

## Medicare Recovers Millions in November 2010 Fraud & Abuse Settlements

The federal crackdown on Medicare Fraud and Abuse has intensified in 2010, with millions of dollars returned to the Medicare fund for violations of Stark, Anti-Kickback, and Fraud and Abuse laws in November 2010 alone. On November 9<sup>th</sup>, 2010, a Maryland hospital settled with the Office of the Inspector General (OIG) for \$22 million, amidst allegations of Stark and Anti-Kickback violations. The very next day, a federal court held that a Pennsylvania hospital violated Stark, and possibly Anti-Kickback and False Claims laws, by entering into compensation agreements with two physicians which exceeded *Fair Market Value*.

St. Joseph Medical Center (SJMC), a hospital located in suburban Baltimore, agreed to pay \$22 million to settle a qui tam allegation that it violated the False Claims Act by knowingly billing Medicare for service contracts which violated both Stark and Anti-Kickback laws.<sup>1</sup> According to the settlement, SJMC paid kickbacks to MidAtlantic Cardiovascular Associates (MACA) in exchange for the referral of “*lucrative cardiac procedures*.”<sup>2</sup> The kickbacks to MACA were allegedly made under the guise of professional service agreements.<sup>3</sup>

The parties entered into eleven contractual agreements “*which were designed in whole or in part as conduits to provide compensation to MACA to continue the stream of referrals*.”<sup>4</sup> For example, one contract paid MACA to read EKG’s at a rate that far exceeded SJMC’s contracts with comparable third-party practitioners.<sup>5</sup> According to the settlement, SJMC paid MACA under this agreement for services that had, “*absolutely no relationship to its EKG reading duties*.”<sup>6</sup> Additionally, the suit alleged that SJMC submitted false claims for medically unnecessary stent procedures performed by a former SJMC employee during a sixteen-month period beginning in January 2008.<sup>7</sup> Included in the settlement, SJMC agreed to sign a *Corporate Integrity Agreement* with the OIG.<sup>8</sup>

In another recent qui tam action, a federal judge in Pennsylvania issued a 69-page opinion in which the Court held that Bradford Regional Medical Center (BRMC) violated the Stark law by submitting claims to Medicare based on referrals from physicians with whom the hospital had a financial relationship that exceeded commercially reasonable compensation amounts.<sup>9</sup> The

primary issue in this action involved an agreement whereby BRMC subleased a nuclear imaging camera from V&S Medical Associates, LLC, a practice owned by two physicians who were once employed by BRMC. As part of the sublease, Dr. Peter Vaccaro and Dr. Kamran Saleh were paid nearly \$25,000 per month in what were essentially alleged “*non-compete*” agreements.<sup>10</sup>

The lawsuit asserted that the sublease was in fact a veiled attempt to compensate Drs. Vaccaro and Saleh for referrals to BRMC. The facts presented in the case indicated that BRMC entered into a sublease with V&S which stipulated that the nuclear camera in question would be relocated to BRMC, which never occurred. Additionally, BRMC admitted that they did not need the camera and planned to upgrade to a new, more technologically advanced camera for their facility shortly after entering into the lease.<sup>11</sup>

Judge Cohill stated in his ruling that the purpose of the sublease “*was not simply to acquire another piece of equipment*.” Further, BRMC’s CEO, George Leonhardt, stated (in response to a hypothetical question), that he would not have entered into the sublease agreement if he knew that BRMC would not have received any referrals from Drs. Vaccaro and Saleh.<sup>12</sup> However, a similar decision on both Anti-Kickback and False Claims Act violations was not reached on summary judgment. Instead, the Court deemed that the “*knowing*” requirement of these two statutes was not clearly satisfied given the facts presented and that a determination of whether BRMC committed Anti-Kickback and False Claims Act violations would go to a jury.<sup>13</sup>

<sup>1</sup> “St. Joseph Medical Center in Maryland to Pay U.S. \$22 Million to Resolve False Claims Act Allegations” U.S. Department of Justice, Office of Public Affairs, Press Release, November 9, 2010, <http://www.justice.gov/opa/pr/2010/November/10-civ-1271.html> (Accessed 11/19/10).

<sup>2</sup> “Settlement Agreement Between the U.S. and St. Joseph’s Medical Center” Section II.D.(1)(a) (November 9, 2010), p.2.

<sup>3</sup> “St. Joseph Medical Center in Maryland to Pay U.S. \$22 Million to Resolve False Claims Act Allegations” U.S. Department of Justice, Office of Public Affairs, Press Release, November 9, 2010, <http://www.justice.gov/opa/pr/2010/November/10-civ-1271.html> (Accessed 11/19/10).

<sup>4</sup> “Settlement Agreement Between the U.S. and St. Joseph’s Medical Center” Section II.D.(1)(a) (November 9, 2010), p.2 <http://mddailyrecord.com/wp-files/stjosephmedctrsettlementagreement.pdf>

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<sup>5</sup> “Settlement Agreement Between the U.S. and St. Joseph’s Medical Center” Section II.D.(1)(k) ( November 9, 2010), p.3.  
<sup>6</sup> “Settlement Agreement Between the U.S. and St. Joseph’s Medical Center” Section II.D.(1)(k) ( November 9, 2010), p.3.  
<sup>7</sup> “St. Joseph Medical Center in Maryland to Pay U.S. \$22 Million to Resolve False Claims Act Allegations” U.S. Department of Justice, Office of Public Affairs, Press Release, November 9, 2010, <http://www.justice.gov/opa/pr/2010/November/10-civ-1271.html> (Accessed 11/19/10).  
<sup>8</sup> “St. Joseph Medical Center in Maryland to Pay U.S. \$22 Million to Resolve False Claims Act Allegations” U.S. Department of Justice, Office of Public Affairs, Press Release, November 9, 2010, <http://www.justice.gov/opa/pr/2010/November/10-civ-1271.html> (Accessed 11/19/10).

<sup>9</sup> United States ex rel. Singh v. Bradford Regional Medical Center, W.D.Pa., No. 1:04-cv-00186-MBC (November 10, 2010).  
<sup>10</sup> United States ex rel. Singh v. Bradford Regional Medical Center, W.D.Pa., No. 1:04-cv-00186-MBC (November 10, 2010).  
<sup>11</sup> United States ex rel. Singh v. Bradford Regional Medical Center, W.D.Pa., No. 1:04-cv-00186-MBC (November 10, 2010), p. 13.  
<sup>12</sup> United States ex rel. Singh v. Bradford Regional Medical Center, W.D.Pa., No. 1:04-cv-00186-MBC (November 10, 2010), p.11.  
<sup>13</sup> “Court Holds Hospital, Physicians Aware Agreements Implicated Stark, Anti-Kickback” BNA Health Law Reporter, November 18, 2010, [http://news.bna.com/hlln/HLLNWB/split\\_display.adp?fedfid=18537724&vname=hlnotallissues&fn=18537724&jd=a0c5e0f2y4&split=0](http://news.bna.com/hlln/HLLNWB/split_display.adp?fedfid=18537724&vname=hlnotallissues&fn=18537724&jd=a0c5e0f2y4&split=0)(Accessed 11/19/10).



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