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After Settlement, Court OKs Some Whistleblower Allegations That DOJ Declined in Sutter Case

By Nina Youngstrom

Sixteen months after Sutter Health settled a false claims case with the Department of Justice (DOJ) over some of the allegations in a 2014 whistleblower complaint about physician arrangements, other allegations that DOJ declined to pursue are back in play. A federal court March 17 gave the whistleblower, a former compliance officer at Sutter Medical Center in Sacramento, the go-ahead to proceed with certain allegations of reverse false claims and overly generous compensation arrangements, while dismissing other allegations.^[1]

“The vast majority of the case is still alive,” said Marlan Wilbanks, the attorney for whistleblower Laurie Hanvey. He thinks it will go straight to trial. The court hasn’t concluded Sutter Health did anything wrong; it just gave the whistleblower a chance to try and prove the allegations, said attorney Jeffrey Fitzgerald, with Polsinelli in Denver, Colorado, who isn’t involved in the case. “The fact the court dismissed a fair number of claims suggests the whistleblower allegations are overbroad.”

The False Claims Act (FCA) lawsuit alleges that certain physician groups referred patients to Sutter Health in violation of the Stark Law, and in turn, Sutter Health submitted tainted claims to Medicare. None of the physician groups named in the remaining set of allegations were part of the November 2019 settlement with DOJ.^[2] Sutter Health agreed to pay \$30.5 million to resolve allegations that Sutter Medical Center paid Sacramento Cardiovascular Surgeons Medical Group (Sac Cardio) compensation for three medical director agreements and one lease for the services of physician assistants (PAs) employed by Sac Cardio that was above fair market value and didn’t satisfy a Stark Law exception, DOJ alleged. The Sac Cardio physicians referred designated health services to Sutter Medical Center Sacramento, which billed Medicare for them from Sept. 1, 2012, through Sept. 30, 2014, DOJ alleged.

In a separate settlement with DOJ, Sac Cardio agreed to pay \$506,000 to resolve allegations related to its Medicare billing for services provided at Sutter Medical Center by the leased physician assistants from May 1, 2011, through Sept. 30, 2014. According to an exhibit to the 2014 complaint, Sac Cardio leased four of its employed physician assistants (PAs) to the hospital, according to an exhibit to the complaint. The PA agreement required Sutter Health to pay Sac Cardio at the rate of \$170,000 per full-time equivalent per year and stipulated that their services couldn’t be charged to patients or payers. But the surgeons allegedly billed third-party payers for some of the PAs’ services anyway and kept the money.

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