

Big Win in Supreme Court!!!

Columbia Physical Therapy, Inc. P.S. v. Benton Franklin Orthopedic Associates, P.L.L.C.

In a unanimous decision released on March 18, 2010, the Washington State Supreme Court ruled in favor of Benton Franklin Orthopedic Associates (BFOA) in the case challenging whether physical therapists could be employed by medical practices in Washington. The Supreme Court held that BFOA was entitled to summary judgment on Columbia Physical Therapy's (CPT's) claims under the corporate practice of medicine doctrine, the Washington Professional Service Corporation Act (PSCA), and the antirebate statute. The Supreme Court did find that there were factual questions related to CPT's claim under the Consumer Protection Act, and remanded the case for further action on that single remaining issue. This decision represents a victory for physicians and medical practices, not only because it is now clear they can employ physical therapists, but because an adverse ruling could have outlawed their employment of other licensed health care professionals (such as nurses).

Background

BFOA, a professional limited liability company, employed three physical therapists who worked in facilities separate from the physicians' office. CPT brought suit, making four different claims. First, CPT claimed that employment of physical therapists violated the corporate practice of medicine doctrine, which prohibits (absent specific legislative authorization) a business entity from employing medical professionals from practicing their licensed professions. Second, CPT claimed that BFOA's employment of the physical therapists violated the PSCA, since the physical therapists were rendering services different than the services for which the professional business entity was created. Third, CPT claimed that BFOA violated the Washington antirebate statute because BFOA received and paid unearned profits – that is, profits generated by a separate, distinct entity. Finally, CPT claimed that BFOA violated the Washington CPA, alleging in two cases, BFOA appeared to be directing patients to their (employed) physical therapists rather than allowing patients to choose which physical therapy facility they wished to patronize.

Corporate Practice of Medicine and Professional Service Corporation Act Claims

The Supreme Court combined their discussion of these two claims since they were closely related. The Court held that the PSCA authorized BFOA to employ physical therapists, and therefore there was not a violation of either the PSCA or the corporate practice of medicine doctrine. The corporate practice of medicine doctrine prohibits a business entity from employing medical professionals to practice their licensed profession – absent a specific legislative authorization which would allow this. Through the PSCA, the Washington legislature created a narrow exception to the corporate practice of medicine doctrine which allows similarly licensed professionals to come together in a business to practice in their field. The Supreme Court confirmed that under the PSCA, BFOA may not engage in any business other than rendering

professional services for which its members are licensed – that is, the *practice of medicine*. The Court determined that “*physical therapy is part of the practice of medicine.*” Therefore, since the BFOA business entity **was** rendering services (through its employed physical therapists) for which its members are licensed, there was no violation of the PSCA *or* the corporate practice of medicine doctrine. The Supreme Court affirmed the lower court’s grant of summary judgment in favor of BFOA in the PSCA claim, and directed the lower court to grant summary judgment in favor of BFOA in the corporate practice of medicine claim.

Antirebate Statute Claim

The Supreme Court held that BFOA did not violate the Washington antirebate statute by receiving profits from their employed physical therapists. The antirebate statute prohibits receiving and paying unearned profits. While at first glance this might appear to apply to profits received by BFOA from their physical therapists, the Court pointed out that the statute has an exception which applies in this case – profits earned by an employee of a firm and which flow to the firm’s owners are **exempt** from the provisions of the statute. Unlike other cases the Supreme Court has heard, in this case there was just one business entity – BFOA – even though there were services provided at different locations. Since the physician members of BFOA practiced as part of the business, and profits came to it from the physical therapists who were employed by the business, the profits were **not unearned**, and therefore are allowed by the statute. In addition, the Supreme Court also declared that there is no supervision requirement for employees under the antirebate statute. The Supreme Court directed the lower court to enter summary judgment on the antirebate claim for BFOA.

Consumer Protection Act Claim

The Supreme Court determined that there were sufficient disputes regarding the facts underlying the CPA claim (whether BFOA might have misled patients into thinking they had no right to choose where they received physical therapy) that it affirmed the trial court’s refusal to grant summary judgment to BFOA, and remanded this claim for further action in the lower court. We do not know what will happen at the lower court. The parties might choose to settle on this claim. The upshot of this particular ruling is that physicians’ practices must take care in how they refer patients for services, including physical therapy, occupational therapy, imaging, or other services in which the practice has an ownership interest. Patients must be informed they have a choice and need to be provided with options for obtaining those services.