

Wheeling Hospital settles \$50M False Claims case with OIG

Enters long-term agreement with WVU

September was a big month for Wheeling Hospital. On Sept. 9, 2020, the U.S. Department of Justice announced the settlement of its False Claims Act/whistleblower case against Wheeling Hospital for \$50 million. Contemporaneously, Wheeling Hospital and WVU Health System moved on from what was previously just a management agreement to a 50-year lease, through which Wheeling will become “a full member of the West Virginia University Healthy System.”

The settlement arose out of a False Claims Act/whistleblower case filed by Lou Longo, a former CFO of Wheeling Hospital, against the hospital and its management company, R&V Associates, Ltd. The investigation became public in 2018, when Western District Pennsylvania Office of the U.S. Attorney General intervened in the whistleblower action, and began issuing Civil Investigative Demands (CIDs) and interviewing many physicians with employment contracts at Wheeling Hospital. The essence of the government’s case alleged that claims by Wheeling Hospital for reimbursement from federal healthcare programs were false claims prohibited by the False Claims Act, because the contractual relationships with the physicians violated either the Federal Anti-Kick-



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back Statute or the Stark Act. Claims arising out of prohibited contracts are the basis for establishing violations of the False Claims Act, civil penalties for which can be treble damages with respect to the claims actually billed and penalties of approximately \$10,000 per claim for each claim filed by the hospital. The proposed damages would be enormous, with potentially tens of thousands of claims over a long period.

Physicians must be extremely cautious when approached by government agencies in investigations such as this.

In the Wheeling Hospital matter, the “approach by the government” was in the form of a CID. CIDs require the recipients to be deposed by the government concerning the scope of its investigation. The approach from the government also can come in the form of a grand jury subpoena, a target letter, or an informal request for

an interview by law enforcement. Of course, a more formal approach such as the execution of a search warrant or the filing of a criminal complaint, which would thereby effectuate an arrest, also could be the most extreme effort undertaken by the government to contact the physician.

In all of these instances, it is imperative for the physician, through counsel, to determine whether there is a criminal and civil investigation being conducted simultaneously. To the extent that there is a criminal investigation, it is important to determine whether the physician is a target, a subject, or a mere witness to the investigation being conducted by the government. A target or subject of the investigation has potential criminal exposure as determined by the government. A mere witness would have no such exposure.

Ordinarily, a call to the U.S. Attorney’s Office, on behalf of the physician, can usually determine the answer to that question.

Once the status of the physician’s role in the government’s investigation is determined, steps can then be taken to ascertain the course of conduct the physician wishes to undertake. In other words, if the physician is a mere witness, and assurances can be reached with the government that he or she

shall remain a mere witness, it may be possible to provide an interview to the government in return for that assurance. To the extent that the physician may have some criminal exposure, negotiations can be undertaken to provide a grant of immunity following an interview with the government.

In each of these instances, counsel would conduct an independent investigation and examination of the records available to the physician to assist in devising a strategy for response to the government's request for interview, grand jury subpoena, or CID. From a tactical standpoint, physicians should be aware that from the earliest onset of an investigation, it is in the physician's best interest to have independent counsel to advise and coordinate any communication or contact with the government. Ideally, counsel working together in handling the civil component and criminal component is best suited to handle all potential ramifications that could ensue when there is a collateral investigation. It

also gives counsel and the physician an opportunity to discuss potential global resolutions with the government when there are collateral investigations. In many jurisdictions, the request must come from the physician, through counsel, for the government to entertain such global discussions.

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