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Stark Law and Anti-Kickback: Update and Examples

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I. NEW STARK DEVELOPMENTS

A. Case Law Developments / False Claims Act Settlements

1. Salinas Valley Urology Associates

In January of 2018, the two physician owners of Salinas Valley Urology Associates, located in Northern California, agreed to pay approximately \$1 million to settle allegations of violating the Stark Law through improper lease arrangements. The arrangement involved lease of image guided radiation therapy (IMRT) equipment to physicians, who then billed for the IMRT services. The billing allegedly failed to meet the location requirement of the in-office ancillary services exception to the Stark Law. Eight other physicians previously paid \$900,000 relating to the arrangement.

2. Pine Creek Medical Center¹

In December of 2017, Pine Creek Medical Center, a physician-owned hospital located in Dallas, agreed to pay \$7.5 million to settle allegations of violating the False Claims Act. The allegations included payment by the hospital for advertisements and other marketing for medical staff physicians.

3. Medicor Associates, Inc. / University of Pennsylvania Hamot Medical Center at Erie²

Following a ruling by federal appeals judge in Pennsylvania that a whistleblower in a False Claims Act lawsuit may proceed with a lawsuit alleging that several medical director arrangements between the Hospital and cardiologists violated the Stark Law and Anti-Kickback Law, the case was settled for \$20.75 million the day before the November trial. The lawsuit involved eight agreements, six of which were documented in

¹ *United States ex rel. Scott v. Pine Creek Med. Ctr., LLC*, No. 3:14-cv-3065, (N.D. Tex. Announced Dec. 4, 2017).

² Settlement announced, *United States ex rel. Emanuele v. Medicor Assocs.*, No. 10-cv-245 (W.D. Pa. Nov. 7, 2017).

writing but allowed to lapse, and two of which were not documented in writing. The trial court granted summary judgment in favor of the relator on the unwritten agreements, holding that the absence of a written agreement precluded compliance with a Stark Law exception. The appeals judge affirmed the ruling, and also failed to grant summary judgment to Medicor and Hamot on the remaining agreements, stating that their ability to qualify for a Stark exception would be a material fact for determination at trial.

4. Family Medical Centers of South Carolina³

On September 11, 2017, Family Medical Centers of South Carolina, a physician group practice agreed to pay \$2 million to settle allegations of violating the Stark Law and False Claims Act. The allegations related to distribution of revenue for lab tests billed through the practice to members of the group based on referrals.

5. Jamaica Hospital Medical Center⁴

On September 13, 2017, Medisys Health Network, Inc., owner of Jamaica Hospital Medical Center, located in New York City, agreed to pay \$4 million to settle allegations of violating the Stark and Anti-Kickback Laws, as well as the False Claims Act. The allegations involved above market compensation and free office space to referring physicians.

6. Mercy Hospital⁵

In May of 2017, Mercy Hospital, located in Springfield, Missouri, agreed to pay \$34 million to settle allegations of violation of the Stark Law based upon compensation of medical oncologists employed by an affiliate of the Hospital. The allegations involved compensation in excess of fair market value.

7. Pacific Alliance Medical Center⁶

On June 28, 2017, Pacific Alliance Medical Center, located in Los Angeles, agreed to pay \$42 million to settle allegations of violation of the Stark and Anti-Kickback Laws, as well as the False Claims Act. The allegations

³ *United States ex rel. Schaefer v. Family Med. Ctrs. Of S.C.*, No. 14-cv-382-MBS (D.S.C. Sept. 1, 2017).

⁴ *United States ex rel. Deshpande. v. Jamaica Hosp. Med. Ctr.*, No. 13-cv-4030 (E.D.N.Y. Aug. 8, 2017).

⁵ *United States ex rel. Holden v. Mercy Hospital Springfield*, No. 03283-DGK (W.D. MO. June 30, 2017).

⁶ *United States ex rel. Chan v. PAMC Ltd.*, No. 2:13-cv-4273 (C.D. Cal. May 25, 2017).

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