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Scripps Pays \$10M for Alleged FCA Violations; Whistleblower Warned of 'Soft Money Policy'

By Theresa Defino

What the federal government—and a whistleblower—allege were False Claims Act (FCA) violations actually resulted from an “accounting discrepancy,” according to the Scripps Research Institute. Regardless of the language used, Scripps officials agreed to pay the Department of Justice (DOJ) \$10 million,^[1] of which \$5 million is restitution, according to the settlement obtained by RRC.

Although the \$10 million pales in comparison to the record \$112.5 million Duke University paid last year for alleged FCA infractions,^[2] Scripps’ payment remains among the largest by a research or educational institution and the fifth so far this year.

Like all FCA settlements, particularly those involving whistleblowers, Scripps’ provides lessons for compliance officials, and some should be common by now. Here, for example, as in other cases, the whistleblower—who will be paid \$1.75 million—said he raised concerns internally about the policy he claimed triggered the alleged fraud.

At the heart of the alleged FCA violations, former Scripps investigator Thomas Burris claimed, was Scripps’ “soft money policy” that required investigators to “entirely cover the cost of their own salaries and related benefits through federal grants.” Faculty also had to cover “the salary for the research staff through the awarded grants.”

Yet, because they usually had multiple grants, other duties such as teaching, and also had to spend time writing and submitting applications, it was “virtually impossible for a faculty member to legitimately charge 100% of his or her working hours to awarded grants,” and thus effort reports were fraudulent, Burris claimed in his 51-page complaint, filed in 2015.

Although Burris called this policy “unusual,” it is not unheard of and may be in effect in other institutions, which, in light of this settlement, may want to consider scrapping it. Neither Burris nor his attorneys responded to RRC’s requests for comment.

Jeffrey Clark, acting assistant attorney for the DOJ Civil Division, didn’t mention this policy in the Sept. 11 settlement announcement, nor did Scripps in its statement provided to RRC. Scripps did not admit liability. The settlement announcement said Scripps had “improperly charged NIH-funded research grants for time spent by researchers on non-grant related activities” from 2008 to the end of 2016.

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