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MedStar Pays $35 Million to Settle Kickback Allegations

On March 21, 2019, Maryland's *MedStar Health, Inc.* and its two affiliate hospitals, *MedStar Union Memorial Hospital* and *MedStar Franklin Square Medical Center*, agreed to pay $35 million to the federal government to resolve allegations of *False Claims Act* (FCA) violations.[1] The government relators alleged that the hospitals made kickback payments, "*under the guise of professional services agreements*," for more than five years to a cardiology practice, *Midatlantic Cardiovascular Associates, P.A.* (MACVA), in exchange for MACVA referring Medicare patients to the hospitals for cardiac surgery and other cardiology services.[2]

The FCA imposes civil monetary penalties upon violators in an amount between $5,000 to $10,000 per claim, as well as treble damages if a person performs any of the following actions:

(1) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(3) Conspires to commit a violation of the FCA; or,

(4) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government.[3]

The FCA is a potent fraud and abuse enforcement tool, as it allows private individuals, also known as *qui tam* relators or *whistleblowers*, to bring suits on behalf of the government. The MedStar settlement resolves two *qui tam* lawsuits, originating in 2010 and 2012, as well as federal allegations of financial misconduct.[4]

The 2010 lawsuit was brought in the District of Maryland by three physician shareholders of *Cardiac Surgery Associates* (CSA), competitors of MACVA.[5] MACVA was originally solely comprised of cardiologists, who do not perform surgery; through consolidation, MACVA became the largest cardiology practice in Maryland, making over 2,100 referrals per year to independent cardiac surgeons (such as CSA).[6] In efforts to allegedly assert their recently-acquired, significant leverage, and to capitalize on the capture of cardiac surgical revenue, MACVA allegedly sought to merge with CSA, structuring the deal such that MACVA would receive from CSA a one-time kickback payment for their referrals to CSA via an $800,000 assessment under the guise of covering "*overhead costs*," which money would, in reality, be distributed to MACVA cardiologists.[7]

In a subsequent attempt at merger discussions (after the first round of merger talks failed), MACVA then allegedly proposed that, post-merger, each CSA senior surgeon would be subject to an annual $500,000 reduction in earnings, in the form of an "*overhead assessment*," which amounts would be redistributed to MACVA cardiologists.[8] In both sets of merger discussions, MACVA allegedly threatened that if CSA did not agree to merge (and to their payment demands), MACVA would "*put CSA out of business*."[9] After the cessation of the MACVA/CSA merger negotiations, MACVA hired their own cardiac surgeons, and shortly thereafter, followed through on their claim of discontinuing all referrals to CSA.[10] Subsequently, CSA experienced a nearly 100% decline in referrals from MACVA, all of which referrals were, instead, allegedly going to the newly-hired MACVA surgeons or hospitals with which MACVA had relationships.[11] MACVA allegedly also asserted their leverage on the hospitals similar to CSA – for example, MACVA allegedly "*forced*" Saint Joseph's Hospital to (among other things) pay CTVS kickbacks for referrals, under the guise of "*managed care guidance*" and "*outcomes data research*" fees paid to CTVS for helping St. Joseph's streamline their operations and thus maximize reimbursement from managed care organizations, as well as conduct research regarding outcomes emanating from hospital-wide inpatient therapies and treatments (i.e., not just cardiology).[12] As a result, in 2010, CSA filed a lawsuit against MACVA and the associated community hospitals in the Baltimore metropolitan region where the MACVA physicians practiced.[13]

Of note, this MedStar settlement also resolves a 2012 lawsuit, alleging the performance of unnecessary cardiac stent procedures by John Wang, M.D. (who was employed by MACVA and, later, MedStar), and the subsequent false claims submitted to Medicare for those procedures.[14]

While MedStar denies any wrongdoing in both cases, the entity determined that it was in their best interest to settle with the government in order to avoid further litigation.[15]

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MedStar has emphasized that "*the two cases have been settled without any findings of liability*," and that "*MedStar has full confidence in our quality assurance and compliance programs, and we remain fully focused on advancing our patient care mission*."[16]

As mentioned in the January 2019 Health Capital Topics article entitled, "*DOJ Recovers Over $2.8 Billion in False Claims Act Cases in 2018*," there has been a significant number of FCA suits brought by whistleblowers, as well as by the *Department of Justice* (DOJ), over the past five years.[17] Despite the Trump Administration's actions to deregulate the healthcare industry during the last two years, the number of new cases enforcing healthcare fraud and abuse laws suggest that FCA enforcement will remain high going forward.

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1 "MedStar Health to Pay U.S. $35 Million to Resolve Allegations that it Paid Kickbacks to a Cardiology Group in Exchange for Referrals" The United States Department of Justice, March 21, 2019, https://www.justice.gov/opa/pr/medstar-health-pay-us-35-million-resolve-allegations-it-paid-kickbacks-cardiology-group (Accessed 3/22/19).
2 *Ibid.*
3 "False claims" 31 U.S.C. § 3729(a)(1) (2013).
4 Note that, the second lawsuit referenced in the Department of Justice (DOJ) press release was a result of the first case being severed into two separate lawsuits (based upon the alleged claims).DOJ, March 21, 2019.
5 "United States of America, et al. v. Midatlantic Cardiovascular Associates, P.A., et al." Case No. 1:10-cv-01632-CCB (October 28, 2010), First Amended Complaint and Jury Demand By Plaintiff-Relator Peter Horneffer, M.D., p. 1, 11-12.
6 *Ibid*, p. 12.
7 *Ibid*, p. 16.
8 *Ibid*, p. 17.
9 *Ibid*, p. 16-18.
10 *Ibid*, p. 18.
11 *Ibid*
12 *Ibid*, p. 19-20.
13 *Ibid*
14 DOJ, March 21, 2019.
15 "MedStar Health to pay $35 million to settle allegations of a kickback scheme" By Meredith Cohn, The Baltimore Sun, March 21, 2019, https://www.baltimoresun.com/health/bs-hs-medstar-settlement-20190321-story.html (Accessed 3/22/19).
16 *Ibid.*
17 "DOJ Recovers Over $2.8 Billion in False Claims Act Cases in 2018" Health Capital Topics, Vol. 12, Issue 1 (January 2019), available at: https://www.healthcapital.com/hcc/newsletter/01_19/HTML/DOJ/convert_hc_topics_doj_2018_settlements_1.23.19.php

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