

## Report on Medicare Compliance Volume 29, Number 25. July 13, 2020

### Oklahoma Hospital, Physicians Settle FCA Case for \$72M; FMV Is Theme

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By Nina Youngstrom

In a complicated false claims case that boils down to fair market value allegedly run amok, an Oklahoma hospital, related entities and two physicians agreed to pay \$72.3 million to settle allegations a physician group got sweetheart deals in exchange for referrals, the Department of Justice (DOJ) said July 8.<sup>[1]</sup> This is another high-dollar False Claims Act (FCA) result stemming from a case pursued by a whistleblower even though DOJ bowed out.

Oklahoma Center for Orthopaedic & Multi-Specialty Surgery (OCOM), a specialty hospital in Oklahoma City; USP OKC Inc. and USP OKC Manager Inc. (collectively USP), its part owner and management company; Southwest Orthopaedic Specialists PLLC (SOS), an Oklahoma City-based physician group; and two SOS physicians resolved allegations under the federal and Oklahoma Medicaid FCA of “improper relationships” between OCOM and SOS from 2006 through 2018, DOJ said. In exchange for patient referrals from SOS physicians, OCOM and USP allegedly provided remuneration in the form of:

- Free or below fair market value office space, employees and supplies;
- Above fair market value compensation;
- Equity buyback provisions and payments for certain SOS physicians that were above fair market value; and
- Preferential investment opportunities related to OCOM anesthesia services.

As a result, false claims allegedly were submitted to Medicare, Medicaid and TRICARE, DOJ said.

“DOJ’s press release indicates what really drove this case is fair market value,” said attorney Jeff Fitzgerald, with Polsinelli in Denver, Colorado. “This reinforces to everyone in the compliance world that fair market value is an important construct.”

The whistleblower, Wayne Allison, who was the SOS practice administrator for 15 years, alleged the “defendants’ unlawful conduct and fraudulent schemes arise from their entangled history of using their patient referrals and various entities as a self-interested, profit-oriented, multi-million-dollar money-making machine,” according to the June 2018 second amended complaint.

OCOM is managed by USP, the complaint said, and Tenet Healthcare Corp. owns 95% of USP, although Tenet isn’t a party to the settlement. Of the settlement amount, USP will pay \$60.86 million to the United States, \$5 million to Oklahoma, and \$206,000 to Texas. SOS and the two physicians, Anthony Cruse and R.J. Langerman, will pay \$5.7 million to the feds and \$495,619 to Oklahoma. None of the defendants admit liability in the settlement.

### Rent Allegedly Based on Volume, Value of Referrals

SOS was created by Cruse and Langerman, who also opened OCOM with orthopedic surgeons they recruited to join

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the SOS practice. In 2004, the SOS physicians partially sold OCOM to USP Oklahoma, which bought equity interest in OCOM and took over its management. The complaint alleged SOS and OCOM engaged in overlapping “schemes” that tainted all OCOM’s reimbursement from certain government payers because they resulted from referrals from SOS physicians.

One was an equity scheme. The complaint alleged that OCOM equity was transferred to SOS physicians in violation of the OCOM operating agreement and the Stark Law or Anti-Kickback Statute. OCOM equity was allegedly used to reward SOS doctors who referred to OCOM the majority of its business, the complaint alleged. Also, the SOS and OCOM defendants based their decisions on which physicians could buy OCOM equity on the volume and value of their referrals for designated health services to OCOM, the complaint alleged.

Another alleged scheme related to employment. According to the complaint, Cruse, Langerman and other SOS physicians directed OCOM to enter into employment agreements with orthopedic surgeon prospects, who agreed to work for OCOM for two years. The new physicians would buy a 1% membership interest in OCOM and had the opportunity for a bonus if they provided services through SOS for 18 months after the agreement ended. OCOM also rented clinic space from SOS where the physicians could practice. Rental payments were based on the volume or value of the physicians’ referrals, and they increased monthly, the complaint alleged. Eventually, the physician transitioned to SOS employment and bought more OCOM equity.

## **Physicians Paid Good Chunk of Settlement**

Attorneys think it’s significant that a medical group on the receiving end of the hospital payments—and two physicians—had to pay a chunk of the settlement amount, because typically only the hospital or other facility is held liable in an FCA case. “I would use this case when talking to doctors” to show Stark and Anti-Kickback Statute compliance is not just a hospital problem, said attorney John Joseph, with Post & Schell in Philadelphia. “This is a doctor problem too.” When the hospital has to charge more for rent or the services of medical assistants, for example, physicians may not be so dismissive of the compliance risks when they learn about the Oklahoma settlement and the other occasional cases where physicians were on the hook for FCA liability, Joseph said.

The case also is a “cautionary tale that the whistleblower can be anyone,” Fitzgerald said. A longtime practice manager is the top nonphysician executive in a practice, he noted. “It rubs me the wrong way when someone’s job is to make sure the company is compliant, and then they file a complaint.”

In a statement, an OCOM spokesperson said, “Our core values prioritize ethical, responsible behavior, and we will accept nothing short of that from our teams. We have taken numerous steps to strengthen compliance safeguards at OCOM to ensure our programs and staff meet the highest standards of integrity—and that we continue to earn the trust of our patients and physicians based only on the quality of care we deliver. We are a stronger organization today with tighter processes, sharper controls, more stringent compliance oversight and a culture that supports our values.”

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**1** Department of Justice, “Oklahoma City Hospital, Management Company, And Physician Group To Pay \$72.3 Million To Settle Federal And State False Claims Act Allegations Arising From Improper Payments To Referring Physicians,” news release, July 8, 2020, <https://bit.ly/2ZeNra4>.

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