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Scripps Pays \$10M for Alleged FCA Violations; Whistleblower Warned of 'Soft Money Policy'

By Theresa Defino

What the federal government—and a whistleblower—allege were False Claims Act (FCA) violations actually resulted from an “accounting discrepancy,” according to the Scripps Research Institute. Regardless of the language used, Scripps officials agreed to pay the Department of Justice (DOJ) \$10 million,^[1] of which \$5 million is restitution, according to the settlement obtained by RRC.

Although the \$10 million pales in comparison to the record \$112.5 million Duke University paid last year for alleged FCA infractions,^[2] Scripps’ payment remains among the largest by a research or educational institution and the fifth so far this year.

Like all FCA settlements, particularly those involving whistleblowers, Scripps’ provides lessons for compliance officials, and some should be common by now. Here, for example, as in other cases, the whistleblower—who will be paid \$1.75 million—said he raised concerns internally about the policy he claimed triggered the alleged fraud.

At the heart of the alleged FCA violations, former Scripps investigator Thomas Burris claimed, was Scripps’ “soft money policy” that required investigators to “entirely cover the cost of their own salaries and related benefits through federal grants.” Faculty also had to cover “the salary for the research staff through the awarded grants.”

Yet, because they usually had multiple grants, other duties such as teaching, and also had to spend time writing and submitting applications, it was “virtually impossible for a faculty member to legitimately charge 100% of his or her working hours to awarded grants,” and thus effort reports were fraudulent, Burris claimed in his 51-page complaint, filed in 2015.

Although Burris called this policy “unusual,” it is not unheard of and may be in effect in other institutions, which, in light of this settlement, may want to consider scrapping it. Neither Burris nor his attorneys responded to RRC’s requests for comment.

Jeffrey Clark, acting assistant attorney for the DOJ Civil Division, didn’t mention this policy in the Sept. 11 settlement announcement, nor did Scripps in its statement provided to RRC. Scripps did not admit liability. The settlement announcement said Scripps had “improperly charged NIH-funded research grants for time spent by researchers on non-grant related activities” from 2008 to the end of 2016.

As the settlement agreement described, Scripps failed to “have a system in place [for] faculty to properly account for their time spent on activities that pursuant to applicable regulation and sponsor terms and conditions cannot be charged directly to NIH-sponsored projects or are unrelated to the research activities of the awarded NIH-sponsored project.”

According to Burris and the DOJ, Scripps “improperly charged time spent by its faculty on developing, preparing, and writing new grant applications directly to existing NIH-sponsored projects.” Such costs “should have been allocated as an indirect cost and not charged directly to the NIH-sponsored projects.”

Additionally, the DOJ contended Scripps “improperly charged NIH-sponsored projects for time spent by its faculty on other activities unrelated to the awarded projects such as teaching, [Scripps] committee work, and other administrative tasks.” Such unallowable claims resulted in Scripps’ “submitting inaccurate Just-in-Time reports, progress reports, and financial reports to NIH.”

Burris is now vice president of research and graduate students at the University of Health Sciences and Pharmacy in St. Louis, Missouri, where he has worked since April of 2018.

PIs ‘Had No Idea It Was Wrong’

In his complaint, Burris detailed that he was made aware of the soft-money policy during his job interview with Scripps, based in La Jolla, California, which hired him in 2008 for its Jupiter, Florida, campus. He said the policy was “universal throughout Scripps, including at both campuses.”

Although it was a frequent topic of conversation among principal investigators and department heads, Burris said he didn’t think other PIs knew, and he “had no idea it was wrong to bill time spent drafting new grant applications to awarded grants” until he joined Saint Louis University (SLU) in 2013. During his time at Scripps, Burris had \$10 million in grants.

His complaint identified—by name and title—43 professors, assistant professors and one dean for whom he said Scripps had submitted false claims by attributing 100% of their time to a grant when they had other duties, including teaching.

Burris “learned through the compliance personnel at SLU that billing awarded grants for time spent on grant applications was unlawful,” the complaint said.

But, Burris alleged in the complaint, Scripps “knowingly” overcharged grants, and he explained how this happened.

“On a monthly basis, Scripps asked employees to sign the first and second pages and return [them] to the Office of Sponsored Programs. However, Scripps never explained or trained employees on the meaning of ‘Research & Training’ or ‘Administration’ beyond the very general definition of ‘Administration’ listed on the first page of the report,” according to the complaint. “Specifically relevant to this complaint, Scripps never provided guidance about how to classify the employee’s effort spent writing new grant applications.”

For his part, in 2012 alone, Burris said 100% of his salary “was charged to four federally awarded grants in different percentages,” but during the year he also “worked on six new grant applications and resubmissions, completing and submitting three of them.”

At SLU, ‘Effort Is Monitored Very Closely’

Overall, Burris estimated that “Scripps overcharged federally awarded grants by 20–50% for time and effort spent by researchers on grant application activity.”

According to Burris, Scripps, because its doctoral and post-doctoral students do not pay tuition, had “limited ability to pay employees for activities not chargeable to federal grants.” If Scripps “had access to tuition or a large endowment which generated material investment proceeds, Scripps could use that money to pay employees’ salaries for work not directly allocable to federal grants.”

He described a failed 2011 bid to build a hospital that Scripps’ then-chief operating officer allegedly said was seen as a way to boost revenues and relieve some of the acknowledged stress PIs were under “to cover 100% of their

salaries from federal grants.”

At the time the complaint was filed in 2015, Burris was still at SLU, which he described as having a “robust compliance office that monitors effort reporting and actually conducts audits. Effort reports for all investigators are also filed online and must be signed by investigators. Non-compliance with filing effort reports is not allowed. Effort is also monitored very closely, and when PIs submit new applications, it has been made very clear that 100% effort on NIH funds is not possible based on the fact that a PI cannot realistically spend all his or her effort on sponsored projects since there are other tasks that are not project related. At SLU, if a researcher approaches or even proposes billing coming close to 100% of time and effort to sponsored projects, it triggers a compliance person to investigate. None of the above compliance activities took place on any systematic basis during his more than 5 years at Scripps.”

Burris alleged that Scripps “kept the researchers ‘in the dark’ about how to accurately account for their time spent on new grant proposals by failing to provide any training or guidance to researchers specifically on the issue. This benefitted Scripps because its operations are highly dependent on grant funding. Because only about 7-15% of the grant applications to NIH since 2008 are approved, and approximately 85-93% are rejected, the substantial time spent by PIs and other researchers would otherwise be lost. By charging such time to awarded grants, Scripps cheats the government and bolster[s] its own operation by recovering revenue from the government that it was not entitled to,” Burris’ complaint alleged.

Scripps: Tiny Percentage of Funding Questioned

In a short statement provided upon request to RRC about the settlement, Scripps officials seemed to downplay it; they also would not respond to any questions.

The agreement, they said, resolves “an inquiry into its grants management practices between 2008 and 2016. The inquiry stemmed from an accounting discrepancy that averaged less than half of one percent per year of the institute’s annual federal grant funding.”

Scripps “fully cooperated with the federal government, providing all requested documentation and assisting government investigators,” the statement said, adding, “No questions were raised concerning the quality or conduct of our research or the contributions of our faculty.” Scripps “tremendously values the investment the federal government makes in scientific research, and we are deeply committed to using this support to its utmost to make discoveries and innovations that improve human health,” the statement concluded.

Under the agreement, the federal government was to pay Burris the \$1.75 million directly after receiving Scripps’ \$10 million. Scripps separately is paying his attorneys \$615,234.82.

Beyond the settlement payment, Scripps may have to reimburse the government additional amounts, as the agreement called for it to “identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by [Scripps] or any of its subsidiaries or affiliates from the United States.”

Additionally, the DOJ has the ability to bring separate legal action against any Scripps individuals in relation to the alleged FCA violations. However, a DOJ spokesperson told RRC agency officials “don’t confirm or deny investigations,” so it is not known whether additional enforcement action is forthcoming.

1 Department of Justice, “The Scripps Research Institute To Pay \$10 Million To Settle False Claims Act Allegations Related To Mischarging NIH-Sponsored Research Grants,” news release, September 11, 2020, <https://bit.ly/2RDHr5S>.

2 Theresa Defino, “Duke’s \$112M False Claims Act Case: A Tale of Fraud, Fabrication and Two Brothers,” *Report on Research Compliance* 16, no. 5 (May 2019), <http://bit.ly/37b2eEF>.

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