



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>December 2, 2015</p>	<p>No. I15-012 (R15-015)</p> <p>Re: Are chiropractors, their profession or any other profession or individual exempt from the title and term protection granted to physical therapists under A.R.S. § 32-2042(C)(D)</p>
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To: Dennis Wells, Ombudsman
Arizona Ombudsman-Citizens' Aide Office
(on behalf of Linda Duke, President of Arizona Physical Therapy Association)

Questions Presented

You have asked whether chiropractors and others are prohibited from using the word “physiotherapy” and other terms that are restricted to services provided by or under the direction of a licensed physical therapist pursuant to Arizona Revised Statutes (“A.R.S.”) § 32-2042 (C) and (D).

Summary Answer

Everyone in Arizona, including chiropractors, is subject to the prohibition in Section 32-2042 on the use of the word “physiotherapy” and other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical therapy, unless those services are provided by or under the direction of a licensed physical therapist.

Background

In 1997, the Federation of State Boards of Physical Therapy published *The Model Practice Act for Physical Therapy: A Tool for Public Protection and Legislative Change* (“Model Practice Act”) as a tool for revising, modernizing, and creating greater uniformity in physical therapy practice acts across the nation. See *The Model Practice Act for Physical Therapy: A Tool for Public Protection and Legislative Change*, Fifth Edition (2011). In 1998, the Legislature rewrote Arizona’s Physical Therapy Practice Act (Title 32, Ch. 19),¹ adopting a majority of the Model Practice Act. 1998 Ariz. Sess. Laws, 43d Leg., 2nd Reg. Sess, ch. 253 (H.B. 2399). To protect and avoid misleading the public, and consistent with Section 4.02 of the Model Practice Act, A.R.S. § 32-2042 restricts the use of terms associated with licensed physical therapists:

C. A person or business entity or its employees, agents or representatives shall not use in connection with that person’s name or the name or activity of the business the words “physical therapy”, “physical therapist”, “physiotherapy”, “physiotherapist” or “registered physical therapist”, the letters “PT”, “LPT”, “RPT”, “MPT”, “DScPT” or “DPT” or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical therapy, unless these services are provided by or under the direction of a physical therapist who is licensed pursuant to this chapter. A person or entity that violates this subsection is guilty of a class 1 misdemeanor.²

D. A person or business entity shall not advertise, bill or otherwise promote a person who is not licensed pursuant to this chapter as being a physical therapist or offering physical therapy services.

¹ The regulations implementing the Arizona act are set forth at Arizona Administrative Code (“A.A.C.”) R4-24-101 to -506.

² A.R.S. § 32-2048 authorizes the Board of Physical Therapy to investigate the unlawful practice of physical therapy, including violations of A.R.S. § 32-2042, and to seek criminal and civil penalties, as well as injunctive relief.

Arizona's Physical Therapy Practice Act does not restrict a person who is licensed under any other law of this state from engaging in the profession or practice for which that person is licensed if that person does not claim to be a physical therapist or a provider of physical therapy. *See* A.R.S. § 32-2021(A).

Amendments made to the statutes governing the profession of chiropractic are consistent with the term use restrictions set forth in A.R.S. § 32-2042. A.R.S. § 32-922.02 governs the certification of chiropractic specialties and, prior to 2010, subsection C provided for a certification to perform "physiotherapy." In 2010, the Legislature amended A.R.S. § 32-922.02 and related statutes³ by replacing the term "physiotherapy" with the terms "physical medicine modalities" and "therapeutic procedures." 2010 Ariz. Sess. Laws, 49th Leg., 2nd Reg. Sess, ch. 26 (H.B. 2025). The legislative history for H.B. 2025 indicates that the Legislature made this change to update and clarify technical terms and to conform statutes relating to the profession of chiropractic with what chiropractors are licensed to do. *See* S. Fact Sheet for H.B. 2025, 49th Leg., 2d Reg. Sess. (Mar. 19, 2010); *see also* Minutes of H. Comm. on Health and Human Servs., 49th Legis., 2nd Reg. Sess. (Jan. 20, 2010); S. Comm. on Health & Med. Liability Reform Hr'g, 49th Legis., 2d Reg. Sess. (Mar. 24, 2010) (Testimony of Barry Aarons, Arizona Association of Chiropractors)⁴; H. Health and Human Servs. Comm. Hr'g, 49th Legis., 2d Reg. Sess. (Jan. 20, 2010) (Testimony of Barry Aarons, Arizona Association of Chiropractors).⁵ Chiropractors who received a certification in physiotherapy prior to the effective date of the amendment are now deemed to be certified in physical medicine modalities and therapeutic procedures pursuant to A.R.S. § 32-922.02(F).

³ A.R.S. § 32-924(A)(19) and A.R.S. § 32-925.

⁴ *See* http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=720 at 46:26-47:27.

⁵ *See* http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=64161 at 29:22-30:00.

Analysis

No Arizona court has determined the scope of the prohibition of the use of the terms set forth in A.R.S. § 32-2042 (C) and (D). “Our task in interpreting the meaning of a statute is to fulfill the intent of the legislature that wrote it.” *State v. Williams*, 175 Ariz. 98, 100 (1993). “In determining the legislature’s intent, we initially look to the language of the statute itself.” *Bilke v. State*, 206 Ariz. 462, 464 ¶ 11 (2003). If the statute’s language is clear, we apply it “unless application of the plain meaning would lead to impossible or absurd results.” *Id.*

The language of A.R.S. § 32-2042(C) and (D) is clear. The Legislature unambiguously prohibited any person or business entity from directly or indirectly using the specified terms unless the services are provided by or under the direction of an Arizona licensed physical therapist. This legislative intent is bolstered by its 2010 amendments to A.R.S. § 32-922.02 and related chiropractic care statutes which deleted all references to the restricted term “physiotherapy,” consistent with A.R.S. § 32-2042 (C) and (D).

While no Arizona court has addressed this issue, other states that have addressed it have come to the same conclusion. Specifically, in *Bureau of Prof'l and Occupational Affairs v. State Board of Physical Therapy*, 728 A.2d 340 (Pa. 1999), chiropractors challenged a term use restriction statute substantially similar to A.R.S. § 32-2042 on the basis that it violated their constitutional freedom of expression by restricting them from advertising physical therapy services that they were allowed to perform. The Pennsylvania Supreme Court disagreed:

The factor that makes restriction of the chiropractors’ advertisements of physical therapy not a violation of their constitutional freedom of expression is that their services do not amount to what is commonly understood to be the practice of physical therapy. Since the enactment of the [Pennsylvania] PT Act in 1975, the practice of physical therapy has been a regulated and licensed profession. No longer is physical therapy understood to be merely a generic term for physical treatment. Rather, it

consists of a statutorily defined set of activities. Because chiropractors are not licensed to perform the full range of those activities, it would mislead the public if chiropractors were permitted to advertise that they offer physical therapy, where, as occurred here, the advertisements did not indicate the very limited scope of therapy that they offer. When the public encounters an advertisement for physical therapy, its rightful expectation is that the therapy consists of services that physical therapists are licensed to perform, and that the services will in fact be performed in a lawful manner by one who is licensed to provide such services. . . . Allowing chiropractors to advertise that they perform “physical therapy” would mislead the public into believing that chiropractors are actually licensed and able to perform the full range of such therapy. The legislative ban on such advertising protects the public from deceptive commercial speech and is, therefore, constitutionally sound.

Id. at 343-44. Likewise, the Delaware Attorney General has opined that Delaware’s term use restriction statute, which is substantially similar to A.R.S. § 32-2042, prohibited chiropractors who are not licensed as physical therapists from using the restricted terms. Del. Op. Atty. Gen. 87-I013.

Conclusion

A.R.S. § 32-2042(C) and (D) clearly prohibit any person or business entity from using terms that are restricted thereunder unless physical therapy services are provided by or under the direction of a licensed physical therapist.

Mark Brnovich
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