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HEALTH CARE LAW ALERT

Federal Court Upholds \$237 Million Sanction Against Tuomey Healthcare

On July 2, 2015, the Federal Court of Appeals for the Fourth Circuit affirmed a lower court's decision that Tuomey Healthcare violated the Stark law and the Federal False Claims Act, paving the way for the government to enforce the \$237 million in court-awarded damages and penalties against the struggling, rural, not-for-profit hospital system. This is a qui tam case originated by Dr. Michael Drakeford, who was one of 20 physicians to whom Tuomey offered the compensation packages that are at the heart of this action.

Dr. Drakeford, who brought this action in 2010, alleged that Tuomey constructed part-time employment arrangements with local private surgeons which provided compensation that violated the federal physician self-referral prohibition or "Stark" law and, by extension, the federal False Claims Act. At the heart of the suit was the allegation that the compensation was above fair market value and was not commercially reasonable, but rather reflected the volume or value of the patient referrals the surgeons made to the hospital – **and that the Tuomey administration and Board "knew" (as that term is defined in federal law) of these problems at the time they entered into the arrangements.**

Tuomey had sought out several legal opinions about the compensation packages and, notwithstanding a very negative reaction received from the fourth attorney it consulted, took no steps to further evaluate or mitigate those concerns. Rather, Tuomey moved forward with the controversial packages with the other physicians (Dr. Drakeford declined the offer). While Tuomey attempted to defend itself by asserting that it had relied upon the advice of one of its attorneys, the court noted – to Tuomey's detriment – that the hospital system had sought out another legal opinion when Dr. Drakeford expressed his concerns, but then chose to ignore that advice. Dr. Drakeford filed his qui tam case within months of the hospital's dismissal of the fourth lawyer (before the lawyer issued a written report).

Tuomey had indicated over the last year that it was unable to pay the damage/penalty award and was negotiating a settlement with the federal government, in hopes of avoiding

bankruptcy. To date, those efforts have not been successful, although they do continue. In addition, Tuomey announced earlier this year that it had entered into merger/affiliation negotiations with Palmetto Health, as a possible financial lifeboat, but finalization of that deal was pended, awaiting this Court of Appeals decision. Tuomey has indicated that it is assessing its options. Reportedly, the legal defense fees shouldered by Tuomey are in the millions.

[Copies of the decision can be found here.](#)

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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