

**Murdo, Patricia**

**From:** Jim McLean [jim@frenchtownpt.com]  
**Sent:** Tuesday, March 04, 2008 12:05 PM  
**To:** Murdo, Patricia  
**Subject:** SJR 15 - Economic Credentialing; Conflict of Interest; Referrals.  
**Attachments:** BETHARD, 2004, Physician Self Referral, Brandeis L.J..pdf; PEARSON, 2006, Disclosure statute.pdf; LEVINSON, 2005, Physician Disclosure.pdf

RE: LC0038; Economic Credentialing & Conflict of Interest.

- Conflict of interest “disclosure” statues are woefully inadequate.
- Proposed definition of a “referral.”
- Proposed definition of a “conflict of interest.”

Dear Pat,

This e-mail contains copies of 3 journal articles, and is from my “main” e-mail box.

First, thank you for addressing conflicts of interest in the health care referral process. As you know, I am a physical therapist that owns a small independent physical therapy clinic in Frenchtown. I would like to comment on LC00038 from the perspective of a small business owner that is trying to compete with (1) physician owned physical therapy clinics, and (2) hospital based out-patient physical therapy clinics.

#### CONFLICT OF INTEREST

The “disclosure statute” [that requires a physician to notify a patient if they have a financial interest in the clinic where they have referred a patient] contained in Section 1 (4) is inadequate for several reasons:

1. “Buyer Beware” does not work in healthcare. The obvious intention of the “disclosure statute” is to “make the buyer beware.” However, research shows that does not work in our healthcare system. Some studies indicate that if a physician provides disclosure of their financial interests, it actually enhances their credibility with patients. This makes patients more likely to enroll in a program if their physician has ownership in that program. Bottom line: Disclosure statues do NOT enhance consumer choice. [Additional information is in these journal articles: (A) Pearson, Steven D., et al; A Trial of Disclosing Physicians’ Financial Incentives to Patients, Archives of Internal Medicine, Vol. 166, page 623, 2006. (B) Levinson, Wendy, et al; The effect of Physician Disclosure of Financial Incentives on Trust, Archives of Internal Medicine, Vol. 165, page 625, 2005.]

2. The “disclosure statute” does not increase patient choice. A physician may notify a patient they have a financial conflict of interest, but they still do not have to advise a patient that many other clinics provide the same services. It is very likely the patient still does not realize they have a choice in where they obtain their out-patient services.

3. In Missouri, they found that “disclosure statutes” sometimes aggravated the abuse in the referral process. Some physicians first referred patients to their own PT clinics, and then explained that the doctor was so concerned about the patient’s care that they opened their own physical therapy clinic. Therefore, instead of giving patients greater choice, the statute inadvertently encouraged physicians to market their own facilities.

4. Disclosure statutes are very difficult to enforce. The Brandeis Law Journal notes: “Unfortunately, it is extremely difficult to enforce this [physician disclosure] legislative requirement. State agencies would be forced to either contact former patients to verify disclosure, or perform sting-like operations to test the compliance of the disclosure requirement by referring physicians. Either form of investigation would prove costly and burdensome upon the agency and could not ensure complete compliance. As patients would not be likely to know which physicians own ancillary facilities and are required to inform, it is unlikely that patients would notify the agency of a physician’s failure to notify.” Rebecca Bethard, Physician Self-Referral: Beyond Stark II, 43 Brandeis Law Journal, Vol. 465, p. 475, 2005.

5. The proposed statute requires notification of a physician’s conflict of interest, but ignores the conflicts that a hospital employed physician may have when making referrals. The hospital physician may not have an ownership interest, but their bonus, or raise may depend on how many referrals are made to their employer. Clearly, the hospital physician also has a conflict of interest.

6. Conclusion: Disclosure statues are a very weak response to physician self-referral. Other means must also be used to insure that consumers have a true choice.

3/7/2008

**DEFINITION OF A REFERRAL:**

1. A referral is a written order from physician, or other health care provider, to a patient or client for health care services, including, without limitation:

- (1) The forwarding of a patient by a health care provider to another health care provider or to an entity that provides or supplies health services or any other health care item or service.
- (2) The request or establishment of a plan of care by a health care provider, which includes the provision of health services or other health care item or service.

2. A health care referral shall include:

- (1) Notification that the patient has a choice of where to obtain the recommended health care item or service.
- (2) A list of providers within 30-miles of the patient's home: This must include one of the following:
  - (A) A statement that no-specific office has been recommended and the patient should consult the yellow pages for a list of providers; OR
  - (B) The names of at least three separate offices that provide the recommended services. The referring party must disclose if they have a financial relationship, contractual relationship, employment relationship, or other financial incentive for recommending a specific health care provider; OR
  - (C) A statement that the referring provider is only aware of one or two health care providers within a 30-mile radius of the patient's home, the names of the provider(s), and a statement that the patient should consult the yellow pages for a list of other providers in their area.

**DEFINITION OF CONFLICT OF INTEREST:**

- (a) When a health care provider accepts, pays, or promises to pay a part of a fee in exchange for patient referrals; obtains any fee by fraud, deceit, or misrepresentation; or pay or receives, directly or indirectly, any fee, wage, commission, rebate, or other compensation for services not actually or personally rendered.

Thank you for your work on this issue. Please contact me if you have questions.

Sincerely,

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