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February 10, 2014

Honorable Leland Y. Yee
Room 4072, State Capitol

PHYSICAL THERAPY: SCOPE OF PRACTICE - #1327942

Dear Senator Yee:

QUESTION

Does the Physical Therapy Practice Act authorize a physical therapist to perform joint manipulation, which, for purposes of this opinion, is defined as moving a joint out of its normal range of motion and into the parapsychological range of motion?

OPINION

The Physical Therapy Practice Act does not authorize a physical therapist to perform joint manipulation, which, for purposes of this opinion, is defined as moving a joint out of its normal range of motion and into the parapsychological range of motion.

ANALYSIS

1. Background

The Physical Therapy Practice Act (Bus. & Prof. Code, div. 2, ch. 5.7 (§ 2600 et seq.); hereafter the act)¹ provides for the licensure and practice of physical therapists by the Physical Therapy Board of California (the board) and makes it unlawful, with certain exceptions, for a person who is not licensed as a physical therapist to practice or offer to practice physical therapy, as defined, for compensation, or to hold himself or herself out as a

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

physical therapist. (§ 2630.) Section 2620 of the act defines the scope of practice for physical therapists as follows:

“2620. (a) Physical therapy means the art and science of physical or corrective rehabilitation or of physical or corrective treatment of any bodily or mental condition of any person by *the use of the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise*, and shall include physical therapy evaluation, treatment planning, instruction and consultative services. The practice of physical therapy includes the promotion and maintenance of physical fitness to enhance the bodily movement related health and wellness of individuals through the use of physical therapy interventions. The use of roentgen rays and radioactive materials, for diagnostic and therapeutic purposes, and the use of electricity for surgical purposes, including cauterization, are not authorized under the term “physical therapy” as used in this chapter, and a license issued pursuant to this chapter does not authorize the diagnosis of disease.

“(b) Nothing in this section shall be construed to restrict or prohibit other healing arts practitioners licensed or registered under this division from practice within the scope of their license or registration.” (Emphasis added.)

In sum, the act authorizes physical therapists to perform therapy treatments only through the use of “the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise.”

You have asked whether the scope of practice set forth in the act authorizes a physical therapist to perform joint manipulation. For purposes of this opinion, you have defined “joint manipulation” as moving a joint out of its normal range of motion and into the parapsychological range of motion. “Parapsychological space” means “the distance a joint can be moved beyond the passive end range (elastic barrier) without causing the tissue to rupture” or “the last of three barriers to end joint movement, distinguished by the audible popping sound that occurs as a gap is created in the joint.”² Accordingly, joint manipulation, for purposes of this opinion, is a technique used to move a joint out of its normal range of motion by exerting enough force to create a gap in the joint.

2. Plain language

As stated above, the act authorizes physical therapists to perform therapy treatments only through the use of “the physical, chemical, and other properties of heat, light, water, electricity, sound, massage, and active, passive, and resistive exercise.” (§ 2620.) When the language of a statute is clear, its plain meaning should be followed. (*Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 38.) Thus, in order for joint manipulation to be an

² See definition of “parapsychologic space” at <<http://medical-dictionary.thefreedictionary.com/parapsychologic+space>> (last accessed Nov. 7, 2013).

authorized physical therapy practice pursuant to section 2620 it must constitute a treatment therapy that involves the use of “the physical, chemical, and other properties of heat, light, water, electricity, sound, *massage, and active, passive, and resistive exercise*” in order for section 2620 to authorize physical therapists to perform the maneuver. (§ 2620; emphasis added.) It is our view that, of the treatment therapies authorized by section 2620, massage and active, passive, and resistive exercise are the only therapies into which joint manipulation may fall. Because the act does not define the terms “massage” and “active, passive, and resistive exercise,” we must rely on the usual, ordinary, and common-sense meaning of those terms. (*People v. Mejia* (2012) 211 Cal.App.4th 586, 611.)

Examining the meaning of “massage” first, that term is defined as “the action of rubbing or pressing someone’s body in a way that helps muscles to relax or reduces pain in muscles and joints” and the “manipulation of tissues (as by rubbing, kneading, or tapping) with the hand or an instrument for therapeutic purposes.”³ Therefore, the ordinary meaning of massage includes the manipulation of tissues to reduce pain in joints. We have no information that would allow us to determine if performing joint manipulation would reduce pain in a joint. Nonetheless, because the definition of massage includes more gentle actions, such as rubbing, kneading, and tapping, rather than more forceful actions such as thrusting, it is unlikely that the ordinary meaning of “massage” includes joint manipulation, which requires exerting enough force to create a gap in the joint. Therefore, we conclude that joint manipulation does not constitute massage for purposes of section 2620.

Turning to the meaning of “active, passive, and resistive exercise,” we must look to the definition of each individual type of exercise listed. “Active exercise” means a “type of bodily movement performed by voluntary contraction and relaxation of muscles.”⁴ “Passive exercise” means a “therapeutic exercise technique used to move a patient’s joints through a range of motion without any effort on the part of the patient.” “It is accomplished by a therapist, an assistant, or the use of a machine.”⁵ “Resistive exercise” means “[e]xercise in which a muscle contraction is opposed by force” with an objective to “increase muscular strength or endurance.”⁶ According to these definitions, joint manipulation is most akin to passive exercise, which involves a therapist moving a patient’s joint through *a range of motion*. However, “range of motion” means “[m]ovement of a joint through its *available* range of motion.”⁷ Consequently, because joint manipulation involves moving a joint outside of its normal range of motion, joint manipulation would not constitute passive or any other kind of exercise under the ordinary meaning of those terms.

³ See definition of “massage” at <<http://www.merriam-webster.com/dictionary/massage>> (last accessed Nov. 7, 2013).

⁴ Taber’s Cyclopedic Medical Dictionary (20th ed. 2001) p. 754.

⁵ *Id.* at p. 755.

⁶ *Ibid.*

⁷ *Ibid.* (Emphasis added.)

Therefore, we conclude that the plain language of section 2620 does not authorize a physical therapist to perform joint manipulation.

3. Attorney General opinions

Relevant to our analysis are two Attorney General opinions rendered in 1962 and 1976.⁸ In 39 Ops.Cal.Atty.Gen. 169 (1962), the Attorney General concluded that the “massage” authorized under section 2620 does not include manipulating the spine because there is a substantial difference between massaging the muscles surrounding the spine and actually manipulating and adjusting the various bones that make up the spine. Subsequently, in 59 Ops.Cal.Atty.Gen. 7, 13 (1976), the Attorney General concluded that “a physical therapist may not directly manipulate or adjust the spine or other bone.” In reaching this conclusion, the Attorney General provided that “[a]djustment’ is not a term used in physical therapy. It is a chiropractic word defined in Schmidt’s Attorney’s Dictionary of Medicine ... as follows: ‘In chiropractic practice, a manipulation intended to replace a displaced vertebra, or one assumed to be displaced and the cause of symptoms.’ It is defined in Dorland’s Medical Dictionary ... as ‘... a chiropractic word for replacement of an alleged subluxed vertebrae for the purpose of relieving pressure on a spinal nerve.’ Blakiston’s New Gould Medical Dictionary ... defines adjustment as a chiropractic treatment aimed at reduction of subluxed vertebrae. We do not believe that adjustment as thus defined, is within the scope of activity permitted a physical therapist under section 2620.” (*Ibid.*)

Although the 1962 and 1976 Attorney General opinions do not analyze joint manipulation as defined in this opinion, they do reach a similar conclusion that physical therapists are not authorized to perform manipulations that adjust the spine or other bones.⁹ To that end, we believe these Attorney General opinions support our plain language interpretation of section 2620, which is significant because opinions of the Attorney General directly affect the public and are influential to a court, as explained below.

Attorney General opinions directly affect the public because “[i]ndividuals affected by an Attorney General opinion must regard the authoritative opinion of the highest law enforcement officer of the state as having a definitive impact on their obligations under the subject laws.” (*Natkin v. California Unemployment Insurance Appeals Board* (2013) 219 Cal.App.4th 997, 1006; internal citations omitted.) “In other words, when the office of the Attorney General promulgates an official opinion, it must assume that it will be relied upon by affected members of the public.” (*Id.* at pp. 1006-1007.) Furthermore, an Attorney General opinion “is not a mere advisory opinion, but a statement which, although not

⁸ Hereafter the 1962 and 1976 Attorney General opinions.

⁹ The 1962 and 1976 Attorney General opinions focus on spinal manipulation, rather than joint manipulation, as the practice of the chiropractor; however, we think their provisions may be extended to joint manipulation because the scope of practice for chiropractors includes the ability to “manipulate and adjust the spinal column and other joints.” (Cal. Code Regs., tit. 16, § 301.)

binding on the judiciary, must be regarded as having a quasi judicial character and [is] entitled to great respect, and given great weight by the courts." (*Id.* at p. 1006; internal citations omitted; brackets in original.) Moreover, when an Attorney General opinion interprets a statutory provision, "[i]t must be presumed that the aforesaid interpretation has come to the attention of the Legislature, and if it were contrary to the legislative intent that some corrective measure would have been adopted in the course of the many enactments on the subject in the meantime." (*Meyer v. Bd. of Trustees of San Dieguito Union High School Dist. of San Diego County* (1961) 195 Cal.App.2d 420, 432.) Additionally, a significant lapse of time since the Attorney General's interpretation of a particular statute "supports the inference that if it were contrary to legislative intent, some corrective measure would have been adopted" by the Legislature. (*People v. Union Oil Co.* (1969) 268 Cal.App.2d 566, 571 [placing significance on the fact that a section of the School Code had been reenacted twice in 10 years since the Attorney General issued an opinion interpreting the statutory provision].)

Here, not only has a significant lapse of time occurred since the Attorney General issued the 1962 and 1976 opinions described above, but the Legislature has amended or attempted to amend section 2620 several times, and even completely recast and revised the act, without amending the physical therapist's scope of practice to negate those Attorney General opinions.¹⁰ The fact that the Legislature has not acted to negate the Attorney General's construction of the language in section 2620 evidences that that construction is consistent with the legislative intent of section 2620 and should be given great weight by the courts. It is also significant to our question because that construction supports our conclusion that the plain language of section 2620 does not authorize physical therapists to perform joint manipulation.

4. Administrative agency opinion

Also relevant to our analysis is Legal Opinion No. 80-18 (July 22, 1980) issued by the chief counsel for the Department of Consumer Affairs (DCA) to the Board of Chiropractic Examiners which addresses the question of whether physical therapists may engage in spinal manipulation (hereafter DCA opinion). The DCA opinion is relevant because the board is under the jurisdiction of the DCA (§ 101), and a court must defer to an administrative agency's interpretation of a statute or regulation involving its area of expertise unless the challenged construction contradicts the clear language and purpose of the interpreted provision. (*Hoitt v. Department of Rehabilitation* (2012) 207 Cal.App.4th 513, 526.)

¹⁰ See, e.g., Senate Bill No. 1485 (2003-2004 Reg. Sess.), Senate Bill No. 77 (2003-2004 Reg. Sess.), Assembly Bill No. 1444 (2007-2008 Reg. Sess.), and Senate Bill No. 198 (2013-2014 Reg. Sess.).

In answering the question regarding spinal manipulation, the DCA opinion, at page 1, differentiates between mobilization and manipulation by explaining, in pertinent part, that:

“Mobilization of the spine and other joints through the use of rotation and other physical pressure constitutes in our opinion the use of physical properties including passive exercise for the treatment of physical conditions and is specifically authorized in the physical therapist’s scope of practice which is set forth in Section 2620 of the Business and Professions Code. Therefore, we do not believe that a physical therapist is practicing beyond his or her legal scope of practice by utilizing such technique.”

However, in the DCA opinion, *supra*, at page 1, the chief counsel acknowledges the 1962 and 1976 Attorney General opinions described above and opines that “... the performance of joint mobilization by a physical therapist is not the adjustment and manipulation of hard tissues as a chiropractic technique. Joint mobilization performed by physical therapists is not done for the purpose of treating or preventing diseases or for maintaining the structural and functional integrity of the nervous system and is thus not the practice of the chiropractic.”

In sum, the DCA opinion provides that physical therapists may perform joint mobilization, which involves the use of physical properties including passive exercise to move joints. However, that opinion does not conclude that the use of physical properties may also include something beyond passive exercise such as thrusting a joint out of its normal range of motion. It is likely that there is some limit to a physical therapist’s use of physical properties because the DCA opinion, *supra*, at page 1, also provides that “the performance of joint mobilization by a physical therapist is not the adjustment and manipulation of hard tissues.” It is not clear from these descriptions of mobilization versus manipulation if joint manipulation, as defined in this opinion, by a physical therapist would constitute permissible mobilization or impermissible manipulation according to the DCA opinion. Therefore, even though the DCA opinion does not conclude whether the scope of practice of physical therapy includes joint manipulation as described in this opinion, we think that it does not contradict our interpretation of section 2620.

Although we have determined that the plain language of section 2620 does not authorize joint manipulation, we are cognizant that, “[w]hile the ultimate interpretation of a statute is an exercise of judicial power, when an administrative agency is charged with enforcing a particular statute, its interpretation of the statute will be accorded great respect by the courts and will be followed if not *clearly erroneous*.” (*Goldman v. California Franchise Tax Bd.* (2012) 202 Cal.App.4th 1193, 1205; internal citations omitted; emphasis added.) Moreover, the standard of care against which the acts of a medical practitioner are to be measured is a matter peculiarly within the knowledge of experts, unless the conduct required by the particular circumstances is within the common knowledge of laymen. (*Selden v. Dinner* (1993) 17 Cal.App.4th 166, 174.) Accordingly, although the board has yet to issue any official guidance or regulations regarding joint manipulation, because the board possesses medical expertise relevant to the scope of practice of a physical therapist, any such guidance or

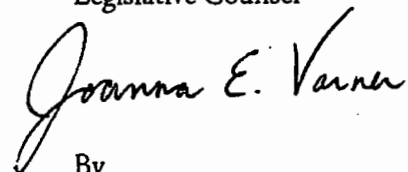
regulations would be viewed very favorably by a court and followed unless clearly erroneous. Ultimately, our plain language interpretation of section 2620 is based on our laypersons' understanding of medical terminology, which is more limited than the board's expert knowledge of physical therapy terminology. Additionally, "[c]ustom is often very important ... in assisting courts to interpret statutes properly" as long as the custom does not overcome the positive provisions of a statute. (*American Nat. Bank of San Francisco v. A.G. Sommerville, Inc.* (1923) 191 Cal. 364, 371.) Here, there may be a custom of physical therapists performing joint manipulation in California; you have informed us that some physical therapists in California are currently performing such a maneuver and that the national accrediting commission for physical therapy includes joint manipulation thrust techniques in its evaluation criteria.¹¹ Therefore, we do not opine as to whether a court would uphold an alternative interpretation of section 2620 by the board, which possesses the most relevant expertise regarding physical therapy terminology.

4. Conclusion

Based on a plain language interpretation of Business and Professions Code section 2620 and the 1962 and 1976 opinions of the Attorney General, it is our opinion that the Physical Therapy Practice Act does not authorize a physical therapist to perform joint manipulation, which, for purposes of this opinion, is defined as moving a joint out of its normal range of motion and into the paraphysiological range of motion.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel



By
Joanna E. Varner
Deputy Legislative Counsel

JEV:sjk

¹¹ Commission on Accreditation in Physical Therapy Education: Evaluative Criteria PT Programs (last updated: 1/7/14), p. 33 (available at <http://www.capteonline.org/uploadedFiles/CAPTEorg/About_CAPTE/Resources/Accreditation_Handbook/Evaluative_Criteria_PT.pdf> [last accessed Feb. 4, 2014]).