LAW OFFICE OF DIANA E. GODWIN
ATTORNEY AT LAW
1500 NE IRVING, SUITE 370
PORTLAND, OREGON 97232
TELEPHONE 503-224-0019 • FAX 503-229-0614
EMAIL dianagodwin@earthlink.net

Admitted to practice in
Oregon and Washington

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Testimony in support of Senate Bill 683

Submitted by Diana E. Godwin, Attorney, on behalf of
Oregon Physical Therapists in Independent Practice (OPTIP)

OPTIP is an association of approximately 165 independent practice physical therapy clinics located throughout Oregon.

Mr. Chair and Members of the Committee:

Thank you for the opportunity today to provide information on the issue of "self-referral" by physicians – an issue that affects the cost and integrity of ancillary health services in Oregon.

I think we would all agree that competition is healthy, especially in the health care field. As in any business model, without competition there is no desire to improve services or to balance the quality of service provided with delivery at the best possible price. Competition is what drives a medical practice to find more efficient ways to give the best treatment possible and keep the patient happy and healthy.

However, competition in health care services in Oregon is suffering badly.

There are state and federal laws in place presently that prohibit a physician from directly referring or channeling to a service that they own. Referral to an ancillary service that a physician has a financial interest in – funneling patients for profit – is a conflict of interest. It denies the healthy competitive nature of health care; it denies the patient's freedom to make choices about their own health; it places profit ahead of patient's interests and can contribute to higher utilization rates.

In 1987 the Oregon Legislature enacted ORS 688.125 as part of the physical therapy licensing laws. It provides as follows:

> **688.125** Notice to patient of interest in physical therapy practice. In order to ensure that physical therapy treatment of a patient is based solely on the needs of a patient, any health care practitioner licensed by a health professional regulatory board as defined in ORS 676.160 who owns, in part or in whole, a physical therapy practice, or who employs a physical

therapist, shall communicate the facts of that ownership or employment relationship to patients for whom physical therapy is prescribed and inform the patient that alternative sources of physical therapy treatment are available.

The problem is that there is a loophole in ORS 688.125 – it does not apply to physicians who are employed by corporations. Because the physicians have no ownership interest in the corporation's physical therapy practice, patients can be directly funneled into facilities or services that the corporation owns without compliance with ORS 688.125. The emphasis on "referring to our own," is becoming a driving force within medical corporations, even in not-for-profit corporations.

This trend leads to three potentially serious problems within health care:

A. **Indirect Pressure**: The most common way to ensure that the patient goes to the physical therapy clinic owned by the corporation is for the employee physician's office to assist with making the appointment for the patient. This facilitates the corporation's self referral under the guise of being "service oriented." The patient hears a statement such as: "We'll make that appointment for you." If the patient objects and wants to choose another provider that they are experienced with or wish to receive their physical therapy from, the reply is often "I don't know anyone there." Or "We're in a relationship with this facility and we like what they do."

Actual Example: Patient X was seeing a specialist for care for her back problem. The physician was employed by a particular corporation but had no direct financial interest in the physical therapy clinics owned by the corporation. At first the patient was offered a direct appointment at one of the physical therapy facilities owned by the corporation. She declined and said she would make the appointment with a physical therapist that she had used in the past and in whose services she had confidence. The physician stated that she needed to pick a PT clinic from "the list" and that this clinic (a private competing clinic) was not on the list. The patient argued for some time with the physician. Indirect pressure actually became direct pressure in this case.

What percent of patients feel they have no right to choose in the matter of their own personal health care decisions, and that they must comply with the physician, even against their own wishes?

B. **Direct Pressure**: Many of the independent physical therapy clinics I represent around the state know of instances where direct pressure is applied to the patient in a heavy handed fashion. The actual instances they know about are only the tip of the iceberg because very few patients have the wherewithal to disagree with their physician.

Documented Example: In this case, an elderly patient on a Medicare Advantage plan was seeing a physician about a painful condition. She was advised that she needed physical therapy to help assist her with recovery and to get her more active. In this case also, a direct referral to the corporate owned clinic was offered, but the patient refused, stating she had a facility that she particularly preferred in her hometown, and had confidence in the therapist there.

The physician looked up a "corporation clinic" in her hometown and insisted that she attend PT in that location. The patient refused. The physician told her that "I don't know anyone in that facility. You need to go to X clinic. I have a relationship with them." The patient again refused.

The physician's response was: "If you don't go to that clinic, I won't write the order for PT." After extensive pressure, the order was written on a one page document that listed multiple clinics owned by the corporation at multiple locations. The corporate clinic in her hometown was circled.

The patient, uncertain of her rights as a consumer, spoke directly with her preferred therapist. She was informed of her little known ( unfortunately) right to choose her provider. She made an appointment at her preferred facility with her preferred therapist. The first visit went well. However, the referring physician discovered that she had gone to the competing clinic. The patient came to the independent clinic the next day in tears. She reported that pressure had been applied on her primary physician office (within the same large corporation) and she was told that she needed to transfer her care to the corporate PT clinic. Very reluctantly, and against her strong wishes, she transferred her treatment to the other facility.

Again, the referring physician had no direct financial interest in the corporate owned physical therapy facility, but the patient's rights were violated for the sake of "referring to our own." What made it particularly unsavory was that the corporation was a not-for-profit entity.

C. **Innate lack of transparency**: Due to the power position of larger health care corporations within communities, there is the opportunity for increasing charges without any knowledge of the consumer. One of the PT clinics I represent informed me that the competing corporate entity charges essentially double the rate for the same CPT codes and services on an outpatient basis. However, when it comes to finding out or asking about the rates charged, for comparison shopping by patients who are paying cash or patients who have large deductibles, the typical answer to patients is "I don't know those rates." If the patient insists on knowing, they are told, "You will have to call the billing office to find out."

D. **Aggressive business practices and unfair competition are harming Small Business medical practices:** A hostile market is forming that favors the big business power position to the detriment of the smaller independent business. In the medical field this occurs not only in contracting with selective clinics to keep business advantage, but also in self-referrals within a corporation to retain income stream or improve market position. This occurs without regard to the best interests of the patient.

When a clinic I represent was approached to sell to a corporation, it was made clear in no uncertain terms that declining to sell to that corporate entity would cause the clinic to "wither on the vine." The corporation would refer the lion's share of business to its own PT service in order to "support our own."

This analogy has been used before, but consider: In Oregon if you are involved in a car accident, you can choose take your car to any body shop you prefer, and insurance must recognize that right, and negotiate with the preferred shop. However, in the same accident if you are injured, you run the risk that the physician who is referring you for physical therapy may not give you the same right. You may be directly referred to the "preferred shop" that the corporation wants you to go to for whatever reason.

**Oregonians deserve at least the same freedom of choice when it comes to their personal health care that Oregon law guarantees them for repairs to their cars.**

Self -referral based on financial interests happens in Oregon. Multiple states have seen the same problem and have enacted laws protecting health care consumers from self- referral behaviors. But in Oregon, competition is being stifled, starved, or destroyed. We need to stop this practice and make Oregon fair and competitive in the realm of health care services.

Change the law for the sake of a patient's right to choose. Remove a patient's fear of reprisal if they do not have confidence in the corporate entity. We must promote delivery of the best service at the most reasonable cost with the medical consumer making the decision. Make Oregon a state that promises fair and open competition based upon patient choice, not corporate expansion.

Medicare Payment Advisory Commission (MedPAC) is an independent congressional agency established by the Balanced Budget Act of 1997 to advise Congress on issues affecting the Medicare program. In June of 2010 MedPAC filed a report to Congress. Chapter 8 of the lengthy report is "Addressing the Growth of Ancillary Services in Physician's Offices." Chapter 8 is 30 pages long but in short, MedPAC found that physicians with a financial interest in physical therapy initiated therapy for patients with musculoskeletal injuries more frequently than other physicians and that physical

therapy clinics with physician ownership provided more visits per patient than non-physician-owned clinics.

During 2003 to 2008, the volume of outpatient therapy services (which includes physical therapy, occupational therapy, and speech-language pathology services) provided by physicians with a financial interest in those services rose by an average of 11.4 percent per beneficiary per year. By comparison, all physician services grew by 4.6 percent per year.

If we are to be successful in curbing the growth of costs for health care services, we must pay attention to factors -- such as self-referral – that increase the cost with no benefit to patient health outcomes.

Again, thank you for the opportunity to testify and I would be happy to answer any questions the committee may have.