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# Legal and Ethical Practice in Georgia

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## Course Objectives

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

- 1) Identify various sources of law that govern physical therapy practice in Georgia
- 2) Examine the Georgia State Practice Act to establish the clinical scope of practice in Georgia
- 3) Examine the Georgia State Practice Act to determine licensure requirements for physical therapists including continuing competence activities
- 4) Distinguish case law and malpractice actions from administrative regulation of licensure
- 5) Develop a personal plan to limit liability

## Outline of Legal Issues

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

## 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

## 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

## 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

## 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
- Georgia has not yet joined the compact

## 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

## 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

## 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

## 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

## 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

## Affordable Care Act

- Individual Mandate
- Expansion of state Medicaid programs
  - Georgia did not join the Medicaid expansion
- Changes to common practices of 3<sup>rd</sup> 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.



## 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>

## Medicare Rules and Regulations

- Centers for Medicare and Medicaid Services  
[www.cms.gov](http://www.cms.gov)

- Site for consumers  
[www.Medicare.gov](http://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

## Medicare Rules and Regulations

- ▶ APTA is a comprehensive resource  
[www.apta.org/payment](http://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

## 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

## 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.

## 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!”

## 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

## 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...

## Physical Therapy Practice in Georgia

Start here:

<http://sos.ga.gov/index.php/licensing/plb/39>

Website for the Georgia State Board of Physical Therapy

Home page has Four tabs:

Board and Exam Information

Online Services

Laws, Policies and Rules

Other Information

## Physical Therapy Practice in Georgia

3 sections under “Laws, Policies and Rules” establish legal physical therapy practice in Georgia

- Georgia Physical Therapy Act
- Board Rules
- Policy Statements

## Physical Therapy Practice in Georgia

- Practice is governed by the State Board of Physical Therapy
- 8 member board, all residents of Georgia
- 6 PTs (must have 3 years of experience)
- 1 PTA (must have 3 years of experience)
- 1 public member with no connection to PT

## Physical Therapy Practice in Georgia

- Georgia 43-33-10 establishes explicit powers of the Board
- Most are typical- regarding licenses, continuing competency, infractions etc.
- Interesting power is the right to initiate investigations of practice infractions
- *“For this purpose, any board member or authorized agent of the board shall have the power and right to enter and make reasonable inspection of any place where physical therapy is practiced;”*

## Georgia State Practice Act

Ability to practice PT in Georgia

- Licensure through examination
- Licensure through endorsement
  - PT presents proof of a license in another state
  - Clinical practice within the past 2 years
- “Training permit”
  - “direct supervision”
  - supervising PT must have no less than 1 year of experience
  - available to new grads, foreign trained applicants waiting to take the licensure exam and reinstatement applicants
- Reinstatement Application

Georgia requires a state specific jurisprudence exam  
GA JAM administered by the FSBPT

## Georgia State Practice Act

- 2 additional temporary situations
  - 43-33-11d (6)

A licensee from another state for less than 60 days in a year *“a temporary sojourner only”*

43-33-11 d (7)

A licensee from another state for less than 60 days annually *“for a declared local, jurisdictional, or national disaster or emergency”*

\*2017 Hurricane Irma notation

## Georgia State Practice Act

- 43-33-3 (6) Definition of a PTA  
*“... a person who is licensed by the board to assist a physical therapist, whose activities are supervised and directed by a physical therapist...”*
- 43-33-3 (8) Definition of the physical therapy aide  
*“...a person who only performs designated and supervised physical therapy tasks. The physical therapy aide must receive direct supervision and must be directed on the premises at all times by a licensee...”*

## Georgia State Practice Act

- Pertinent distinctions for practice  
 Aides: designated tasks  
 Supported by 43-33-18 a)3(D):  
*“A physical therapist may use physical therapy aides for designated routine tasks”*
- Both require direction and supervision  
 however aides require “*on premise*”  
 supervision by a licensee (PT and PTA)
- Aide is not licensed



## Georgia State Practice Act

- PT is responsible for the “episode of care” of each patient
- PT must be physically on site 50% of the work week in most inpatient and outpatient settings
- Exceptions are
  - Home Health Care: PT must make an on- site visit with the patient every 6 visits and must meet with the PTA weekly to review cases
  - School setting: every 4th week for weekly patients, once every 3 months for patients seen on a monthly basis

## Georgia State Practice Act

- The FSBPT categorizes Georgia’s PTA supervision rules as “General Supervision”
 

*“The supervisor is available on a regularly scheduled basis to review the practice of the PTA and support the PTA in the performance of his/her services. The supervising therapist is on call and readily available physically or through direct telecommunication for consultation, and written or oral instructions for treatment of the patient has been given. There is predetermined plan for emergency situations, including the designation of an alternate PT in the absence of the regular licensed PT.”*

## Georgia State Practice Act

- Georgia has direct access for examination and restricted DA for treatment
- Education/Experience Requirement:
  - 5 years experience
  - Or a DPT plus 2 years experience
  - OR a DPT with extra training such as a post graduate certificate, ABPTS Board Certification or residency or fellowship training
  - A PTA can provide care to a patient being treated without a referral (May 2017 State board of PT meeting minutes)

## Georgia State Practice Act

- Georgia has limitations on treatment length
- Generally 21 days from the initiation of treatment or 8 visits
- Exceptions:
  - Health promotion, wellness, fitness or maintenance
  - Patients diagnosed with a neuromuscular or developmental condition within the past 9 months who are being examined or treated for the same condition
  - Patients diagnosed with a chronic musculoskeletal problem in the last 90 days (relevant document from a medical professional)

## Georgia State Practice Act

- Patients who are self referred must be given a written disclosure that the diagnosis they receive is not a medical diagnosis
- The disclosure must also warn the patient that PT without a physician's referral may not be covered by their insurance
- Explicitly states PT cannot order radiology or lab tests or perform surgery

## Georgia State Practice Act

Note regarding dry needling:

- Dry Needling is within the scope of practice of a PT
- Georgia was one of the first states to add specific dry needling language to their statute (since amended out when language was simplified in 2015)
- However, dry needling is not allowed under direct access without a consultation with a referral source

## Georgia State Practice Act

- PT and PTA licenses are good for 2 years and expire on Dec 31 of odd years
- 30 hours of continuing competence activities are required every 2 years
- Of the 30 hours, 4 hours must be in ethics and jurisprudence or by taking the Georgia Jurisprudence Exam
- Courses must be taken within the 2 year period and cannot be carried over into the next cycle

## Georgia State Practice Act

- Georgia requires PTs/PTAs to report compliance with continuing competence activities.
- Endorsement candidates must use the required reporting system once they receive an assigned Georgia applicant number

## Georgia State Practice Act

GA will soon be using CE Broker for reporting:  
<https://sos.ga.gov/PLB/acrobat/Forms/15%20Reference%20-%20Guide%20for%20Continuing%20Competence%20Activities%20&%20Documentation%20Requirements.pdf>

Based on Rule Citation 490-4-.02

## Georgia State Practice Act

As per the Board website:

***\*\*\*PLEASE NOTE\*\*\* Those who opt to submit the jurisprudence examination in lieu of taken a jurisprudence course are not able to submit the same test that was taken to obtain licensure for continuing education credit. A new test result will need to be submitted. The rationale behind the Board's position is that laws and rules do change and to use the same test for CE credit during the same cycle one was licensed does not ensure that the licensee has remained abreast of the current laws and rules.***

## Georgia State Practice Act

- There are also rules as to:
  - representing self as a PT
  - using the designator “Dr.”– clarify PT
  - language to protect the practice of PT,
  - rules which prevent fee sharing,
  - language about impaired practice
  - language about breaking the law
- There are GA ethical regulations consistent with the APTA Code of Ethics

## Georgia State Practice Act

- 43-33-18 c(6) Reporting
  - “Failed to report to the board any act or omission of a licensee or applicant or any other person which violates the provisions of this subsection”* (legal and ethical practice)

Later language offers immunity from civil and criminal for reporting or testifying in regards to reporting as long as the report is made *“in good faith without fraud or malice”*

## Georgia Board Policies

The Georgia State Board of Physical Therapy, adopts the APTA position of Medications in the Provision of Physical Therapy which states:

*“The scope of practice of physical therapy often requires the use of medications in the course of patient/client management, such as in the administration of phonophoresis, iontophoresis, nebulized bronchodilators, and in integumentary repair and protection. The application and storage of medications used in physical therapy is within the scope of physical therapy practice.”*

Source: Policy #12

## Georgia State Board Website

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

- Online application for licensure, application status
- FAQ
- License Search feature
- Online complaint feature
- A list of public disciplinary actions
- Link for Continuing Competence tracking

## Georgia State Board Meeting Minutes

- ▶ Meeting minutes contain information about board roles and responsibilities  
license infractions,  
upcoming legislation  
entertain questions from licensees which may include occasional guidance on interpretation of the practice act

## Georgia State Board Meeting Minutes

1/24/17 Meeting Minutes

- ▶ GA State Board is moving ahead with legislation to join the PT Licensure Compact
- ▶ GA has a legislative initiative regarding fair co-pays
- ▶ A licensee asked via letter if a PT in GA can accept a referral from a chiropractor ? Board voted unanimously to send her a “no response” letter. Must seek legal advice.



## Georgia State Board Meeting Minutes

- 3/21/17 minutes
- Discussion of violation of Continuing Competency Requirements upon renewal
- Agreed upon a fine of \$500
- Required completion of the outstanding units in 60 days
- These units cannot be put toward the next/active cycle
- Licensee is flagged for audit

## Georgia State Board Meeting Minutes

- 3/29/17  
*“Physical therapists and physical therapist assistants should be advised that the Georgia Physical Therapy Act does not appear to grant individuals licensed under that statute the authority to perform animal rehabilitation in the state of Georgia. The Board encourages physical therapists to review the Veterinary Practice Act, specifically O.C.G.A. § 43-50-3(11) for additional guidance”*

## Georgia State Board Meeting Minutes

- 5/16/17 minutes (busy meeting!)
- Discussed criteria for audits (Rule 490-4-.03)
- Licensee may be audited randomly
- May be audited if they select “no” regarding completion of required competency activities
- If they have been disciplined by a board or regulatory agency
- If they have pled guilty or been convicted or been sentenced for a felony, misdemeanor or any offense other than a minor traffic violation

## Georgia State Board Meeting Minutes

- PTs/PTAs shall not be sexually intimate with any individual related to their practice of PT regardless of consent
- Includes patients, PTAs, trainees and students
- (No language on aides)
- Relationship is terminated if the patient has not received care for 2 years or if the supportive clinician has not been supervised by the PT/PTA for 2 years

## Georgia State Board Meeting Minutes

- Language to establishes guidelines for telehealth
- Defines telehealth and its uses– emphasizes within PT scope of practice
- With short term exceptions, PTs providing telehealth to patients in GA must be licensed in GA
- PTs licensed outside the state of GA may provide a consultation to a PT licensed in GA via telehealth

## 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

## Georgia State Laws

### ‣ IMPORTANT LEGISLATIVE CHANGE ~

*“The Consumer Information and Awareness Act (O.C.G.A. § 43-1-33) was signed into law by Governor Nathan Deal on May 12, 2015. The new statute requires that physical therapists and other licensed health care practitioners provide for certain identification, educational identifiers and signage in the workplace and in advertisements. It also identifies the penalties for intentional violation of the provisions of the law.”*

Source: Georgia Physical Therapy Association website

## 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

## 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

## 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”

## 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

## 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

## 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

## 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

## 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

## 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



## 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

## 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

## 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

## 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

## 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

## 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!”

## 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

## 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

## 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”

## 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

## 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

## 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!

## “Personal Plan” to limit liability

### ‣ Brigitte’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

## 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/>

## 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

## Limit liability

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



## 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

## 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

## 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!

## In Conclusion

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