Surgical Chain Pays $5M To End FCA Kickbacks Suit

By **Jeff Overley** **Share us on:**

Law360, New York (September 10, 2014, 5:13 PM ET) -- An operator of outpatient surgical clinics will pay $5.1 million to settle a whistleblower's False Claims Act allegations that it disguised kickbacks as investment interests for doctors who steered valuable Medicare patients its way, attorneys said Wednesday.

Meridian Surgical Partners LLC — which is paying $3.3 million to the government and $1.8 in attorneys fees and costs — denied any wrongdoing in connection with sales of ownership stakes in a Florida clinic called Treasure Coast Surgery Center LLC.

"While the allegations in the lawsuit were completely without merit, we chose to settle this action to avoid the financial costs and distractions that would have come with further legal proceedings," John Wilson, CEO of Meridian, said in a statement that labeled the payout a small fraction of what the lawsuit had sought.

But lawyers for former Treasure Coast office manager Thomas Reed Simmons, who brought suit in 2011 and will receive roughly $900,000 under the settlement, declared victory on Wednesday.

"This is one of very few cases to allege successfully that payments of ownership interests in an [ambulatory surgical center] to physicians in exchange for patient referrals are kickbacks that violate the False Claims Act," said Ross Brooks, co-chair of the whistleblower practice at Sanford Heisler LLP, one of several firms that represented Simmons.

The Obama administration did not intervene in the case.

According to the complaint, Meridian in 2007 paid $5.7 million for a 60 percent stake in Treasure Coast. That would translate to a total clinic value of $9.6 million and a 1 percent stake valued at $96,000, the complaint noted.

Shortly after the purchase, however, Meridian began selling off small stakes in Treasure Coast to referring doctors for far less than it had paid, the complaint said. For example, several physicians purchased 1 percent stakes for roughly $25,000, according to the lawsuit.

Those stakes immediately generated healthy returns for the doctors, who typically received more than $1,000 per month as dividends on their investments, the lawsuit said. That sort of return on investment "can only be viewed as remuneration to reward [doctors] for referrals and induce [them] to continue to refer," the complaint stated.

The arrangements constitute improper kickbacks that don’t qualify for a safe harbor related to investment income because the stakes were sold at far below market value and the “lucrative terms” were tied to referral volume, the complaint charged.

Simmons is represented by Ross B. Brooks and Michael Douglas Palmer of Sanford Heisler LLP, by Jonathan Kroner of the Jonathan Kroner Law Office, and by William Michael Hamilton of Provost Umphrey Law Firm LLP

Meridian is represented by Brian D. Roark, Michael L. Dagley, Anna M. Grizzle and J. Taylor Chenery of Bass Berry & Sims PLC.

The case is USA ex rel. Simmons v. Meridian Surgical Partners LLC et al., case number 3:11-cv-00439, in the U.S. District Court for the Middle District of Tennessee.

--Editing by Emily Kokoll.