

Legislation in Review: From Where We Started To Where We're Going

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The following is a summary of the Professional Issues Forum presentation at Spring Conference on April 16, 2010.

Early Milestones

The history of the profession physical therapy in our state began with the passage of the first physical therapy (PT) law [RCW 18.74] in 1949. This law enacted a registration requirement, creating a list of all PTs practicing in the state.

In 1975, the entire scope of physical therapy practice was updated and included two new components: licensure and an independent licensing board. Licensure requires a higher burden of proof that the designee has the desirable level of professional education and examination performance and includes experience and training. This updated law moved the practice out from under the medical licensing board authority. In 1984, all licensing boards and commissions became responsible for regulating and disciplining their own designees under the Uniform Disciplinary Act.

Passage of direct access for patients did away with the referral requirement in 1988. However, it came at a cost. Because of a last minute floor amendment and negotiations, PTs lost the legal right to perform spinal manipulation.

The Professional Services Corporation Act (PSCA) was amended in 1999 to allow PTs and OTs to go into business together. The two state-funded PT schools moved to the DPT program in 2001 (Eastern Washington University) and 2004 (University of Washington). The years of service pay for school PTs (up to two years) became law in 2007.

Model Practice Act

An updated bill was introduced in 1998, which was based on the Federation of State Boards of Physical Therapy's Model Practice Act. The Physical Therapy Association of Washington's (PTWA) membership directed the Legislative Committee to attain Title Protection, PTA licensure, and removal of the spinal manipulation prohibition. The bill failed that year because chiropractors opposed the spinal manipulation section, medical doctors opposed everything in general and needle EMG specifically, podiatrists opposed wound care and sharp debridement, prosthetists and orthotists opposed orthoses and OTs opposed functional and cognitive abilities language. On advice from the American Physical Therapy Association (APTA), the big bill was broken into smaller and more focused bills.

Title Protection took seven years to pass. PTWA worked hard with the opposing stakeholder groups to come to common language, only to have agreements rescinded each session. PTWA persisted with negotiations and used mediators when necessary. Our members learned the value of grassroots lobbying and telling the truth when speaking to

legislators or testifying before committees. In spite of persistent opposition from the medical and podiatry groups, the governor signed the bill into law in 2005.

Because of our members' good will relationships with legislators, the PTA licensure bill was signed into law in a record-breaking one session time frame in 2007.

The bill to remove the spinal manipulation prohibition was introduced in 2009. The bill didn't get a hearing in either health care committee, because of the controversy with the chiropractors. Legislators dislike scope of practice battles.

PTWA met with the Washington State Chiropractic Association (WSCA) for small-group negotiations four times over a two-year period. After asking and answering their many questions, debating terminology and techniques and supplying them with referenced documents, the WSCA presented PTWA with a position paper stating it would be neutral on our bill if: 1) an extra 2,000 hours of training in spinal manipulation was required in addition to the DPT degree 2) these 2,000 hours would include the ability to order and interpret imaging studies and 3) every patient needs an X-ray before receiving a spinal manipulation. PTWA responded with a written document refuting the paper with cited evidence. The response paper reiterated PT education and training requirements and explained that PTs follow the red-flag rules on when to recommend ordering X-rays. These documents are available for review on the PTWA website.

Our plan is to ask a legislative mediator to facilitate discussions on bill language with WSCA. We are clear on having done our due diligence with negotiations and will ask an objective outsider to help us. We will reintroduce our bill in the 2011 session. We will continue to support legislators who support us by encouraging donations to WPT-PAC, inviting our representatives to our clinics or out for a cup of coffee to discuss our issues and keep Legislative Impact Day as successful as ever.

Supreme Court Decision

The Washington State Supreme Court rendered a unanimous 9-0 decision March 18, 2010 in the Columbia Physical Therapy v. Benton Franklin Orthopedics, a case arguing that medical doctors owning physical therapy practices and employing PTs violates state law. The court decided that because physical therapy is a subset of medicine (the entire PT scope of practice falls under the Medical Practice Act), Benton Franklin Orthopedics did not violate 1) the corporate practice of medicine, 2) the PSCA or 3) the anti-rebate act. It is legal for medical doctors to employ PTs.

In effect, the court disregarded the PT Title Protection law and the PT/OT Incorporation law. Its decision to include all of physical therapy as a subset of medicine superseded these statutes.

The court did state that the Consumer Protection Act (CPA) may be violated and that the trial court may hear the merits of this case. It's up to Columbia Physical Therapy to decide its next step.

Because the CPA is in play, medical doctors are on notice by the court to follow through with the letter of the law. When referring patients for services, they must inform their patients of any potential for financial gain from service ownership. They also must inform patients that they have a choice of where to receive services and provide them a list of local options.

Though neither PTWA nor the APTA initiated this lawsuit, Columbia Physical Therapy asked both associations for assistance after the case was filed. Each group presented an amicus brief to the court. Both groups and many individuals offered financial support. Unfortunately, there were 18 state and national associations siding with Benton Franklin Orthopedics including the American Academy of Orthopedic Surgeons (AAOS) and the American Medical Association that provided legal and financial support.

Chances of overturning a unanimous court decision are slim. It would take legislation to change the Medical Practice Act, adding language stating medical doctors can't practice physical therapy, or a United States Supreme Court decision overturning the Washington State Supreme Court's decision. Even though this decision only affects the laws of Washington state, it will most likely be cited as case law in other states and jurisdictions.

It appears most likely a federal solution may be needed to combat referral for profit instead of a state-by-state battle. The APTA is initiating a dialog with the AAOS in an attempt to find common areas of interest and build a positive relationship. They are also perusing removal of physical therapy services from the ancillary service exemption in the federal Stark law.

In the mean time, PTWA will continue to support members and educate the public on the concerns surrounding referral for profit.

Conclusion

PTWA has achieved major legislative successes over the past 10 years. It is because of our strong membership grassroots participation, our knowledge of the issues, the ability to speak with one voice and our reputation for integrity that we've gained so much. We've had our share of knockdown blows, but we are a strong organization. We know where we're headed and are tenacious enough to get there by 2020.

APTA and PTWA Vision 2020:

By 2020 physical therapy will be provided by physical therapists who are doctors of physical therapy, recognized by consumers and other health care professionals as practitioners of choice to whom consumers have direct access for the diagnosis of, interventions for, and prevention of impairments, functional limitations, and disabilities related to movement, function and health.