



Toumey Healthcare Settles False Claims Act Suit for \$72 Million

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In a long-running False Claims Act case with significant implications for hospitals, Toumey Healthcare System last week agreed to settle its case by paying \$72.4 million to the government. While this sum is significant, it is less than a third of the \$237 million verdict that was upheld on appeal over the summer. In addition to the payment, Toumey will be sold to Palmetto Health and entered into a Corporate Integrity Agreement with the Department of Health and Human Services' Office of Inspector General.

The government and relator in Toumey argued that the hospital violated the Stark law by entering into agreements with certain specialist physicians requiring them to refer their outpatient procedures to Toumey and compensating them in excess of fair market value. Additionally, the government alleged that Toumey ignored red flags and warnings from an attorney retained to review the arrangements. In doing so, the government alleged that the hospital violated the False Claims Act by submitting claims tainted by the Stark violation for reimbursement by Medicare. The first trial in 2010 resulted in a defense verdict but the district court vacated the opinion and granted a new trial, finding that it had erred in excluding testimony from the attorney who provided advice to Toumey. At a new trial in 2013, the jury found for the government. Toumey was assessed nearly \$40 million in actual damages that were then trebled, as well as almost \$120 million in civil penalties, for a total of \$237 million.

Toumey appealed the decision, but, in July 2015, the appellate court affirmed. While affirming the opinion, the court also noted concerns raised about potential devastating affect the decision will have on a hospital in an underserved community. One judge concurred in the decision but wrote separately to "emphasize the troubling picture this case paints: An impenetrably complex set of laws and regulations that will result in a likely death sentence for a community hospital in an already medically underserved area." The concurring judge also noted: "It seems as if, even for well-intentioned health care providers, the Stark Law has become a booby trap rigged with strict liability and potentially ruinous exposure-especially when coupled with the False Claims Act."

Facing a judgment of \$237 million, far more than the hospital's revenues, Toumey had no choice but to settle. It could not afford to pay the judgment and, if it had to shut down, then there would have been no hospital in the community in which it served. The case, however, illustrates how challenging it is for hospitals to manage risk with the complexity of Stark regulations and the possibility that relators will allege that a Stark violation amounts to a violation of the False Claims Act, and, with it, the potential for ruinous damages. The saga of Toumey has ended but, perhaps, it will lead to some reconsideration of the interplay of the Stark law and the False Claims Act.

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