



DOJ moves to dismiss 11 False Claims Act cases

January 16, 2019

On December 17, 2018, the Department of Justice (DOJ) [moved to dismiss](#) 11 False Claims Act (FCA) cases brought by whistleblowers against pharmaceutical manufacturers and their commercial outsourcing vendors, alleging that manufacturers' patient support services violated the Anti-Kickback Statute. The cases were brought by what the DOJ described as "shell companies" backed by the National Health Care Analysis Group (NHCA Group). Each case involved "essentially the same theories of FCA liability" and argued that the defendants had engaged in "white coat marketing" by providing remuneration to physician through free nursing education and other support services, such as assistance with prior authorizations. The relators brought the cases against 38 defendants across 31 states and "implicate[d] more than 73 million prescriptions written by hundreds of thousands of different physicians."

In its motion to dismiss, the DOJ asserted that the government has "a strong interest in ensuring that, after a physician has appropriately prescribed a medication, patients have access to basic support services relating to their medication" and that advancing the relators claims would "undermine common industry practices the federal government has determined are, in this particular case, appropriate and beneficial to federal health care programs and their beneficiaries." The DOJ reviewed



Joshua M. Gilbert
Senior Associate
Columbus
614.227.7736
jgilbert@bricker.com



Jeremy R. Morris
Partner
Columbus
614.227.2370
jmorris@bricker.com

tens of thousands of documents and spent over 1,500 hours in its investigation but found “the allegations to lack sufficient merit to justify the cost of investigation and prosecution and otherwise to be contrary to public interest.”

The DOJ’s motion to dismiss also highlighted specific issues with the backing and investigation by the NHCA Group, which the DOJ called a “professional relator.” The DOJ specifically singled out that the NHCA Group’s gathered information from witnesses under “false pretenses.” According to the DOJ, the NHCA Group attempted to gain inside information by contacting defendant’s current and former employees under the false premise of conducting a non-biased research study.

The DOJ’s efforts to dismiss a group of 11 cases is unprecedented, given that the agency has only moved to dismiss a total of roughly 30 FCA cases from 1986 to 2011. However, the efforts to dismiss the cases emphasize the DOJ’s efforts to adhere to the [Granston Memorandum](#), which directs the DOJ to consider the government’s discretion in dismissing meritless FCA cases. The NHCA Group has stated that it plans to oppose the DOJ’s motions.

Bricker & Eckler has extensive experience counselling clients regarding the False Claims Act and the Stark Law. Contact the author or any member of the health care team with questions.