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DOJ Intervenes in FCA Case Against UPMC on Concurrent Surgeries

By Nina Youngstrom

In a new False Claims Act (FCA) complaint, the Department of Justice alleged that University of Pittsburgh Medical Center (UPMC), University of Pittsburgh Physicians (UPP) and the chairman of the cardiothoracic surgery department have cheated Medicare and other federal health care programs in connection with overlapping surgeries.^[1] James Luketich, M.D., allegedly performed up to three surgeries at the same time without always doing the “key and critical” portion while some patients remained under anesthesia for hours, DOJ said in its complaint. In some instances, patients allegedly were harmed, with one patient losing a lower leg.

Luketich, one of UPMC’s highest-paid employees, allegedly continued to bill concurrent surgeries even after receiving a memo from the UPMC compliance department about teaching physician documentation and billing rules for procedures, according to the complaint in partial intervention, which was filed by the U.S. Attorney’s Office for the Western District of Pennsylvania Sept. 2.^[2] The case was set in motion by a whistleblower, Jonathan D’Cunha, M.D., Ph.D., who is now the chair of cardiothoracic surgery at the Mayo Clinic in Phoenix, Arizona. D’Cunha was a UPMC employee from 2012 to 2019 and contracted with UPP to provide physician services at UPMC facilities.

“UPMC has persistently ignored or minimized complaints by employees and staff regarding Luketich, his hyper-busy schedule, his refusal to delegate surgeries and surgical tasks to other attending physicians or abide by the applicable statutes, regulations, policies, and standard of care,” the complaint alleged.

UPMC: DOJ Misapplied CMS Guidance

Allegations of noncompliance involving people in leadership positions “present a greater risk to the organization,” said attorney Jeff Fitzgerald, with Polsinelli in Denver, Colorado. “When allegations are made against leaders, it’s harder inherently to address them.”

In a statement, UPMC said “Dr. James Luketich is a uniquely skilled and world-renowned cardiothoracic surgeon. As the government itself concedes in its Complaint: ‘Many of [Dr.] Luketich’s surgical patients are elderly, frail, and/or very ill. They include the ‘hopeless’ patients...who suffer from chronic illness or metastatic cancer, and/or have extensive surgical histories, and choose UPMC and [Dr.] Luketich when other physicians and healthcare providers have turned them down.’” UPMC explained that “when treating these patients, Dr. Luketich leads teams of highly skilled surgeons and other clinicians through complex procedures that frequently last more than 12 hours.”

UPMC also contends that “as the government also concedes, Dr. Luketich always performs the most critical portions of every operation he undertakes. No law or regulation prohibits overlapping surgeries or billing for those surgeries, let alone surgeries conducted by teams of surgeons like those led by Dr. Luketich. The government’s claims are, rather, based on a misapplication or misinterpretation of UPMC’s internal policies and CMS guidance, neither of which can support a claim for fraudulent billing. UPMC and Dr. Luketich plan to vigorously defend against the government’s claims.”

There have been several false claims settlements in recent years about overlapping surgeries. For example, Lenox Hill Hospital in 2019 agreed to pay \$12.3 million in connection with allegations that urologist David Samadi performed “critical or key portions” or the “entire viewing” of two procedures at the same time, one with a surgical robot.^[3] Samadi’s employment and privileges at Lenox Hill ended in June 2019.

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