Dynamic Chiropractic

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Florida Court Denies Reimbursement for Modalities Performed by Unlicensed Assts. (But Then Changes Its Mind)

What started out as a routine lawsuit for $1,500 by a doctor against an insurance company almost ended up having a dramatic adverse financial effect on medical doctors and chiropractors.

It began like thousands of other cases around the country. A physical medicine clinic treated an auto accident patient. State Farm declined to pay for most of the services, so the clinic sued. At trial, State Farm argued, among other things, that it shouldn't have to pay for the physical therapy modalities rendered by the clinic's unlicensed physical therapists, because such treatment was supposedly illegal under Florida law. The trial court rejected the argument, and the jury went on to award the clinic the full amount requested.

State Farm appealed, primarily on the unlicensed therapist issue. Incredibly, the Florida Third Circuit Court of Appeals ruled in State Farm's favor! The Court held that the medical assistants were unauthorized to perform physical therapy, so State Farm had no obligation to pay for their services. The fact that a licensed physician ordered and directly supervised the treatment did not persuade the Court of the legitimacy of the services performed.

Although this case specifically dealt with medical assistants, the decision would have directly impacted chiropractic reimbursement. Most of the modalities in chiropractors' offices are performed by individuals who do not have a license to practice physical therapy. The financial reality is that reimbursement for most common modalities, such as hot/cold packs, electrical stim, and ultrasound, is far too low to justify the expense of employing a licensed physical therapist. The only way these services can be provided by chiropractors or medical doctors is by utilizing lower-paid, unlicensed chiropractic or medical assistants.

This decision would have had ramifications in Florida and perhaps other states. Indeed, it could have changed the whole nature of personal injury treatment and other physical medicine cases, as it may have been no longer financially viable to perform any of these modalities. Not coincidentally, it would have also saved insurance companies a great deal of money.

However, the decision apparently created concern in Florida. The clinic sought rehearing. Remember, this was a $1,500 case, so the fact that the clinic requested a rehearing means that it understood the importance of the issue. Others understood as well. Numerous state associations, including the Florida Medical Association, the Florida Osteopathic Medical Association, and the Florida State Massage Therapist Association, filed amicus briefs in support of the clinic.

The same three judges who initially ruled in State Farm's favor granted rehearing, reversed its earlier decision, and reinstated the jury verdict.[1] This time, the court got it right. Florida, like many states,

provides that medical assistants can assist with patient examinations and operate medical equipment. Florida law also provides that a therapist providing treatment "incident to" a licensed practitioner's treatment does not need a physical therapy license. The Court also noted that for years, insurance companies have been paying for physical therapy provided by medical assistants, so the Court held that industry practice supported the revised decision.

Clearly, the Court's initial decision was wrong and was inconsistent with established rules regarding scope of practice and "incident to" rules. It is heartening to see that the appellate court eventually got it right. However, the case may not be over; State Farm could appeal to the Florida Supreme Court, or State Farm or one its competitors may try the same argument in another state. Needless to say, physical medicine clinics and chiropractic offices would be dramatically different if insurance companies were not obligated to pay for treatment rendered by medical or chiropractic assistants. For now, one such effort has failed.

Reference

1. The case is State Farm v. Universal Medical Center, Florida Third District Court of Appeals. Decision filed March 17, 2004, docket# 02-2483. The decision is listed at www.3dca.flcourts.org [click on "Opinions," then "03/17/2004" and reference docket# noted above].

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