

## South Carolina Medical Center pays Department of Justice \$17 million to settle False Claims Act case alleging employment agreements violate Stark law

September 21, 2016

On July 28, 2016, Lexington Medical Center, West Columbia, South Carolina (LMC), agreed to pay the United States Department of Justice (DOJ) \$17 million to resolve allegations that it violated the Stark law and the False Claims Act as a result of improper financial arrangements with employed physicians in five physician practices, including two cardiology practices, two internal medicine practices and an orthopedic practice. The civil settlement resolved allegations made by a neurologist previously employed by LMC, Dr. David Hammett, who filed a qui tam whistleblower suit in federal court in Columbia, South Carolina.

Allegedly, LMC engaged in a concerted business strategy to 1) buy access to patients through the acquisition of physician practices; 2) pay the physicians commercially unreasonable compensation in exchange for their practice and their employment at LMC; 3) impose a *de facto* mandate on the physicians that required them to refer to LMC while LMC closely tracked their referrals; and 4) punish physicians who referred patients to services outside of LMC.

LMC's compensation scheme, employment contracts, referral-tracking reports, and treatment of Dr. Hammett all demonstrated LMC's improper scheme. Dr. Hammett alleged that he was terminated by LMC for referring patients for imaging services outside of LMC. Dr. Hammett will receive \$4.5 million of the funds recovered in the settlement.

In 2011, LMC acquired a physician practice of 28 member physicians and entered into 7-year employment contracts with the 28 member physicians. The United States alleged that the compensation paid to the employed physicians exceeded the fair market value of the services the physicians performed and took into account the volume or value of patient referrals the physicians were expected to make under the hospital's *de facto* mandatory referral policy. The compensation took into account referrals because LMC allegedly pressured physicians into ordering more studies and mandated that referrals remain within LMC without including the necessary language from the Stark regulation permitting an employer to direct referrals and track referrals.

Significantly, the post-acquisition compensation arrangements were in excess of the amounts the physicians were paid while owners of their private practice (which included profits generated by ancillary revenues of the practice) and the overall compensation amounts were well in excess of fair market value – exceeding the 90<sup>th</sup> percentile of MGMA (e.g., an internal medicine physician was paid \$500,000 whereas the MGMA 90<sup>th</sup> percentile physician benchmark for internal medicine physicians was \$378,143.)

The compensation was also not commercially reasonable because the amount exceeded what LMC collected for the employed physicians' services. The government also found LMC's tiered wRVU productivity bonus approach suspect because the base compensation and productivity bonuses were exorbitantly high, thereby incentivizing the physicians to see more patients, which in turn generated more ancillary revenue. In addition, LMC paid the practice owners post-acquisition bonuses that were not included in the purchase contract, but were kickbacks designed to reward the practice owners for future referrals.

LMC was required to enter into a Corporate Integrity Agreement with the HHS OIG, which requires LMC to implement measures designed to avoid or promptly detect future similar conduct.

*"This case demonstrates the United States' commitment to ensuring that doctors who refer Medicare beneficiaries to hospitals for procedures, tests and other health care services do so only because they believe the service is in the patient's best interest and not because the physician stands to gain financially from the referral." - Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of Justice Department Civil Division.*

# Authors

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