

Report on Medicare Compliance Volume 28, Number 39. November 04, 2019 Sanford Health Settles FCA Case for \$20M Over Spine Surgery; CCO Allegedly Was Warned

By Nina Youngstrom

For years, several surgeons at Sanford Clinic in Sioux Falls, South Dakota, complained to the chief compliance officer and other leaders at Sanford Health that employed neurosurgeon Wilson Asfora, M.D., was performing medically unnecessary spinal surgery using devices from his physician-owned distributorship (POD), according to allegations in a False Claims Act complaint. But Sanford Health allegedly brushed aside the concerns, and Asfora continued to implant his POD devices into patients, with the hospital billing Medicare for the procedures—even though Sanford Health in 2013 paid \$625,000 to settle false claims allegations that Asfora “was engaged in a kickback scheme to pay other surgeons” for using one of his POD devices.

Now Sanford Health, Sanford Medical Center, and Sanford Clinic are swallowing more bitter medicine. They have agreed to pay \$20.25 million to settle false claims allegations in connection with Asfora’s surgeries and his POD devices, the Department of Justice said Oct. 29.^[1] Two of the physicians who claim they ran into a brick wall became whistleblowers and filed the false claims case that led to this settlement.

“Given the responses to their complaints, culture of tolerance and encouragement of the fraud, and the abject refusal to stop the fraudulent practices and patient harm, relators saw no other option but to report the fraud to the government as a last resort,” according to the complaint.

Sanford Health denies wrongdoing and liability and “has taken steps to prohibit all Sanford physicians from profiting from their choice of medical devices to use in procedures at Sanford Medical Center,” according to a statement from Chief Operating Officer Matt Hocks. Asfora was terminated from Sanford in September and couldn’t be reached for comment. The two whistleblowers still work there.

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