

Report on Medicare Compliance Volume 32, Number 12. March 27, 2023 Before Second FCA Trial, Neurosurgeon, Fiancée Settle AKS-Related Allegations

By Nina Youngstrom

Before take two of their False Claims Act (FCA) trial, a Missouri neurosurgeon and his fiancée, who owns a medical equipment distributorship, put the kickback-related case to bed with an \$825,000 settlement, the Department of Justice (DOJ) said March 22.^[1]

The FCA settlement is the culmination of a 10-year saga involving neurosurgeon Sonjay Fonn, D.O.; his medical practice, Midwest Neurosurgeons (MWN), in Cape Girardeau, Missouri; Deborah Seeger, his fiancée since June 2008; and her distributorship, DS Medical, which is in the same town. They lost the first trial in 2017 but an appeals court ordered a new trial last year.

“Clearly reflecting the strength of their case, the settlement requires the couple to pay out of pocket only \$400,000, when the government was originally seeking over \$20,000,000,” attorneys Sanford Boxerman, who represents Seeger, and Jim Martin, who represents Fonn, said in a statement.

Separately, in October 2022, Wisconsin Physicians Services issued a demand letter to Fonn and MWN for \$899,816 based on a 2017 overpayment finding by a unified program integrity contractor, according to the settlement.^[2] The settlement states that it “does not apply to or resolve the CMS overpayment in any way.” Fonn and MWN have filed an appeal and deny the overpayment exists.

The case got rolling with a whistleblower lawsuit filed by physicians in other practices. DOJ intervened and filed a complaint in intervention in 2014, alleging Fonn, Seeger and their practices submitted false claims to Medicare and Medicaid. They denied the allegations.

DOJ’s complaint paints a picture of the allegedly inextricable links between MWN and DS Medical.^[3] Fonn had privileges to do spinal fusion surgeries at a hospital in Cape Girardeau from November 2008 through March 2012, with the hospital allowing him and other physicians performing surgeries there to select their preferred type of implants from among many spinal implant manufacturers, according to the complaint. They could deal directly with the manufacturer or use a distributor.

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