

Eli's Rehab Report

Get the Lowdown on Referral for Profit: Why South Carolina Made It Illegal

Find out what your colleagues in that state are doing to stay compliant

The highly controversial subject of referral for profit and physician ownership of physical therapy services (POPTS) has drawn the nation's attention to South Carolina and has physical therapists in other states who practice in physician-owned settings wondering if they're next.

Background: South Carolina's decision to crack down on referral for profit stems from the state's licensing act, which prohibits therapists from working for physicians who refer patients to them for therapy services. On March 30, 2004, the state attorney general issued an opinion supporting this prohibition. (See www.scapta.org/AGopinion.pdf for the full opinion.)

[Subsequently, in May 2005, the South Carolina Board of PT Examiners got the green light to take disciplinary action against PTs and PTAs employed by physicians.](#)

[A year and a half later, the South Carolina Supreme Court has ruled in favor of what's known as the "SC Anti-POPTS Law": It's illegal for physicians in South Carolina to employ physical therapists in these settings, and they must find another way to practice. For the full text of the opinion, see \[www.judicial.state.sc.us/opinions/displayOpinionPF.cfm?caseNo=26209\]\(http://www.judicial.state.sc.us/opinions/displayOpinionPF.cfm?caseNo=26209\).](#)

PTs Examine Other Options

The decision may come as a shock to physical therapists in other states who may not have been monitoring the South Carolina situation closely. But the South Carolina chapter of the American Physical Therapy Association (SCAPTA) is adamant about helping its therapists who have been displaced as a result of the ruling. "I am offering any advice that we can provide, regarding transitioning out of those settings," says **Lisa Saladin, PT, PhD**, president of SCAPTA.

Some of the options Saladin is helping PTs work with include:

1. Leasing space from physicians. "We've provided members an OIG report with recommendations for this route and some of the legalities that clinicians need to think about," Saladin tells TCI.
2. Having a corporation assist the PT with a buyout or a lease arrangement. "A couple of companies are willing to put up the capital and give the therapist a 70-30 split, with the option to buy into the practice within a three- to five-year timeframe," she says.
3. Opening an independent practice. Although some PTs have opted for this route, the most prominent option that PTs are exploring is the space-leasing option, Saladin says.

Hidden trap: Opting to contract with a physician in his office setting is not safe ground for these therapists. "It is really still an employment arrangement," Saladin says, and she encourages relocating PTs to avoid this option.

Hear the Associations' Stance

The anti-referral-for-profit stance ruffles the feathers of many PTs who practice in these settings and believe they deliver quality service to their patients. In response, both SCAPTA and APTA, who stand strong on the issue of referral for profit, emphasize they are not out to alienate this group of PTs. "They are our colleagues, we respect them, and although they've made a choice we might not agree with, we've made a plan to help them get out," Saladin says.

Reality: "The driving force behind APTA's and South Carolina's stance on POPTS is that all the facts, data and studies show that physician ownership of physical therapy services leads to over-utilization, lack of patient choice, and a potential conflict-of-interest situation," says **Justin Elliott**, associate director of state government affairs for APTA. And he maintains that APTA is also helping to ensure that members working in physician practices "do not feel ostracized."

Important: There is no grace period for South Carolina PTs to make the transition from physician office settings, Saladin says, because therapists would technically be "breaking the law" to continue practicing in that manner. "There is a time for due process," however, for therapists undergoing current board investigations as a result of a filed complaint.

"The board has stated that if PTs can prove they are in the process of transitioning, the board will work with them to provide an appropriate timeframe to complete the transition," Saladin says.

Keep an Eye on the Horizon

So the burning question is, will other states move on this issue as well and re-examine their practice acts? Some say it's too soon to say, but others would agree to at least keep a watch.

Experts say: "For a number of years, states have had laws like the one involved in the Sloan case [the South Carolina Supreme Court referral-for-profit case], but there hasn't been much enforcement action," says **Elizabeth Hogue, Esq.**, an independent healthcare attorney practicing in Burtonsville, Md. "Now, it looks to me like we're going to see some increased efforts there.

Why: The South Carolina case basically dismisses the employee safe harbor of the anti-kickback statute, "going a step beyond what the feds have done," Hogue says. And when you couple the Sloan case with the requirements of the Deficit Reduction Act that states have to beef up their Medicare fraud control units, "the Sloan case goes hand-in-hand with the trend that states are going to get a lot more active now," Hogue says.