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BUSY TIME FOR HEALTH CARE FRAUD SETTLEMENTS

DOJ Announces Largest Health Care Fraud Settlement in Its History

DOJ announced on September 2, 2009 that American Pharmaceutical giant Pfizer, Inc. and its subsidiary Pharmacia & Upjohn Company (PU) Inc. have agreed to pay \$2.3 billion to resolve criminal and civil liability arising from the illegal promotion of certain pharmaceutical products. In the DOJ press release it stated that PU has agreed to plead guilty to a felony violation of the Food, Drug and Cosmetic Act for misbranding Bextra with the intent to defraud or mislead. Bextra is an anti-inflammatory drug that Pfizer pulled from the market in 2005, Pfizer promoted the sale of Bextra for several uses and dosages that the FDA specifically declined to approve due to safety concerns. Pfizer will pay \$1.195 billion in criminal fines, PU will forfeit \$105 million for a total criminal resolution of \$1.3 billion. In addition, Pfizer has agreed to pay \$1 billion to resolve allegations it illegally promoted four drugs – Bextra; Geodon; an anti-psychotic drug; Zy drug – and caused false claims to be submitted to government health care programs for uses that were not medically accepted indications and therefore not covered by those programs. The civil settlement also resolves allegations that Pfizer paid kickbacks to health care providers to induce them to prescribe these, as well as other drugs.

As part of the settlement, Pfizer also has agreed to enter into an expansive corporate integrity agreement with the Office of Inspector General of the Department of Health and Human Services. Under the CIA, Pfizer will engage an Independent Review Organization that will help the Company assess and evaluate its promotional and product-related business functions.

In a statement announcing the settlement, Pfizer stated that it “expressly denies all of these civil allegations, with the exception that Pfizer acknowledges certain improper actions related to the promotion of Zyvox.”

Various whistleblower lawsuits filed under the qui tam provisions of the False Claims Act triggered the investigation. As part of the resolution, six whistleblowers will receive payments totaling more than \$102 million from the federal share of the civil recovery.

Covenant Medical Center to Pay \$4.5 Million to Resolve False Claims Allegation Related To Hospital / Physician Compensation Arrangements

On August 25, 2009 the DOJ and the United States Attorney’s Office Northern District of Iowa announced a settlement had been reached with regard to allegations of health care fraud relating to Covenant Medical Center’s financial relationships with five doctors.

As reported in the August 26, 2009 DesMoines Register “Critics had accused the hospital of wildly overpaying medical specialists to serve as employed physicians so they could bring in patients for procedures. Several years ago, critics noted that at least two doctors were making more than \$2 million per year, which the critics said was more than double what the doctors could have made elsewhere in Iowa.” DOJ alleged that the five physicians were paid in excess of commercially reasonable fair market value for their services which was in violation of Stark Laws. This resulted in false claims being submitted to the Medicare program as the Stark Laws prohibit a hospital from profiting from referrals of patients by a physician when the hospital and physician have an improper compensation arrangement.

The Des Moines Register noted that hospital leaders continued to defend the doctors' pay stating "Covenant believes the government did not produce any evidence that Covenant had engaged in wrongdoing or illegal conduct" Covenant said in a related press release "Covenant Medical Center made a business decision to settle to avoid the uncertainty of litigation, disruption and high expense associated with protracted litigation with the government, despite our firm belief that Covenant's compensation to its physicians was reasonable and fell within fair market value."

The Register States "The issue came to light several years ago when leaders of an independent medical practice, Cedar Valley Medical Specialists, complained that Covenant was offering inflated pay to doctors. For example, Covenant's top-paid doctors were making more than triple what their counterparts were making at the acclaimed Mayo Clinic in Minnesota. Cedar Valley Medical Specialists' leader noted then that Covenant was paying more to individual doctors than it was spending on charity care for uninsured patients. Covenant leaders said "their hospital's specialists earned their pay through extraordinarily hard work and long hours." The WCF Courier in Waterloo, Iowa reported on its website on August 25, 2009 "The allegations of physician overcompensation surfaced in 2005. Cedar Valley Medical Specialists, a for-profit medical clinic, expressed concerns to the U.S. Senate Finance Committee, then chaired by U.S. Sen. Charles Grassley, as well as to the Department of the Treasury. CVMS executives obtained Internal Revenue Service 990 forms which showed that for tax year 2002,

nonprofit Covenant's five highest paid physicians made between \$633,000 and \$2.1 million a year – much greater than the highest paid physicians at Allen Hospital in Waterloo, whose compensation ranged between \$230,000 and \$360,000 according to IRS documents. It was also several times higher than physicians at hospitals in Des Moines, Cedar Rapids, University Hospitals and Clinics in Iowa City and the Mayo Clinic in Rochester, Minn. Two of the top paid physicians were orthopedic surgeons who made \$2.14 million and \$1 million in 2002, respectively. A Gastro-intestinal Specialist made \$2.1 million."

No charges have been filed, and U.S. Attorney Matt Dummermuth said none of the doctors faces sanctions from the government. The settlement is confidential but Covenant denies any wrongdoing. Mr. Dummermuth stated that "this payment is the largest ever related to claims of health care fraud in the Northern District of Iowa."

Once again both of the above actions were initiated by whistleblowers or concerned third parties and this is where most of the activity originates. The best approach to combat this is a well planned and educated policy and program to catch potential issues or prevent abuses before they happen.

NOTE: FOR ADDITIONAL INFORMATION AND RESOURCES MAKE SURE YOU CHECK OUT OUR NEW WEBSITE: <http://www.baratzcpa.com>

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