

# Report on Medicare Compliance Volume 29, Number 2. January 20, 2020 Health System, Clinic Settle FCA Case for \$10M, Allegedly Ignored Attorney's Advice

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By Nina Youngstrom

When Agnesian HealthCare in Wisconsin was negotiating a new professional services agreement (PSA) with Fond du Lac Regional Clinic for 2016, the attorney who was hired as a neutral party discovered the physicians allegedly were “significantly overcompensated” based on data from the Medical Group Management Association (MGMA). He proposed a new compensation methodology, saying “I’m here to make you compliant because you aren’t,” according to allegations in a False Claims Act complaint,<sup>[1]</sup> which was filed by a whistleblower. Instead, the attorney was terminated and Agnesian allegedly kept “physician compensation at historic and above fair market value levels” in return for their referrals, the complaint contends.

Now Agnesian HealthCare and Fond du Lac Regional Clinic have agreed to pay \$10 million<sup>[2]</sup> to settle the whistleblower’s allegations, according to Phillips & Cohen, one of the law firms that represented the whistleblower, Clark Searle, an orthopedic surgeon at the clinic who left in 2017. He filed the lawsuit under the False Claims Act<sup>[3]</sup> (FCA), alleging Agnesian HealthCare and Fond du Lac Regional Clinic violated the Stark Law and the Anti-Kickback Statute.

The Department of Justice declined to intervene in the complaint. “These False Claims Act cases based on Stark continue to be very difficult to defend even in non-intervened case,” says Houston attorney Adam Robison, with King & Spalding, who was not involved in the case. If there are “fair market value reports and guidance from lawyers on steps that should be taken to comply with the law and they are not followed, it makes it more difficult to defend,” although he emphasized these are allegations only.

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