



Successful Defense of False Claims Act Lawsuit

Results

03.15.2022

Burr & Forman LLP is pleased to announce that its Health Care Practice Group led by partner James A. Hoover successfully defended a physician and a nurse practitioner by obtaining a dismissal with prejudice of a qui tam False Claims Act (FCA) lawsuit filed in the District Court of Delaware. The United States Court of Appeals for the Third Circuit affirmed the district court's dismissal. Joining Jim Hoover on the defense team were Ben Coulter and Richard Robinson.

“We are grateful to the panel on the Third Circuit for their thoughtful consideration of this matter in upholding the district court's dismissal of these allegations against our clients,” said Hoover. “We have long asserted that our clients have acted in the best interest of their patients and in compliance with the law, and we are pleased for this ruling to uphold their professional reputations and allow them to move forward.”

The relator in the matter owns a competing durable medical equipment (DME) supply company, which brought the action against a hospital, two competing DME suppliers as well as Hoover's physician and nurse practitioner clients. The suit alleged a scheme to submit false claims for payment by the United States' Medicare program, which the relator based on allegations that the prescribers “almost exclusively” referred patients to the relator's competitors. The FCA violations in the case were premised around four laws and regulations, and the Court affirmed the dismissal of these claims with Judge Patty Shwartz citing the following in her opinion:

- The District Court dismissed with prejudice the relator's complaint alleging violations of (1) the Stark Act, (2) the federal

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Anti-Kickback statute, (3) Medicare’s “freedom of choice rule” and (4) Medicare’s prohibition on billing for medically unnecessary services.

- Related to the Stark Act, the relator did not allege that the prescribers or hospital have an ownership or investment interest in the competitors or that the competitors directly paid the prescribers or hospital. Additionally, the relator did not plausibly allege an indirect compensation arrangement.
- Related to federal Anti-Kickback statute, the relator did not plausibly allege remuneration as required under the statute but, rather, only asserted that the prescribers “almost exclusively” referred patients to competitors. The relator also did not allege how competitors incentivized the prescribers for referrals.
- Related to Medicare’s “freedom of choice rule,” the relator did not allege that any of the thirteen patients it identified in the suit received Medicare. Further, the prescribers did not require that patients exclusively use the competitors, with the prescribers actually referring at least six of the thirteen patients to the relator’s DME.
- The relator’s allegation that the defendants violated Medicare’s prohibition on billing for medically unnecessary services lacked merit.
- “Since [the plaintiff] has not plausibly alleged any underlying federal violation, [the plaintiff] fails to state a claim under the False Claims Act.”