

Piedmont Pays \$16 Million to Settle Kickback and Overbilling Allegations

On June 25, 2020 Atlanta's *Piedmont Healthcare, Inc.* agreed to pay \$16 million to the federal government to resolve two *False Claims Act* (FCA) allegations of kickbacks and overbilling.¹ The relator, a former Piedmont physician, alleged *Stark Law* and *Anti-Kickback Statute* (and subsequent FCA) violations of paying an amount that was above *fair market value* (FMV) and commercially unreasonable in Piedmont's 2007 acquisition of *Atlanta Cardiology Group* (ACG).² Additionally, Piedmont's payments settle allegations that the hospital admitted patients without medical necessity in order to bill Medicare and Medicaid for inpatient procedures that were recommended to be performed at the less expensive outpatient or observation settings.³

The FCA imposes civil monetary penalties in an amount between \$5,000 to \$10,000 per claim, as well as treble damages, upon any individual who knowingly submits a false or fraudulent claim to, or uses false records to induce payment from, the U.S. government.⁴ 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.⁵

A violation of the FCA can be triggered by violations of the Stark Law and/or Anti-Kickback Statute.⁶ The Stark Law governs those physicians (or their immediate family members) who have a financial relationship (i.e., an ownership interest, investment interest, or compensation arrangement) with an entity, and prohibits those individuals from making Medicare referrals to those entities for the provision of *designated health services* (DHS), unless the referral is protected by one or more of the numerous exceptions delineated by the statute.⁷ Notable to the allegations against Piedmont, *group practice arrangements with a hospital* is one of the financial relationships protected by the Stark Law exceptions.⁸ However, this exception requires that compensation for such an arrangement: (1) be consistent with FMV; (2) be *commercially reasonable*; and, (3) not *take into account the value or volume of any referrals* provided by the group-practice physicians.⁹

The lawsuit alleges that Piedmont paid an above-FMV and commercially unreasonable amount for the acquisition of ACG and an affiliated, ACG-physician-owned, cardiac cath lab, *CSA of Atlanta*.¹⁰ At the time of acquisition, ACG was the largest cardiologist group in Georgia and was affiliated with Atlanta's *Saint Joseph's*

Hospital.¹¹ Upon acquisition, ACG severed ties with Saint Joseph's and 32 of ACG's 34 physicians became employed by Piedmont.¹² Per the terms of the acquisition, Piedmont paid over \$15 million for the acquisition of ACG and its affiliated cath lab and agreed to compensate each of the employed physicians a salary of \$750,000 per year (plus productivity bonuses) for five years.¹³

To support their claims of Stark Law violations, the relator alleged that the over \$15 million paid for the acquisition of ACG was an inflated and excessive amount.¹⁴ Similarly, the complaint alleges that the agreed-upon salary for the ACG physicians was above FMV, as evidenced by compensation packages that were: (1) greater than the total dollar value of service performed; (2) hundreds of thousands of dollars greater than those received by similarly-skilled physicians employed in the months following the ACG acquisition; and (3) not reflective of their productivity when compared to high-performing physicians in their practices.¹⁵ The complaint claims that the payments (comprised of salary and productivity bonuses) made to ACG cardiologists, interventional cardiologists, vascular surgeons, cardiac surgeons, and thoracic surgeons, in nearly all cases, exceeded the dollar value of the performed physician services before or after acquisition.¹⁶ Additionally, in approximately nine months following the ACG acquisition, Piedmont acquired cardiology groups *Cardiology of Georgia* and *Cardiac Disease Specialists*.¹⁷ The complaint alleges that 35 of the 37 physicians employed as a result of the additional group acquisitions were paid salaries "hundreds of thousands of dollars less than the ACG physicians for comparable skills and services" as a result of the inflated ACG-physician compensation agreements.¹⁸ The relator asserts that the ACG physicians' compensation packages were not a result of higher levels of productivity, claiming that many of the highly compensated physicians' *relative value units* (RVUs) were repeatedly 40% to 60% less than their high-performing colleagues.¹⁹

Piedmont allegedly structured the terms of the ACG acquisition so that in exchange for above-FMV compensation, ACG physicians would be incentivized to refer patients for medically unnecessary, inpatient, interventional diagnostic and therapeutic cardiac and vascular procedures at Piedmont Hospital and Piedmont's cath lab, violating the Anti-Kickback

Statute.²⁰ The payment of these kickbacks is related to the second FCA allegation resolved by Piedmont's settlement, i.e., that Piedmont billed Medicare and Medicaid for medically unnecessary hospital admissions so that procedures could be reimbursed at the more expensive, inpatient level of care.²¹ The complaint asserts that Piedmont placed pressure on above-FMV-compensated ACG physicians to refer patients to receive inpatient cardiac procedures at Piedmont, even when the procedures could be performed in an outpatient setting, resulting in Medicare reimbursement to Piedmont that was 300% to 400% higher.²²

While Piedmont denies any wrongdoing, the entity determined that it was in their best interest to settle with the government in order to avoid further litigation.²³ Piedmont, in a statement to the press, emphasized that the

*“decision to settle is not an admission of liability” and that “in all cases, [Piedmont] doctors and nurses made their decisions based on the best interest and health of their patients—just like they always have and always will.”*²⁴

As mentioned in the March 2020 *Health Capital Topics* article entitled, “*DOJ Recovers Over \$3 Billion in False Claims Act Cases*,” there has been a significant number of FCA suits brought by whistleblowers, as well as by the Department of Justice (DOJ), in recent years.²⁵ Despite the Trump Administration's actions to deregulate the healthcare industry during the last three years, the number of new healthcare fraud and abuse enforcement actions suggest that regulatory scrutiny of healthcare transactions will remain high going forward.

1 “Atlanta Hospital System to Pay \$16 million to Resolve False Claims Allegations” The United States Department of Justice, June 25, 2020, <https://www.justice.gov/usao-ndga/pr/atlanta-hospital-system-pay-16-million-resolve-false-claims-allegations> (Accessed 7/6/20).

2 “United States and Georgia ex rel. Doe v. Piedmont Healthcare, Inc. et al.” Case No: 1:16-cv-00780-ELR (N.D. Ga., March 10, 2016), p. 59.

3 “Atlanta Hospital System to Pay \$16 million to Resolve False Claims Allegations” The United States Department of Justice, June 25, 2020, <https://www.justice.gov/usao-ndga/pr/atlanta-hospital-system-pay-16-million-resolve-false-claims-allegations> (Accessed 7/6/20).

4 “False claims” 31 U.S.C. § 3729(a)(1) (2013).

5 *Ibid.*

6 *Ibid.*

7 “Prohibition on certain referrals by physicians and limitations on billing” 42 CFR § 411.353

8 “Exceptions to the referral prohibition related to compensation arrangements” 42 CFR § 411.357

9 *Ibid.*

10 Case No: 1:16-cv-00780-ELR (N.D. Ga., March 10, 2016), p. 59.

11 *Ibid.*, p. 59-60.

12 “Atlanta Cardiology Group leaves St Joseph's for Piedmont Heart Institute” By Shelley Wood, Medscape, November 16,

2007, <https://www.medscape.com/viewarticle/789749> (Accessed 7/6/20).

13 Case No: 1:16-cv-00780-ELR (N.D. Ga., March 10, 2016), p. 60.

14 *Ibid.*

15 *Ibid.*, p. 60-61.

16 *Ibid.*, p. 4-5, 60-61.

17 *Ibid.*, p. 4-5, 60.

18 *Ibid.*, p. 60-61.

19 *Ibid.*, p. 61-62.

20 *Ibid.*, p. 5, 62

21 *Ibid.*, p. 3-5, 59.

22 *Ibid.*, p. 61; “Piedmont Healthcare to pay \$16 million to settle false-claims, kickback allegations” By Alex Kacik, June 29, 2020, <https://www.modernhealthcare.com/legal/piedmont-healthcare-pay-16-million-settle-false-claims-kickback-allegations> (Accessed 7/6/20).

23 Kacik, June 29, 2020.

24 *Ibid.*

25 “DOJ Recovers Over \$3 Billion in False Claims Act Cases” *Health Capital Topics*, Vol. 13, Issue 3 (March 2020), available at: https://www.healthcapital.com/hcc/newsletter/03_20/HTML/DOJ/convert_hc_topics_doj_2019_settlements.php



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Todd A. Zigrang, MBA, MHA, CVA, ASA, FACHE, is the President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 25 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 2,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigrang is the co-author of "[The Adviser's Guide to Healthcare – 2nd Edition](#)" [2015 – AICPA], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Accountant's Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies*; *Business Appraisal Practice*; and, *NACVA QuickRead*. In addition to his contributions as an author, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); American Health Lawyers Associate (AHLA); the American Bar Association (ABA); the National Association of Certified Valuators and Analysts (NACVA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Mr. Zigrang holds a Master of Science in Health Administration (MHA) and a Master of Business Administration (MBA) from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives (FACHE) and holds the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter, and is current Chair of the ASA Healthcare Special Interest Group (HSIG).



Jessica L. Bailey-Wheaton, Esq., is Senior Vice President and General Counsel of HCC, where she conducts project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions, and provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services.

She serves on the editorial boards of NACVA's The Value Examiner and of the American Health Lawyers Association's (AHLA's) Journal of Health & Life Sciences Law. Additionally, she is the current Chair of the American Bar Association's (ABA) Young Lawyers Division (YLD) Health Law Committee and the YLD Liaison for the ABA Health Law Section's Membership Committee. She has previously presented before the ABA, NACVA, and the National Society of Certified Healthcare Business Consultants (NSCHBC).

Ms. Bailey-Wheaton is a member of the Missouri and Illinois Bars and holds a J.D., with a concentration in Health Law, from Saint Louis University School of Law, where she served as Fall Managing Editor for the Journal of Health Law & Policy.



Daniel J. Chen, MSF, CVA, focuses on developing Fair Market Value and Commercial Reasonableness opinions related to healthcare enterprises, assets, and services. In addition he prepares, reviews and analyzes forecasted and pro forma financial statements to determine the most probable future net economic benefit related to healthcare enterprises, assets, and services and applies utilization demand and reimbursement trends to project professional medical revenue streams and ancillary services and technical component (ASTC) revenue streams. Mr. Chen holds the Certified Valuation Analyst (CVA) designation from NACVA.