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Hospital Settles FCA Case for \$50M; DOJ: CEO 'Disregarded' Concerns

By Nina Youngstrom

Wheeling Hospital in West Virginia has agreed to pay \$50 million to settle a False Claims Act (FCA) lawsuit over physician compensation, the Department of Justice (DOJ) said Sept. 9.^[1] The hospital allegedly went from being in the red to the black largely because of the way it paid physicians and, in the process, submitted Medicare claims tainted by the Stark Law and Anti-Kickback Statute (AKS), DOJ said.

The case was set in motion in a 2017 lawsuit^[2] by a whistleblower—Louis Longo, former executive vice president of Wheeling Hospital—and DOJ partially intervened in March 2019 with a complaint in intervention.^[3] From 2012 to 2015, Longo alleged he “repeatedly raised compliance concerns about Wheeling Hospital’s physician compensation arrangements to [the CEO], who disregarded those concerns,” according to DOJ’s complaint.

The hospital denied liability in the settlement and wasn’t required to enter into a corporate integrity agreement.

Wheeling Hospital was having financial troubles, having lost more than \$55 million between 1998 and 2005, when it hired a management company, R & V Associates, in 2006 to turn things around. Ronald Violi, the co-owner of R & V Associates, became Wheeling Hospital’s CEO, and he helped orchestrate the physician contracts at the heart of the false claims lawsuit, the DOJ complaint alleged.

Under R & V Associates’ management, Wheeling Hospital went from losing on its operations to turning a profit. During the first five years, the hospital realized almost \$90 million in operating profits. Violi was CEO from 2006 through 2018.

Wheeling Hospital hired more physicians, mostly as employees, to capture their referrals, the DOJ complaint alleged. “In executing that strategy, since at least 2007, Wheeling Hospital, under the direction and control of R & V and Violi, systematically entered into compensation arrangements with referring physicians that did not satisfy the requirements of any statutory or regulatory exception to the Stark Law, or that violated the AKS,” according to the DOJ complaint.

Some employed physicians had compensation arrangements that were linked to the volume or value of their referrals of designated health services (DHS) to the hospital, DOJ alleged.

A sweetheart deal with a pain management specialist, Adam Tune, M.D., also was alleged in the complaint. Around 2012, the hospital decided to hire a pain management specialist, partly to capture revenues for the ancillary services. Longo “expressed concern” that the hospital was considering an employment agreement with Tune at an above-market value salary, and the deal eventually fell apart.

About a year later, Violi and Tune negotiated a different arrangement, the complaint alleged. Tune became an independent contractor to Wheeling Hospital, performing services in a pain management clinic, Three Rivers Health, on the hospital campus. The hospital billed for the professional services provided by Tune and the technical component for services he ordered. The contract allowed Tune to charge the hospital \$3,000 a day for

seeing patients, and he was “eligible to receive” incentive compensation up to 70% of the net income of the practice.

After the contract was signed, Wheeling Hospital’s chief financial officer raised concerns to the chief operating officer about tying Tune’s incentive compensation to technical fees generated for the hospital, according to the complaint. The general counsel chimed in, telling Tune that “because of legal concerns,” the language in the contract about incentive compensation had to go. “Notwithstanding those concerns, through the end of 2015, Wheeling Hospital continued to pay Dr. Tune incentive compensation pursuant to the parties’ August 2013 contract,” the complaint alleged. When the incentive pay was finally removed in 2016, the hospital doubled Tune’s daily stipend.

In 2017, Wheeling Hospital paid Three Rivers Health \$1.42 million and about the same amount the following year. After the clinic covered costs, Tune took home a salary of \$1 million to \$1.2 million a year from 2014 to 2018, when the nationwide 50th percentile for the salaries of pain management physicians was from \$415,000 to \$450,000, and the 90th percentile ranged from \$700,000 to \$750,000.

“Wheeling Hospital’s compensation arrangements with Dr. Tune failed to satisfy an applicable exception to the Stark Law, because, at a minimum, the compensation paid by Wheeling Hospital to Dr. Tune exceeded the fair market value of the services he provided and was determined in a manner that took into account the volume or value of his DHS referrals to, and other business generated for, Wheeling Hospital,” the complaint alleged.

DOJ’s complaint takes note of a board member’s awareness of the alleged noncompliance. “Around August 2015, Nicholas Sparchane, a member of Wheeling Hospital’s board of directors, asked Relator if the hospital’s financial turnaround may have been due in part to regulatory violations. When Relator responded yes, Sparchane said he was not surprised and that he thought that may have been the case.”

Violi and R & V Associates also were named in the FCA complaint, but the case against them was dismissed Sept. 10. Violi didn’t respond to RMC’s request for comment.

R & V Associates no longer has a contract with Wheeling Hospital, and West Virginia University Health System (WVUHS) has taken over as the manager. According to a statement from Wheeling Hospital, it has a new CEO, Douglass Harrison, and added a “robust compliance program” through WVUHS. R & V Associates had an indemnification agreement with the hospital, which means the hospital had to pay under the settlement.

“This settlement is a reminder that fair market value principles apply to hospital-employed physicians,” said Denver attorney Jeffrey Fitzgerald, with Polsinelli. “It is entirely permissible for hospitals to employ physicians, but the details of physician compensation plans really do matter.”

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¹ Department of Justice, “West Virginia Hospital Agrees To Pay \$50 Million To Settle Allegations Concerning Improper Compensation To Referring Physicians,” news release, September 9, 2020, <https://bit.ly/35hMQI1>.

² Nina Youngstrom, “DOJ Intervenes in FCA Lawsuit Against Hospital, CEO Over M.D. Compensation,” *Report on Medicare Compliance* 28, no. 2 (January 21, 2019), <http://bit.ly/325Ok3I>.

³ U.S. ex rel. Longo v. Wheeling Hospital, Inc., Civil Action No. 17-1654, (W.D. Pa., March 25, 2019), <https://bit.ly/2Zk86sT>.

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