

Adventist Health System's record-setting \$118.7 million settlement started with a whistleblower lawsuit by 3 former hospital employees

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WASHINGTON, DC, Sept. 21, 2015 – Three former employees of a North Carolina hospital were the first to expose an alleged scheme by Adventist Health System to pay doctors excessive compensation to lock in their patient referrals to Adventist-owned hospitals, clinics and other outpatient services in Florida, North Carolina, Tennessee and Texas.

The US Justice Department announced today that Adventist will pay a total of \$118.7 million to the federal government and those four states to settle a whistleblower (qui tam) lawsuit filed in December 2012 by those former employees, who are represented by whistleblower law firm Phillips & Cohen LLP. The settlement agreement also covers a separate qui tam lawsuit filed in 2013 that made the same allegations as some of those made earlier in Phillips & Cohen's qui tam lawsuit.

The Adventist settlement is the largest healthcare fraud settlement ever made involving physician referrals to hospitals, according to Peter Chatfield, a whistleblower attorney with Phillips & Cohen. It is nearly twice the previous largest settlement involving allegations of hospitals paying doctors for referrals, which was North Broward Hospital District's recent \$69.5 million settlement.

"We alleged Adventist's hospitals paid doctors outrageous sums and offered overly generous benefits and lax billing oversight as part of a corporate strategy to capture and control physician referrals for inpatient and outpatient services near its hospitals," Chatfield said. "Federal law prohibits hospitals from paying doctors directly or indirectly for referrals so that doctors make recommendations for care based on what's best for the patient – not what's best for the doctor's bank account."

Phillips & Cohen's whistleblower complaint listed a number of ways Adventist allegedly paid doctors for their referrals. For example, the complaint says that Adventist hospitals paid for:

- The leases of a BMW and a Mustang for a surgeon.
- A \$366,000 base salary for a family practitioner that more than doubled the salary that similar practitioners in that area, due to the extraordinarily high level of his facility fee referrals to Adventist for x-ray and CBC tests.
- A bonus of nearly \$368,000 plus salary for total annual pay of \$710,000 for a dermatologist who worked just three days a week. He also received payments to cover his costs for staff, equipment, supplies and medical malpractice insurance for the remainder of his time spent on his private practice.

Adventist initiated a corporate policy that directed its hospitals to purchase physician practices and group practices or employ physicians in their surrounding areas, Phillips & Cohen's complaint says, in order to control all patient referrals in those locations.

"This tactic was intended to increase the number of Medicare, Medicaid and other patients sent to Adventist hospitals for inpatient and outpatient treatment and boost the hospital's revenues," Chatfield said. As employees of Adventist-owned subsidiaries, doctors were required to refer patients to the Adventist hospitals that employed them or owned their practices with limited exceptions.

To convince doctors to sell their practices to Adventist hospitals or to become hospital employees, Adventist hospitals allegedly provided excessive compensation, perks and benefits to the physicians. The hospitals were willing to pay doctors more compensation than considered fair market value and absorb persistent losses in those deals because of the revenue the doctors' stream of referrals generated for Adventist from government healthcare programs and elsewhere, the whistleblowers' complaint said.

A substantial portion of the settlement amount is based on allegations involving Florida Hospital Medical Group, an Adventist-owned physician practice in Florida whose doctors worked at several Adventist hospitals and dozens of Adventist-owned outpatient clinics. Those hospitals include Florida Hospital Altamonte, Florida Hospital Apopka, Florida Hospital Celebration Health, Florida Hospital Kissimmee, Florida Hospital Orlando, Florida Hospital Waterman (Tavares, Fla.), Florida Hospital for Children (Orlando, Fla.) and Winter Park Memorial Hospital.

The three whistleblowers were longtime employees at Adventist's Park Ridge Health in Hendersonville, NC, where they became aware of the alleged system-wide kickback scheme. Michael Payne was a risk manager and Melissa Church was the executive director of physician services at Park Ridge. Gloria Pryor was a compliance officer for physician offices at Park Ridge.

"My clients went through internal channels at the hospital to get their concerns about deals with doctors and improper billing practices addressed for several years," Chatfield said. "They decided to file a whistleblower lawsuit after they confirmed that the alleged money-for-referrals scheme was system-wide at Adventist and it was clear management wasn't going to stop it."

The financial arrangements Adventist hospitals allegedly had with doctors violated the Stark Statute and the False Claims Act.

The Adventist hospitals kept careful track of the value of the referrals the physician employees made to the hospitals, according to the complaint. Losses suffered by the hospitals were due in large part to overcompensation of physicians, the complaint said. For instance, one doctor at Park Ridge was marked in Adventist financial records as a "recurring issue" because he needed to bring in approximately \$70,000 per month in billings for the hospital to break even on the compensation Adventist paid him, but he was bringing in only about \$57,000 per month.

In addition to the charges related to the money-for-referrals scheme, Adventist settled a number of Medicare billing fraud allegations made in Phillips & Cohen's whistleblower lawsuit and supported by the government. Adventist hospitals allegedly:

- "Upcoded" Medicare claims, meaning that they filed for reimbursement for more involved and therefore more expensive treatment than was needed, and filed claims for services that were medically unnecessary for patients in nursing and assisted living facilities;

- Submitted claims for services provided by doctors who didn't have the proper credentials for working at hospitals where they were filling in for regular doctors;
- "Unbundled" services and submitted them as separate claims to get larger Medicare and Medicaid reimbursements when the services should have been bundled into a single claim for reimbursement at a lower overall cost.
- Submitted claims for services that weren't documented in patients' medical records.

The government joined Phillips & Cohen's whistleblower lawsuit – which was not publicly known until today because it was under seal – after investigating the whistleblowers' allegations. Attorney James Wyatt of Wyatt & Blake LLP, in Charlotte, N.C., served as whistleblowers' local counsel on the case.

Out of the total \$118 million settlement, Adventist will pay:

- \$115 million to the federal government.
- \$3.48 million to Florida.
- \$198,453 to North Carolina.
- \$66,897 to Tennessee.
- \$4,711 to Texas.

Payne, Church, Pryor and their attorneys expressed their appreciation for the work by the government's lawyers and investigators to stop the alleged schemes and recover millions for the government.

In particular, they thanked David Finkelstein, Trial Lawyer with the Justice Department's Civil Division, and Jonathan Ferry, Assistant US Attorney in the US Attorney's Office for the Western District of North Carolina, for their outstanding work on the case.

Payne, Church and Pryor also thanked their families for their support and encouragement to do the right thing by pursuing their qui tam lawsuit for the past three years.

The False Claims Act allows private citizens to file "qui tam" lawsuits against any entity defrauding the government to recover funds for the government. Whistleblowers are rewarded with 15 percent to 25 percent of the recovery when the government joins the case. The amount of the whistleblowers' rewards in this case hasn't been determined yet.

Case citation: *United States, Florida, North Carolina, Tennessee and Texas ex rel. Payne, Church and Pryor v. Adventist Health System-Sunbelt, Inc. et al.*, No. 3:12-cv-856-FDW-DSC (W.D.N.C.)

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