



## The Tuomey Saga – The Latest Chapter

October 15, 2013

A False Claims Bulletin

When we last visited the case of *U.S. ex rel. Drakeford v. Tuomey Healthcare System, Inc.*, Tuomey requested that a federal judge throw out a jury verdict that found the hospital system violated the False Claims Act and the Stark Law. (See Bricker & Eckler's [July 2013 bulletin](#).) As you may recall, in May, following a four-week trial, the jury rendered a verdict finding that Tuomey violated the False Claims Act by submitting over 21,000 Medicare claims that were "tainted" due to contractual arrangements between the referring physicians and Tuomey that violated the Stark law. (See Bricker & Eckler's [May 2013 E-Alert](#).)

A federal judge recently considered Tuomey's motion to overturn the jury's verdict, or at least provide Tuomey with a new trial. Tuomey made multiple arguments in support of its motion attempting to call into question the jury's verdict at almost every juncture. For example, Tuomey argued insufficient evidence was presented that would have allowed the jury to conclude the physician contracts at issue were subject to the Stark Law by attempting to convince the court that the physicians' compensation would not change based upon referrals to Tuomey. In addition, Tuomey contested the government's evidence that the physicians at issue were the "referring" doctors by asserting insufficient evidence of actual referrals was presented by the government. Tuomey also argued that the government's evidence regarding damages was too speculative for the jury to base its damages award.

Ultimately, the court considered each of Tuomey's arguments and ruled against Tuomey on each point. The court concluded that on each issue Tuomey raised, sufficient evidence was presented upon which a reasonable jury could have based its verdict. The court stated it would not overturn the jury's determination on those issues. In conclusion, the court stated that "[a] reasonable jury could have concluded that Tuomey submitted 21,730 false claims and was improperly reimbursed \$39,313,065."

Even more troubling for Tuomey was the court's decision regarding the government's motion for judgment under the False Claims Act. The False Claims Act permits the government to seek a civil penalty in the amount of \$5,500 to \$11,000 per false claim in addition to requesting treble damages. In this case, the government requested a civil penalty of \$5,500 per false claim plus treble damages for a total civil penalty in the amount of \$237,454,195. The court granted the government's motion and entered judgment under the False Claims Act against Tuomey in the amount of \$237,454,195.

This judgment is believed to possibly be the largest of its kind against a community hospital in U.S. history. Shortly after the announcement of the \$237 million judgment, Tuomey announced its latest appeal by filing a motion indicating it would immediately appeal the U.S. Court of Appeals for the Fourth Circuit.

Given the latest ruling against Tuomey, many observers believe a post-verdict settlement could be in the works. However, that remains to be seen. Please stay tuned as we will continue to provide updates regarding this important case as developments occur.

# Authors

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