

LEGAL UPDATE RE: NEW PT LEGISLATION AFFECTING PODIATRIC MEDICAL CORPORATIONS



BY: BETH A. KASE, ESQ.

CPMA and CMA have been working together the last few years to clarify an ambiguity in existing law regarding the employment of licensed physical therapists by medical corporations and podiatric medical corporations. On October 7, 2013 Governor Brown signed AB 1000 into law which expressly adds licensed physical therapists to the list of healing arts professionals who may be professional employees, shareholders, officers, or directors of a California medical corporation or a podiatric medical corporation. The law goes into effect January 1, 2014. Of particular interest to you is that the new law permits the physical therapist employed by the podiatric medical corporation to practice within the full scope of the physical therapist's practice, without being limited by the podiatric scope of practice. Thus the physical therapist may perform physical therapy services outside of the podiatric scope of practice, as this article will discuss. This article will also discuss the law's authorization of the employment of other healthcare professionals not expressly listed in the legislation, which is intended to provide the professional corporation flexibility to practice in the future without needing to go back to the legislature for authorization. Additionally this article will discuss the patient's new direct access to physical therapy services which is a significant change to current law.

The Legislative Fix to Authorize Employment of PTs.

Although many medical corporations and some podiatric medical corporations have employed physical therapists for years, in 2010 the Physical Therapy Board reinterpreted the professional corporation regulatory scheme which made it unclear whether these professional corporations could employ physical therapists. The ambiguity lies in the omission of "physical therapists" from the list of health care professionals that may be employed by a medical corporation and a podiatric medical corporation under the Moscone-Knox Professional Corporations Act (Corporations Code Section 13401.5).

Prior to the enactment of AB 1000, Corporations Code Section 13401.5 provided:

"... the following 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. . . .

(b) Podiatric medical corporation.

- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Registered nurses.
- (4) Licensed optometrists.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Naturopathic doctors."

The ambiguity arose because "physical therapists" are not included in the list. Nor are "physical therapists" included in the list for medical corporations. AB 1000 fixes the omission and adds "licensed physical therapists" to the list. Now physical therapists may be employees, shareholders (up to certain percentage and numeric limitations), directors, and officers of a podiatric medical corporation or a medical corporation. The referring physician or podiatric physician must provide the patient oral and written disclosure of such physician's financial interest in the professional corporation, and explain the patient's right to be treated by a physical therapy provider who is not employed by the practice.

There's more. Recognizing the changing nature of healthcare, the legislation provides flexibility to allow medical corporations and podiatric medical corporations to employ other licensees who may not be specifically listed in the statute. To accomplish this flexibility, AB 1000 adds the following:

"This section [13401.5] does not limit employment by a professional corporation designated in this section of only those licensed professionals listed under each subdivision. Any person duly licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed to render professional services by a professional corporation designated in this section."

Therefore podiatry corporations may now employ licensed occupational therapists, licensed speech-language pathologists, and certain other healthcare professionals to provide professional healthcare services within the scope of their respective profession. These healthcare professionals still may not be shareholders, officers or directors of the podiatric medical corporation. Under current practice you might not see the benefit to your podiatry practice to add these practitioners. However, to keep pace with the ever-growing trend of consolidation and affiliation within the healthcare industry, it's in the professional corporation's best interest to have legislative flexibility to grow the practice in all ways.

Physical Therapist Employees Not Limited to Podiatric Scope of Practice.

"Physician Partnerships" submitted by Jim Rathlesberger, M.P.A., Executive Officer, California Board of Podiatric Medicine (BPM) and posted on the BPM website at http://www.bpm.ca.gov/forms_pubs/phys_partner.pdf clarifies that MDs who are employed by podiatric medical corporations may work within their full MD scope of practice. The BPM's Department of Consumer Affairs attorney interpreted Corporations Code Section 13401.5(b) to permit the healthcare professional employee to practice his or her full scope of practice. Otherwise, the inclusion of "optometrists" on the list of healthcare licensees who may be employed by podiatric medical corporations

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would make no sense. Interpreting AB 1000 to allow the physical therapist employee to practice within the full PT scope of practice is consistent with this interpretation. The author confirmed this interpretation with Jim Rathlesberger, and Mr. Rathlesberger confirmed that BPM concurs with this interpretation.

Patient's Direct Access to Physical Therapist Without a Doctor's Order.

Physical therapists have been lobbying for years to win the right to practice independently without a doctor's order. AB 1000 stops short of granting PTs full independent practice. However, a big win for physical therapists is that the new law allows health care consumers to seek treatment from a physical therapist without a physicians' or podiatrist's order for a limited period of time. Physical therapists may now treat patients for 45 calendar business days, or 12 visits, whichever comes first, without first seeing a physician or a podiatric physician. The law does not expand or modify the scope of practice for physical therapists. The law requires physical therapists to refer patients to a physician or podiatrist for an in-person patient examination and evaluation to ensure there is no underlying medical condition if the therapy extends beyond 45 calendar days or 12 visits, whichever comes first.

Interestingly, it appears that under the new law a patient may seek PT treatment from a physical therapist employee for the limited period of time without a physician's order. If the therapy extends for more than 45 calendar days or 12 visits, whichever comes first, the physical therapist must refer the patient to a physician. You can foresee the potential for some pretty knotty referral patterns emerging under this scenario which could require regulatory analysis for compliance with the self-referral (i.e., Stark law) and anti-kickback laws.

Additional requirements for the PT are included in the new legislation. Among these, the PT must provide oral and written

notice to the patient of the limitations of the Direct Physical Therapy Treatment Services, as specified in the legislation. The new law specifies that nothing in the legislation requires a health care service plan, insurer, worker's compensation plan, employer or state program to provide coverage for direct access to treatment by a physical therapist.

If you decide to employ a physical therapist or any other licensed professional authorized by the legislation, you must take care to structure the arrangement to comply with other applicable laws, such as self-referral, anti-kickback, and fictitious name permit laws and requirements.

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CMA and CPMA had previously opposed the Physical Therapy Association's attempts to authorize "direct access" to PTs, but they came to the conclusion that allowing AB 1000's limited direct access was an acceptable compromise. The bill does not expand the PT's scope of practice, and the existing prohibition on a PT's diagnosing disease remains. Some physical therapists are unhappy with the law because they want more independence. If a sign of a good compromise is that both sides feel they had to give more than they wanted to, then AB 1000 has the markings of a good compromise, and offers the prospect of enhanced access to physical therapy care for patients in both the medical and podiatry practice settings and the independent physical therapist's practice.

The full text of AB 1000 may be found at:

http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0951-1000/ab_1000_bill_20130918_enrolled.htm

Legislative history has been made.

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