

PENDING REAL ESTATE-RELATED FCA CASES TO WATCH

Over the years, there have been a number of federal cases involving allegations that health care providers used improper real estate arrangements to induce referrals. Recently, two real estate-related cases have made headlines. Hospitals should pay careful consideration to the following two cases.

SERIAL WHISTLEBLOWER SEEKS TO OVERTURN RULING INVOLVING ALLEGED CASH-FLOW SUBSIDIES UNDER GROUND LEASE

On February 1, 2019, the Eleventh Circuit Court of Appeals heard arguments in a False Claims Act case involving a real estate appraiser-turned-whistleblower claiming that a for-profit hospital operator violated both the Anti-Kickback Statute and the Stark Law in connection with medical office building transactions designed to benefit physicians. According to the pleadings, the hospital system partnered with a real estate development firm to construct medical office buildings in Florida and Missouri on land near its hospitals. The transactions involved the hospital system entering into long-term ground leases with a developer who would plan, design and construct the buildings.

The appraiser argued that the ground leases were structured in a way to benefit the owners and occupants of the buildings. In particular, that the hospital provided the medical office buildings with parking easements for no consideration and agreed to subsidize certain parking lot maintenance expenses. For one of the medical office buildings, the appraiser argued the hospital system knowingly rented space in the building with no intent of using the space. The purpose of the leasing arrangement, according to the appraiser, was to increase cash flows to the developer and its physician owners. According to the allegations made by the appraiser, the hospital system's leasing arrangement allowed the developer to keep those portions of the building open until it could find physician tenants for the space.

The district court granted the hospital's motion for summary judgment; however, the appraiser appealed that decision to the Eleventh Circuit under cause number 16-17059-JJ. A decision is expected within the coming months. Interestingly, the appraiser involved in the case is the same appraiser that brought *qui tam* actions against other hospitals alleging improper real estate arrangements. More information about those cases can be found [here](#).

PHYSICIANS TARGETED ILLEGAL KICKBACKS INVOLVING A REAL ESTATE ARRANGEMENT

In another case out of the U.S. District Court for the Northern District of Texas, the federal government is alleging that a group of physicians received \$40 million worth of "bribes and kickbacks" between 2009 and 2013. These physicians allegedly coordinated with hospital officials to refer patients with either private insurance or workers' compensation claims to a particular hospital for surgery that would be paid out of network. In return, one defendant was paid by a real estate firm as a consultant.

One of the defendants charged with receiving kickbacks was originally considered for a position with the hospital. The physician turned down the offer when an attorney advised the defendant that the hospital was offering compensation in excess of fair market value for the Dallas market. However, the defendant thereafter accepted a consulting position with the hospital's realty company. The consulting arrangement, according to the indictment, was a sham arrangement where the hospital would pay the physician each month in exchange for referrals.

This case remains pending in the Northern District of Texas under cause number 3:16-cr-00516.

If you have any questions or would like additional information about these cases, please contact:

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