

LEONARD, STREET AND DEINARD

PROFESSIONAL ASSOCIATION

MEMORANDUM

TO: MATA Executive Committee and Members
FROM: T.J. Conley, Leonard, Street and Deinard
RE: Use of Athletic Trainers in Physical Therapy Settings
DATE: February 7, 2005

You have asked that we provide an analysis of the role of athletic trainers in a clinical setting, as well as some context around strategies to strengthen the profession. This memo addresses those requests.

We have provided a similar analysis in the past based on our interpretation of the Minnesota Athletic Trainers Act.¹ (A copy of that earlier analysis is available upon request.) However, a recent ruling from the United States District Court in the case of *United States of America, ex rel., Toni Lee v. Fairview Health System*² provides additional support for that analysis. In the interest of economy, this memo will highlight the ruling, as opposed to presenting a thorough analysis of the Minnesota Athletic Trainers Act and the Minnesota Physical Therapy Act.

THE LEE DECISION

The *Lee* case involved a physical therapist, Toni Lee, who sued her former employer, Fairview Health Systems, alleging that Fairview violated federal law by submitting claims to Medicare and Medicaid for reimbursement of physical therapy services performed by athletic trainers. The Court dismissed Ms. Lee's claims for a variety of reasons. For our purposes, however, the court's decision has two very important teachings for athletic trainers and physical therapists:

1. Athletic Trainers may provide physical therapy services in a physical therapy setting

Lee's fundamental argument was that only physical therapists, physical therapist assistants and physical therapy aides could provide physical therapy services, and that athletic trainers were specifically prohibited from doing so. Based on its analysis of Minnesota law, the Court

¹ Minn. Stat. §§ 148.7801 et seq.

² Civ. No. 02-270, (D. Minn. July 22, 2004)(Kyle, J.)

explicitly rejected this argument: “The clear legislative intent expressed by [the Minnesota Athletic Trainers Act] is that *athletic trainers may provide physical therapy services when working under the direct supervision of a physical therapist.*” (emphasis added).

To put it another way, within the physical therapy setting athletic trainers may practice within the scope of the Minnesota Athletic Trainers’ Act (Minn. §§ 148.7801 – 7815) and provide physical therapy under the direct supervision of a physical therapist, and physical therapists may practice within the scope of the Minnesota Physical Therapy Rules (Minn R. 5601.1400). When the athletic trainer is providing physical therapy services (as opposed to athletic training services), the athletic trainer must practice under the direct supervision of a physical therapist. By contrast, athletic trainers require no supervision when providing *athletic training* services.

2. Athletic Trainers are not physical therapy aides.

Lee also argued that when working in the physical therapy setting, athletic trainers must function as physical therapy aides. The Court rejected this argument. It pointed out that the level of supervision imposed on athletic trainers by the statute is much less stringent than that imposed on physical therapy aides. The Court also recognized that athletic trainers have more training and education than aides. Thus, it would be illogical to suggest that athletic trainers have no more autonomy or responsibility than physical therapy aides. To put it another way, when practicing within the scope of the Minnesota Athletic Trainers’ Act (Minn. §§ 148.7801 – 7815), athletic trainers may provide physical therapy services as *athletic trainers*, not aides.

The statute governing physical therapists in Minnesota permits physical therapists to delegate tasks and treatment procedures to assistants and aides.³ Rules promulgated by the Board of Physical Therapy permit such delegation as well.⁴ Neither addresses the definition of “selected treatment procedures.” As a result, it is incumbent on the physical therapist and the athletic trainer to determine what represents appropriate delegation.

BILLING ISSUES

Neither the statutes nor the Court’s decision in *Lee* address the issue of billing. We can, however, make the following recommendations:

1. Physical therapists may bill private or commercial payors for the services rendered by assistants, aides, and athletic trainers, pursuant to the contractual relationship between the facility and the payor. Put another way, provided the contractual relationship between the organization and the payor allows the provider to bill for services delegated to others, there is little reason to suggest services rendered by athletic trainers can not be billed accordingly. There are, of course, caveats to this suggestion:
 - Professionals must be practicing within the scope of their respective practice acts. In the case of ATC’s and PT’s, the *Lee* decision affirms physical therapists may

³ See Minn. Stat. § 148.706: “The physical therapist shall permit the assistant or aide to perform only those functions which the therapist is authorized by rule to delegate to a physical therapist assistant or assign to a physical therapy aide and shall provide supervision as specified.”

⁴ See Minn R. Chapter 5601.1400. Aides may “perform tasks related to and selected treatment procedures.”

delegate to athletic trainers and that athletic trainers may provide physical therapy within certain parameters as outlined above.

- Provision of care must also follow federal and state regulations. For example, recent CMS rules limit the provision of physical therapy to physical therapists and physical therapist assistants (and other notable exceptions), but will not reimburse for services rendered by athletic trainers.
 - The contractual relationship between the payor and the provider organization will determine eligibility, and we encourage athletic trainers to consult with their organizations' legal departments for further clarification.
2. Medicare does not provide coverage for *athletic training* services. Until March 2005, however, physical therapist may bill Medicare⁵ for physical therapy services provided by athletic trainers (assuming the physical therapist provides direct supervision over the athletic trainer and that both are performing within the standards of the statute(s)). This statement is conditional on a recent CMS ruling.
 3. Medicaid does not provide coverage for services rendered by athletic trainers, even if under the supervision of a physical therapist.

In summary, the current climate favors the use of athletic trainers in the clinical setting. The statutes and the *Lee* decision do not limit the types of patients athletic trainers are allowed to treat. However, whenever services are represented as being *physical therapy*, such services must be provided under the supervision of a physical therapist. By contrast, when services are represented as *athletic training*, no supervision is required beyond the requirements of the Minnesota Athletic Trainers Act.

If you have any questions, please feel free to contact me.

⁵ 42 C.F.R. §§410.60(c)(2); 410.32(b)(3)(iii).