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Hospital-Employed M.D.'s Unrelated FCA Settlement Is Reminder of Risks of Outside Pay

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A recent False Claims Act[1] (FCA) settlement with four Florida neurosurgeons serves as a reminder for hospitals to consider the ripple effects of their employed physicians' outside activities. Although payments from pharmaceutical and device manufacturers don't necessarily pose a problem on their face, they could signal a conflict of commitment if the employed physicians spend too much time away from clinic, hospital and administrative responsibilities, which potentially has a bearing on the fair market value of their compensation, experts say.

The neurosurgeons settled false claims allegations with the Department of Justice (DOJ) in November over payments from Catalyst Spinal Innovations LLC, a physician-owned distributorship (POD). They agreed to pay $580,963 in connection with their "acceptance of remuneration derived from orders of CSI products for use in the CSI Physicians' surgeries" in 2013 that were billed to Medicare, according to the settlement. One of the neurosurgeons who resolved the FCA allegations is Dean Lin, M.D., an employee of Lee Memorial Health System in Florida, which is facing a Stark-based FCA lawsuit.[2] Although it's unrelated, the whistleblower complaint alleged that Lee Memorial's compensation for four employed neurosurgeons, including Lin, was above fair market value and not commercially reasonable, including $1.526 million paid to Lin in cash compensation in 2013. According to CMS's Open Payments database, CSI, an affiliate of Reliance Medical Systems, paid Lin a couple hundred thousand dollars a year between 2014 and 2018. (The other three neurosurgeons are not the same as in the CSI settlement.)

"Dr. Lin was paid by Reliance to do outside research, which further calls into question the fair market value" of his compensation as an employed physician at Lee Memorial Health System (known as Lee Health), said Marlan Wilbanks, an attorney for the whistleblower. That information was available to the hospital because it's public on the Open Payments database, added Scott Withrow, another attorney for the whistleblower.

But some experts contend that outside payments to physicians are independent of employment compensation. "The fair market analysis is its own analysis," said Julie Hamilton, managing director of healthcare provider regulatory and operational risk for Deloitte Advisory.

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