



# Eli's Rehab Report

The Practical Advisor on Reimbursement, Regulations & Business Strategies for Rehab Facilities

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## Industry Alert

# Tune In: POPTS Stir the Pot in California

### Experts dish why physician ownership of physical therapy services spells bad news.

A heated debate over physician-owned physical therapy services (POPTS) and physical therapy referral-for-profit is taking center stage in California — and physical therapy advocates insist that POPTS affects physical therapists nationwide.

In a move that critics say reeked of payoffs from the California Medical Association, California State Senate Pro tem **Darrell Steinberg** (D-Sacramento) squeezed a last-minute amendment into omnibus regulatory measure SB 543 that changed the playing field for physical therapy in California.

**New rule:** Until Jan. 1, 2013, the California State Board of Physical Therapy, must stop enforcing long-standing state statutes that outlaw medical, chiropractic, and podiatric corporations from employing PTs. Previously, the California State Board could take disciplinary measure against PTs working in POPTS settings, up to and including license revocation.

**Industry reaction:** The California Physical Therapy Association (CPTA) is up in arms about the SB 543 amendment. “The legislative branch has *twice* defeated bills that would make [POPTS] lawful,” notes Dr. **James Syms, PT, DSc, ATC, SCS**, president of CPTA. If that’s not enough, a legislative counsel opinion deemed POPTS unlawful, *and* the California Department of Consumer Affairs came to the same conclusion, Syms tells **Eli**.

### Know Your Colleagues' Views

The discussion of PTs working for physicians is “a topic that’s very polarizing,” observes **Michael Weiner, PT, DPT, MPH**, president and CEO of PTPN. That said, “it’s the minority [of PTs] who work in physician offices.”

CPTA estimates that about 20 percent of its 25,000 physical therapists work in POPTS settings. And “in California, it’s been happening ad nauseam,” Weiner remarks.

**Opposition:** The physical therapy profession at large, especially the American Physical Therapy Association and its respective state chapters, vehemently opposes referral-for-profit and POPTS. Their reasoning:

- » **Lack of professional autonomy.** “First, should one profession be able to claim financial control over another?” posits APTA in a white paper on the issue. The association has worked hard to promote the authority of the PT profession, so ownership by another profession is a big step backwards, it says.

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“When you lose your authority, you are prone to be exploited,” says **Ken Maily, PT**, with Maily & Inglett Consulting in Wayne, N.J. “And you’re in an even higher-risk situation when your referral source is also your employer.”

- » **Conflict of interest.** “Once a physical therapist is employed by a physician or physician group, a conflict of interest exists, in which the best interests of the patient or client may be compromised for financial gain by the physician owner,” APTA argues. When that happens, standard of care drops, and the services become over utilized.
- » **Economic repercussions.** “An independent study in Florida showed 43 percent more therapy visits in the POPTS setting,” Syms says. “What if a person was ordered nine therapy visits when he only needed six? That’s three more copays he has to pay out of pocket and three more times he has to call off work,” Syms says. Now he’s short around \$120. For some people, that may keep them from paying next month’s rent.

Meanwhile, overutilization is why insurance premiums have increased so much – and why Medicare is running in the red, Syms points out. And the less Medicare and your payers have in their budgets, the lower *your* paycheck becomes.

Also, “working in POPTS environments is not fair to independent therapists who cannot compete with those situations,” Weinper says.

- » **Loss of patient choice.** A POPTS situation will mostly refer to their in-house therapists, removing the patient’s choice. “If the patient is not treated as an individual who has a choice and is told where they will and will not go, that is wrong and something every healthcare provider should be opposing,” Maily says.

### You May Need to Bite the Bullet

Despite the physical therapy profession’s strong argument against POPTS, “most people working in those situations want to stay in them,” Weinper observes. In fact, many of these PTs testified before the California Assembly and Senate that they worked in POPTS settings and felt they provided good care.

“It’s as if they gave all the reasons they were speeding to work,” Weinper says. “But speeding is illegal, regardless of the logic you give for the situation.”

**Cold, hard truth:** Staying in a POPTS situation is the easy way out – but getting out of it is a whole other story, especially if it means finding a new job or becoming a business owner instead of an employee.

**The good news:** If you are in California and need to remove yourself from a POPTS situation, now you have a year to do so. “We have a section on the CPTA website to help the therapists, who, for whatever reason, are in these arrangements, to get out of them,” Syms says. “We are reaching out to help them, and not just our members, but any therapist in the state.” See [www.ccapta.org/displaycommon.cfm?an=1&subarticlenbr=142](http://www.ccapta.org/displaycommon.cfm?an=1&subarticlenbr=142). □

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## 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. □

## 5010 Readiness

# Medicare Won't Penalize You for 5010 Non-Compliance Until March 31, 2012

Plus: Avoid PO boxes on 5010, despite what your MAC tells you.

Sweating over the fact that your 5010 standard won't be in place by the Jan. 1 deadline? CMS has an early holiday gift for your practice, with the Nov. 17 announcement

that it will not initiate enforcement action regarding 5010 until March 31, 2012.

*(Continued on next page)*