

Triumph in Maryland

THE STATE'S SELF-REFERRAL RULING IS A MAJOR VICTORY FOR RADIOLOGISTS, RADIATION ONCOLOGISTS, AND PATIENTS.

Sometimes in the law, good things do come to those who wait — and wait. That axiom became reality when Maryland's court of appeals overwhelmingly reaffirmed the state's well-known physician self-referral law more than two years after it heard a case involving the law (*Potomac Valley Orthopaedic Associates, et al. v. Maryland State Board of Physicians, et al.*; No. 18, September Term — 2008; Md. Ct. of App., January 24, 2011). In January 2011, the state's highest court unanimously upheld a trial court's ruling that the state board of physicians correctly interpreted the statute as applied to situations in which orthopedic, urologic, and emergency medicine physicians self-refer patients for MRIs, CT scans, and radiation-therapy services.

The state board administers Maryland's self-referral law and had enforced it against a few self-referring group practices. However, the board did not actively pursue cases in recent years because it awaited the outcome of this lawsuit.

In 2006, a coalition of orthopedic surgeons, urologists, and emergency physicians sued the board, claiming that it misread how the law applied to various self-referral MRI arrangements. The board had determined that orthopedic surgeons and other physicians benefited financially from self-referring patients for MRI studies and failed to meet any exception to the self-referral ban. Therefore, the board ruled that such arrangements violated Maryland's law, except for isolated cases involving referrals from employed physicians. Notably, the board concluded it did not find evidence that the in-office MRI studies supported "patient convenience." The coalition appealed from a trial court's 2007 opinion that the state board properly interpreted the self-referral law.

The ACR worked with the Maryland Radiological Society during the entire litigation by submitting an amicus brief to the court of appeals. The ACR focused on the policy arguments for preserving the Maryland self-referral statute, urging the court to recognize the Maryland legislature's intent to control health-care costs and reduce unnecessary radiation from CT studies. Additionally, the ACR assisted the Maryland state chapter by contributing to its legislative efforts to keep the law intact.

Maryland's self-referral law generally reflects the federal Stark law. However, unlike Stark, Maryland permits only radiologists' offices or a radiologist group practice — rather than any physicians or their group — to qualify for the "in-office ancillary service exception" and avoid violating the law when they perform and bill for those diagnostic tests or therapeutic services.

The court of appeals unanimously supported the state and the ACR's position. First, the court ruled that the board, as any agency, was entitled to considerable deference on interpreting and applying the statute it

administers. Consequently, the court agreed that the board properly found that the self-referral law's "group practice" exemption does not allow an orthopedic surgeon to refer his or her patient for an MRI or CT study that another member of that surgeon's group would perform. The court also clarified that the law's "direct supervision" exception, which is limited to referrals to "outside entities," requires that the referring physician be "personally present within the treatment area when the service is being performed" and must personally provide that service or directly supervise it.¹

The court highlighted two state attorney general opinions issued since 2004 regarding the law's scope that concluded that the state board properly interpreted the law's restrictions against in-office self-referral of MRI studies by orthopedic surgeons. Notably, the court also concluded that the legislative history clearly showed that the Maryland General Assembly intended to exclude MRIs and CTs from the "in-office ancillary services exception."²

The court further indicated that the general assembly rejected four legislative attempts since 2007 to enact legislation that would have weakened the statute. Such "persistent inaction" confirmed the legislature's intent about the law's reach.³

This ruling represents a major victory for quality patient care. Since its inception in 1993, the Maryland statute has faced attack in both the legislature and courts. The state supreme court's decision should enable the state board to enforce the law's limits on MRIs, CTs, and radiation therapy performed by self-referring physicians. However, the court's reliance on legislative history will motivate the law's opponents to redouble their efforts to repeal or amend the statute. //

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ENDNOTES

1. *Potomac Valley Orthopaedic Associates, et al.*, at 18. Available at: <http://bit.ly/mCV46O>. Accessed May 11, 2011.
2. *Ibid.*
3. *Ibid.*

