

No Private Right of Action Under Anti-Kickback Statute

There is no private right of action provided by the federal Anti-Kickback Statute according to a June 30, 2010 ruling by a Texas District Court in the matter of *Gaella, et al. v. Citizens Medical Center*.¹

This action by the plaintiffs, three licensed cardiologists with privileges at Citizens Medical Center (CMC), was prompted by the receipt of a letter from CMC to the physicians on February 17, 2010, which denied these physicians clinical privileges at CMC in response to a CMC board resolution that would no longer allow cardiologists that did not participate in CMC's on-call emergency room coverage program to practice as a part of the CMC cardiology department.² The plaintiffs brought a private cause of action under the Anti-Kickback Statute asserting that they were denied privileges at CMC because they refused to refer their surgical patients to a cardiothoracic surgeon at CMC as a part of the on-call emergency room coverage program.³ The plaintiffs alleged that CMC's grievance was that the cardiologists were making decisions that were not in the best economic interest of CMS.⁴ In response, CMC moved to dismiss the claim under a theory that the Anti-Kickback Statute does not provide for a private right of action.⁵

The Federal Anti-Kickback Statute⁶ imposes criminal penalties on individuals and entities that knowingly and willfully solicit or receive remuneration "in return for referring an individual to a person for the furnishing or arranging for the furnishing of an item or service" or "in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part under a federal healthcare program."⁷ The types of remuneration prohibited by the Anti-Kickback Statute include, but are not limited to kickback, bribes, and rebates. Additionally, the Anti-Kickback Statute expressly prohibits both "direct" and "indirect" remuneration.⁸

In addition to potential monetary penalties and imprisonment, violators of the Anti-Kickback Statute are subject to exclusion from federal healthcare programs i.e., Medicare and Medicaid.⁹ The Balanced Budget Act of 1997 also grants the Secretary of HHS new authority to impose civil monetary penalties for each violation of the Anti-Kickback Statute of: (a) up to \$50,000; and (b) three times the amount of the remuneration in question.¹⁰

The *Galla* court ruled in favor of CMC in dismissing the plaintiffs' suit, stating that "although the Fifth Circuit has not definitively ruled on the issue, courts within this Circuit have rejected private rights of action under the Anti-Kickback Statute."¹¹ Other cases provided precedent for the decision, e.g., *RGB Eye Associates, PA. V Physicians Resource Group*, which noted that the Anti-Kickback Statute imposes criminal penalties for the commission of certain acts and that there is no statutory authority which creates a private right of action.¹²

¹ "Court Dismisses Declaratory Judgment Suit Alleging Violations of Anti-Kickback Law", BNA Health Law Reporter Vol 19, No 29, July 22, 2010.

² "Gaella et al. v Citizens Medical Center", United States District Court, Southern District of Texas pg. 2

³ "Cardiologists sue Citizens, Claiming Racketeering, Conspiracy" J. R. Ortega, Victoria Advocate, March 13, 2010.

⁴ "Court Dismisses Declaratory Judgment Suit Alleging Violations of Anti-Kickback Law", BNA Health Law Reporter Vol 19, No 29, July 22, 2010.

⁵ "Court Dismisses Declaratory Judgment Suit Alleging Violations of Anti-Kickback Law", BNA Health Law Reporter Vol 19, No 29, July 22, 2010.

⁶ 42 U.S.C. 1320a-7b

⁷ "Anti-Kickback and Patient Referral", EmCare Compliance Program, February 2004, p. 1

⁸ "Anti-Kickback and Patient Referral", EmCare Compliance Program, February 2004, p. 2

⁹ "Anti-Kickback and Patient Referral", EmCare Compliance Program, February 2004, p. 2

¹⁰ "Anti-Kickback and Patient Referral", EmCare Compliance Program, February 2004, p. 2

¹¹ "Gaella et al. v Citizens Medical Center", United States District Court, Southern District of Texas pg. 6

¹² "Gaella et al. v Citizens Medical Center", United States District Court, Southern District of Texas pg. 6



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