

HEALTH CARE LAW ALERT

Uncooperative and Obstructive Response to Routine Claims Audit Results in High Penalties for Home Health Company and Personal Liability for Its Owner

A federal court has hit Dynamic Visions, Inc., a home health care company operating in the District of Columbia, with a \$1.98 million adverse judgement in a False Claims Act case where the value of the underlying claims totaled only \$489,744. In addition, marking a success for the Department of Justice's directive to pursue individual bad actors in False Claims Act cases, the court held the owner of the company, Isaiah Bongam, personally liable for the damages in question, due in large measure to his involvement in orchestrating obstructive and fraudulent responses to a routine claims audit and the subsequent legal investigation. As reported by the United States Department of Justice, on October 20, 2017, Judge Colleen Kollar-Kotelly imposed damages equaling three times the total of the underlying fraudulent claims (as called for by the False Claims Act), plus the maximum allowable civil penalty of \$11,000 for each of 47 problematic invoices that were at issue in the audit, for a total civil penalty of \$517,000.

The court noted that the extreme nature of the penalties she imposed was intended to address the defendant's uncooperative and obstructive conduct during the audit and the ensuing investigation and proceedings. She held Mr. Bongam personally liable for the damage award based on her finding that Dynamic Visions was merely his "alter ego". In reaching this conclusion, Judge Kollar-Kotelly pointed to Mr. Bongam's personal actions, such as transferring large sums of money from Dynamic Visions' bank accounts into his own personal account and the accounts of two other companies he owned, immediately after the government searched Dynamic Visions' offices. The court also noted that Mr. Bongam failed to produce many of Dynamic Visions' financials records, even though he was required to do so.

As reported in court papers, this matter started with a routine claims audit which revealed missing physician authorizations, unsigned plans of care and forged signatures intended to cover up the lack of legally-required authorizations. Even so, the damages, which could have been as low as \$489,744, ballooned to four times that amount due to the company's and Mr. Bongam's response to the investigation and proceedings — conduct that made a bad situation substantially worse.

This case highlights that the better practice is almost always to cooperate and be forthright with the government when audits and investigations reveal problems. While mistakes, and sometimes even intentional wrongdoing, can happen, how an entity and its management react can turn a bad outcome into something much worse.

Please do not hesitate to contact one of our Firm's health law attorneys identified below if you would like more information on this issue.

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