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Tenet Healthcare Corp. pays \$5 million to settle False Claims Act case

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Tenet Healthcare Corp., owner of four Miami-Dade hospitals, paid \$5 million in December to settle a South Florida whistle-blower lawsuit alleging that the company paid kickbacks to doctors by allowing them to lease offices at below-market rates, among other favorable terms, in return for patient referrals — a violation of federal and state laws.

To settle the False Claims Act case, Tenet paid \$4 million to the federal government — with \$1 million of that going to the South Florida landlord who was the whistle-blower in the case — and an additional \$1 million for legal fees and other costs. Tenet admitted no wrongdoing.

“There’s clearly a potential concern if a doctor is getting incentives from healthcare providers, whether that translates into that doctor doing more business with them, referring more patients to them, and on and on,” said Sal Barbera, a healthcare services administration professor at Florida International University and a former whistle-blower in a separate False Claims Act lawsuit filed against Tenet in 1997.

In addition to the alleged kickback scheme, the suit filed in July 2009 by Marc Osheroff, a Broward resident and entrepreneur, accused Tenet of submitting payment claims to federal programs including Medicare and Medicaid based on referrals from physician-tenants who were getting a break on their office rent.

Tenet operates 77 hospitals in 14 states — including Miami-Dade’s Coral Gables Hospital, Palmetto General Hospital, Hialeah Hospital and North Shore Medical Center — and relies heavily on the taxpayer-funded healthcare programs.

According to the suit, about 31 percent of Tenet’s hospital admissions are Medicare patients and 12 percent are Medicaid patients. And Tenet’s SEC [filings](#) for 2013 show its hospitals received net revenues of \$2.3 billion from Medicare, and an additional \$975 million from Medicaid — more than 27 percent of the \$12 billion the company earned that year.

The suit said the doctors benefited via leases with Tenet at buildings in Hialeah and Fort Lauderdale, as well as facilities in California, Georgia, Texas and Tennessee. Tenet charged less than market rate for offices and offered money for tenant improvements and understated the offices’ square footage, according to the suit.

The result: tens of thousands of dollars in financial gain for some physician-tenants over the life of the leases, according to the lawsuit. The arrangements also created a prohibited financial relationship under the federal Stark Law, which bans hospitals from filing Medicare claims based

on such referrals.

Tenet, meanwhile, earned more than \$11,000 in net revenue for every patient admission, according to the suit.

Shortly after the case was settled and dismissed, Tenet purchased for \$48 million a medical office building next to Palmetto General that was owned in part by Osheroff, the whistle-blower. That building was not among those used by Tenet in the alleged scheme.

But Tenet's purchase of the medical office building is an unusual wrinkle in the case, since Osheroff operates a number of South Florida medical office buildings that compete with Tenet for physician-tenants.

The building at 7160 West 20th Ave. sold for an \$11 million profit over the \$37 million that Pal-Med Holdings, a limited liability corporation controlled by Osheroff, paid for it in 2008, according to Miami-Dade property records.

Tenet had a ground lease on the Pal-Med building prior to buying the 454,785-square-foot facility, which is used for outpatient services, medical offices and parking.

Jonathan Kroner, an attorney representing Osheroff, said the U.S. Department of Justice, which declined to intervene in the suit but consented to the settlement, was aware of the sale.

"Everything Osheroff or the owners of Pal-Med did was with full disclosure," Kroner said. "He did nothing that the government was not aware of."

A Tenet spokeswoman declined to answer questions about the allegations contained in Osheroff's lawsuit but issued a written statement on behalf of Steve Campanini, vice president of corporate communications for Tenet.

Campanini's statement said Tenet contested Osheroff's allegations in court but settled in December to avoid the uncertainty and expense of a drawn-out lawsuit.

"After years of litigation, Tenet decided it was in its best interest to sever any remaining business relationships with Mr. Osheroff," Campanini's statement read. "Palmetto General Hospital's separate purchase of the medical office building located on its hospital campus from the real estate company partially owned by Mr. Osheroff was fully disclosed to the U.S. Department of Justice in connection with their approval of the settlement of the Osheroff lawsuit."

Annette Castillo, a spokeswoman for the U.S. Attorney's Office in South Florida, said the case is closed. The settlement was not included in the public docket on the case, but Castillo said they "often do not include a copy of the settlement agreement."

Patrick Burns, co-director of the nonprofit Taxpayers Against Fraud Education Fund based in Washington, D.C., said the federal government's actions related to the settlement amount to secrecy in a case that merits full public disclosure.

"If a case is settled, the Department of Justice should weigh in to make sure that the settlement is part of the public record," said Burns. "It helps the Department of Justice to understand, and the hospital to understand that the public is paying attention, and that we want bad actors to

straighten up.”

FIU’s Barbera, who brought his own whistle-blower lawsuit against Tenet in 1997, and which the company settled with the federal government for \$22.5 million, said hospitals are allowed by law to have financial relationships with physicians, including employment agreements and office leases.

But, he added, the details must be fully disclosed and executed at arm’s length, often with independent assessments by a third party.

“To everyday people, they may think, well, there’s nothing wrong with that,” Barbera said. “Here’s a hospital, and, yeah, they’re doing business with doctors. So shouldn’t they be allowed to do good deals with them on office space to get them to refer patients?”

But he said that may pose a problem for patients.

“How would you like to be a patient of a doctor who orders a service for you that that doctor has financial benefit from? You may feel a little uneasy with that. How would you like it if your doctor recommended that you have surgery in an ambulatory surgery center owned by that doctor?”

Barbera said False Claims Act cases frequently settle without going to trial because of the potential cost.

“The False Claims Act has very, very rigid financial penalties involved if you go to trial and lose,” Barbera said, “and those penalties are real significant.”

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