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Health Care Alert: Tuomey Ex-CEO Banned From Medicare In \$1 Million Settlement

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CLIENT ALERT | 9.29.2016

On September 27th, the Department of Justice entered into a settlement for \$1 million with Tuomey Healthcare System, Inc.'s former Chief Executive Officer, Ralph J. Cox III.^[1] The settlement terms include a ban from participating in any of the federal health care programs for four years which prevents Cox from working as a manager or administrator for services paid for by the federal health care programs. Cox was targeted as a result of his involvement in Tuomey's illegal Medicare and Medicaid billings for services referred by physicians with whom the hospital had improper financial relationships.

Whistleblower Michael K. Drakeford sued Tuomey in 2005 alleging Tuomey inflated the amount it paid 19 specialist physicians on the belief it would make up any losses from the physician's downstream referrals to the hospital. The Stark Law prohibits a hospital from basing any payments to a referring physician on or taking into account the volume or value of the physician's referrals to the hospital. Such payments must be at fair market value for the physician's actual services. A South Carolina jury decided the contracts violated the Stark Law and that Tuomey had filed more than 21,000 false claims with Medicare in May of 2013. Later, on October 2, 2013, the trial court entered a judgment for \$237.4 million against Tuomey under the False Claims Act. Cox's position as Tuomey's CEO was terminated in the fall of 2013. The United States Court of Appeals for the Fourth Circuit affirmed the trial court's judgment on July 2, 2015.

The government's settlement with Cox resulted from the allegation that Cox intentionally caused Tuomey to contract with the specialist physicians so that the physicians were required to refer their outpatient procedures to Tuomey and, in exchange, paid them compensation above fair market value and which included a portion of the money Tuomey received from Medicare for the referred procedures. The government claimed Cox's motivation for entering into the contracts was his concern about losing high earning outpatient referrals to a competitor surgery center. During trial, the government also alleged Cox ignored and tried to suppress warnings from one of Tuomey's lawyers regarding the risky nature of the contracts and that they raised

“red flags.”

This settlement comes a little more than a year after the DOJ issued what is now commonly referred to as the “Yates Memo,” which explains the government’s intention to focus on individual corporate executive accountability during investigations of corporate wrongdoing.^[2] While the DOJ’s settlement with Cox is not the first False Claims Act corporate settlement involving an individual, it is noteworthy given Cox’s position as a high-level executive and the significant monetary and administrative penalties and is evidence of the DOJ’s intention of adhering to the Yates Memo.

^[1] Press Release, Department of Justice, Former Chief Executive of South Carolina Hospital Pays \$1 Million and Agrees to Exclusion to Settle Claims Related to Illegal Payments to Referring Physicians (Sept. 27, 2016), available at <https://www.justice.gov/opa/pr/former-chief-executive-south-carolina-hospital-pays-1-million-and-agrees-exclusion-settle>.

^[2] Memorandum from Deputy Attorney General Sally Quillian Yates on Individual Accountability for Corporate Wrongdoing (Sept. 9, 2015) available at <https://www.justice.gov/dag/file/769036/download>.