

Eli's Rehab Report

Compliance Corner: Stand on Legal -- and Ethical -- Ground With POPTS

Careful: You may not even know you're in an illegal situation.

California's not the only state where physician-owned physical therapy services (POPTS) are illegal. And even if your state has nothing to say about POPTS, experts consider these employment situations shaky ground that affect both patients and your fellow physical therapists. (See previous article.)

The facts: "Right now, five states that have some kind of law on the books that prohibits physician employment of physical therapists. Those are South Carolina, Delaware, Missouri, Colorado, and California," reports **Justin Elliot**, director of state government affairs for the American Physical Therapy Association.

That's not all: A number of other states require referring physicians to disclose to their patients when they have a financial interest in the physical therapy clinic, Elliot states.

Know Your Business Structure

Think you're in the clear because you don't work for an in-house physician? Think again. "Some PTs may not know they are working in POPTS," Elliot warns. "They may be in a separate physical therapy-only clinic that is managed by a PT, but it may be majority-owned by a physician group from across town."

Takeaway: "It's important for folks to know where they're working," Elliot says. "Know the investors of your clinic. Is it truly an independently owned PT clinic, or is it owned by other physicians?" If it is physician-owned, know whether your state has laws on this, and be very cognizant of when you receive referrals, Elliot stresses. "Does the patient really need the therapy, or is there another motive behind it?" Then, act in the patient's best interest.

Next step: "Know your state laws regarding employment by physicians, and relationships between PTs and physicians," says **Ken Maily, PT**, with Maily & Inglett Consulting in Wayne, N.J. Are you in compliance?

Relax: You Have Options

If you've found yourself in a questionable situation and are afraid of leaving, lest you become unemployed, know this doesn't have to be the case. "These therapists will not be out of a job, says Dr. **James Syms, PT, DSc, ATC, SCS**, president of the California Physical Therapy Association.

"It's about changing your business arrangement" into a legal structure, where physicians have no financial incentive to refer their patients to physical therapy, Syms says. Perhaps that means you buy out the physical therapy part of the physician group.

Another option: "You could transfer from an employment situation to an independent contracting situation for the physician group," suggests **Michael Weinper, PT, DPT, MPH**, president and CEO of PTPN.

Whatever you decide, make sure your new arrangement uses "fair market value" for rent and other shared services so you're in line with federal Stark law and avoid situations that could be construed as kickbacks or referral incentives, Weinper says.

Sound overwhelming? You're not alone in this. "We have consultants in our Association who will talk to [PTs seeking transition] and have experience navigating this tricky situation," Syms assures.

If you're not in California, seek help from the American Physical Therapy Association or your state's chapter.

