$ 167
Psychiatric services				
824 Medical back problems†	61 (39)	24 (37)	3,230 $\pm$ 1,493	2,340 $\pm$ 697
2120 Minor wounds and injuries	58 (37)	18 (28)	3,215 $\pm$ 1,420	2,887 $\pm$ 743
1941 Individual supportive therapy	14 (9)	8 (12)	3,114 $\pm$ 1,465	2,214 $\pm$ 626
1945 Unscheduled crisis	10 (6)	3 (5)	2,929 $\pm$ 1,153	2,314 $\pm$ 929
1923 Other mental disturbances	6 (4)	7 (11)	4,372 $\pm$ 1,967	2,744 $\pm$ 748
Other	6 (4)	5 (8)	2,780 $\pm$ 1,091	2,751 $\pm$ 736
Total‡	155 (100)	65 (100)	3,222 $\pm$ 1,450	2,549 $\pm$ 742
MRI				
824 Medical back problems	273 (87)	165 (88)	981 $\pm$ 231	994 $\pm$ 171
829 Strain of arm or shoulder	30 (10)	14 (7)	936 $\pm$ 179	874 $\pm$ 79
Other	12 (4)	8 (4)	964 $\pm$ 199	1,103 $\pm$ 180
Total	315 (100)	187 (100)	976 $\pm$ 226	990 $\pm$ 170

*AVG denotes the Ambulatory Visit Groups classification.¹⁴ There were no significant differences in the distribution of AVGs for physical therapy, psychiatric-evaluation services, or MRI between the self-referral group and the independent-referral group, by the chi-square test. Percentages do not always total 100, because of rounding.

†Differences in cost between the self-referral and independent-referral groups were significant ($P < 0.05$) by t-test.

‡Differences in cost between the self-referral and independent-referral groups were significant ($P < 0.01$) by t-test.

increasing the percentage of injured workers who receive physical therapy (which more than offsets the slight decrease in cost per case); by increasing the number of psychometric tests and the cost of psychiatric-evaluation reports; and by increasing the frequency of requests for clinically inappropriate MRI scans. These higher rates of use and higher costs have important implications for workers' compensation expenditures, since self-referral is the predominant form of referral for these services.

Physical Therapy

According to the California Workers' Compensation Institute (CWCI) 1990 Medical Fee Survey of 39 private and public insurers, physical therapy represents 56 percent of all outpatient procedures and 34 percent of all outpatient costs for the treatment of injured workers in California.¹⁶ This represents an increase of 31 percent in the volume of services in relation to other outpatient procedures since the CWCI's 1988 study.¹⁶

Injured workers usually receive a prescription for treatment from a physician (an orthopedic specialist or physician at an industrial medical or multispecialty clinic) to the physical therapist for specific treatment. Over the years, many physicians and clinics that treat patients covered by workers' compensation have established physical-therapy departments within their general operations or have established separate phys-

Table 2. Frequency of Use of Services and Cost per Case in the Self-Referral and Independent-Referral Groups.

VARIABLE	CASES			COST PER CASE		
	SELF-REFERRAL	INDEPENDENT-REFERRAL	SELF:INDEPENDENT RATIO*	SELF-REFERRAL	INDEPENDENT-REFERRAL	SELF:INDEPENDENT RATIO*
	no. (%)			mean $\pm$ SD (\$)		
Physical therapy						
No. of musculoskeletal injuries	1017 (100)	240 (100)	—	—	—	—
Cases with physical therapy	690 (68) [†]	71 (30)	2.3	404 $\pm$ 102 [‡]	440 $\pm$ 167	0.9
Psychiatric services						
Cases with psychiatric-evaluation reports	155 (100)	65 (100)	—	2,056 $\pm$ 1,063 [‡]	1,680 $\pm$ 578	1.2
Cases with psychometric testing	155 (100)	65 (100)	—	1,165 $\pm$ 728 [‡]	870 $\pm$ 482	1.3
Cost of total evaluation	—	—	—	3,222 $\pm$ 1,451 [‡]	2,550 $\pm$ 742	1.3
MRI						
Requests for scans	315 (100)	187 (100)	—	—	—	—
Scans found medically inappropriate	121 (38) [§]	52 (28)	1.4	976 $\pm$ 226	990 $\pm$ 170	1.0

*The ratio of the number of cases or the cost per case in the self-referral group to that in the independent-referral group.

[†]The proportion of cases in which physical therapy was ordered in the self-referral and independent-referral groups differed significantly ($P < 0.01$), by the chi-square test.

[‡]The mean cost per case differed significantly between the self-referral group and the independent-referral group ($P < 0.01$), by t-test.

[§]The proportion of cases in which MRI scans were found to be medically inappropriate differed significantly between the self-referral group and the independent-referral group ($P < 0.05$), by the chi-square test.

ical-therapy facilities that they own but that are operated as distinct financial entities.

In Florida, Mitchel and Scott recently found that 40 percent of physical-therapy facilities were owned by physicians.⁷ Our study focused on California physicians who treat large numbers of musculoskeletal injuries and found that 91 percent of all physical therapy was performed by providers who engage in self-referral (Table 2), and the frequency with which physical therapy was initiated was 2.3 times greater in the self-referral group than the independent-referral group. The cost per case of physical therapy, however, was about 10 percent higher in the independent-referral group.

In this study, there was no significant difference in case mix between the self-referral and independent-referral groups (Table 1). In the absence of measures of severity of illness among outpatients, it is therefore impossible to determine whether the lower cost per case in the self-referral group reflects more efficient care or the provision of physical therapy to patients with less severe injuries, since self-referring practitioners initiate physical therapy at more than twice the rate of independent providers.

Regardless of which hypothesis is correct, this small difference in cost per case is more than offset by the dramatically greater frequency with which self-referring providers initiate physical therapy. As Table 3 shows, for every 1000 workers with musculoskeletal injuries, the costs incurred by the California workers' compensation system would be \$143,672 (110 per-

cent) higher if these injured workers were evaluated by self-referring rather than independently referring practitioners.

Psychiatric-Evaluation Services

The CWCI estimates that approximately 6 percent of the total medical payments under workers' compensation were for psychiatric services in 1991.¹⁶ California state law defines a valid claim of work-related stress as one in which the work environment contributes 10 percent or more to a worker's total stress level. Some argue that this definition of compensable workplace stress has created a referral environment that encourages excessive evaluation and testing.

We found that 70 percent of all psychiatric-evaluation services were requested by providers who had an ownership interest in the entity that provided both psychometric testing and psychiatric-evaluation reports (Table 2). Furthermore, evaluation costs were 26 percent higher when this ownership

relation existed.

As indicated above, a referral for evaluation virtually always results in charges for two services: psychometric testing and a psychiatric-evaluation report that synthesizes the findings of the psychometric tests with the findings from the psychiatric history and examination. Therefore, if a provider with an economic interest in a facility were motivated more by monetary incentives than one without such an economic interest, we would expect this to be reflected in greater use and higher costs of psychometric testing, as well as a more extensive and therefore more costly evaluation report, which would be required to integrate the results of more extensive testing. As shown in Table 2, the cost of each psychiatric service and the mean cost per case were significantly higher in the self-referral group than the independent-referral group; the differences in cost were as follows: psychometric testing, 34 percent; psychiatric evaluation reports, 22 percent; and total evaluation, 26 percent.

As Table 3 shows, for every 1000 workers receiving psychiatric-evaluation services, the costs incurred by the California workers' compensation system would be \$672,000 (26 percent) higher if these workers were treated by physicians in the self-referral group rather than the independent-referral group.

MRI Scans

MRI has gained prominence as the diagnostic imaging tool of choice in the assessment and documentation of specific types of injuries. California cur-

Table 3. Additional Cost Incurred by the California Workers' Compensation System for Each 1000 Injuries Treated at Self-Referral Rather Than Independent-Referral Rates.

SERVICE	SELF-REFERRAL	INDEPENDENT REFERRAL
Physical therapy		
No. of musculoskeletal injuries	1000	1000
Rate of referral for physical therapy	$\times .678$	$\times .296$
No. of cases with physical therapy	678	296
Cost per case	$\times \$404$	$\times \$440$
Total cost of physical therapy	\$273,912	\$130,240
Additional cost per 1000 cases (%)	\$143,672 (110)	
Psychiatric services		
No. of cases with psychiatric-evaluation services	1000	1000
Cost per case	$\times \$3,222$	$\times \$2,550$
Total cost of psychiatric-evaluation services	\$3,222,000	\$2,550,000
Additional cost per 1000 cases (%)	\$672,000 (26)	
MRI		
No. of requests for MRI	1000	1000
Rate of inappropriate scans	$\times .384$	$\times .278$
No. of inappropriate scans	384	278
Cost per case	$\times \$976$	$\times \$990$
Cost of inappropriate MRI scans*	\$374,784	\$275,220
Cost differential for appropriate scans*	—	\$10,108
Total cost of MRI scans	\$374,784	\$285,328
Additional cost per 1000 cases (%)	\$89,456 (31)	

*Additional cost (\$14 per case) of the 722 approved MRI procedures.

rently has approximately 400 MRI machines (Mitchell J: personal communication). Recent studies have shown that such a concentration of imaging centers is associated with higher rates of use. After adjustment for the characteristics of the population, Californians undergo 51 percent more MRI procedures than the national average.⁹ Leape et al. similarly concluded that an increased concentration of providers increases rates of use.¹⁷ In their study, regions with a high rate of carotid endarterectomy had twice as many surgeons performing the operation as regions where the rate was low.

We found MRI scans to be medically inappropriate 38 percent more often when ordered by self-referring physicians, suggesting increased rates of use in this group. The higher rate of inappropriateness in the self-

referral group may help explain the Florida study's finding that rates of use in these physician-owned facilities were 14 to 65 percent higher than in a control area.⁷

Table 3 illustrates the effects of these requests for medically inappropriate scans. For every 1000 requests for MRI scans, the costs incurred by the California workers' compensation system would be \$89,456 (31 percent) higher if these requests were made by self-referring physicians rather than by physicians in the independent-referral group.

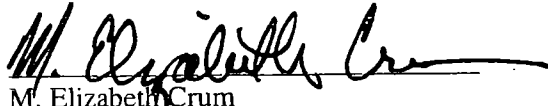
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material. I also certify that this Record is in compliance with the August 13, 2007 order of the South Carolina Supreme Court.



M. Elizabeth Crum

Ariail B. Kirk

McNAIR LAW FIRM, P.A.

Post Office Box 11390

Columbia, South Carolina 29211

(803) 799-9800

ATTORNEYS FOR
APPELLANT

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