

Report on Medicare Compliance Volume 28, Number 8. March 04, 2019 DOJ Drops Criminal Investigation in POD Case, Pursues FCA Lawsuit

By Nina Youngstrom

The Department of Justice (DOJ) has decided not to prosecute Reliance Medical Systems, two of its physician-owned distributorships (PODs) and the companies' owners, but apparently DOJ will now resume its five-year-old False Claims Act (FCA) lawsuit against them.

In mid-February, "we were told by the DOJ criminal division that they were declining criminal prosecution," says Los Angeles attorney Pat Hooper, who represents Reliance, a spinal implant company. At the same time, DOJ's civil division filed a request Feb. 11 with the U.S. District Court for the Central District of California for 28 more days to amend its FCA lawsuit and add a physician. DOJ also asked the court to drop another physician, Aria Sabit, the Michigan neurosurgeon serving 20 years in prison in connection with medically unnecessary spinal fusion surgeries, from the FCA lawsuit.

The 2014 FCA lawsuit alleges a kickback scheme embroiling Reliance Medical Systems, the PODs — Apex Medical Technologies and Kronos Spinal Technologies — and the companies' owners, Bret Berry, John Hoffman and Adam Pike. The complaint alleges that Apex Medical Technologies and Kronos Spinal Technologies paid physicians to induce them to use Reliance spinal implants in their surgeries. The payments that Reliance made through Apex and Kronos "caused physician investors to perform surgeries using Reliance implants that were not medically necessary and/or were more extensive than was necessary," the complaint alleged.

Reliance plans to fight the false claims allegations at trial. "We absolutely plan to take this to trial," says Hooper, with Hooper, Lundy & Bookman. "Lots of people say this, but this case will not settle."

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