



South Carolina Orthopaedic Association v. South Carolina Board of Physical Therapy, 417 S.C. 436 (S.C. 2016)

Topic(s): Scope of Practice

Outcome: Very favorable

Issue

The issue in this “reverse scope of practice” case was whether South Carolina physicians can legally employ physical therapists.

AMA interest

The AMA opposes government interference in the practice of medicine, and the AMA encourages full and unrestricted licensures for competent physicians.

Case summary

In 2006, the South Carolina Supreme Court interpreted a section of the South Carolina Physical Therapists Act (PT Act), S.C. Code Ann. § 40-45-110(A)(1), to prohibit physician employment of physical therapists. *Sloan v. South Carolina Board of Physical Therapy Examiners*, 636 S.E.2d 598. The present case attempted to obtain an outright reversal of the Sloan decision or, perhaps somewhat contradictorily, to expand the Sloan holding in order to make a legislative repeal more likely.

Under the name *Joseph v. South Carolina Department of Labor, Licensing and Regulation*, a physical therapist and two orthopaedic surgeons, with support from the South Carolina Orthopaedic Association, sued the South Carolina Physical Therapy Board for a declaratory judgment. The plaintiffs’ complaint sought to establish either (1) *Sloan* was wrongly decided and should be overruled, or (2) *Sloan*, if correctly decided, should be extended.

On a combined motion to dismiss, motion for summary judgment, the trial court held that it could not overrule *Sloan*, and it granted summary judgment to the defendant on the counts seeking such relief. However, it declined to dismiss the remaining counts, which sought to expand the *Sloan* holding to employment of one physical therapist by another. Following the trial court ruling on the motion to dismiss/motion for summary judgment, the South Carolina Physical Therapy Association and three individual physician therapists intervened as additional defendants. The parties filed cross-motions for summary judgment on the remaining counts.

On April 21, 2014, the trial court ruled in favor of the defendants on all outstanding motions. It held that the PT Act was intended to prohibit excessive referrals to physical therapists from

physicians but not to prevent such referrals from one physical therapist to another. There was therefore no reason why one physical therapist could not employ another physical therapist.

The plaintiffs appealed, with their principal argument being that *Sloan* was wrongly decided. The South Carolina Supreme Court then certified this case for review, thus bypassing the South Carolina Court of Appeals.

On September 14, 2016, the South Carolina Supreme Court, by split decision, reversed the trial court and overruled *Sloan*. It found that *Sloan* created “an absurd situation,” which violated the constitutional rights of equal protection and substantive due process for physical therapists. As a result, South Carolina physicians may now employ physical therapists.

Litigation Center involvement

The Litigation Center contributed to the plaintiff's legal expenses.