

Report on Medicare Compliance Volume 31, Number 17. May 09, 2022 OIG OKs POD in New Advisory Opinion; Reliance Settles on Second Day of Trial for \$1M

By Nina Youngstrom

A week before the Department of Justice (DOJ) told jurors at a trial that a physician-owned distributorship (POD) violated the False Claims Act (FCA), the HHS Office of Inspector General (OIG) green-lit a different POD in an advisory opinion.^[1]

The False Claims Act lawsuit alleged a kickback scheme embroiling Reliance Medical Systems, two of its PODS—Apex Medical Technologies and Kronos Spinal Technologies—and two of the companies' owners, Bret Berry and Adam Pike. Reliance sold devices used in spinal fusion surgeries through Apex and Kronos. "Spinal fusion surgeries of the physicians that invested in and/or were employed by Apex and Kronos were tainted by kickbacks," the complaint alleged.^[2] The payments that defendants made to physicians allegedly caused them to do more procedures with Reliance implants that weren't medically necessary. They denied the allegations.

Although the trial began May 4 in a federal courtroom in the central district of California, on the second day, Reliance and DOJ reached a settlement, said attorney Patric Hooper, who represents Reliance. He said Reliance agreed to pay \$1 million.

"As part of the deal, we obtained a release of all allegedly bad conduct through the date of the settlement—May 2022," he said, which is "very unusual." OIG agreed to give the defendants a "cold comfort" letter that it has no intention of excluding his clients from federal health care programs. "Our clients are very pleased about the outcome," said Hooper, with Hooper, Lundy & Bookman. "They have been fighting this case since 2014, including defending a criminal investigation" that dates back to 2010. He was told in 2019 that DOJ decided against a criminal prosecution, but the FCA case lived on.

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