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Attorney General

**PROFESSIONAL SERVICES—HEALTH CARE SERVICES—PHYSICAL THERAPISTS—
OCCUPATIONAL THERAPISTS—Whether Physical Therapists And Occupational
Therapists May Share An Ownership Interest In A Health Care Practice**

Physical therapists and occupational therapists may not share an ownership interest in a health care practice with health care professionals listed in RCW 18.100.050(5)(a).

November 16, 2020

The Honorable Joe Schmick
State Representative, District 9
PO Box 40600
Olympia, WA 98504-0600

Cite As:
AGO 2020 No. 5

Dear Representative Schmick:

By letter previously acknowledged, you have requested our opinion on the following question:

Does RCW 18.100.050(5)(b) prohibit physical and occupational therapists from having an ownership interest in a health care practice with health care professionals listed in RCW 18.100.050(5)(a)?

BRIEF ANSWER

Yes. Physical and occupational therapists are prohibited from having an ownership interest in a health care practice with health care professionals listed in RCW 18.100.050(5)(a). Physical and occupational therapists may only own stock in and render their services through a professional service corporation within their respective fields. See RCW 18.100.050(5)(b).

FACTUAL BACKGROUND

Washington adheres to the corporate practice of medicine doctrine, which provides that a business entity may not employ medical professionals to practice their licensed professions absent legislative authorization. *See Columbia Physical Therapy, Inc., P.S. v. Benton Franklin Orthopedic Assocs., P.L.L.C.*, 168 Wn.2d 421, 431, 228 P.3d 1260 (2010); *State ex rel. Standard Optical Co. v. Superior Ct. for Chelan Cnty.*, 17 Wn.2d 323, 328, 135 P.2d 839 (1943) (corporation may not engage in practice of learned professions by hiring licensed practitioner). “A person or

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entity practices a profession by either directly engaging in statutorily defined conduct or by employing a licensed individual to engage in such conduct.” *Columbia Physical Therapy*, 168 Wn.2d at 430. The rationale of this doctrine is that ethical obligations to clients or patients should not be compromised by obligations to shareholders. *See Standard Optical*, 17 Wn.2d at 332 (“One who practices a profession is responsible directly to his patient or his client. Hence he cannot properly act in the practice of his vocation as an agent of a corporation or business partnership whose interests in the very nature of the case are commercial in character.” (quoting *Ezell v. Ritholz*, 88 S.C. 39, 198 S.E. 419, 424 (1938))).

In 1969, the legislature enacted the Professional Service Corporation Act (PSCA), and “thereby carved out ‘a narrow statutory exception’ to the general rule prohibiting corporations from practicing learned professions.” *Columbia Physical Therapy*, 168 Wn.2d at 432; see Laws of 1969, ch. 122 (*codified as* RCW 18.100). The PSCA allows certain health care professionals to form corporate entities, provided those corporate entities are organized by an “individual or group of individuals duly licensed . . . to render the same professional services within this state[.]” RCW 18.100.050(1). Such groups of individuals may become “shareholders of a professional corporation for pecuniary profit . . . for the purpose of rendering professional service.”[1] RCW 18.100.050(1). The legislature has amended the PSCA several times, and three changes to RCW 18.100.050 are discussed in further detail below.

ANALYSIS

As just discussed, the starting point in our analysis is that the law prohibits a business entity from engaging in the practice of medicine by employing medical professionals to practice their licensed professions absent legislative authorization. *Columbia Physical Therapy*, 168 Wn.2d at 431. We next determine whether the legislature has authorized physical and occupational therapists to own a practice with other health care professionals, specifically those identified in RCW 18.100.050(5)(a). As explained below, we determine that no exception allowing such ownership exists.

The PSCA permits physical and occupational therapists to co-own a health care practice. *See* RCW 18.100.050(5)(b). It also permits health care professionals licensed or certified under the chapters listed in RCW 18.100.050(5)(a) to co-own a health care practice. It does not, however, allow physical and occupational therapists to co-own a health care practice with health care professionals listed in RCW 18.100.050(5)(a). This conclusion is supported by the plain language of RCW 18.100.050 and the history of amendments to RCW 18.100.050.

Our objective in construing a statute is to determine the legislature’s intent. *See Dep’t of*

Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.3d 4 (2002). This analysis begins

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with the plain meaning of the statute, which encompasses “the text of the provision, the context of the statute in which the provision is found, related provisions, amendments to the provision, and the statutory scheme as a whole.” *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 170, 385 P.3d 769 (2016). “Where statutory language is unambiguous, we accept that the legislature means exactly what it says.” *State v. Marohl*, 170 Wn.2d 691, 698, 246 P.3d 177 (2010). But if, after considering this plain language analysis, “the statute remains ambiguous or unclear, it is appropriate to resort to canons of construction and legislative history.” *Drummond*, 187 Wn.2d at 170.

Plain Language

Turning first to the statute’s text, the PSCA allows certain health care professionals to form corporate entities, provided those corporate entities are organized by an “individual or group of individuals duly licensed . . . to render *the same professional services* within this state[.]” RCW 18.100.050(1) (emphasis added). Subsection (5)(a) goes on to state:

[H]ealth care professionals who are licensed or certified pursuant to chapters 18.06, 18.225, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.57, 18.57A, 18.64, 18.71, 18.71A, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may own stock in and render their individual professional services *through one professional service corporation* and are to be considered, for the purpose of forming a professional service corporation, as rendering the “*same specific professional services*” or “*same professional services*” or similar terms.[2]

(Emphases added.) Thus, the twenty-one health care professions listed in RCW 18.100.050(5) (a) are permitted to own stock in and render their professional services through a single professional service corporation because for, purposes of forming a professional service corporation, the legislature has determined that these professionals are providing the same professional services.

Subsection (5)(b), which refers to physical and occupational therapists, states:

[H]ealth care professionals who are regulated under chapters 18.59 and 18.74 RCW may own stock in and render their individual professional services *through one professional service corporation* formed for *the sole purpose of providing professional services within their respective scope of practice*.

(Emphases added.)

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The structure of the statute, dividing its provisions into two parts, (a) and (b), textually demonstrates that the health care professions listed in RCW 18.100.050(5)(b)—occupational therapists (RCW 18.59) and physical therapists (RCW 18.74)—are not considered to offer the

“same professional services” as the professionals grouped in RCW 18.100.050(5)(a). *See Rocha v. King County*, 195 Wn.2d 412, 428, 460 P.3d 624 (2020) (looking in part to statutory structure in construing a statute); *Jin Zhu v. N. Cent. Educ. Serv. Dist.*, 189 Wn.2d 607, 620, 404 P.3d 504 (2017) (same). While physical and occupational therapists may form a single professional service corporation, the entity may be formed solely to provide services within their “respective scope of practice,” which are statutorily defined by RCW 18.59 and RCW 18.74. *See* RCW 18.100.050(5)(b).

To read RCW 18.100.050 as allowing physical and occupational therapists to own a practice with other health care professionals identified in RCW 18.100.050(5)(a) would effectively add occupational and physical therapists to the list of health care professions in RCW 18.100.050(5)(a). But doing so “add[s] words or clauses to an unambiguous statute when the legislature has chosen not to include that language.” *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003); *State v. Christensen*, 153 Wn.2d 186, 194, 102 P.3d 789 (2004) (adding a limitation to a statute would violate a crucial rule of statutory construction). The legislature unambiguously did not include that language and did not group physical and occupational therapists with the professions in subsection (5)(a).

The plain language of RCW 18.100.050 thus compels us to answer yes to your question.

History of the Statutory Amendments

Along with the statute’s unambiguous language, the legislative history further confirms that the legislature chose to restrict the formation of professional service corporations for physical therapists and occupational therapists to those two disciplines.

Before 1996, the PSCA generally permitted a group of individual health care professionals to form a professional service corporation or limited liability company only if all the professionals were members of the same profession. In 1996, the legislature amended the PSCA so that seventeen different licensed and certified health care professionals could associate together in forming a single professional service corporation. *See* Laws of 1996, ch. 22, § 1. Physical and occupational therapists were not included in this list. *See* Laws of 1996, ch. 22, § 1; *see also* H.B. Rep. on Substitute H.B. 6150, at 2, 54th Leg., Reg. Sess. (Wash. 1996) (noting that doctors of medicine and osteopathy, occupational therapists, and physical therapists are not included in the provisions). The legislature also added a separate subsection to clarify that physicians and osteopathic physicians could continue to form a single professional service corporation or limited liability company. *See* Laws of 1996, ch. 22, § 1; H.B. Rep. on Substitute H.B. 6150, at 2.

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In 1997, the legislature added physicians and osteopathic physicians to the list of regulated health professionals who may associate together in forming a single professional health service corporation or similar business entity. *See* Laws of 1997, ch. 390, § 3.[3]

Finally, in 1999 the legislature allowed physical and occupational therapists to form a business entity “for the sole purpose of providing professional services within their respective scope of practice.” Laws of 1999, ch. 128, § 2 (adding RCW 18.100.050(5)(b)). Notably, the

legislature did not add physical therapists and occupational therapists to the list of regulated health professionals who were already permitted to associate together to form a single corporation. The legislature seems to have understood that it was drawing a clear distinction, allowing the twenty-one already identified health care professions to establish professional service corporations or professional limited liability corporations and these entities were “composed of individuals who are licensed to perform the same professional services.” Final Bill Report on S.B. 5829, at 1, 56th Leg., Reg. Sess. (Wash. 1999). But rather than add occupational and physical therapists to that list, occupational and physical therapists could instead “own stock in and perform services for a professional service corporation or professional limited liability corporation within their respective fields.” Final Bill Report on S.B. 5829, at 1.

Your letter on whether physical and occupational therapists may have an ownership interest in a health care practice with professionals listed in RCW 18.100.050(5)(a) discusses *Columbia Physical Therapy*. In that decision, the Washington Supreme Court discussed the separate identification of the professions in subsections (5)(a) and (5)(b) in the context of whether a physician-owned limited liability company that employed physical therapists violated the corporate practice of medicine doctrine and the PSCA. *See Columbia Physical Therapy*, 168 Wn.2d at 437-38. The Court noted that the legislature’s adoption of these lists had “the effect of broadening the professions that could come together and form a single professional services corporation.” *Id.* at 437-38 (citing Laws of 1997, ch. 390, § 3). This was simply an acknowledgement of the history noted above—that before the legislature adopted these lists, only members of a single profession could own a business together. But the legislature has not added occupational therapists and physical therapists to the list of professions in RCW 18.100.050(5)(a) that can come together to form a professional service corporation. *Columbia Physical Therapy* also held that a physician-owned limited liability company may employ physical therapists in part because the practice of physical therapy is one aspect of the practice of medicine. *Id.* at 435. But nothing in the Court’s opinion suggests that a physical or occupational therapist can thereby own an interest in a business of one of the professions listed in RCW 18.100.050(5)(a). Even if the Court’s language about physical therapy falling within the practice of medicine had any bearing on the plain meaning of RCW 18.100.050(5), it would not imply that physical therapists can own

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an interest in the businesses listed in RCW 18.100.050(5)(a), because the Court’s point was only one-sided: while physical therapy falls entirely within the practice of medicine, the practice of medicine does not fall entirely within the practice of physical therapy. Thus, the case does not hold or suggest that a physician and physical therapist may co-own a business enterprise to provide professional services. *Id.* at 438.

In sum, the plain language and legislative history of RCW 18.100.050 shows that physical and occupational therapists are prohibited from having an ownership interest in a health care practice with health care professionals listed in RCW 18.100.050(5)(a). But “the legislature remains free to adopt another course should it see fit to do so.” *Columbia Physical Therapy*, 168 Wn.2d at 443.

We trust that the foregoing will be useful to you.

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s/ Cristina Sepe
CRISTINA SEPE
Assistant Attorney General

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[1] The PSCA also applies to professional limited liability companies under RCW 25.15.046. *See Columbia Physical Therapy*, 168 Wn.2d at 432 n.3.

[2] Effective July 1, 2022, osteopathic physician assistants will not be listed in RCW 18.100.050(5)(a). *See* Laws of 2020, ch. 80, § 21.

[3] The legislature also tried to abrogate the corporate practice of medicine doctrine for all health care practitioners except dentistry and veterinary medicine. *See* Laws of 1997, ch. 390, §§ 1, 2. But the governor partially vetoed the bill, including sections 1 and 2. *See* Laws of 1997, ch. 390.