

**A GUIDE TO SURVIVING  
PHYSICIAN-OWNED  
PHYSICAL THERAPY SERVICES  
(POPTS)**

**PRACTICE POSITIONING STRATEGIES**



**American  
Physical Therapy  
Association**

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**For more information about POPTS and other legislative issues, please contact APTA's Government Affairs Department at 800.999.8533.**

# APTA'S 25-YEAR BATTLE WITH POPTS

The history of the American Physical Therapy Association's (APTA) efforts to prohibit or regulate physician ownership of practices to which they can refer patients illustrates what a difficult objective it is to achieve. Despite federal and state legislation and regulations, the medical profession has been very effective in utilizing its substantial resources to blunt these efforts and to adapt practice structures to take advantage of exemptions and "safe harbors." Physical therapists and other health care providers should be aware of the difficulties and prepared for the strength of the opposition that will confront their efforts, and the impact they can have on other legislative and regulatory initiatives and priorities.

## Background

Since the late 1970s, APTA has adopted policies and positions and mounted campaigns in opposition to physician-owned physical therapy services (POPTS).

Throughout the 1980s, significant attention and effort was concentrated on revising state laws to prohibit the existence of POPTS, focusing primarily on amending the physical therapy state practice acts to make involvement in POPTS grounds for loss of one's physical therapist license. These APTA/chapter actions faced serious opposition, primarily from physician groups, and successes were limited to Delaware and Missouri where laws were enacted restricting POPTS.

In the late 1980s, the Federal Trade Commission (FTC) investigated APTA, one of its special-interest sections, and three of its chapters relative to their activities in opposition to POPTS. The Commission's investigation seemed strange due to the fact that it appeared to many that it was the physician with access to the physical therapist who had the potential for financial gain and was in a much stronger position to restrict competition.

In the end, the FTC found no evidence of antitrust activity, except with regard to an invalid action taken by one of the chapters. At a business meeting, chapter members had voted to expel any member who worked for a physician and published the decision throughout the chapter. The FTC decided that the vote was sufficient grounds for an allegation of an antitrust violation. Although the FTC claim could have been challenged, the chapter decided to accept the provisions of a consent decree.

The Association's anti-POPTS efforts got a major boost when Representative Pete Stark (D-CA) began formulating Medicare legislation that would restrict physician involvement in situations in which compensation would be derived from other services for which the physician referred. These efforts, which encountered substantial physician opposition, suddenly generated much congressional interest and support with the publication of "Physician Ownership of Physical Therapy Services, Effects on Charges, Utilization, Profits, and Service Characteristics." The study found higher costs and higher utilization in POPTS arrangements than when the referring physician had no financial interest in the physical therapy service. The study successfully underwent intense scrutiny and, provided the impetus needed to secure enactment of the Stark legislation.

From the beginning, the Stark legislation contained a major flaw — it did not apply to "incident to" services provided in a physician's office. However, the legislation helped to slow the spread of POPTS arrangements during the 1990s because physicians were unwilling to hassle with the potential risks and liabilities that POPTS presented. In the 2000s, however, physicians began to feel the continuing squeeze of managed care and the impact of reduced Medicare payments. They began looking for other ways to make up for lost income. Also, during this time the provisions of the Stark legislation that limited POPTS arrangements were being "watered down" by permissive regulation. As a result, the POPTS movement reemerged.

APTA and its Private Practice Section have surveyed their membership, and the responses of many physical therapists throughout the country attest to the reemergence and spread of POPTS. There is little interest or political will among policy makers, nationally and possibly also in the states, to begin a new battle with physicians to prohibit or restrict POPTS arrangements. However, Congress is beginning to scrutinize physician ownership of certain specialty hospitals and ambulatory surgery centers. ●

# FREQUENTLY ASKED QUESTIONS ABOUT POPTS AND REFERRAL FOR PROFIT

## What does “referral for profit” mean?

“Referral for profit” describes situations in which a referring physician, refers a patient for physical therapy treatment on the basis of financial gain related to the referral. The most common type of referral for profit in physical therapy is the physician-owned physical therapy services — POPTS. According to several studies, referral for profit can lead to unnecessary referrals to physical therapy, excessive durations or frequencies of treatment. In other cases, referral for profit can lead to the referring physician having undue influence on the clinical judgment of the physical therapist. Anecdotal evidence exists of cases in which physical therapists have been told to modify their care because too many patients whom the physician expected to require surgery were being discharged with good recovery of function, making surgery unnecessary.

## How do physicians gain financially from referrals?

A physician can receive financial gains by having total or partial ownership of the physical therapy practice to which he or she refers, by directly employing the physical therapist, by contracting with physical therapists, or by taking kickbacks from the physical therapist to whom he or she refers. Actual kickbacks are strictly illegal, whereas the legal status of physician ownership of physical therapy services depends on whether the structure of the financial arrangement meets “safe harbor” guidelines under the Stark self-referral rules. The legal status of physician-owned physical therapy services may also depend on state medical and physical therapy practice acts or various state laws that regulate physician self-referral or referral for profit.

## How are patients harmed in POPTS referral-for-profit situations?

Patients traditionally place great trust in the physician to prescribe and recommend appropriate treatment for their care. When the physician’s judgment and referral can be influenced by financial incentives resulting from avoidable conflicts of interest, the trust between the patient and the physician is violated. Further, referral for profit may subject the patient to unnecessary inconvenience, extra expense, and the potential risk of unnecessary treatment. Also, the patient’s freedom to choose a physical therapist may be diminished if the physician directs the patient to a specific location for physical therapy, which may not be the most convenient location for the patient. And, it is possible that another physical therapy practice or hospital department could provide more appropriate care.

## How is the physical therapy profession harmed by POPTS?

Many physician-owned physical therapy service arrangements take referrals away from existing hospital departments and other outpatient centers, harming existing physical therapy resources in the community. Referral for profit arrangements can foster relationships between physical therapists and referring physicians that are based on financial incentives rather than professional collaboration, mutual respect, and patient care. The surplus value created for a POPTS arrangement by the “business” of physical therapy is not reinvested in the profession of physical therapy. When a practice is owned by a physical therapist or group of physical therapists, it is the physical therapist’s license at stake if there are any systematic violations of the practice act within the owner’s responsibility. But a physical therapy licensing board has no jurisdiction over non-physical therapists who own or administer physical therapy services, reducing the level of oversight and protection for the public.

## How can a patient or a physical therapist identify a referral-for-profit situation?

There are a number of indicators that can indicate a potential referral-for-profit situation:

- A physical therapist or physical therapist assistant works directly for a physician practice or for a physician-owned physical therapy practice as an employee or an independent contractor.
- A physician owns all or part of a physical therapy practice and refers a large number of patients to the practice.
- An independently owned physical therapy practice rents space from a referring physician at an above-market rate or at a rate based on the volume of treatments provided, the number of visits, or the number of referrals.
- An independently owned physical therapy practice leases equipment from a referring source at an above market rate as an incentive for referrals.
- A physician and a hospital cooperate in a joint venture for an outpatient physical therapy service in which the physician's compensation from the hospital is tied to the volume of referrals or treatments provided in the physical therapy clinic.

## What are the obligations of the physical therapist who discovers a referral-for-profit or POPTS situation?

The APTA Code of Ethics states that it is the obligation of the physical therapist to inform his or her patients when the patient's referral is from a physician who has a financial interest in the physical therapy service.

## What is APTA doing to prevent POPTS and referral for profit?

APTA and the Private Practice Section of APTA have coordinated efforts to educate physical therapists, physicians, insurers, government agencies, legislators, and the public about the harmful effects and incentives created by referral for profit and physician ownership of physical therapy services. In response to a unanimous vote of the 2003 House of Delegates charging the Association to take action on the POPTS issue, the APTA Board of Directors formed a special task force in July 2003 reporting directly to the Board. The task force developed a comprehensive strategic plan to combat POPTS including researching state and federal laws, educating the public and physical therapy community about the POPTS problem, and developing federal and state legislative and regulatory strategies to prohibit POPTS.

A comprehensive resource manual on POPTS was compiled and provided to APTA components in 2004, and a "take-action packet" was developed to assist Chapter legislative committees explore options for amending state practice acts or other statutes to prohibit POPTS. APTA consults frequently with chapter leaders regarding individual strategies for attacking the spread of POPTS.

## What can individual physical therapists do to prevent referral for profit?

Individual physical therapists can combat referral for profit directly by refusing to work as an employee in a POPTS arrangement, as an independent contractor to a physician owned practice, or as an employee of a company which contracts to manage a POPTS arrangement.

Physical therapists and physical therapist assistants should educate their colleagues, patients, referral sources, and legislators about the impact of referral for profit and the conflict of interest in physical therapy referrals. PTs and PTAs can also support APTA's efforts by volunteering to work in state and federal legislative efforts to legally prohibit POPTS, by contributing to PT-PAC and chapter political action committees, and by maintaining active membership in your APTA. ●

# POPTS Dos AND DON'TS

This list summarizes professional, ethical, and legal issues to help APTA members avoid making oral or written statements that could potentially be misinterpreted as instances of slander, libel, or anticompetitive trade practices.

## Do:

- Publicly and privately voice your opposition to POPTS on the basis of what is good public policy.
- Educate colleagues, physicians, administrators, legislators, community leaders, patients, family members, and all voters that you believe POPTS are bad public policy and therefore should be legally prohibited through appropriate state and/or federal legislation or regulation.
- Formulate the debate in terms of public policy issues such as “reducing conflict of interest,” “protecting the public from financial conflicts,” “preserving appropriate professional autonomy,” and “safeguarding the fiduciary relationship between a patient and a professional.” These principles are timeless and unassailable, and will ultimately carry the day!
- Study your state legal environment so you have a clear understanding of how other professions (including non–health care professions) in your state regulate ownership of their professional services. Learn from these professions.
- Make sure that the physical therapy professional self-interest is aligned with the public interest. Such linkage has been a source of great political strength for physical therapy.

## Don't:

- Don't state that you or APTA hold that POPTS are “unethical.” State that you and APTA are opposed to POPTS on public policy grounds.
- Don't confuse or blur the distinction between something being “unethical,” and something being bad public policy.
- Don't say or write that a physical therapist working for a POPTS is unethical, practicing illegally, or subject to revocation of APTA membership. Such statements under current understanding of law, and under current APTA bylaws and ethics, are untrue.
- Don't publicly denigrate or verbally attack physicians or physical therapists who participate in POPTS. Personalizing such issues is bad form, bad public relations, and counter-productive.
- If you feel your local APTA leadership is not involved enough in acting on POPTS issues, get involved in your state legislative affairs committee. From there you can start to exert your influence from the inside.
- Don't undertake private campaigns or litigation to eliminate POPTS without great deliberation and without first conferring with experienced leaders and legal counsel within the profession. The law of unintended consequences can have harsh consequences. ●

# FIGHTING AND COMPETING WITH POPTS: PRACTICE-POSITIONING TACTICS

By James E Glinn, Sr, PT, and Peter J McMenam, PT, MS, OCS

Since the weakening of the federal Stark law, there has been a veritable explosion in the number of POPTS opening up in many areas in the United States. These operations have been developed by numerous physicians and physician groups comprising various specialties including (but not limited to) family practice, industrial practice, physical medicine, neurology and neurosurgery, chiropractic, podiatry, and of course, the most dominant of all POPTS players: orthopedic surgical soloists, partners, and multipractitioners.

Attempts by physical therapists to thwart the proliferation of POPTS have been focusing primarily on utilizing legal means such as professional corporation laws, tightening Stark loopholes, or introducing specific POPTS prohibition language into law as was done in Delaware and Missouri during the early 1990s. This article in no way is intended to reduce or lessen the legislative focus. POPTS were wrong before Stark law, and, despite current Stark loopholes, we believe they are wrong today. The purpose of this article is to focus on what you can do right now to fight the POPTS next door, before you have the advantage of anti-POPTS laws on your side.

As experienced physical therapists in private practice, we have assisted in the creation of numerous strategic positioning and marketing plans. It is from this vantage point that we have experienced certain phenomena, which, when physicians planning their own POPTS are introduced to the possible net negative consequences, are likely to occur if indeed their plans ever reach fruition. As individuals intimately acquainted with marketing techniques, our philosophy is that marketing and premarketing practice positioning is all about meeting potential and actual customers' needs. The first step in dealing with a potential POPTS situation, then, is to find out what needs exist in the physician's mind that stimulate consideration of a POPTS start-up. Before the reader rushes to judgment that the only reason is financial, consider the following nonfinancial reasons that have been given to some PTs by physicians "POPTING" or planning a POPTS:

1. Convenient "one-stop shopping" for their patients.
2. Increased control over the physical therapy care rendered.
3. Lack of outcomes data with regards to physical therapy services.
4. Excess capacity of office space.

Prior to ever meeting with a physician regarding formation of a POPTS, be prepared to offer solutions to the above four needs.

## "It's Nothing Personal...It's Just Business"

A statement similar to the above is often heard by PTs who are about to lose a large share of their business due to a POPTS being set up by physicians who previously referred to the independent physical therapy group. In the end, for the most part, it is indeed about money.

Prior to starting any business, the wise entrepreneur does well to make a list of the pros and cons of starting a venture. If the negatives outweigh the positives, no astute business person enters into such risk. The POPTS owner-to-be (or the current POPTS owner for that matter) must be made to realize the very real possibility that while such ventures may make sense in terms of direct income generated from such PT services, the gain in overall income to the physician may be very little or even result in a net loss! The latter may occur in the medical and surgical practice due to, but not limited to, one of the following:

1. The medical community at large may find POPTS arrangement distasteful and even unethical.
2. Payers may also take a dim view of such blatant self-referral.
3. Case managers, employers, and other direct patient gatekeepers may direct surgical cases elsewhere.
4. Private practice and other ethically practicing physical therapists will almost certainly form alliances with ethical orthopaedic surgeons and other physicians who believe that POPTS ventures raise the cost of patient care and do not necessarily direct patients to the best care available.
5. Large private physical therapy practices or smaller practices forming networks are often powerful influences as to where patients are referred for medical specialty care.

Your negotiations or discussions with the POPTS "wannabe" group should not shy away from pointing out these potential risks.

## Competing with the POPTS: It's All About Critical Mass

Private physical therapy practices which focus on their practice and marketing strengths should have little to fear from the unfair competition of POPTS. Strong presence in the following areas will make any private physical therapy practice not only competitive with POPTS, but also competitive with other private, corporate, or hospital-based practices:

1. Sports physical therapy and related services
2. Industrial physical therapy and related services
3. General orthopedics and related services
4. Other “niche” practice areas
5. Practice commitment to clinical specialization and clinical specialists

*Related services* include, but are not limited to, value-added service mixes such as sports enhancement programs, functional capacity evaluations, on-site ergonomics, after-care, fitness and wellness programs. Such services must also reach out to a variety of individuals and organizations with a variety of combined personal selling, public relations, and advertising approaches, which one of the authors (Glynn) refers to as “continuous integrated marketing.” The goal is always to meet the needs of customers and to convert the private practice physical therapist into a practitioner who can be viewed as a gatekeeper or referral source.

When offering such related services, think of the unique approach or presently unavailable dimension of a service that may distinguish your clinic from the POPTS and from other clinics. For example, you may highlight offering “second opinion” FCEs as a distinct service in addition to the conventional initial FCE. This gives case managers attorneys and doctors who may be dissatisfied with the existing FCE providers, another option. Find out what they do not like about the FCEs currently available. Educate the case managers and attorneys in issues such as the validity and reliability of the FCE systems being used, and respond to the need for a more scientifically based FCE that avoids bias and acknowledges the fact that an FCE is not a lie detector test! Once case managers and attorneys have used your clinic for a “second opinion” they may decide to influence their patients to see you for work conditioning/work hardening, or they may insist that the next patient see you for the “first opinion” next time around. As you advance your FCE skills, you may extend your industrial practice to include visits to industry, job analysis, injury prevention services, and pre-employment testing. Such services get you into the community where you develop connections and referrals independent from the physicians.

*Niche practice* areas include those special programs that fill special needs in the community in which your practice thrives. It is important when developing such niche programs to enhance your credibility by basing them on sound physiology, biomechanics, and neurology, as well as on available evidence of effectiveness. As with the practice areas listed above, niche programs have a way of knitting your practice into the fabric of a community by getting you more in touch with the community’s extended families and decision makers. Niche programs include any of the following plus others we have not yet thought of!

- Balance, fall prevention, and other geriatric-focused programs, whether in the clinic, or provided through outreach to senior residences and nursing homes. Where will these seniors choose to go for rehab if/when they have problems requiring rehab later on?
- Women’s health programs, attracting referrals from atypical sources (for physical therapists) such as family practitioners and ob-gyn physicians. Women’s health physical therapy can be extremely broad-based and includes such diverse concerns as: pre and postchildbirth education, exercise, and musculoskeletal treatment; chronic pelvic pain syndromes; osteoporosis; incontinence; pre and postsurgical rehab related to pelvic or breast surgeries; lymphedema, etc. Women are the predominant decision makers in households. Win their loyalty by providing excellent care in an area of importance to them, and they may refer other extended family members to you as well.
- Specialized exercise and rehab programs geared to people with diabetes, and people with other chronic diseases such as multiple sclerosis, postpolio syndrome, various arthritic diseases, lymphedema, migraines and other chronic headaches, TMJ dysfunction, cancer, etc. Such programs serve to educate and attract hitherto untouched referral sources such as neurologists, internists, endocrinologists, urologists, rheumatologists, dentists, oral surgeons, maxillofacial surgeons, general surgeons, oncologists, etc.
- Wellness programs are already cited above. Think of specialized wellness programs not commonly offered at the health club. Example: Posture! Market posture evaluations with a follow-up program that concentrates on specific exercises and/or manual therapy to improve posture and mobility, and that integrates that approach into a comprehensive independent fitness program carried out by the patient after discharge.

- Another niche area for those with a legal bent is making oneself available as an expert witness. While not for the faint of heart, expert testimony serves a valuable function in our society dominated by the rule of law. Physical therapists also have a responsibility to the profession to be willing to stand up in front of a judge and jury (or attorneys at a deposition) and state for all to hear, what, in your expert opinion, is the “standard of practice” in physical therapy. The privilege of being in an autonomous profession requires that individuals are willing to provide expert testimony. The work is challenging, stressful, well paid, and serves to extend the reach of your practice still further into the community or society at large.

*Clinical specialization* in the form of Board certification is the wave of the future in physical therapy, just as it has become a necessity in modern medicine. As physical therapy becomes a more autonomous profession responding to the needs of society, the advanced expertise of individual therapists will become highly valued, and the old notion of physical therapy as a kind of anonymous profession in which any staff therapist can be replaced by any other will fade away with surprising speed. The highly skilled, Board-certified clinical specialist recognized and functioning as an autonomous practitioner will replace the “fake and bake” anonymous automatons of yesteryear! And, properly so. Position your practice with the future, as a place for clinical specialists who demonstrate the greatest commitment to their professional development and skills. Become a magnet of excellence within the community, and then be unafraid to let the world know of that commitment (within the legal/ethical advertising guidelines of your state practice act). Such differentiation may be thinly recognized today; but why should physical therapy be any different from medicine and dentistry when it comes to the evolution towards specialization? In our sophisticated service economy, professional expertise and personalized service will always have a major role to play.

For practices that do not have significant size or critical mass to position themselves as noted above, there certainly are numerous ways for two, three, or more practices to join together and create a “600-pound gorilla” who is a competitive force with which to be reckoned. In such an instance, it is a matter of putting practices together, which are synergistic in nature. Such practices may then be better able to retain a full-time Director of Business Development to oversee a calculated, nuanced approach designed to take the combined entity to new heights.

## Summary

Through strategic planning, proper practice positioning, and a sound marketing plan, private practice physical therapists will look back one day on this fear of POPTS as one more “blip” on the radar screen. Even after state and federal statutes come to our aid, as they most certainly will, the astute networked and/or multiclinic practices will continue such planning and positioning. In the end, the private practice physical therapy care continuum will be stronger than ever. Remember the old adage: “It takes a strong north wind to make a Viking!” Begin now to create an extremely broad referral base by always discovering and then meeting the needs of the customer, and broaden your vision as to who constitutes a customer.

This chapter has focused on the marketing approach to compete with the POPTS threat. Other approaches discussed elsewhere in this manual include:

- 1) Become involved in state legislative affairs to have a voice and provide leadership to your APTA state association in developing legislative and regulatory strategies to combat POPTS (ie, make POPTS illegal!).
- 2) Develop tough and assertive negotiating strategies and defensive maneuvers that you may need to employ to check the power of some physicians who have used unsavory and threatening market take-over tactics to force you out of business.
- 3) Systematically develop alliances within the business, municipal, and healthcare communities to help you counterbalance the superior financial resources and check the superior power of the POPTS physicians.
- 4) Give generously to your state and federal PAC!

## In Conclusion: Keep a Game Face

The growth of the Private Practice Section of APTA over the past few years has been phenomenal. There are large numbers of young, highly motivated private practitioners currently entering our ranks. Let’s not let them down as once occurred in the mid 1990s with regards to managed care. At that time, many vintage and disgruntled private practitioners sold out to corporate entities after grumbling and grouching about the decline and eventual demise of the private practitioner. It didn’t happen then, and it won’t happen now with a sound offensive and defensive strategy. ●

# SAMPLE LETTER TO PHYSICIAN

*Editor's Note: This is a revised version of an actual letter sent to a physician group that was trying to force the physical therapists out of a professional office building to make room for a POPTS. All names have been changed to protect confidentiality.*

*The editor recommends against using this letter without first consulting an attorney. If parts of this letter are deemed appropriate, make sure to adapt the letter to particular circumstances at hand.*

Dear Doctor:

Metropolitan PT Associates (MPTA) is well aware of the changing health care climate and diminished revenues you have complained about. You have expressed concerns about your bottom line, and you seek ways to increase your income, within the framework allowable by State and Federal Laws. Your proposal to us was that you would own a physical therapy clinic as part of your practice, and that we allow you to acquire our practice or take over our lease here in the professional building where we have served your patients for several years. You have suggested that for “business reasons” you might have to stop referring to us if we do not accept your “proposal.”

At MPTA, we share the ethical, legal, and business concerns that lawmakers and other health care professionals have regarding physician-owned physical therapy services (POPTS). We want to make you aware of these concerns before you decide to pursue your venture into physical therapy any further.

The American Medical Association's Current Opinions of the Council on Ethical and Judicial Affairs (CEJA) has historically recognized the inherent problems with POPTS. “A physician may not accept payment of any kind in any form from any source . . . for prescribing or referring a patient.” The Code goes on to say that physicians should avoid business arrangements that might, because of personal gain, influence his/her decisions for patient care. In 1991, the AMA House of Delegates took a stand against self-referral, but indicated that only 10% of US physicians have been linked to potential self-referral cases. We agree with the AMA concerns over referral for profit, but we disagree with where they draw the line. AMA believes that the conflict of interest magically disappears when the financial conflict of interest exists all under one roof within the physician's office. We believe that there should be no financial interest tied to physical therapy referrals whether the physical therapy clinic is across town, across the street, or across the hall from the physician's office. This is also the position of the American Physical Therapy Association to which we belong.

Multiple research studies validate the concerns many have regarding the “referral for profit” that occurs within physician-owned physical therapy services.

In August of 1991, the state of Florida Health Care Cost Containment Study — a survey of 3,000 health care facilities — was published. This study concluded that physical therapy referral for profit results in major overutilization of services:

1. Physician-owned physical therapy facilities provide 62% more patient visits per full-time physical therapist, when compared with non-physician-owned clinics.
2. The patients referred have 43% more treatments (therapeutic exercise, ultrasound, etc.), when compared with non-physician-owned clinics.

The Mitchell and Scott study in *JAMA* showed similar results. The findings of this study are as follows:

1. Visits per patient were 39% to 45% higher when compared with non-physician-owned clinics.
2. Gross and net revenue per patient was 30% to 40% higher.
3. Licensed physical therapists and physical therapist assistants employed in non-physician-owned clinics spent approximately 60% more time per visit treating patients.
4. Physician-owned clinics also generated more of their revenue from patients with well-paying insurance, strongly suggesting that “cherry picking” of patients is a common POPTS practice.

In 1992, the William M Mercer Co studied California Worker Compensation Programs. The results of this study are as follows:

1. The study found that if an injured worker received initial treatment from a physician with ownership interest in physical therapy services, that patient received a referral to physical therapy 66% of the time.
2. If, on the other hand, the injured worker received initial treatment from a physician with no ownership interest in physical therapy services, the patient was referred to physical therapy 32% of the time, less than half the frequency of physician-owned clinics.
3. This study concluded that financial incentives played a major role in decisions. The added incentive for physicians with ownership interests in physical therapy services was \$233 million per year in California alone.

The recent growth of POPTS around the country, along with other conflicts of interest in health care, is drawing serious concern from government agencies. We feel there is good reason for concern regarding the future of referral-for-profit situations, especially now that the explosion of POPTS is large enough to draw widespread attention. Entering the physical therapy “business” may not be as risk-free and profitable as you have imagined. The ethical, business, and legal aspects of these types of relationships are being closely scrutinized in terms of restraint of trade, competition, and interference with consumer choice.

In 1993, in the first-ever ruling of its kind, the FTC proposed settlements in the San Francisco area involving pulmonologists with financial interests in two home medical care firms to which they referred patients. The federal regulatory agency voted 4–1 in favor of the settlement after alleging that the physicians used their market power to exclude competition. This action signals that the FTC may have moved into a new area of antitrust enforcement. Agency officials are not permitted to disclose whether they are considering similar cases, but heightened external pressures may push the FTC to examine these conflict of interest situations with increasing intensity. With the current climate of cost containment, the agency wants to get the best mix of quality and price. With referral for profit, there are serious issues with both “quality and price.”

In POPTS situations, the referring physician is in a unique position as the referral source for physical therapy. The POPTS physician controls the market for physical therapy services and prevents or minimizes effective competition by independent physical therapy practitioners.

The American Physical Therapy Association, of which I am a member, opposes situations in which physical therapists or physical therapy assistants are employed by or under agreements with referring practitioners in which the referring practitioner receives compensation either directly or indirectly as a result of referring for, prescribing, or recommending physical therapy. The Association believes that these arrangements offer a serious potential for abuse in the provisions of physical therapy and that the effective provision of physical therapy will be enhanced if such arrangements are avoided.

APTA is specifically opposed to any situation in which a physical therapist or physical therapy assistant is employed by or under arrangement with a referring physician and/or works for a business or corporation owned in whole or in part by a referring physician or other referral source. The Association believes that such arrangements are misleading to the consumer and have a high potential for abuse.

Professional colleagues within the physical therapy community are looking for “ideal cases” for possible pursuit of antitrust litigation. Our Metropolis area may present such a case because the orthopedic surgery and physical therapy markets here are limited in size — with just four orthopedic surgery practices, two of which already own their own POPTS, and the third we understand to be looking into the matter. If all four orthopedic surgery groups in the Metropolis area own physical therapy clinics, they can effectively use their market power to exclude physical therapist competitors. Even though they may not be acting “together,” culpability may still be perceived to exist if the combined actions result in diminished competition or restraint of trade. We have been urged to bring our concerns to a prominent Metropolis attorney specializing in litigation over anticompetitive business practices. We have felt this is not in our best interest at this time, but it is an option open to us.

We feel the argument you cited, that physician participation in medical businesses ensures quality of services and proper care for patient needs, is unpersuasive. In physician-owned physical therapy clinics, the physician must serve as a type of “double agent,” and because of this, ethical questions arise. Physicians must be agents for their patients and agents for their business seeking to sell products and services to their patients. A competitive market works best when consumers and business firms are each pursuing their own interests. (Just because a national trend is occurring doesn’t mean the trend is proper or best for patients.)

We feel an excellent opportunity exists for your group to capture a new marketing niche with industry as well as potential new patients. Industry’s bottom line these days is cost containment. Keeping in mind some of the studies mentioned earlier, we feel the cost containment argument is compelling now and will be more so in the future, as payer groups recognize the benefit of physical therapy services operating independently of physician business control. Health care consumers are quickly becoming more educated and more business savvy. Quality and price will be the drive of the future. You can capitalize on the fact that you refer to the best *independent* clinicians for their patients, keeping costs contained as well. By forgoing your idea to start a POPTS, you will avoid the headaches and hassles of everyday management of a business you know nothing about and will be relieved of having to scramble for physical therapy personnel when the next expected acute shortage of physical therapists occurs — in about 2 years. While avoiding the very high turnover rate and the associated costs with physical therapists in referral-for-profit situations, you will still have access to a dedicated *independent* professional group within the building. You can maintain and further enhance the excellent relationships you have developed with the various MPTA clinicians and hence benefit your patients. The positive working relationship that has been established combining your talent with our capabilities in a high-quality and cost-managed arrangement is a successful combination for all parties.

Our intent is certainly to stay in practice in Metropolis. If you persist in your efforts to force us to abandon our lease because you have egregiously cut off all referrals to our practice without cause, and merely for your so-called “business reasons,” we will be forced to examine all options available to us. These include legal responses, public relations efforts within our community, an aggressive marketing campaign, and the development of alliances with other physicians and with Metropolis businesses that appreciate the need for complete independence from the conflict of interest inherent in a referral-for-profit or vertical monopoly situation within our health care community.

Sincerely,  
Annie Oakley, PT ●

# INTERNAL PT PRACTICE ASSESSMENT

In order to protect your practice from a POPTS, it is important to make sure your own business operations are in order. The following are questions to consider to keep your business strong and competitive:

- Are there opportunities to grow/expand your practice into new specialties, or should you focus more on what you do best?
- Are you clinically diversified or relying on a narrow diagnosis range?
- What are your vision and mission, and what is your plan to achieve them?
- Do you have an existing relationship with managed care organizations (MCO)? Are they a referral source for you?
- Have you built relationships with other gatekeepers — case managers, employers, discharge planners, and other decision makers?
- Have you explored the advantages and disadvantages of participation in a physical therapy provider network?
- Are you considered a part of the medical community or merely a vendor of service? Are you an integral part of the business, medical, and social communities within which you practice?
- How many sources do you have for referrals? Do referrals come from a diversity of sources based on medical specialty and geography?
- How fast do you process collections? Do you regularly review accounts for outstanding collections?
- Do you have a high rate of appointment cancellations or no shows?
- Is your profit margin steady, increasing, or decreasing?
- How much debt does your practice have? Do you know the status of your credit rating?
- Do you have an up-to-date patient database with accurate addresses and phone numbers?
- How long are patients delayed in the waiting room? Is your front desk efficient/friendly?
- Do you have measurable standards to evaluate patient/client satisfaction in respect to the clinical services you provide? Do you also have a measurable standards process in terms of the time it takes for patients/client to secure an appointment, fill out paper work, or wait for a scheduled appointment? Do you have a planned course of action if standards are not met?
- Is your equipment and facility up-to-date? What are the needs for additional or new equipment? Does your staff attend continuing education courses annually?
- Do you have an appropriate staff size? Are they motivated and involved with key decision making?
- Do your practice colleagues consider themselves professionals in a practice or employees of a business? ●



# EXTERNAL PT PRACTICE ASSESSMENT

To keep your business competitive with the POPTS in your area, it's important to be visible to the local market. Review the list below to see what some of your options might be:

- Do you have a Web site for your practice? If so, be sure to promote your Web address in all practice publications and materials.
- Do you have a budget for advertising/marketing? While radio and TV ads are traditional, there are also more cost-effective ways to promote your business, including direct mail, print advertising, and sponsorships opportunities.
- Do you have a standard, timely way to communicate with past, present, and potential patients, such as a clinic newsletter? Consider collecting e-mail addresses from all patients to Email newsletters rather than using standard mail; it saves money.
- Is your practice involved with community organizations such as the local Chamber of Commerce, Rotary, Lions Club, or community business council?
- Consider hosting open houses and offering free assessments (such as grip strength, balance, or posture) throughout the afternoon. Contact local radio stations and newspapers to promote your event through public service announcements (radio) and community calendars (newspaper). Consider using one of APTA's Community Awareness Kits (Balance and Falls, FUNfitness, Fit For the Fairway, etc. . . ). Kits are available for purchase online at [www.apta.org](http://www.apta.org) or by calling 800/999-2782, ext 3395.
- Volunteer your services to a local athletic team at a nearby school.
- Offer to write a weekly or monthly column in your local newspaper. (APTA feature releases can give you great topic ideas.)
- Make APTA's feature press releases your own. Simply reformat the press release with your own quote and contact information and send out to your local media. Feature releases can be found on APTA's web site at [www.apta.org](http://www.apta.org).
- Distribute copies of APTA's *For Your Health* consumer publication in your practice. Bulk copies are free to APTA members and available by contacting APTA's Service Center at [svctr@apta.org](mailto:svctr@apta.org) or 800/999-2782, ext 3395. ●

# ADDITIONAL POPTS RESOURCES

## Private Practice Publications:

- **The Phoenix Strategic Survey's Rehabilitation Industry Best Practice Guide**

Available for sale through APTA's Private Practice Section (\$125 for Private Practice members, \$175 for APTA members, and \$200 for nonmembers).

- **Private Practice Physical Therapy: The How-To Manual**

Available for sale through APTA's Private Practice Section (\$89 for Private Practice members, \$125 for APTA Members, and \$145 for nonmembers).

- **The Acquisition or Sale of a Physical Therapy Practice**

Available for sale through APTA's Private Practice Section (\$89 for Private Practice members, \$125 for APTA members, and \$145 for nonmembers).

- **Private Practice: Strategies for Everyday Management**

Available for sale through APTA's Private Practice Section (\$45 for Private Practice members, \$65 for APTA members, and \$90 for nonmembers).

- **The Valuation for a Physical Therapy Practice**

Available for sale through APTA's Private Practice Section (\$55 for Private Practice members, \$77 for APTA members, and \$88 for nonmembers).

*To purchase any of these resources, visit [www.ppsapta.org](http://www.ppsapta.org) and view the "Publications" section.*

## Public Relations/Marketing Publications:

- **Business Skills in Physical Therapy: Strategic Marketing — An APTA Professional Development Home Study Course**  
(available in three parts)

*Strategic Marketing:* Available through APTA (\$59 for members, \$42 for student members, and \$99 for nonmembers). Order No. BS-3

*Legal Issues:* Available through APTA (\$59 for members, \$42 for student members and \$99 for nonmembers). Order No. BS-1

*Defining Your Business:* Available through APTA (\$59 for members, \$42 for student members, and \$99 for non members). Order No. BS-2

- **American Physical Therapy Association Public Relations Manual: A How-To**

Available through APTA (\$24.99 for members, \$45 for nonmembers). Order No. 484.


*To purchase any of these resources, visit [www.apta.org](http://www.apta.org) and view the "Online Shopping" section. ●*



**American  
Physical Therapy  
Association**

1111 North Fairfax Street Alexandria, VA 22314-1488

[www.apta.org](http://www.apta.org)



**For more information about POPTS and other  
legislative issues, please contact APTA's Government Affairs  
Department at 800.999.8533.**