

Rising Up Against POPTS

My Opinion by Michael Weinper, PT, MPH

The biggest threat to private practitioners today is the proliferation of physician-owned physical therapy services (POPTS). The evidence of their effects is strong: more closed physical therapy offices, more hospital hiring problems and staff layoffs, and higher incidence and cost of physical therapy care. If therapists are to survive in the current business climate, we need to understand the nature of POPTS and learn strategies to combat them.

POPTS have existed for at least thirty years, but recent changes in federal self-referral law (Stark II) have generated more such business arrangements that affect referrals to both independent physical therapists and hospital departments.

By broadening the “in-office ancillary services exception” in the Stark legislation, the Center for Medicare and Medicaid Services (CMS) has given physicians a road map for qualifying as physical therapy providers. For example, physical therapy services do not have to be in the physician’s office anymore, just in the same building. The building needs to be open only eight hours a week, and the physician has to provide services there for only six hours a week to qualify. Theoretically, that allows physicians to offer physical therapy services in multiple locations.

The Problem with POPTS

The proliferation of POPTS has taken on various forms. These are some of the most common models:

- ▶ Physicians employ physical therapists in their medical practice.
- ▶ Physicians contract with individual physical therapists.
- ▶ Physicians use a POPTS management company or leased employee arrangement (a physical therapist or a non-physical therapist might own the management company).
- ▶ “Incident to” practices by physicians may use “qualified” personnel, as of March 2005.
- ▶ The “incident to” requirements for physicians providing physical therapy to Medicare patients in their offices have been tightened by new regulations in the 2005 Medicare Physician Fee Schedule, effective March 2005. The new “qualified” personnel rule for “incident to” POPTS now excludes aides and athletic trainers, but still includes non-physical therapists such as nurses and physician assistants.

While the rules help somewhat to level the playing field between physician offices and physical therapy-owned offices, they increase the demand for physical therapists. Because of the increased demand, now is the time to educate your staff about POPTS and why they should be wary of any employment offers they may receive. POPTS may

- ▶ Block patients from direct access to physical therapist professional expertise, judgment, and opinion because the POPTS are under direct “orders” from the physician.
- ▶ Interfere with independent clinical judgment of practicing physical therapists.
- ▶ Cherry-pick patients, sending difficult or unprofitable patients elsewhere.
- ▶ Unfairly compete, which can harm community health care facilities and independent providers.
- ▶ Put the physical therapy profession under control of others whose goals and interests differ.
- ▶ Block upward mobility of physical therapists.
- ▶ Hinder the development of the physical therapy profession and the professional.
- ▶ Permit economic exploitation of physical therapy at the expense of patients and physical therapists.
- ▶ Drain reinvestment out of the physical therapy profession.
- ▶ Result in higher health care costs and higher insurance costs for all.

Business Responses to POPTS

To plan for economic survival and success against POPTS, practitioners should capitalize on their advantages and their opponents’ disadvantages. Consider the following strategies:

Reputation in the community. POPTS may alienate small communities with their imperious attitude, and they may elicit ill will from local hospitals experiencing management problems during shortages of physical therapists. Use your experience and continuity in the community to influence those disenchanted with the arrival of POPTS.

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Alliances. Enlist the support of other doctors who resent medical monopolies, and local businesses that fear increased medical costs. Look to physical therapy mentors through the APTA and the PPS.

Referral sources. Develop new medical referral sources as well as non-medical referrals from case managers, corporations, and attorneys.

Public relations. Educate your public, including managed care plans, insurers, and case managers, about conflict-of-interest and referral-for-profit issues. Contact the local newspapers and broadcast media about the growing concern over increased utilization and higher costs generated by POPTS.

Marketing. Build a new marketing strategy. Try marketing to freestanding “doc in the box” clinics, family practices, ob-gyns and other specialists. Reassess your community’s needs and create a niche market in women’s health, for example—and don’t forget your long marketing list of former patients.

Legal advice. POPTS are vulnerable to accusations of “monopoly” business practices in your community and may recoil at threats of investigations by the Office of the Inspector General (OIG) or the Federal Trade Commission (FTC). A good lawyer familiar with FTC and restraint of trade issues can help

position you as a litigant against predatory, anti-competitive practices. If POPTS are not in compliance with Stark and Medicare regulations, you can threaten a whistleblower lawsuit.

Political action. Get involved with political action at the state level. APTA’s POPTS Task Force has worked for two years to provide guidance for its component chapters and individuals. Many APTA chapters are organizing POPTS task forces and need smart and savvy people to get involved. Help your chapter develop an overall strategic plan to achieve professional autonomy in your state, including POPTS regulation.

In responding to POPTS—as survivors rather than victims—PTs must perceive themselves as autonomous, in terms of both their individual practices and their profession as a whole. Just as the desire for greater control of their professional environment has led many practitioners to business ownership of a practice, the overall profession has evolved toward increased autonomy, control of practice, and regulation of ownership. As APTA President Ben Massey Jr. said in June 2003, “Vision 2020 does not envision physical therapists as employees of physicians.” ■

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