

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Allen Sloan, M.D.; Doctor's Care, P.A.; Barry E. Fitch, P.T.; Jerry O'Reilly, P.T.A.; Oaktree Medical Centre, P.C.; FirstChoice Healthcare, P.C.; Southern Orthopaedic Sports Medicine, LLC; and South Carolina Medical Association, Plaintiffs,

Of Whom Doctor's Care, P.A.; Barry E. Fitch, P.T.; Jerry O'Reilly, P.T.A.; Oaktree Medical Centre, P.C.; FirstChoice Healthcare, P.C.; and Southern Orthopaedic Sports Medicine, LLC, are Appellants,

v.

South Carolina Board of Physical Therapy Examiners; South Carolina Chapter, American Physical Therapy Association; and the Attorney General of the State of South Carolina, Respondents,

and

South Carolina Association of Medical Professionals and South Carolina Orthopaedic Association, Appellants,

v.

South Carolina Board of Physical Therapy Examiners, Respondent.

Appeal from Richland County
J. Ernest Kinard, Jr., Circuit Court Judge

Opinion No. 26209
Heard June 7, 2006 – Filed September 25, 2006

AFFIRMED

James G. Long, III, and Manton M. Grier, Jr., both of Nexsen Pruet Adams Kleemeier, LLC, of Columbia, for Appellants Doctors Care, P.A.; Barry E. Fitch, P.T.; Jerry O'Reilly, P.T.A.; Oaktree Medical Centre, P.C.; FirstChoice Healthcare, P.C.; and Southern Orthopaedic

Sports Medicine, LLC.

Stephen P. Bates and Mary Margaret Hyatt, both of McAngus, Goudelock & Courie, LLC, of Columbia, for Appellants South Carolina Association of Medical Professionals and South Carolina Orthopaedic Association.

Monteith P. Todd of Sowell Gray Stepp & Laffitte, LLP, of Columbia, for Respondent South Carolina Board of Physical Therapy Examiners.

R. Bruce Shaw and Alice V. Harris, both of Nelson Mullins Riley & Scarborough, LLP, of Columbia, for Respondent South Carolina Chapter, American Physical Therapy Association.

Henry D. McMaster, T. Stephen Lynch, Robert D. Cook, and C. Havird Jones, all of the South Carolina Office of Attorney General, of Columbia, for Respondent Attorney General of the State of South Carolina.

Charles E. Carpenter, Jr., and Carmen V. Ganjehsani, both of Richardson, Plowden, Carpenter & Robinson, P.A., of Columbia, for Amicus Curiae American Association of Orthopaedic Surgeons.

William J. Watkins, Jr., and Sandra L. W. Miller, both of Womble Carlyle Sandridge & Rice, LLC, of Greenville, for Amicus Curiae William Davis, Barry Cohen, Bruce Carlson, and George Todd.

JUSTICE BURNETT: In this appeal, we are asked to decide the novel issue of whether a physical therapist in South Carolina is statutorily prohibited from working as an employee of a physician who refers patients to the physical therapist for services.

FACTUAL AND PROCEDURAL BACKGROUND

The arrangement at issue, known within the medical profession as a physician-owned physical therapy service, or POPTS, has generated debate nationwide since the mid-1970s. The debate is driven in part by money, *i.e.*, whether physicians or physical therapists will primarily benefit from fees paid by therapy patients, and in part by ethical concerns about actual and potential conflicts of interest. The debate also implicates issues of control and prestige among medical professionals. Two position statements from leading organizations on both sides of the issue offer a beneficial summary of the concerns.

The American Physical Therapy Association (APTA) opposes physician-owned physical therapy services.

Physical therapy referral for profit describes a financial relationship in which a physician, podiatrist, or dentist refers a patient for physical therapy treatment and gains financially from the referral. A physician can achieve financial gains from referral by (a) having total or partial ownership of a physical therapy practice, (b) directly employing physical therapists, or (c) contracting with physical therapists. The most common form of referral for profit relationship in physical therapy is the physician-owned physical therapy service, known by the acronym

