



# Kentucky Board of Physical Therapy v. Dubin Orthopedic Center, 294 S.W.3d 421 (2009)

Topics Covered: Scope of Practice

**Outcome: Very Favorable**

## **Issue**

The issue in this case was whether a physician can bill for physical therapy services under the Kentucky Physical Therapy Act.

## **AMA Interest**

The AMA supports the right of a physician to bill under Current Procedural Terminology (CPT) criteria.

## **Case Summary**

The Kentucky State Board of Physical Therapy sued to enjoin Dubin Orthopaedic Centre, Inc. (whose sole shareholder is Dr. Dubin) from billing under the CPT codes specific to physical therapy services, as those services were not provided by a licensed physical therapist. The Board claimed it is illegal under the Kentucky Physical Therapy Act for a non-physical therapist—even a physician—to bill for these services. While the suit was pending, the Kentucky Board of Medical Licensure issued an advisory opinion finding that physicians do have the right to bill for physical therapy services. On cross-motions for summary judgment, the trial court found in favor of Dubin Orthopaedic. The Board of Physical Therapy appealed.

The Kentucky Court of Appeals reversed the trial court's order and directed the trial court to enjoin Dubin Orthopaedic from using CPT codes for physical therapists in his billing for physical therapy services. The appellate court noted that a licensed physician may utilize treatment modalities that are the same as, or similar to, those provided by a licensed physical therapist. Nevertheless, the appellate court found that the statute at issue mandated that no person other than a licensed physical therapist, even a licensed physician, can submit a bill that describes his services as physical therapy services.

Dubin Orthopaedic then appealed to the Kentucky Supreme Court, which reversed the Court of Appeals, holding for Dubin Orthopaedic. It found that the Kentucky Physical Therapy Act was not intended to prevent physicians from using the proper CPT code to describe their services.

### **Litigation Center Involvement**

The AMA joined with the Kentucky Medical Association in the filing of amicus curiae briefs in the Kentucky Court of Appeals and the Kentucky Supreme Court on behalf of Dubin Orthopaedic.

Kentucky Court of Appeals brief

Kentucky Supreme Court brief