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Honorable T-Michael Dougherty, Chair
Alabama Board of Physical Therapy
100 N. Union Street, Suite 724
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Physical Therapy, State Board of –
Licenses and Permits – Cash

A patient seeking treatment for physical therapy services who is paying with cash may have direct access to only those physical therapists who meet the educational, experience, and other requirements, of section 34-24-210.1 of the Code of Alabama.

“Paying cash” under section 34-24-210.1 of the Code, includes all forms of direct personal payment made by an individual to a qualified physical therapist. Given the established meaning of the word “cash,” however, this Opinion should not be interpreted to expand the definition of the term “cash” outside of this context.

Dear Mr. Dougherty:

This opinion of the Attorney General is issued in response to your request on behalf of the Alabama Board of Physical Therapy.

QUESTION ONE

Can a patient seeking treatment for physical therapy services who is paying cash have direct

access to any physical therapist, licensed or privileged, to practice in Alabama?

FACTS AND ANALYSIS

As originally introduced in the Legislature, proposed amendments to section 34-24-210.1 of the Code were intended to eliminate “the requirement that physical therapy be practiced only upon a referral from a licensed physician, licensed dentist, licensed chiropractor, licensed physician assistant, or licensed certified registered nurse practitioner.” H.B. 232 (Ala. Reg. Sess., 2024) (first read Feb. 27, 2024).

When patients are permitted to receive treatment from a physical therapist without first receiving a referral, it is referred to as a “direct access” regulatory scheme. In many states, direct access to physical therapists is limited by additional qualifications or provisions. *Levels of Patient Access to Physical Therapist Services in the U.S.*, Am. Physical Therapy Ass’n, https://www.apta.org/contentassets/4daf765978464a948505c2f115c90f55/apta_direct_access_by_state230906.pdf (last visited Nov. 12, 2024). Alabama, as a result of the recent amendments to section 34-24-210.1 of the Code, is one of those states.

After amendments were made to the original bill, section 34-24-210.1 of the Code was adopted with language that allows only licensed physical therapists with certain educational backgrounds, and practice experience, to treat patients who do not first receive a referral from a “physical therapy referrer.” ALA. CODE § 34-24-210.1(a) (Supp. 2024). Section 34-24-210.1(a) of the Code states that such physical therapists must “possess[] a doctorate in physical therapy or a master’s degree from an accredited institution along with 10 years of clinical practice experience[.]” *Id.* The physical therapist must also be licensed to practice in Alabama, having passed the examination of the Federation of State Boards of Physical Therapy. *Id.* Further, physical therapists may not, without a referral, treat patients seeking treatment for “work-related injuries, infirmities, diseases, or conditions which do not provide any basis for establishing a claim or right to recover under the Alabama’s Workers Compensation Act[.]” ALA. CODE § 34-24-210.1(d)(1) (Supp. 2024).

The Code attempts to clarify a patient’s rights at the end of subsection (d)(1) by stating that “[a]n individual seeking treatment for physical therapy services who is paying cash shall have direct access without restriction.” ALA. CODE § 34-24-210.1(d)(1) (Supp. 2024). By

allowing cash payers access to physical therapy services “without restriction,” this sentence, at first blush, conflicts with the earlier educational and experience requirements, among other things, for physical therapists to directly treat patients.

“Two provisions concerning ‘the same or similar subject matter’ that appear to be conflicting should be read *in pari materia*, giving each provision equal weight, and if possible, reading them as being consistent with one another.” Opinion to Honorable Zachary Bigley, Mayor, Town of Pine Level, dated Jun. 27, 2024, A.G. No. 2024-038 at 3. “In construing statutes, [a] Court does not interpret provisions in isolation, but considers them in the context of the entire statutory scheme.” *Siegelman v. Alabama Ass’n of Sch. Boards*, 819 So. 2d 568, 582 (Ala. 2001) (emphasis in original removed). “Finally, well-settled law provides that, in interpreting two closely related statutes, ***interpretation should not be given that, without clear reason, defeats the policy of the other.***” Opinion to Honorable Hal Taylor, Secretary, Alabama State Law Enforcement Agency, dated Sep. 13, 2017, A.G. No. 2017-046 at 4 (emphasis added) (citing *Ginsberg v. Union Cent. Life Ins. Co.*, 198 So. 855, 858 (1940)).

It is important to note in subsection (d)(1), that the statute reiterates the requirement that the physical therapist providing such services must “meet[] the educational requirements of subsection (a)[.]” ALA. CODE § 34-24-210.1(d)(1) (Supp. 2024). This requirement is reiterated for a second time in subsection (d)(2). *Id.* Allowing cash payers unrestricted access to all physical therapists, regardless of their educational background or experience, just by virtue of being cash payers, would defeat the primary policy established by the statute, without clear reason.

On the other hand, a reasonable interpretation of the last sentence of subsection (d)(1) exists which allows both provisions of section 34-24-210.1 of the Code to be read harmoniously with one another. By removing restrictions for cash payers to access physical therapy services, the last sentence of subsection (d)(1) precludes third-party payers (i.e., insurance companies) from interposing additional barriers on physical therapists for providing services to cash payers. *See, e.g., Cash-Based Practice*, AM. PHYSICAL THERAPY ASS’N, <https://www.apta.org/your-practice/payment/cash-practice> (last visited Oct. 31, 2024). By removing such barriers, the statute also potentially reduces operating costs for physical therapists by eliminating the need to bill, collect, and negotiate rates, with insurance companies. *See id.* Physical therapists performing services directly to patients, however, must still do so in conformance with

all requirements and limitations contained in section 34-24-210.1 of the Code.

CONCLUSION

A patient seeking treatment for physical therapy services who is paying with cash may have direct access to only those physical therapists who meet the educational, experience, and other requirements, of section 34-24-210.1 of the Code.

QUESTION TWO

Does “paying cash” include personal credit card, checks, or any other form of self-payment?

FACTS AND ANALYSIS

Neither section 34-24-210.1 of the Code, nor its related statutes, define the terms “cash” or “paying cash.” “In the absence of a statutory definition, the commonly accepted definition for a term must be applied.” Opinion to the Honorable Joe W. Ingram, Register, Circuit Court, Talladega County, dated Apr. 29, 1982, A.G. No. 82-00304 at 2. Black’s Law Dictionary defines “cash” as “[m]oney or its equivalent . . . currency or coins, *negotiable checks*, and balances in bank accounts.” *Cash*, BLACK’S LAW DICTIONARY (10th ed. 2014) (emphasis added). “Courts have frequently held that ‘cash’ means money or its equivalent, or ‘ready money’ at one’s command, subject to free disposal and not tied up in a fixed state.” 53A AM. JUR. 2D *Money* § 3 (Westlaw 2024). Here, given the commonly accepted definition of “cash” includes negotiable checks, a patient is not prohibited from paying for physical therapy services by check. You additionally ask about payments made by credit card or other forms of self-payment.

The word “cash” is interpreted by the courts “in the context of the particular facts before them.” *See Scott v. Wallace*, 686 So. 2d 1241, 1244 (Ala. Civ. App. 1996) (interpreting the term “cash money” as used in a will to include balances in bank accounts); *cf. State v. Woodward*, 93 So. 826, 827 (1922) (describing “cash” as the “antonym” of credit, and applying the term “cash value” narrowly to exclude credit “as used in the present statutes.”). In construing statutes this Office “does not interpret provisions in isolation, but considers them in the context of the entire statutory

scheme.” *Siegelman v. Alabama Ass’n of Sch. Bds*, 819 So. 2d 568, 582 (Ala. 2001). “If a literal construction would produce an absurd and unjust result that is clearly inconsistent with the purpose and policy of the statute, such a construction is to be avoided.” *Ex parte Cincinnati Ins. Co.*, 51 So. 3d 298, 303 (Ala. 2010). “The intent of the body which enacted the legislation ‘should not be defeated by narrow construction based on nice distinctions in the meaning of the words.’” *City of Montgomery v. Water Works & Sanitary Sewer Bd. of City of Montgomery*, 660 So. 2d 588, 594 (Ala. 1995). This Office has, for example, previously opined that credit cards can be used to pay “cash bail” for criminal defendants. Opinion to Honorable Carl E. Chamblee, Jr., Municipal Judge, Trussville Municipal Court, dated Apr. 9, 2014, A.G. No. 2014-052 at 3.

The *Chamblee* opinion acknowledged that, generally, municipalities are statutorily authorized to receive credit card payments, that a credit card charge for “cash bail” would result in an immediate deposit with the court (similarly to cash), and that the authorization to pay for “cash bail” via a credit card did not otherwise conflict with the law. *Id.* at 2–3. Being part of the private sector, and unlike municipalities which require statutory authority to carry out a given function, physical therapists are free to accept whatever types of payment for their services that they prefer.

The purpose and policy of section 34-24-210.1 of the Code is to remove third-party payers as a barrier of access to physical therapy services by people who can pay for those services directly. Interpreting the term “paying cash” narrowly to exclude other kinds of direct personal payment to physical therapists is “inconsistent with the purpose and policy of the statute,” and tends to lead to an “absurd” result.

CONCLUSION

“Paying cash” under section 34-24-210.1 of the Code, includes all forms of direct personal payment made by an individual to a qualified physical therapist. Given the established meaning of the word “cash,” however, this Opinion should not be interpreted to expand the definition of the term “cash” outside of this context.

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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Daniel J. Wisniewski of my staff.

Sincerely,

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By:



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