

## State Medical Board of Ohio Guidance Regarding Physician-Owned Distributorships (PODs)

September 3, 2015

To Medical Board Licensees,

In recent years, the rise of physician-owned distributorships, or “PODs,” has prompted concern and the need for awareness of potential legal concerns, such as potential violations of the Federal Anti-Kickback statute. To address the rising concerns, in March 2013, the Department of Health and Human Services, Office of Inspector General, released a Special Fraud Alert concerning the practices of PODs and the potential for inappropriate influence by financial incentives. [http://oig.hhs.gov/fraud/docs/alertsandbulletins/2013/POD\\_Special\\_Fraud\\_Alert.pdf](http://oig.hhs.gov/fraud/docs/alertsandbulletins/2013/POD_Special_Fraud_Alert.pdf)

The Board strongly recommends that physicians involved with or considering involvement with a POD review and understand the OIG Special Fraud Alert and consult with their private legal counsel.

A main purpose of the Federal Anti-Kickback statute is to protect patients from inappropriate medical referrals or recommendations by health care professionals who may be influenced by financial incentives. The utilization of PODs may pose dangers to patient safety by inducing surgeons to perform more procedures than medically necessary, and to favor devices they profit from over more “clinically appropriate” ones. Federal law makes it a criminal offense to knowingly and willfully offer, pay, solicit, or receive any payment to induce referrals of items or services reimbursable by a Federal health care program. It is also a criminal offense to knowingly and willfully offer, pay, solicit or receive any payment in exchange for referrals of items or services reimbursable by a Federal health care program. Although the lawfulness of any POD under the Federal Anti-Kickback statute depends on the intent of the parties, the OIG views PODs as “inherently suspect.” The statute attributes criminal liability to parties on both sides of an impermissible kickback transaction; thus, hospitals or ambulatory surgical centers that enter into arrangements with PODs may also be at risk under the statute and potentially face a felony conviction, imprisonment, fines, and exclusions from Federal health care programs, including Medicare and Medicaid.

Violations of the Federal Anti-Kickback statute could also lead to discipline by the State Medical Board of Ohio under various provisions of the Medical Practices Act. See, Sections 4731.22 (B)(8), (B)(17), Ohio Revised Code. In May 2015, a Michigan neurosurgeon pleaded guilty in two separate criminal cases, admitting to causing serious bodily injury to patients in an \$11 million health care fraud scheme involving a POD. Department of Justice has posted an article to its website at:

<http://www.justice.gov/opa/pr/detroit-area-neurosurgeon-admits-causing-serious-bodily-injury-patients-11-million-health>

The State Medical Board of Ohio takes this matter seriously, and would encourage all licensees to make themselves aware of the law pertaining to this issue.

Respectfully,



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