



Client Alert

Contact Attorneys Regarding
This Matter:

Aaron M. Danzig
404.873.8504 - direct
404.873.8505 - fax
aaron.danzig@agg.com

Edward A. Marshall
404.873.8536 - direct
404.873.8537 - fax
edward.marshall@agg.com

Arnall Golden Gregory LLP
Attorneys at Law

171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500

2001 Pennsylvania Avenue NW
Suite 250
Washington DC 20006
202.677.4030

www.agg.com

False Claims Act Suit for Stark Violation Illustrates Increased Government Scrutiny

It has been well documented that the government has significantly stepped up its focus on healthcare providers and has been aggressively pursuing both civil and criminal actions against providers for violations of the healthcare fraud statutes, the Stark Act, the Anti-kickback Statute and the False Claims Act. A recent case demonstrates the potential dangers associated with physician employment relationships with hospitals and the intersection of the False Claims Act and the Stark Act.

In *United States v. Campbell*, a case in federal court in New Jersey, the court ruled that a False Claims Act suit could proceed against a doctor who entered into a part-time employment relationship with a hospital but was not required to actually perform the services identified in the contract. Thus, the court decided that the doctor may have been paid above the fair market value for the services actually rendered and the excess payments could violate the self-referral constraints of the Stark Act. The violation of Stark caused the Medicare claims to be false, thus exposing the hospital and doctor to False Claims Act liability. While the doctor was ultimately exonerated in a jury trial, this case nonetheless demonstrates the risks associated with employment agreements that are not operationally enforced.

In this case, a hospital in New Jersey was at risk of losing its license as a Level 1 Trauma Center for failure to perform the requisite number of cardiac procedures. To prevent losing the license, the hospital entered into contracts with various cardiologists in private practice. These part-time employment contracts required the doctors to perform various activities, including teaching cardiac fellows, interpreting hospital electrocardiograms, attending weekly cardiology conferences, and teaching medical students. The contracts were prepared by hospital counsel, and the hospital confirmed that the contractual arrangements were lawful and proper. The government contended that the services required under the contract were not fully performed and that the real service provided was for the doctors to refer patients to the hospital for inpatient and outpatient services in order for the hospital to maintain its status as a Level 1 Trauma Center. The hospital ultimately settled for \$8.3 million.

The government then brought suit against one doctor, alleging that he caused the hospital to present false claims to Medicare and Medicaid for services rendered as a result of illegal financial relationships. While the Stark Act contains an exception that allows hospitals to submit claims based on referrals from employee physicians if the employment satisfies all four elements of the exception, the court ruled that the case would not be dismissed because there was a factual dispute as to whether the doctor actually performed the services required under the contract. That is, it was not sufficient for the written agreement to satisfy the exception alone—the actual relationship must satisfy the exception. Ultimately, the case went to trial, and the jury ruled that the doctor would not be held liable because he demonstrated that he qualified for the bona fide employment exception to the Stark Act.

There are several important take-aways from this case. First, the existence of a valid employment contract, drafted by legal counsel that complies fully with the Stark bona fide employment exception does not automatically insulate a physician. Instead, the government will look to whether the duties and responsibilities contained in the contract were actually performed and whether there is sufficient documentation evidencing performance. Second, a violation of Stark could also result in False Claims Act liability for the physician even if the physician did not actually submit a false claim. The physician could be liable for helping cause the hospital to unlawfully bill for services provided in violation of Stark. Third, because the federal government has dramatically increased its investigations of healthcare providers, both hospitals and doctors should periodically review their contracts to ensure not only that the contracts comply with the law but also that the services required under the contract are actually performed.

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