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CONTINUED™

Legal and Ethical Practice in Indiana

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4

Course Objectives

At the conclusion of this continuing education course the participant will be able to

- 1) List at least two sources of law that govern physical therapy practice in Indiana.
- 2) Identify the clinical scope of practice in Indiana based on the Indiana State Practice Act.
- 3) Identify the specific licensure requirements for physical therapists and assistants that include continuing competence activities based on the Indiana State Practice Act.

5

Course Objectives

At the conclusion of this continuing education course the participant will be able to

- 4) Distinguish case law and malpractice actions from administrative regulation of licensure
- 5) Develop a personal plan to limit liability

6

Outline of Legal Issues

- ▶ Types of laws
- ▶ Federal Examples
- ▶ Indiana State Practice Act
- ▶ State Examples
- ▶ Malpractice
- ▶ Plan for Limiting Liability

7

Physical Therapy and the Law

Laws that govern the practice of PT:

- ▶ Federal laws that all healthcare providers must follow
- ▶ State practice act specific to physical therapy
- ▶ State laws for healthcare providers
- ▶ Common law or case law: malpractice

8

Physical Therapy and the Law

- ▶ Physical therapy practice in each state is established in a state practice act
- ▶ The state practice act is decided by the legislature with administrative input and is governed/interpreted by an administrative body usually the State Board of PT
- ▶ 50 different states, 50 different practice acts

9

Physical Therapy Practice in the States

- ▶ Regulated by the State Board of Physical Therapy
- ▶ 50 different states, 50 different laws, 50 different boards
- ▶ Primary means of regulation is licensure
- ▶ Licensure is by state– reciprocity is not guaranteed (2017) however the Physical Therapy Licensure Compact has been enacted

10

Physical Therapy Licensure Compact

- ▶ Officially enacted in April 2017 with greater than 10 states passing compact language in their statutes
- ▶ Goal is to reduce regulatory barriers to PT services
- ▶ Will take up to a year to operationalize and actually have PTs treating in multiple states as part of the compact
- ▶ FSBPT and APTA have educational information for state boards to join the compact
- ▶ Indiana has not yet joined the compact

11

Physical Therapy and the Law

- ▶ Federal Regulation of the Physical Therapist:
 - HIPAA
 - HITECH
 - The Affordable Care Act
(At the time of this recording although a repeal of this law is probable)
 - Medicare Rules and Regulations
 - Americans with Disabilities Act

12

HIPAA

- ▶ 1996 The Health Insurance Portability and Accountability Act
- ▶ Confidentiality law covering protected health information (patient identifiers)
- ▶ Concerned with the transmission of such information
- ▶ Covers providers, insurance companies and business associates
- ▶ Gives the patient the right to see and correct their medical record

13

HITECH

- ▶ 2009 Health Information Technology for Economic and Clinical Health Act
- ▶ encourages technological advances in health care
- ▶ “meaningful use” of electronic healthcare records
- ▶ strengthens aspects of HIPAA specifically breach reporting requirements

14

HIPAA and HITECH resources

- ▶ Health Information Privacy:

<http://www.hhs.gov/ocr/privacy/index.html>

- ▶ [healthIT.gov](http://healthit.gov):

extensive information on electronic medical records and compliance issues

15

Patient Protection and Affordable Care Act

- ▶ Largest piece of health care legislation since Medicare and Medicaid in the 60's
- ▶ Controversial and rife with political discord
- ▶ Signed into law on March 23, 2010
- ▶ Due to change in 2017 and beyond due to changes in leadership in Washington

16

Affordable Care Act

- ▶ Individual Mandate
- ▶ Expansion of state Medicaid programs
- ▶ Changes to common practices of 3rd party payers: no exclusions for pre existing conditions, right to an appeal with a coverage denial, requires plain language summary of benefits and coverage, no lifetime limits on coverage etc.

17

Affordable Care Act

- ▶ Extends parental insurance coverage of a young adult to 26
- ▶ Establishes insurance exchange marketplaces
- ▶ For more information:
<http://www.hhs.gov/healthcare/rights/law/index.html>

18

Medicare Rules and Regulations

- ▶ Centers for Medicare and Medicaid Services

www.cms.gov

- ▶ Site for consumers

www.Medicare.gov

- A, B, C, original Medicare v. Medicare Advantage HMOs and PPOs, D is pharmaceutical coverage
- Medicare is federally funded and federally administered

19

Medicare Rules and Regulations

- ▶ APTA is a comprehensive resource

www.apta.org/payment

Basics, new developments (G codes),
advocacy

- ▶ Medicare rules and regulations have a huge impact on PT practice because of the patient population, reimbursement and the influence of Medicare on other third party payers

20

Fraud and Abuse

“It is projected that fraud and abuse account for between 3 to 15 percent of annual expenditures for healthcare in the United States”

Costs taxpayers literally BILLIONS of dollars

HIPPA, HITECH and ACA all have provisions to limit fraud and abuse

21

Fraud and Abuse

- ▶ CMS defines common **fraud** practices:
 - Knowingly billing for services that were not furnished and/or supplies not provided
 - Billing Medicare for appointments that the patient failed to keep
 - Knowingly altering claims forms and/or receipts to receive a higher payment amount.

22

Fraud and Abuse

- ▶ CMS defines common **abuse** practices:

Misusing codes on a claim

Charging excessively for services or supplies

Billing for services that were not medically necessary

“Fudging is for brownies– not therapy!”

23

Fraud and Abuse

- ▶ Federal and State issue
- ▶ Civil and criminal provisions
- ▶ Civil and criminal penalties including jail time
- ▶ Potential sanctions on license depending on egregiousness

24

Americans with Disabilities Act

- ▶ ADA.gov
- ▶ What accommodations do I have to provide a patient who is deaf?
- ▶ What service animals should I permit in my outpatient clinic?
- ▶ Do all aspects of my clinic need to be wc accessible?
- ▶ Also an advocacy vehicle...

25

Indiana State Practice Act

- ▶ 2 official documents depict the full set of rules and regulations
- ▶ Committee document is more “accessible” in its language
- ▶ Rather than a “State Board of PT” Indiana has a Medical Licensing Board with a PT “Committee”

26

Physical Therapy Practice in Indiana

Indiana State Practice Act:

- ▶ Indiana Administrative Code:
www.in.gov/legislative/iac/T08440/A00060.PDF
- ▶ Physical Therapy Committee Laws and Regulations:
http://www.in.gov/pla/files/PTC_2013_Edition.pdf
- ▶ Indiana Professional Licensing Agency: Physical Therapy Committee:
<http://www.in.gov/pla/pt.htm>

27

Indiana State Practice Act

- ▶ Physical Therapy Committee is appointed by the Governor for 3 year terms
- ▶ 5 member committee: 3 PTs, 1 physician, 1 community member
- ▶ PTs on the Committee must be licensed in Indiana, actively practicing in Indiana and have at least 3 years of clinical experience as a PT

28

Indiana State Practice Act

Ability to practice PT in Indiana

- ▶ Licensure through examination
- ▶ Licensure through endorsement (Reciprocity)

PT presents proof of licensure scores and license in another state

- ▶ Temporary permit
- ▶ PTAs are “registered by the committee” and hold a certificate

29

Indiana State Practice Act

- ▶ PTAs in Indiana require “direct supervision” from the PT
- ▶ “ *‘Direct supervision’ means that the supervising physical therapist or physician at all times shall be available and under all circumstances shall be absolutely responsible for the direction and the actions of the person supervised*”
- ▶ If the PT is not on site to direct the PTA, a daily meeting to review all treatments is required

30

Indiana State Practice Act

- ▶ Explicit that PTAs can provide treatment but not examination or the development of a plan of care
- ▶ PTAs cannot perform or interpret tests and measures as part of treatment
- ▶ PTAs cannot adjust the treatment plan

31

Indiana State Practice Act

- ▶ Supervising PT must examine patients
 - Every 14 days if in a hospital or rehab facility
 - Every 6 sessions or every 90 days in school settings or settings for the intellectually disabled
 - The earlier of 30 days or 15 visits in all other settings

If daily consultation is not “face to face”, # of PTAs supervised is limited to 3 or fewer

32

Indiana State Practice Act

Temporary Permits to practice PT in Indiana:

- ▶ available to PTs licensed in another jurisdiction or for recent graduates who have applied to take the licensing exam
- ▶ Require the direct supervision of a licensed PT and reporting to the Committee the name of the supervising PT and the facility where the temporary PT is practicing
- ▶ Expire within 90 days, or when a temporary PT becomes licensed, or when their licensure application is denied whichever comes first (up to 2)

33

Indiana State Practice Act

- ▶ Temporary license holders must have in person daily meetings with the supervising licensed PT
- ▶ The supervising licensed PT must cosign all notes of the temporary license holder

34

Indiana State Practice Act

Physical Therapy referral sources in Indiana include

- ▶ physician
- ▶ podiatrist
- ▶ psychologist
- ▶ chiropractor
- ▶ dentist
- ▶ nurse practitioner
- ▶ physician assistant

35

Indiana State Practice Act

- ▶ Indiana has direct access for examination and restricted DA for treatment
- ▶ Treatment limitations: PT can treat without a referral for 24 days from the initiation of treatment
- ▶ If treatment longer than 24 days is needed the PT must obtain a referral
- ▶ No spinal manipulation or sharps debridement without an order to do so

36

Indiana State Practice Act

- ▶ Spinal manipulation referral must be made by a physician, osteopath or chiropractor who has examined the patient
- ▶ Sharps debridement referral must be made by a physician, osteopath or podiatrist

37

Indiana State Practice Act

- ▶ PT licenses and PTA certificates are good for 2 years and must be renewed by July 1 of even numbered years
- ▶ 22 hours of continuing competence activities are required every 2 years
- ▶ Of the 22 hours, 2 hours must be in ethics and Indiana jurisprudence
- ▶ Courses must be taken within the 2 year period and cannot be carried over into the next cycle

38

Indiana State Practice Act

- ▶ 2 categories of continuing competency activities
- ▶ At least 10 hours must be Category 1
- ▶ Only 10 hours can be Category 2
- ▶ Examples of Category 1: formal continuing education courses, workshops, seminars, symposia, home study courses, approved “for credit” courses
- ▶ Must be at minimum 1 hour in length

39

Indiana State Practice Act

Category 2 activities:

- ▶ Professional research and writing
- ▶ Teaching activities
- ▶ Presenting at continuing education courses, workshops or seminars
- ▶ CI/Supervision of full time PT or PTA students
- ▶ In-house in-services or seminars
- ▶ Service to the professional organization in a leadership role
- ▶ Certification of clinical specialization
- ▶ Participation in INAPTA state or regional events
- ▶ APTA Certificate of Advanced Proficiency for the PTA

40

Indiana State Practice Act

A PT that is retiring, leaving or moving from a community or discontinuing their practice must notify in writing all active patients and their referral sources

An active patient is one seen in the last 2 years

A PT should transfer active patient records as appropriate to the new provider or to the referral source but not for a fee or anything of value

41

Indiana State Practice Act

- ▶ There are also rules as to fees, advertising and solicitation
- ▶ There are regulations consistent with the APTA Code of Ethics in regards to reporting requirements
- ▶ No drugs, alcohol, sexual misconduct, felonies

42

Indiana State Practice Act

Beyond the rules and regulations additional information is available on the website

- ▶ License applications and renewal information
- ▶ FAQ, information on approved continuing competency activities
- ▶ Meeting minutes: contain information about board discussions including occasional guidance on interpretation of the practice act

43

Indiana State Practice Act

- ▶ Law is “silent” as to dry needling
- ▶ How do you know if dry needling is allowed in Indiana?
- ▶ August 2012 meeting minutes: “Indiana does not take a position on needling. The current statute is open and does not specifically state whether or not it is appropriate.”
- ▶ INAPTA July 2013 “no stance” on dry needling but notes it is within the scope of PT practice as per the APTA’s information
- ▶ <http://www.apta.org/StateIssues/DryNeedling/>

44

Indiana State Practice Act

- ▶ Meeting minutes also contain a significant amount of information about PTs who have had disciplinary actions in the recent past and may have their license suspended or be on probation.
- ▶ Information is detailed and shows the Committee to be actively engaged in the rehabilitation and progress of these PTs
- ▶ Public discussion of individual circumstances may be a deterrent for inappropriate activities

45

Physical Therapy and the Law

- ▶ State Laws beyond the State Practice Act
 - Additional confidentiality provisions
 - Department of Public Health requirements: disease reporting, restraint laws etc.
- ▶ Medicaid rules and regulations
 - Medicaid is federally and state funded, state administered

46

Medicaid in Indiana

- ▶ Interesting fact is that Gov. Pence– now Vice-President Pence– negotiated with the federal government to develop a unique program
- ▶ Indiana participates in the Medicaid expansion program through the ACA receiving federal monies but also has been allowed to develop its own plan Healthy Indiana Plan 2.0 (HIP)2.0

47

Medicaid in Indiana

- ▶ HIP 2.0 requires beneficiaries to pay into health savings accounts to keep their benefits
- ▶ Administrative regulations of the program are extensive and persons can lose their insurance and be “locked out” if they do not pay into the HSA
- ▶ Critics of the plan are concerned that it places obstacles in the way of healthcare for the poor
- ▶ Proponents of the plan believe that Medicaid benefits should not be funded only by the government

48

Case Law

- ▶ “A professional name for the aggregate of reported cases as forming a body of jurisprudence; or for the law of a particular subject as evidenced or formed by the adjudged cases ; in distinction to statutes and other sources of law”
- ▶ Can be mandatory or persuasive
- ▶ Civil or criminal

49

Malpractice

- ▶ Generally speaking *malpractice* means that a professional has been negligent
- ▶ A professional has a duty (fiduciary duty) that carries more responsibility than a regular relationship
- ▶ The relationship is hierarchal– professional has power– based on education, skill set, research etc. that the other person does not have

50

Malpractice

- ▶ Indiana has its own definition/standard
- ▶ Taken directly from the administrative code:
 - “ ‘Professional incompetence’ may include, but is not limited to, a pattern or course of repeated conduct by a practitioner demonstrating a failure to exercise such reasonable care and diligence as is ordinarily exercised by practitioners in the same or similar circumstances in the same or similar locality”

51

Malpractice

- ▶ Most common after patient sustains some type of injury during PT
 - (duty, breach of duty, causation, harm/loss)
- ▶ Can be warranted or unwarranted
- ▶ PT may or may not have immediate knowledge of the claim
- ▶ Generally within 2 years statute of limitations
- ▶ Rare for a case to actually “go to court”– less than 1%
- ▶ Most of what we know about PT malpractice is from insurance settlements “professional liability”

52

Malpractice

- ▶ HPSO/CNA report includes 5 years of data 2010–2014
- ▶ Previous report was 10 years 2001–2010 with some overlap of the data sets
- ▶ 3,105 claims total, 443 with settlements over \$10,000
- ▶ 85% of the incidents occurred in a non hospital based outpatient clinic
- ▶ 30% increase in claims for case management– improper management through course of care

53

Malpractice

- ▶ Improper management over the course of care:
- ▶ 30% of this type of claim were post surgical patients
 - Autonomy does NOT mean disregard the surgeon's protocol
- ▶ Other issues:
 - Failure to follow the referral
 - Failure to refer back
 - Failure to obtain informed consent

54

Malpractice

- ▶ Failure to properly manage the course of care case example:

SIXTY visits for a 35 y.o. marathon runner with hip weakness, pain and increasing falls– underlying problem was a benign giant cell tumor– claim was for delay of diagnosis

55

Malpractice

- ▶ Improper performance of manual therapy
 - Ex. Manual traction resulting in lumbar disc herniation
 - Cervical adjustment damaged the carotid artery
- ▶ Failure to supervise or monitor (highest average paid claims– PTs leave PTAs/aides alone)
- ▶ Improper performance of TE

Increase in dry needling therefore an increase in dry needling claims– several incidences of pneumothorax

56

Malpractice

- ▶ Improper performance of a biophysical agent
 - 98% heat, 2% cold
 - Of the burn claims: 54% hot packs, 44% estim burns
 - Sound judgment? modalities used with patients with decreased sensation or on a patient with diabetes
- ▶ Failure to properly test or treat a patient – only 2% of claims, but the highest payouts:
 - 3 weeks post op rotator cuff repair, MMT resulted in a biceps tear
 - PT had a PTA student do the MMT portion of an initial exam and the PTA student injured the patient

57

Malpractice vs. License Infraction

- ▶ Malpractice: Judicial branch, court case, no impact on ability to practice
- ▶ License Infraction: Administrative branch, Medical Licensing Board: Physical Therapy Committee, impacts practice
- ▶ PT/PTA could be reported for both, 1 could lead to another but usually remain separate
- ▶ License Infraction: behavior of the PT, not the condition of the patient, no harm to the patient is necessary to report the PT

58

License Infraction

- ▶ HPSO shares data from cost to defend the PT's license
- ▶ 309 claims but only 144 required an insurance payment for defense
- ▶ 38% of cases of license infractions were closed upon initial review
- ▶ 93% involved a professional in the outpatient setting
- ▶ 77% were complaints about individuals, 33% were complaints about entire practices
- ▶ 94% PTs, 6% PTAs

59

License Infraction

Highest frequency of paid claims:

- ▶ improper management over course of treatment includes incomplete or poor documentation
- ▶ improper behavior of the PT
 - substance abuse
 - initiating relationship with patient or patient's family
 - practicing beyond scope of practice

60

License infraction

- ▶ Allegations with highest severity
 - fraudulent billing (fraud and abuse)
 - improper behavior
 - failure to supervise
- ▶ Severity of action by the State Boards in response to infractions start with warnings but can progress to suspension or revocation of the PT's license

61

License Infractions

Case example:

- ▶ Home care PT was inappropriate with family members in an attempt to initiate a relationship of some type during patient's treatment session (multiple patients)
- ▶ Patients also complained the PT was using his phone inappropriately during treatments sessions (multiple patients)
- ▶ the State Board subpoenaed phone records and compared them to documentation to show that the allegations were true
- ▶ Not mentioned in the HPSO report but this is potentially billing fraud

62

Sources of Law on Practice

- ▶ State Practice Act rules and regulations
- ▶ Interpretations of the State Practice Act by “state board” or similar body
- ▶ Binding case law (if available)
- ▶ Information on the state website, in meeting minutes etc.
- ▶ Information from professional sources
- ▶ Standards of practice are important
- ▶ Organizational policies and procedures

63

Policy and Procedure Compliance

- ▶ Following organizational policies and procedures is important to show compliance, establish practice standards, and practice culture for specialized interventions or techniques
- ▶ Compliance with established p and p can be a defense in malpractice litigation
- ▶ However “When in Rome... is only true if Rome is standing!”

64

Consensus Statement on Clinical Practice

- ▶ Group effort of the APTA, AOTA and ASHA
- ▶ Emphasizes the need of the professional to be able to make autonomous clinical decisions
- ▶ Warns of practices that may benefit organizations but are not appropriate clinical practice or beneficial to patients
- ▶ Practices may be as serious as fraud or abuse
- ▶ Practices undermine the clinician and cause stress, decreased job satisfaction and potential burnout

65

Consensus Statement on Clinical Practice

- ▶ Examples cited in the statement:
 - –patients on caseload who do not belong on caseload
 - Inappropriate administrative requirements for productivity and frequency, intensity or duration
 - Treatment without consent
 - Inappropriate coding
 - Counting time that does not count– transport, rest etc.
 - Limiting examination time due to reimbursement issues

66

Clinical Judgments: Choosing Wisely

- ▶ Choosing Wisely is an initiative of the American Board of Internal Medicine Foundation
- ▶ Over 50 medical groups including the APTA have joined
- ▶ Evidence based recommendations to help providers give the best care
- ▶ “Things Providers and Patients should Question”

67

Clinical Judgments: Ask the Question

- ▶ 1) Don't employ passive physical agents except when necessary to facilitate participation in an active treatment program
- ▶ 2) Don't prescribe under dosed strength training programs for older adults.
- ▶ 3) Don't recommend bed rest following the diagnosis of DVT once anti-coagulation therapy has started unless there are significant medical concerns

68

Clinical Judgments: Ask the Question

- ▶ 4) Don't use CPM machines for the post op management of patients following uncomplicated TKR
- ▶ 5) Don't use whirlpools for wound management

69

Malpractice Prevention

An ounce of prevention is worth a pound of cure....

And although you cant completely prevent a malpractice action from happening you can prevent it from being successful!

70

“Personal Plan” to limit liability

▶ **Brigette’s Top 10 list to Minimize Personal Negligence:**

- 1) Understand your state practice act– scope of practice
- 2) Stay current with “best” practices– standards of practice

71

Limit liability

- 3) Honor your fiduciary duty and act ethically
APTA Code of Ethics revised in 2010
- 4) Maintain high standards of professional behavior
APTA Guide for Professional Conduct
Both documents available:
<http://www.apta.org/Ethics/Core/>

72

Limit liability

- 5) Document thoroughly:
 - “Tell yourself a story through your note”
 - “If you open a door, shut it.”
 - Resist being limited by forms, check off sheets and EHR drop down boxes
- 6) Billing must match documentation:
 - only bill for what actually occurred
 - beware of billing for work others have completed

73

Limit liability

- 7) Get informed consent regularly as part of your routine practice and patient education
- 8) Know if you need malpractice insurance

74

Limit liability

- ▶ 9) Remember that every individual that you supervise you are figuratively carrying on top of your license– *this is a weighty responsibility!*

Ensure that every person understands and acts within their scope of practice.

*HPSO/CNA claims predominantly PTs, not PTAs for a reason

75

Limit liability

- 10) Be cautious with your modalities:
 - know what you are applying and why
 - get informed consent
 - monitor skin pre, during and post application
 - document what you observed pre, during and post

76

Legal Resources and Reminders

Scope of practice:

If you don't know... Ask the Medical Licensing Board: Physical Therapy Committee

Malpractice issues:

Follow your personal plan to limit liability

Fraud and Abuse:

Be diligent to prevent it- don't be afraid to report it!

77

Professional Resources

- ▶ Indiana Chapter- American Physical Therapy Association:

<https://inapta.org/>

- ▶ American Physical Therapy Association:

<https://www.apta.org/>

- ▶ Federation of State boards of Physical Therapy:

<http://www.fsbpt.org/>

78

In Conclusion

- ▶ Legal responsibilities are an important part of clinical practice
- ▶ Knowledge of practice standards is our responsibility
- ▶ Whether in Indiana or Philadelphia our duty to our patients is the same
- ▶ Thank you for your time!

79