

## Compliance Today – April 2023



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### Building a strong physician practice compliance infrastructure: Lessons learned from physician practice diligence

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by Valerie G. Rock, CHC, CPC, and Kristen Lilly Davidson, MHA, CCEP-I, CHC, CPHQ, RHIA

As we look back at the activity regarding physician practice acquisitions for the past few years, there is much to be learned from the diligence process. Private equity (PE) firms have created a sizable shift in the market where hospitals were trending previously. While hospitals understand healthcare compliance, PE firms are reflecting a steep learning curve. However, we have observed a quick pivot to understanding healthcare compliance by many firms through an increase in compliance-related diligence, implementing compliance programs, and a better understanding of the risks encountered in this arena.

Healthcare compliance is guided in part by government scrutiny. From qui tam suits to False Claims Act (FCA) cases, PE firms are awakening to healthcare compliance realities. For example, there were \$5.6 billion in FCA settlements and judgments recovered by the U.S. Department of Justice (DOJ) in fiscal year 2021, and over \$1.6 billion of that arose from lawsuits filed under the qui tam provisions of the Act.<sup>[1]</sup>

The specifics of cases teach us to monitor certain aspects of our practices. The Diabetic Care RX case revealed issues with leadership's knowledge of improper marketing schemes, leading to physicians prescribing creams and other items without patient consent or seeing the patient. The Gores Group case is similar but further highlights that once an issue is known, it is expected to be resolved. In the H.I.G. Capital case, we see issues regarding unlicensed or unqualified staff performing services.

#### September 2019 – *United States ex rel. Medrano v. Diabetic Care RX, LLC et al.*<sup>[2]</sup>

- Riordan, Lewis & Haden (RLH) Inc., a private equity firm, was also named a defendant.
- Allegations that the pharmacy improperly paid kickbacks to receive lucrative referrals of patients eligible for compounded medications.
- DOJ alleged RLH had a “controlling stake” in the compound pharmacy and “planned to increase [the pharmacy’s] value and sell it for a profit in five years.”
- DOJ perspective – RLH focused on profits over patients to make a fast payback and was not mindful of the complex legal and regulatory landscape governing healthcare fraud.
- Private equity firms on notice to take steps to reduce risk of being targeted by the government for FCA violations.

### November 2020 – Johnson & Johnson and The Gores Group (TGG)<sup>[3]</sup>

- FCA violations by a former TGG portfolio company.
- As part of the settlement, the Gores Group agreed to pay an additional \$1.5 million to resolve allegations that the portfolio company continued the alleged improper sales and promotion practices after TGG acquired the company.

### October 2021 – H.I.G. Capital<sup>[4]</sup>

- H.I.G. agreed to pay \$19.9 million in the largest FCA settlement to date involving a PE firm to resolve claims against a mental health company it owned.
- Billed Massachusetts' Medicaid program for services provided by unlicensed and unqualified staff

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