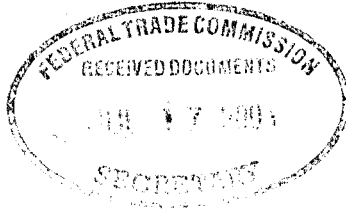


# American Congress on Electroneuromyography

## Comments Regarding Health Care and Competition Law and Policy

July 15, 2003



Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Dear Mr. Clark:

On behalf of the American Congress of Electroneuromyography, I wish to thank the Federal Trade Commission and Department of Justice for conducting hearings on the subject of barriers that limit access to health care providers because of the desire of some associations and individual providers to limit potential competition.

We wish to comment specifically to testimony presented at your June 10, 2003 Joint FTC/DOJ Hearing by the American Academy of Neurology and Steven Lomazow, MD. The testimony presented was inaccurate and misleading.

Dr. Lomazow begins his address by reporting "...less than five states allow unrestricted direct access by physical therapists and others permit direct access to patients for a finite period of time..." The truth is that 37 states allow direct access to physical therapists for evaluation and treatment (the most recent being in Dr. Lomazow's home state of New Jersey) and an additional 10 states allow direct access for physical therapy examination and evaluation. It is of interest to note the phrasing of the neurology group. They refer to "...non-physicians direct access to patients." We in contrast seek fair and honest access of citizens to non-physicians when that is their choice of provider.

Dr. Lomazow states "...therapists are not properly equipped to make informed and often critical diagnostic and referral decisions." He further states, "Triage by physicians significantly increases the likelihood that patients see highly trained professionals as early as possible. Compromising this authority means that patients will wait much longer for accurate diagnosis – incurring expensive, avoidable, and unacceptable risks." This is absolutely not the case and is well illustrated in the US military. We offer the military approach because it is less concerned about "turf" issues and more concerned about results.

As an example, in the US Navy on aircraft carriers such as the USS Lincoln, there are primary care physicians but no orthopedic surgeons. Physical therapists serve in a primary role seeing patients with musculoskeletal problems. Quoting the USS Abraham Lincoln's Senior Medical Officer, "Our Physical Therapy personnel generated 4,526 patient visits and 116 specialty consults from 21 July 1998 to 29 June 2000. Their efforts saved an estimated 6,189 man-hours, averted 13 medical evacuations, and completely eliminated off ship physical therapy referrals. Our physical therapist functioned at the level of a primary care orthopedic provider. His expertise in the evaluation and treatment of neuromusculoskeletal disorders greatly improved the Medical Department's diagnostic capability and the operational readiness of the crew." "The Physical Therapy On Aircraft Carriers Program offers unprecedented support to the Fleet and has earned my strongest recommendation."

The US Army also uses physical therapists as the primary "gatekeepers" for orthopedic injuries acting as the first and only credentialed providers for those patients. For those posts having physical therapists at their Troop Medical Clinics, soldiers have the ability to see the physical therapist for a neuromusculoskeletal condition rather than going to the General Medical Officer, PA or NP.

Dr. Lomazow states that "...medical liability insurance is already strangling healthcare resources; access to patient care by lesser-trained individuals will greatly compound this problem." To our knowledge, states such as Maryland, who have had direct access to physical therapists since 1979, have had no malpractice claims resulting from the direct access practice. Liability premiums result in part by medical malpractice. Perhaps this is the reason physicians pay tens of thousands of dollars per year for malpractice insurance and physical therapists less than five hundred dollars per year.

The AAN also states that direct access would lead to greatly increased costs later. The fact is that history shows costs are reduced. In a study using claims paid data from 1989 to 1993, researchers for the Blue Cross / Blue Shield of Maryland found that direct access to physical therapists substantially reduced costs by 120%. The AAN's hypothesis is not based on fact and is not valid.

The AAN states that "Unrestricted access to non-physicians could significantly drive up healthcare costs" They further state that the "Costs will be increased because there will undoubtedly be cases where patients will receive needless and excessive therapy..." This is absolutely a distortion of truth. A 1994 study showed that physician referral episodes generated 67% more physical therapy claims and 60% more office visits than episodes where the patient went directly to the physical therapist without a physician referral.

Other data clearly shows that physician owned therapy services are more costly and clearly the incentive to over-refer is greater when a physician controls the number of therapy visits in his/her office. In addition the American Physical Therapy Association has published practice guidelines as a model guide to effective delivery of physical therapy services. Physician providers of physical therapy services lack any such nationally recognized benchmarks for measuring treatment efficacy. This precludes a checks and balances measure and opens the door to overuse and abuse in the delivery of physical therapy by "physician owned" physical therapy providers.

Dr. Lomazow and the AAN refer to the practice of electromyography (EMG) and nerve conduction studies (NCS) as examples of why citizens should not have direct access to physical therapists. They state that EMG and NCS are diagnostic procedures and have no therapeutic benefit. Their statement that physical therapy training in this practice area is measured in hours as compared to years by physicians is an absolute prevarication from a group of self-interest physicians who for years have been trying to control the entire marketplace in this field. They claim it is not "turf". We assure you that it is just that, turf. Neurology groups have been so malicious in their attempts to limit competition that they have been found guilty of antitrust violations.

We refer to the Michigan Circuit Court of Wayne County, Palazzo vs. Dr Teasdall and the MI Neurological Association, case #86-616526nz and case #88-527764nz, Palazzo vs. Henry Ford Hospital and the Univ. of MI Medical Center.

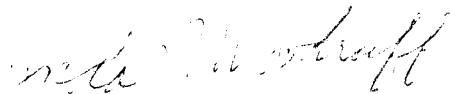
It is interesting that Dr. Lomazow, from NJ, is so concerned about the possibility of physical therapists being able to compete in the EMG arena instant to recent legislation allowing for direct access in NJ. It is also interesting to note that the physician climate enjoyed in NJ is so permissive that oversight of this group must be an issue. As an example a former NJ neurologist, Barry M. Vogal, MD surrendered his license to practice medicine in the State of NJ. This neurologist was charged by the Essex County Division of Criminal Justice – Office of Insurance Fraud Prosecutor with Health Care Claims Fraud and Theft as a part of a scheme to bill an insurance company for electrodiagnostic (EMG, NCS) procedures in an amount exceeding \$50,000 for tests for which he billed but never performed.

Physical therapists have been performing EMG/NCS studies for over 50 years and doing so without incident. Physical therapists have an additional control and barrier when competing with the physician in the EMG/NCS field in that the patient must be referred to the therapist by a physician for insurance coverage. Therapists survive in this slanted EMG market only because they continue to receive referrals from physicians who appreciate the service, accuracy and competency demonstrated by the physical therapist practitioner and the referring physician enjoys a choice of provider of service, including physical therapists. It would absolutely be against the interests of the public to deprive this practice by physical therapists.

Clearly, there is no better example of how physicians have worked vigorously to create barriers for the provision of services they wish to control than this EMG/NCS issue.

Thank you for this opportunity to respond to testimony presented at your hearing. We offer you any support and information that will help you in addressing barriers to public access to non-MD healthcare providers. Please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynda D. Woodruff".

Lynda D. Woodruff, PhD, PT, FAAPT  
Board of Directors  
American Congress of Electroneuromyography