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FRAUD, WASTE AND ABUSE

DOJ intervenes in FCA action against Florida compounding pharmacy and a private equity firm

The *National Law Review* reported on March 6 that the DOJ had recently intervened in a False Claims Act case with several allegations including the investigation of both the compounding pharmacy and the private equity firm that invested in the firm and allegedly prompted it to commit the violative acts which included kickbacks to a marketing firm, TRICARE beneficiaries, and prescribers.

The compounder, Patient Care America (PCA) is a Florida-based pharmacy that prior to 2012 prepared IV nutrition therapy for dialysis patients. The investor, Riordan Lewis & Haden, Inc. (RLH), allegedly installed two of its partners as officers of the pharmacy and then directed the pharmacy to begin producing and marketing a new product line – topical compounding. The investors allegedly planned to pump the pharmacy’s sales in anticipation of placing the firm on the block in 5 years. The company was then directed, according to the pleadings, to hire a new CEO who came with cautionary advice from a talent consultant, and the CEO hired a new pharmacist to oversee the new business line, because of the pharmacist’s “ability to ‘generate immediate referrals.’” According to the NLR report, the CEO and the pharmacist are the individuals named in the relator’s suit.

The DOJ claims that PCA then engaged a marketing firm and paid the firm 50% commission on profits to generate prescriptions for PCA. Allegedly, PCA exercised little or no control over the marketer’s methods to generate referrals. The suit also alleges that “to exploit the fact that TRICARE at the time reimbursed pharmacies for all ingredients in a compounded drug, PCA repeatedly modified its compounding formulas to increase reimbursement for its pain management products.” Between 2012 and 2015, PCA is alleged to have received \$68 million from the fraud.

The NLR reporter comments that the case is notable in part because: (1) a private equity firm is a named party; (2) the government is pursuing individuals rather than solely corporate actors (a continuing trend); (3) the case arises from scrutiny of contractor relationships and copayment waivers, and a focus on not only kickbacks to TRICARE beneficiaries and prescribers, but commission-based marketing. [Hardy XG, Lovitch KS. DOJ intervenes in False Claims Act against a compounding pharmacy and a private equity firm. *National Law Review* 2018 Mar 6; <http://bit.ly/2p4VEel>; United States ex rel. Medrano and Lopez v. Diabetic Care Rx, LLC dba Patient Care America, et al., No. 15-CV-62617, S.D. Fla.]