Healthcare Fraud: A Hospital Rolls The Dice And Loses

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A US District judge in South Carolina has ordered [1] Tuomey Healthcare System (THS) to pay $238 million for violations of the Stark Law and False Claims Act (FCA). The judge originally ordered Tuomey to pay $277 million, but one of the government attorneys pointed out the judge had awarded $39 million more than the government had asked for, and the penalties were immediately reduced [2].

This case began in 2005 when Dr. Michael Drakeford filed a lawsuit against THS [3]. Dr. Drakeford (and later the federal government) alleged THS violated the Stark Law and the FCA by entering into prohibited contractual relationships with 19 physicians that *required* the physicians to perform all their outpatient surgeries at THS' outpatient surgery center (OSC).

In addition [1]:

> Tuomey agreed to pay each physician an annual base salary that fluctuated based on Tuomey's net cash collections for the outpatient procedures. Tuomey further agreed to pay each physician a "productivity bonus" equal to 80 percent of the net collections. Moreover, each physician was eligible for an incentive bonus that could total up to 7 percent of the productivity bonus. Each contract had a ten year term and provided that the physicians would not compete with Tuomey during the term of the contract and for two years thereafter.

Because THS performed the billing for the services provided at the OSC, the government alleged the claims THS submitted to Medicare and Medicaid as a result of the prohibited contractual relationships amounted to false claims. The government also alleged THS made false statements in its certificates of cost reports.

As I said in a previous post [3], THS denied any wrongdoing and, among other things, stated it consulted with outside law firms who advised THS its physician agreements were legal.

The case then went to trial.

In March 2010, a jury found THS guilty of violating the Stark Law, but not the FCA. Then the judge in the case did something highly unusual — he threw the jury verdict out [3] and ordered THS to pay $45 million for the Stark Law violations.

THS appealed the judge's decision to the Fourth Circuit Court of Appeals, and in March 2012, the Fourth Circuit threw out the $45 million penalty and ordered a new trial. That new trial began in April 2013.

After a month-long trial and less than five hours of deliberations, the new jury found THS guilty [4] of violating both the Stark Law and the FCA. At that point, THS was potentially on the hook for up to $357 million in penalties.

A flurry of motions from both THS and the government followed, and are the basis for the most recent ruling in which the judge denied all of THS' motions and levied the $238 million penalty.

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