

To: Fraud and Abuse, Self-Referrals, and False Claims,
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**Government Files False Claims Act Case Against Tenet's Former
In-House Counsel For Knowledge of Stark Violations**

On September 18, 2007, the Department of Justice (DOJ) filed a civil complaint under the False Claims Act against the former general counsel for Tenet Healthcare Corporation (Tenet). The complaint likely will generate significant discussion within the healthcare legal community.

During the time period in question, Tenet was operating under a Corporate Integrity Agreement (CIA) as part of a settlement with the federal government involving conduct of Tenet's predecessor, National Medical Enterprises. DOJ contended the defendant was responsible for ensuring compliance with the CIA, and that signed certifications required to be submitted to the Department of Health and Human Services contained false statements because the defendant had knowledge about potential ongoing violations of federal program legal requirements.

DOJ explained that a Tenet-owned hospital employed a number of physicians pursuant to written employment agreements. During the term of the CIA, the defendant directed an outside law firm to analyze the agreements. DOJ pointed out in a fair amount of detail that the law firm apparently concluded the agreements were not in compliance with the federal Physician Self-Referral Statute (Stark Law) because physician compensation was: (a) tied to the volume or value of laboratory referrals; (b) in excess of fair market value; and (c) not commercially reasonable. The defendant apparently directed employees of Tenet to take corrective action in response to the law firm analysis. DOJ contended no such corrective action took place, and that over 70,000 individual payments to Tenet totaling roughly \$18 million were paid improperly.

Tenet settled a qui tam case with the government in 2004 for \$22.5 million that was based in part upon the same alleged Stark violations at the same Tenet-owned hospital. In its new complaint, DOJ stated that this earlier settlement did not release any claims the government might have against individuals and noted that the defendant was involved actively in defending against that qui tam suit.

In 2006, DOJ discovered the law firm analysis as part of a separate \$920 million global settlement with Tenet to resolve numerous other claims involving Medicare payments unrelated to the CIA or the qui tam case. Due to that new information, DOJ reviewed the annual CIA

certifications provided in 1997 and 1998 by Tenet and signed by the defendant. The certifications provided that the company had reviewed its records and practices for the prior year, and to the best of the defendant's knowledge and belief, the company was in material compliance with the CIA and other federal program legal requirements. DOJ alleged that those certifications were false.

As a result, three False Claims Act allegations were set forth in the new complaint with respect to payments made to Tenet by the Medicare program. DOJ alleges the defendant knowingly: (1) presented false claims; (2) made or used false records or statements to present false claims; and (3) made or used false records or statements to avoid an obligation to refund program monies. The government is seeking treble damages and penalties of \$5,000 to \$10,000 per violation. While the defendant may be entitled to an offset for amounts previously collected from the qui tam settlement, that offset would be deducted after damages have been trebled.

A number of issues will be raised by this case as it unfolds. The case is U.S. v. Sulzbach. To access a copy of the complaint, [click here](#), or visit [AHLA's Fraud and Abuse Practice Corner](#).

We would like to thank David Deaton, Esquire (O'Melveny & Myers LLP, Los Angeles, CA), Mark Bonnano, Esquire (Law Offices of Mark Bonanno LLC, Portland, OR), and the Enforcement Subcommittee for providing this email alert.

Member benefit educational opportunity:
[Teleconference Series](#) on Stark Phase III Final Regulation (September 27 and October 25, 2007).

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