

Colorado PT e-bulletin

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DORA WARNS SMALL PT CLINIC ON CORPORATE OWNERSHIP

The agency that regulates the practice of physical therapy and licenses physical therapists in Colorado has cited a little known, and even less understood statute in its threat to shut down a small physical therapy clinic in rural Colorado and to discipline the two physical therapists that are employed there. The Department of Regulatory Agencies (DORA) issued a cease-and-desist order to the clinic's owners and their employed therapists in response to a complaint filed by a competitor. The order requires the clinic to reorganize by December 31, 2003 or face disciplinary and other action against the clinic and its physical therapists.

Issue is Longstanding One

The issue of corporate practice and ownership has long been a contentious issue in the state's Physical Therapy Practice Act. For more than 30 years, Section 12-41-124, C.R.S., has required that physical therapy services can only be provided by and through individuals who are licensed as physical therapists in the state of Colorado, according to Greg Smith, APTA Colorado Chapter's legal counsel. In other words, Smith explained further, if Colorado PTs desire to organize (or be employed by) an entity providing physical therapy services, such as a corporation, limited liability company or limited liability partnership, the Practice Act requires that such entity be organized as a professional entity. This professional entity must be entirely owned by one or more licensed physical therapists and must include certain mandatory provisions in its organizational documents, including that the entity is organized solely to provide physical therapy services. There is no specific exemption from this rule for hospitals, home health agencies, rehabilitation agencies, nursing homes or schools. Only a very few "provider networks" (mostly larger hospitals) that meet the requirements of the Insurance Commissioner are exempt from this requirement. Read the PT Practice Act at <http://www.dora.state.co.us/physical-therapy/images/law.pdf>

The Colorado Chapter has consistently brought this language forward to the General Assembly as needing clarification or change in order to bring dozens of entities into compliance with the law. During the 2001 Sunset Review, the policy arm of DORA responsible for writing the sunset report, wrote, *"The current statute was modeled after the corporate practice section of the Medical Practice Act and has little relevance for the actual practice of physical therapy. Section 12-41-124, C.R.S., requires that the corporation be organized solely for the purposes of practicing physical therapy and that all shareholders of the corporation be licensed to practice physical therapy. However, the physical therapy profession has never been one where its licensees all practice independently. Licensees may be employees of hospitals, other health care agencies, or practice in a clinic with occupational therapists and speech pathologists. This section is*

at total variance with the reality of practice.” DORA went on to recommend that licensed professionals be allowed to obtain the advantages associated with corporate practice, while maintaining professional control over professional decisions. Even with the urging of the Colorado Chapter, the necessary changes were never thoroughly discussed by lawmakers and this section of the law remained virtually untouched.

The Chapter estimates that half of Colorado physical therapists are employed directly through various entities that do not meet the corporate ownership requirements, despite the contrary provisions of the Practice Act. This subjects them to potential disciplinary action by the Colorado licensing agency.

What Next?

Since issuance of the “cease and desist” order, DORA has convened an internal task force to address the problem posed by the strict “corporate practice” rules in the PT Practice Act and in similar laws for other health professionals such as optometrists, chiropractors and dentists. The Chapter’s Governmental Affairs Committee will monitor all developments and lobby for needed improvements in the PT Practice Act during the next session of the Legislature which begins in early January. Due to the uncertainty of any legislative action that would solve all related problems, Smith advises all organizations that provide physical therapy services to retain a legal expert to review their organizational documents for compliance with the Practice Act. Some organizations may be able to restructure themselves so as to comply even with today’s strict rules, while others will have to await a potential legislative solution.

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