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Judge Orders Government to Pay Relators a Cut of FCA Settlement

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Headlines that Matter for Companies and Executives in Regulated Industries

Judge Orders Government to Pay Relators a Cut of FCA Settlement

On November 4, a federal judge from the US District Court for the District of Massachusetts ordered the government to pay the relators' share of a settlement in connection with violations of the False Claims Act (FCA). Previously, the government argued that the relators were not entitled to a portion of the settlement because they did not specifically name the settling parties as defendants. The relators asserted that they are entitled to a 15% to 25% finder's fee cut of the settlement under the FCA. The FCA, 31 U.S.C. §3730(d), provides that if the government proceeds on an action brought by relators, then the relators are entitled to receive 15% to 25% of the proceeds of an action.

In the underlying case, the government alleged that SpineFrontier Inc., a spine device manufacturer that sells spinal implant devices, paid kickbacks to spinal surgeons through sham consulting agreements. Rather than compensate the surgeons for legitimate consulting, SpineFrontier allegedly compensated them for using their products. This scheme allowed surgeons to receive compensation not only from SpineFrontier but also from insurers and federal health care programs. SpineFrontier, its founder and CEO, Kingsley Chin, and its CFO, Aditya Humad, were indicted for the same alleged scheme. The criminal trial is scheduled for March 2025. Six of the surgeons entered the settlement agreement at issue, which is valued at $3.3 million.

At the hearing for the relator's motion to receive a relator award, the government argued that the relators were not entitled to a portion of the government's settlement with the surgeons because they did not make a formal claim in the complaint against the settling surgeons. The court rejected that argument, finding that the allegations in the relators' complaints mirror the allegations in the government's settlement. Moreover, though the surgeons were not named defendants in the relators' complaints, the complaints identified each settling surgeon by name and described the fraudulent conduct at issue. Because the allegations described in the complaint and the settlement agreement were indistinguishable, the relators were entitled to a cut.

Read the government's press release concerning the indictment here.

Jury Convicts Columbus Doctor for Medicaid Scam

On November 1, Ohio Attorney General Dave Yost announced that a jury found an Ohio doctor, Robert Florea, guilty of defrauding the state's Medicaid program. Florea submitted false reimbursement requests for medical equipment he did not purchase. The doctor's company, Buckeye Health and Research, which operates a clinic in Columbus, was also found guilty of fraud.

Both Florea and Buckeye Health received reimbursements for 5,100 pieces of medical equipment, including braces used to treat joint and neck pain. However, according to Yost, Florea only bought 460 pieces of equipment. This disparity caused extra reimbursements, causing a total $1.5 million loss for the state's Medicaid program. At trial, Florea argued that he did not file for more reimbursements than other doctors and that he did not file for reimbursement care that they did not provide. Sentencing has yet to be scheduled.

You can find Yost's announcement here.

New Hampshire Doctor Pleads Guilty to Drug Conspiracy

The US Department of Justice (DOJ) announced on November 4 that New Hampshire doctor Adnan Khan pleaded guilty to conspiring to illegally distribute controlled substances.

Khan owned and operated New England Medicine and Counseling Associates (NEMCA), which operates a network of clinics in New England that purportedly provided clinical treatment services for persons suffering from substance use disorder. According to the press release, Khan conspired with others to prescribe controlled substances through NEMCA to patients despite knowing that they were diverting the prescriptions and falsified medical records to justify his illegal prescribing practices. Khan admitted that he would require cash for purported office visits to receive control substance prescriptions. As part of the scheme, Khan and his co-conspirators required economically disadvantaged patients to pay $250 for drug prescriptions despite the patients having health care coverage.

Over the course of the conspiracy, Khan and his co-conspirators allegedly were aware of the New England Strike Force, a law enforcement partnership whose purpose is to identify and prosecute health care fraud and other criminal schemes impacting the New England region. Given this knowledge, Khan ordered NEMCA employees not to discuss anything with the Strike Force.

Sentencing has yet to be scheduled. He faces a maximum penalty of 10 years in prison. Read the DOJ's press release here.

Court Disqualifies Attorney in Medicare Fraud Case Because of Conflict of Interest

In a case involving two doctors who allegedly ran a Medicare fraud scheme, the US District Court for the District of New Jersey disqualified the attorney for one of the doctors because of an actual or potential conflict of interest.

The DOJ charged laboratory owners Richard Abrazi and Dr. Alexander Baldonado in a health care fraud scheme for conducting nearly $20.7 million worth of unnecessary medical tests. The government alleged that Baldonado ordered the unnecessary tests, which were conducted by Abrazi, and accepted kickbacks for patient referrals. Abrazi allegedly submitted false and fraudulent claims for these tests to Medicare.

Abe George of the Law Offices of Abe George PC initially represented Abrazi in the criminal case. However, on November 1, the court disqualified George after prosecutors filed a letter with the court, arguing that George should not represent Abrazi because George had represented Baldonado during the government's investigation into the alleged healthcare fraud scheme. Even though the two defendants had signed conflict waivers, the court found that there was an actual or potential conflict of interest that could not be waived and Baldonado had later retracted his waiver. The court also reasoned that disqualification was necessary because Abrazi's interests are materially adverse to Baldonado's.

DOJ Continues to Pursue COVID-19 Fraud

The DOJ announced on October 31 that it unsealed an indictment charging Vince Atkins, a Maryland man, with COVID-19 relief fraud, not filing a tax return, and not paying all required employment taxes.

According to the indictment, Atkins owned and operated several transportation companies that served different federal agencies. All but one of those companies stopped operating. In 2020, Atkins allegedly filed four Paycheck Protection Program (PPP) loan applications using false Internal Revenue Service (IRS) documents on behalf of his then-defunct companies. He received $387,220 in fraudulent PPP loans, which were later forgiven. When he obtained the loan proceeds, he laundered approximately $151,000 of it by transferring it to two personal bank accounts in Nigeria.

Moreover, despite his companies being defunct, Atkins was still allegedly responsible for withholding Social Security, Medicare, and income taxes from employees' wages and paying those funds to the IRS each quarter. From 2019 to 2022, Atkins allegedly did not pay the IRS the full amount of the taxes withheld. Further, Atkins allegedly did not file a personal return for 2020 despite being required by law to do so.

Read the DOJ's press release here.

Heather M. Zimmer also contributed to this article.

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