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Employed physician arrangements in the government's crosshairs

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We periodically report on lawsuits and settlements involving the False Claims Act that we think are particularly noteworthy. The settlements we have seen in the last few months have been eye-opening – case after case of multi-million dollars settlements with one common thread – employed physicians. Here's a rundown of some of the biggest False Claims Act settlements in recent months involving employed physicians.

North Broward Health District

In September 2015, the Department of Justice (DOJ) [announced](#) that North Broward Health District had agreed to pay \$69.5 million to settle allegations that North Broward had violated the False Claims Act by engaging in improper financial relationships with referring physicians. Specifically, North Broward was alleged to have provided compensation to nine employed physicians that exceeded the fair market value of their services and was not commercially reasonable in violation of the Stark Law and Anti-Kickback Statute. Of particular interest in this case is that the basis for the allegation that the compensation was not consistent with fair market value and was not commercially reasonable was that the compensation was in excess of the 90th percentile of total cash compensation as published in physician compensation surveys, and that this level of compensation generated substantial

practices losses for North Broward. The complaint also alleged that the compensation must have taken into account the volume or value of the physicians' referrals since the physicians' professional income alone was not self-sustaining, but when considered with the added value of facility fees, which North Broward also tracked, the relationships were self-sustaining. The whistleblower, an orthopedic surgeon who said he first learned of the compensation arrangements when he considered taking a job with North Broward until his attorney saw the proposed contract and told him to tear it up and stay away from such compensation schemes, will receive more than \$12 million for bringing this case on behalf of the United States.

Columbus Regional Healthcare System

On September 4, 2015, the DOJ [announced](#) a settlement with Columbus Regional Healthcare System. In the agreement, Columbus Regional agreed to pay up to \$35 million to settle allegations that it violated the False Claims Act by submitting claims in violation of the Stark Law, and that Columbus Regional and a physician, Dr. Pippas, had submitted claims for payment to federal health care programs that misrepresented the level of services they provided. The alleged violation of the Stark law was that Columbus Regional provided excessive salary and directorship payments to Dr. Pippas – that his compensation was in excess of fair market value, was determined in a manner that took into account the volume or value of his referrals, and that the compensation paid pursuant to his employment agreement would not have been commercially reasonable but for his referrals to the system. The complaint also alleged that Dr. Pippas's salary was more than what the system collected from his personally performed services, took into account his chemotherapy and other referrals to the system, and was based in significant part on productivity, which was artificially inflated by the productivity of other practitioners and his own upcoding. Of note in this case:

- It includes a settlement with the employed physician, Dr. Pippas, pursuant to which he will pay \$425,000. A settlement with a physician is relatively unusual, but is consistent with the recently issued "[Yates Memo](#)" issued by DOJ in September 2015, which says the government will be looking for individuals to hold accountable as well as corporate entities.
- This was an ability to pay settlement (that's why the amount of the settlement is "up to" \$35 million): \$10 million upfront, \$3 million per year over the next 5 years plus up to another \$10 million if certain assets are sold. This settlement structure may indicate that the government is looking to receive payments through settlements even over time, or when the current financial situation of an alleged violator would not allow a one-time upfront payment.
- This case was initiated by a whistleblower, a former top administrator of Columbus Regional's cancer center where Dr. Pippas was the medical director.

Citizens Medical Center

On April 21, 2015, the DOJ [announced](#) a \$21.75 million settlement with Texas-based Citizens Medical Center to resolve allegations brought by three whistleblowers who were formerly physicians at the hospital until their privileges were revoked. Those physicians initially sued Citizens for racketeering, conspiracy and discrimination and settled with Citizens for \$8 million. Then they filed a whistleblower lawsuit alleging that Citizens violated the False Claims Act by engaging in improper financial relationships with physicians – specifically, that Citizens violated the Stark Law by providing compensation to several employed cardiologists that exceeded fair market value for their services (three of the cardiologists' combined salaries went from \$630,000 before they were employed by Citizens to \$1.4 million a year later once they were employed by Citizens) and by paying bonuses to emergency department physicians that took into account the value of their cardiology referrals. Of note in this case: Citizens presented an expert report showing that the cardiologists' salaries were below national median levels, but because of the huge jump in compensation after they became employed by Citizens, the complaint alleged that it would make little economic sense for Citizens to employ the cardiologists at a loss, except when the motive was to induce referrals.

Adventist Health System

We [previously reported](#) on the Adventist Health System settlement but are including a summary of the settlement here since it reiterates the trend we are seeing of government enforcement actions and settlements regarding arrangements with employed physicians. In September 2015, DOJ [announced](#) it had settled with Adventist for \$115 million to resolve allegations that it had entered into improper relationships with employed physicians, including paying the leases for a surgeon's BMW and Mustang cars, paying a \$366,000 base salary for a family practitioner, and paying total annual compensation of \$710,000 to a dermatologist who only worked three days a week. The complaint also alleged that Adventist paid bonuses to its employed physicians that took into account the volume of the physicians' referrals to Adventist hospitals by being based on the number of tests and procedures the physicians ordered. Of note: the whistleblowers were high-ranking employees within Adventist – the chief operating officer of physician enterprises, a risk manager, the executive director of physician services, and the compliance officer of the physician offices.

Tuomey

We also [previously reported](#) on the final chapter of the Tuomey Healthcare System saga, but are including a brief summary of the case here because no summary of False Claims Act/Stark Law cases involving employed physicians would be complete without mention of the Tuomey case. Tuomey settled with the Department of Justice for \$72.4 million after a 10 year battle that included two trials, numerous appeals,

and a \$237 million judgment against Tuomey that would have bankrupted the hospital system. Under the terms of the settlement, Tuomey will be sold to Palmetto Health. This case stemmed from Tuomey's part-time employment agreements with 19 specialist physicians whom the whistleblower (Dr. Drakeford, a physician who chose not to participate in the arrangement) alleged were only offered the employment arrangements so that Tuomey could keep their referrals of outpatient procedures that the specialist physicians had threatened to take to a new surgery center. The allegations were that the part-time employment arrangements included compensation that far exceeded fair market value and had other benefits that were not typical of part-time arrangements and that the compensation included part of the money that Tuomey received from Medicare for the referred procedures. The DOJ press release announcing the settlement referred to the employment arrangements as "secret sweetheart deals" that undermine patient confidence and drive up healthcare costs for everybody.

These settlements raise more questions than they answer about how hospitals and health systems can compensate their employed physicians. We will continue to monitor cases involving employed physicians and will report on the trends we are seeing.

If you have questions about any of these cases, please contact Shannon DeBra, (sdebra@bricker.com, 513.870,6685) or any member of the [Health Care practice group](#).