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**KENTUCKY SUPREME COURT GRANTED DISCRETIONARY REVIEW:
APRIL 16, 2008
(FILE NO. 2007-SC-0756-D)**

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-001173-MR

COMMONWEALTH OF KENTUCKY,
STATE BOARD OF PHYSICAL THERAPY

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 05-CI-00210

DUBIN ORTHOPAEDIC CENTRE, INC.

APPELLEE

OPINION
REVERSING AND REMANDING
WITH DIRECTIONS

** ** * ** * **

BEFORE: DIXON, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Commonwealth of Kentucky, State Board of Physical Therapy

(Board of Physical Therapy) brings this appeal from a May 12, 2006, Opinion and Order
of the Franklin Circuit Court. We reverse and remand with directions.

The Board of Physical Therapy instituted an investigation into whether Dubin Orthopaedic Centre, Inc. (Dubin Orthopaedic Centre) was violating provisions of Kentucky Revised Statutes (KRS) Chapter 327. The record reveals that Dubin Orthopaedic Centre provides medical services to patients through its sole shareholder, Dr. Ronald S. Dubin. The Board of Physical Therapy was investigating whether Dubin Orthopaedic Centre violated KRS 327.020¹ by using certain medical billing Codes (known as the American Medical Association's Current Procedural Terminology (CPT) Code 97001 – Physical therapy evaluation and CPT Code 97002 – Physical therapy re-evaluation) to bill for services although such services were not provided by a licensed physical therapist.

To carry out this investigation, the Board of Physical Therapy issued a subpoena to Dr. Dubin and Dubin Orthopaedic Centre (collectively referred to as Dubin Centre) on May 25, 2004. *See* KRS 327.040(4). Therein, the Board of Physical Therapy sought patient treatment records, explanation of benefits records, billing records, and financial records upon six patients of Dubin Centre. The Board of Physical Therapy sought these documents to determine whether Dubin Centre utilized CPT Codes 97001 and 97002 when billing patients for these services. Dubin Centre, however, failed to comply with the subpoena.

To compel Dubin Centre's compliance with the subpoena, the Board of Physical Therapy filed a complaint for injunctive relief in the Franklin Circuit Court on

¹ Kentucky Revised Statutes (KRS) 327.020 was subsequently amended effective June 26, 2007. This 2007 amendment of KRS 327.020 is not relevant to this appeal.

February 14, 2005. Thereafter, Dubin Centre filed an answer to the complaint and a counterclaim.

It appears that Dubin Centre eventually admitted to utilizing CPT Codes 97001 and 97002 for services provided to patients. By agreement of the parties, the issue before the circuit court was broadened to include the ultimate legal issue of whether a physician licensed in Kentucky may utilize CPT Codes 97001 and 97002 for services provided to a patient without a licensed physical therapist.

The circuit court rendered an Opinion and Order on May 12, 2006. Therein, the circuit court held that Dubin Centre did not violate KRS 327.020 by utilizing CPT Codes 97001 and 97002 when billing for services rendered by a licensed physician to patients. This appeal follows.

The Board of Physical Therapy argues that the circuit court erred by concluding that Dubin Centre, through Dr. Dubin, properly utilized CPT Codes 97001 and 97002 when billing for services. Specifically, the Board of Physical Therapy maintains that the circuit court improperly interpreted KRS 327.020. For the reasons hereinafter elucidated, we agree.

Resolution of this appeal centers upon proper interpretation of KRS 327.020, which provides:

- (1) No person shall practice or hold himself out as being able to practice physical therapy in any manner whatsoever unless he meets the educational requirements of this chapter, is licensed in accordance with the provisions of this chapter, he is in good standing with the board and his license is not

suspended or revoked. Provided, however, that nothing contained in this chapter shall prohibit any person licensed in this state under any other law from engaging in the practice for which such person is duly licensed. Nothing contained in this chapter shall prohibit routine and restorative services performed by personnel employed by hospitals, physicians or licensed health care facilities as relates to physical therapists. This chapter does not preclude certified occupational therapists, respiratory technicians or respiratory therapists from practicing as defined in the United States Department of Health, Education and Welfare, Public Health Service, Health Resources Administration, Bureau of Health Manpower, DHEW publication No. (HRA) 80-28, "A Report On Allied Health Personnel." Provided further that persons regularly employed by the United States shall be exempted from the provisions of this chapter while engaged in such employment.

- (2) A licensed physical therapist may hold himself out as a "physical therapist" or "licensed physical therapist" and may use the abbreviations "P.T." or "L.P.T." as a part of or immediately following his name, in connection with his profession.
- (3) It shall be unlawful for any person, or for any business entity, its employees, agents or representatives to use in connection with his or its name or business activity the words "physical therapy," "physical therapist," "physiotherapy," "physiotherapist," "registered physical therapist," the letters "P.T.," "L.P.T." or any other words, letters, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied or to bill for physical therapy unless such physical therapy is provided by or under the supervision of a physical therapist licensed and practicing in accordance with this chapter.

Pursuant to KRS 327.020, the Board of Physical Therapy contends that only a licensed physical therapist may practice physical therapy or represent to others that he is providing physical therapy services. More particularly, the Board of Physical Therapy points out that KRS 327.020(3) clearly prohibits any person or entity from using the words “physical therapy,” from billing for physical therapy, and from even implying that physical therapy is provided unless such therapy is provided by a licensed physical therapist. As CPT Code 97001 is entitled “Physical therapy evaluation” and CPT Code 97002 is entitled “Physical therapy re-evaluation,” the Board of Physical Therapy maintains that a physician may not utilize such Codes.

Conversely, Dubin Centre believes that a physician may utilize CPT Codes 97001 and 97002. Dubin Centre cites to the statutory definition of “practice of medicine,” as applicable to physicians, found in KRS 311.550(10), which reads:

Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities[.]

As the practice of medicine includes utilizing “any and all means” to treat a patient, Dubin Centre argues that a physician may, of course, provide physical therapy services. In support of this interpretation, Dubin Centre also cites to the following language in KRS 327.020(1) that “nothing contained in this chapter shall prohibit any person licensed in this state under any other law from engaging in the practice for which such person is

duly licensed.” As such, Dubin Centre maintains that a licensed physician may utilize CPT Codes 97001 and 97002 when billing for services rendered to a patient.

It is well-established that interpretation and construction of a statute is a matter of law for the court. *City of Worthington Hills v. Worthington Fire Protection District*, 140 S.W.3d 584 (Ky.App. 2004). When interpreting a statute, the court should be guided by the legislative intent and legislative purpose for enacting the statute. *City of Louisville v. Helman*, 253 S.W.2d 598 (Ky. 1952). And, we are bound to adopt a harmonizing interpretation of differing statutes so as to give effect to each statute. *DeStock No. 14, Inc. v. Logsdon*, 993 S.W.2d 952 (Ky. 1999).

In this Commonwealth, the General Assembly has enacted a comprehensive statutory scheme concerning the licensing of health care providers. *See* KRS Chapters 311, 311A, 312, 313, 314, 314A, 315, 319, 319A, 320, 327, and 334A. Included in this comprehensive scheme are physicians, osteopaths, podiatrists, chiropractors, registered nurses, practical nurses, respiratory care practitioners, pharmacists, psychologists, occupational therapists, and, of course, physical therapists. By so doing, the General Assembly undoubtedly sought to protect the public by ensuring that health care providers meet certain statutory guidelines. The sheer volume of legislation upon this subject speaks to its public importance.

In the case *sub judice*, we are called upon to interpret a statute that is included in this comprehensive scheme - KRS 327.020. It is found in KRS Chapter 327, which is entitled “Physical Therapists.” KRS Chapter 327 generally sets forth the

licensing requirements of a physical therapist and also creates the Board of Physical Therapy. With this background, we shall now turn to an examination of the specific language of KRS 327.020.

Under the plain terms of KRS 327.020(1), no person shall practice or represent to be practicing “physical therapy” unless he is so licensed. Additionally, KRS 327.020(3) clearly prohibits any person or entity from billing for physical therapy or from implying that physical therapy is provided unless billed or provided by a licensed physical therapist. However, KRS 327.020(1) extends an exemption from its ambit and states that no person shall be prohibited from engaging in the “practice” for which he is licensed. And, KRS 311.550(10) clearly defines the “practice of medicine” by a physician as the treatment of ailments by any and all means.

Considering the definition of the practice of medicine found in KRS 311.550(10) and the exemption extended to a person “licensed” found in KRS 327.020(1), we conclude that a licensed physician may perform and furnish to patients services that are the same or similar to the services performed by a licensed physical therapist. However, we also conclude that KRS 327.020(1) and (3) clearly mandate that no person, including a physician, may represent or hold himself out as being a physical therapist or as providing physical therapy services. Moreover, KRS 327.020(3), likewise, plainly prohibits any person, including a physician, from billing for physical therapy services. Thus, while a physician may utilize the same or similar treatment modalities as a physical therapist, he may not refer to the treatment as physical therapy or bill for

physical therapy services. As such, we are of the opinion that utilization of CPT Codes 97001 and 97002 by a physician violates KRS 327.020.

In reaching the above interpretation of KRS 327.020, we are mindful of the comprehensive statutory scheme for licensing health care providers. This licensing scheme operates to ensure the integrity of the health care system and to safeguard the unsuspecting general public. Without rigorous licensing of health care providers, the public would be virtually incapable of determining whether a particular health care provider was adequately trained in his or her field. The facts leading to the Board of Physical Therapy's investigation of Dubin Centre highlight the importance and the necessity of such a rigorous licensing scheme.

The record discloses that the Board of Physical Therapy received a complaint on November 5, 2003. In that complaint, it was alleged, and later admitted by Dubin Centre, that in its Corbin office there existed a sign which read "Physical Therapy" and that physical therapy services were being provided by an unlicensed athletic trainer at the direction of Dr. Dubin. It was further alleged that the unlicensed athletic trainer identified himself to a patient as a physical therapist. Later, it was determined that Dubin Centre was also billing for physical therapy services and utilizing CPT Codes 97001 and 97002.

Although ostensibly innocent, the above conduct of Dubin Centre and its employee, the athletic trainer, potentially misled the public into believing that a licensed physical therapist was performing physical therapy services for Dubin Centre. Our

interpretation of KRS 327.020 recognizes the public importance of licensing health care providers and gives effect to same. It also serves to harmonize the internal provisions of KRS 327.020. By contrast, Dubin Centre's proposed interpretation of KRS 327.020 would both stifle the effectiveness of our comprehensive statutory scheme for licensing health care providers and leave provisions of KRS 327.020 virtually ineffectual.

In sum, we hold that KRS 327.020 prohibits any person, including a licensed physician, from representing to be a physical therapist, from representing to provide physical therapy services, or from billing for physical therapy services. Thus, a physician may not utilize CPT Codes 97001 and 97002.² However, a licensed physician may utilize treatment modalities that are the same or similar to those provided by a licensed physical therapist.³ We, thus, remand this matter to the circuit court with directions to grant the Board of Physical Therapy injunctive relief against Dubin Centre to restrain it from utilizing CPT Codes 97001 and 97002 when billing for services rendered a patient without a licensed physical therapist.

² We cite to Dr. Ronald S. Dubin's affidavit of March 8, 2005. Therein, he states:

Prior to 1998, physical therapy evaluations were coded under the Evaluation and Management Codes with the result that physical therapists' claims were often denied by third party payors because they were not physicians. In 1998, the CPT [Current Procedural Terminology] system was revised to include two new codes, 97001 and 97002, so that physical therapists could also bill for evaluations.

³ We note there are other CPT Codes that may be utilized by a physician when billing for such services. For example, CPT Codes 99201-99215 may be utilized by a physician for his initial examination or re-examination of a patient for physical therapy or physical medicine services.

For the foregoing reasons, the Opinion and Order of the Franklin Circuit Court is reversed and this cause remanded with directions that the circuit court grant the Commonwealth of Kentucky, State Board of Physical Therapy injunctive relief against Dubin Orthopaedic Centre, Inc.

MOORE, JUDGE, CONCURS.

DIXON, JUDGE, CONCURS IN RESULT ONLY.

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