

## Report on Medicare Compliance Volume 28, Number 14. April 15, 2019 DOJ Wins Two Big Fraud Trials; Execs, MDs Face Long Prison Terms

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By Nina Youngstrom

Over a four-day period in early April, the Department of Justice (DOJ) announced the conviction of seven executives and physicians embroiled in a Texas hospital fraud case, won a guilty verdict in a \$1.3 billion skilled nursing facility (SNF) fraud in Florida, and claimed they dismantled one of the largest Medicare fraud schemes ever, which involves telemedicine and durable medical equipment (DME). These are monster cases that implicate the Anti-Kickback Statute or other laws, including the Travel Act, a Kennedy-era law that comes from the Racketeering chapter of the federal criminal code and is being used to prosecute kickbacks.

In Dallas, the executives, physicians and a nurse at Forest Park Medical Center were found guilty April 9 after a seven-week bribery trial, the U.S. Attorney's Office for the Northern District of Texas said. In Florida, Philip Esformes, the owner of SNFs and assisted living facilities, was convicted April 5 after an eight-week trial in the largest health fraud scheme ever charged by DOJ. And in 17 districts, 24 arrests were made April 9 in an alleged scheme involving medically unnecessary back, knee, shoulder and wrist braces.

### Cases Will 'Energize' Prosecutors

"The fact is the government is pursuing large-scale frauds and marketing and kickback schemes, and will be further energized" by these victories, says attorney Melissa Ho, with Polsinelli in Phoenix, Arizona. "DOJ has seen it can get huge recoveries even though they are hugely complicated cases" that are difficult for juries to sort through. Hospitals should review their arrangements with physicians, marketers and others to ensure the payments are fair market value and documented, "because if there's any irregularity, they're setting themselves up at a minimum for grand-jury subpoenas, which are costly to respond to, and then witness interviews," Ho explains. DOJ could start with a civil investigation, "but if the government thinks there's truly fraud, they skip that and go straight to a subpoena." And if providers don't respond fast enough for the government, they may get hit with search warrants, interviews and potentially indictments, she warns.

A total of 17 people have now been convicted in connection with Forest Park Medical Center, an out-of-network hospital that's now out of business. Out-of-network hospitals don't accept reimbursement rates set by insurers. They're free to set their own prices "and were generally reimbursed at substantially higher rates than in-network providers," according to the indictment. Patients who use out-of-network hospitals generally pay much more of their bills—"generally 20% to 50% of the hospital's total charges." In a nutshell, the government alleged that some physicians at Forest Park Medical Center were paid kickbacks to refer patients "with high reimbursing out-of-network private insurance benefits or benefits under certain federally funded programs" and to "sell" Medicare and Medicaid patients to other hospitals.

Forest Park Medical Center was founded by Richard Ferdinand Toussaint Jr., an anesthesiologist; Wade Neal Barker, a bariatric surgeon; Alan Andrew Beauchamp, chief operating officer; and Wilton McPherson Burt, a managing partner—all of whom were charged—and was managed by Burt and Beauchamp, according to the indictment. Barker, Toussaint and Beauchamp pleaded guilty before trial, along with seven other defendants.

They illegally enriched themselves and others through the submission of private, out-of-network claims, and Federal Employees' Compensation Act (FECA) and TRICARE claims, for services provided to beneficiaries at

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Forest Park Medical Center. FECA provides medical care and rehab to federal employees, including postal workers.

## **Former Exec Faces Up To 65 Years in Prison**

Several of the people were convicted of violating the Travel Act, an unusual tool that has been used by DOJ recently in several health fraud cases. The Travel Act prevents the use of mail or interstate/foreign travel or commerce with the intent to “promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any unlawful activity,” which includes “bribery...in violation of the laws of the State in which committed or of the United States.”

According to the U.S. attorney’s office, the following people were convicted at trial in the Forest Part Medical Center case:

- Wilton McPherson Burt, Forest Park’s managing partner, was found guilty of conspiracy, paying kickbacks, commercial bribery in violation of the Travel Act, and money laundering. He faces up to 65 years in prison.
- Jackson Jacob, owner of the shell companies through which some bribes were routed, was found guilty of conspiracy and kickbacks and faces up to 20 years in prison.
- Douglas Sung Won, a spinal surgeon, was found guilty of conspiracy and faces up to five years in prison.
- Michael Bassem Rimlawi, a spinal surgeon, was convicted of conspiracy and receiving kickbacks and faces up to 15 years in prison.
- Shawn Mark Henry, a spinal surgeon who invested in the hospital, was found guilty of conspiracy, commercial bribery and money laundering, and faces up to 30 years in prison.
- Mrugeshkumar Shah, a pain management doctor, was found guilty of conspiracy, paying kickbacks and commercial bribery, and faces up to 20 years in prison.
- Iris Kathleen Forrest, a nurse who recruited and preauthorized worker’s comp requests, was found guilty of conspiracy and paying kickbacks and faces up to 10 years in prison.

In the Florida case, Esformes was convicted of bribing physicians to admit patients to his SNFs, where they often received medically unnecessary or inappropriate services that were billed to Medicare and Medicaid from January 1998 through July 2016. “Several witnesses testified to the poor conditions in the facilities and the inadequate care patients received, which Esformes was able to conceal from authorities by bribing an employee of a Florida state regulator for advance notice of surprise inspections scheduled to take place at his facilities,” DOJ said. Esformes was convicted of various counts, including conspiracy to defraud the United States, receipt of kickbacks in connection with a federal health care program, payment of kickbacks in connection with a federal health care program and money laundering. DOJ said he personally collected more than \$37 million.

In the third case, DOJ, the FBI and the HHS Office of Inspector General said they had dismantled one of the largest Medicare fraud schemes ever: a \$1.2 billion case involving alleged kickbacks for medically unnecessary braces. On April 9, criminal charges were filed against 24 people, including CEOs, COOs and others associated with five telemedicine companies, the owners of dozens of DME companies, a physician and two other clinicians. Federal agents executed 80 search warrants, and the CMS Center for Program Integrity “took adverse administrative action” against 130 DME companies that were paid more than \$900 million in the alleged scheme, DOJ said.

According to DOJ, an international telemarketing network allegedly controlled by some of the defendants lured hundreds of thousands of elderly and/or disabled patients into the scheme, and paid physicians to prescribe DME for patients after a brief phone conversation without ever meeting them. “The proceeds of the fraudulent scheme were allegedly laundered through international shell corporations and used to purchase exotic automobiles, yachts and luxury real estate in the United States and abroad,” DOJ alleged.

Contact Ho at [mho@polsinelli.com](mailto:mho@polsinelli.com). Read about the Forest Park case at <http://bit.ly/2If5lSL>, the Esformes case at <http://bit.ly/2X7sbiB>, and the DME sweep at <http://bit.ly/2X2Rd27>. ✧

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