

US False Claims Act: Court Lets Nurse's Case Go Ahead.

The US False Claims Act allows a private individual to sue a recipient of Federal funding to recoup money the recipient has fraudulently obtained from a Federal source.

The law was passed long ago to stop military contractors from bilking the US during the Civil War. It is now seeing application in a wide range of contexts including healthcare facilities that participate in Medicare and Medicaid.

A nurse and a physician sued a number of facilities alleging that a fraudulent scheme was underway to bilk Medicare by hospitals admitting certain patients for three days just so that their subsequent care in a skilled nursing facility would be covered by Medicare.

The US District Court for the District of New Jersey ruled that that allegation, if it can be proven, could amount to a violation of the US False Claims Act.

The Court allowed the case to move forward to the civil discovery phase of the litigation to determine if evidence exists to support the allegations. **US v. AHS Hosp. Corp.**, 2014 WL 4238148 (D. N.J., August 26, 2014).

US False Claims Act: Court Strikes Down Nurses' Case.

The US False Claims Act prohibits knowingly submitting a false or fraudulent claim to the US Government for payment.

The US Attorney General can sue to recoup false or fraudulent payments. A private individual also can sue in the name of the US Government. If successful the private individual gets to keep a set percentage of the amount recouped.

A number of nurses filed a False Claims Act lawsuit against the nursing facility where they had worked alleging the facility had submitted thousands of false or fraudulent claims to Medicare and Medicaid for "worthless services," that is, patient care that was seriously substandard.

An example of the application of their theory would be a service for which \$200 was billed that was so substandard that it was really worth only \$80, leaving \$120 as the quantum of false or fraudulent payment they could recoup in their lawsuit for that one out of many services.

The US Court of Appeals for the Seventh Circuit declined to approve their "worthless services" theory. **US v. Momence**, ___ F. 3d ___, 2014 WL 4092258 (7th Cir., August 20, 2014).

Physicians' Pre-Operative Orders In Conflict: Court Imposes Legal Duty On Hospital, Nurses.

A medical malpractice case filed by the family for the death of a hospital patient after a cardiac procedure led to the defendant physicians pointing their fingers at each other.

One physician apparently admitted the patient to the hospital nominally as the patient of another physician to undergo a procedure by yet another physician, an interventional cardiologist.

The family's lawsuit also pointed a finger at the hospital for failing to have policies and procedures in place requiring the hospital's nurses to check with the surgeon after another physician has changed the surgeon's standing preoperative orders before going ahead with the other physician's conflicting orders.

The lawsuit also alleged that the nurses in this case, with or without a hospital policy or procedure in place,

The jury will be allowed to hear the family's medical expert's opinion.

His opinion is that a hospital should have guidelines for the nurses so that the surgeon is notified when the surgeon's orders are changed before surgery.

A nurse should refuse to follow another physician's preoperative orders that contradict the surgeon's, in the expert's opinion.

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PUERTO RICO
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should not have gone ahead with another physician's preoperative orders without first communicating with the interventional cardiologist.

The US District Court for the District of Puerto Rico ruled against the hospital.

The Court decided it will allow the family's medical expert to testify before the jury that a hospital must put policies and procedures into effect requiring the hospital's nurses to communicate with the surgeon before going ahead with preoperative orders from another physician that conflict with the surgeon's.

The basic tenet that nurses must carry out the physician's orders requires further guidance to the nurses when different physicians give different orders, the Court said. **Ramirez-Ortiz**, ___ F. Supp. 2d ___, 2014 WL 3940413 (D. Puerto Rico, August 13, 2014).