

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 11-14312

and

Hon. Stephen J. Murphy

Ex. Rel. KAREN HOUGHTON,

Plaintiff/Relator,

v.

WILLIAM BEAUMONT HOSPITAL
d/b/a BEAUMONT HEALTH SYSTEM
a Domestic Nonprofit Corporation; TROY
INTERNAL MEDICINE, P.C., a Domestic
Professional Service Corporation,
and JOHN DOE 1-100

Defendants.

QUI TAM ACTION - FILED UNDER SEAL PURSUANT TO 31 U.S.C. § 3730(b)(2)

DO NOT PLACE IN PRESS BOX

DO NOT ENTER ON PACER

DAVID M. BLANCHARD (P67190)
DANIEL TAI (P76798)
BLANCHARD & WALKER, PLLC
Attorney for Relator
221 N. Main Street, Ste. 300
Ann Arbor, MI 48104
(734) 929-4313
blanchard@bwlawonline.com
tai@bwlawonline.com

**FIRST AMENDED FALSE CLAIMS ACT COMPLAINT
AND DEMAND FOR JURY TRIAL**

Introduction

1. Relator brings this action on behalf of the United States of America against Defendants for treble damages and civil penalties arising from the Defendant's false statements and false claims in violation of the False Claims Act, 31 U.S.C. §3729 et seq.

2. The complaint details violations of the Federal anti-kickback law, 42 U.S.C. § 1320(a)-7(b) as well as the Stark Anti-Referral Law, 42 U.S.C. § 1395nn.

3. Defendant Beaumont Hospital ("Beaumont") is engaged in multiple practices that violate these statutory provisions. In general, these practices reward known top referral sources with compensation, remuneration and other favorable business arrangements inconsistent with fair-market value.

4. First, Beaumont has an arrangement where CT Scanners at the UnaSource Imaging Center are owned independently by Beaumont and Defendant Troy Internal Medicine, P.C. ("Troy Internal Medicine" or "TIM"). Patients who call for a CT scan through Beaumont's appointment line are equally scheduled at its own scanner or Troy Internal Medicine's scanner. Thus, Troy Internal Medicine is provided business on its scanner in return for the large referral business it provides to Beaumont.

5. Second, Beaumont has a regular practice of providing "block leases" to doctors that do not accurately reflect fair-market value of the space, in exchange for referrals and as an implicit reward for these referral relationships.

6. Third, Beaumont regularly provides compensation and medical director positions and other high-paying positions to top referrers in return for referral relationships and without receiving any substantial labor to the benefit of the hospital.

Jurisdiction and Venue

7. This action arises under the False Claims Act, 31 U.S.C. §3729 et seq. This Court has jurisdiction over this case pursuant to 31 U.S.C. §§ 3732(a) and 3730(b). This Court also has jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1331.

8. Venue is proper in the Eastern District pursuant to 31 U.S.C. §3732(a), because the acts proscribed by 31 U.S.C. §3729 et seq. and complained of herein took place in this District, and is also proper pursuant to 28 U.S.C. §1391, because at all times material and relevant, Defendants transact and transacted business in this District.

The Parties

9. Relator Karen Houghton, is a former employee of Beaumont and is a citizen of the United States and a resident of Oakland County, Michigan. Ms. Houghton hired into Beaumont in 1985. She served as Director of Nuclear Medicine and Revenue Cycle Manager from 2002-2007 and then, from 2007 on, as Director of Diagnostic Radiology and Nuclear Medicine based in Defendant's Royal Oak facility. Relator brings this action based on her direct, independent and personal knowledge and also on information and belief. In her various positions at Beaumont, Relator was involved in business development, revenue cycle management, and fiscal management. Relator's responsibilities included contract negotiations; pro forma development; strategic and operational planning; financial management; human resource development; partnering with other departments and divisions to implement new services, equipment, performance measures and enhancements; compliance issues; and customer and employee satisfaction and safety.

10. Relator is an original source of this information to the United States. She has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under the False Claims Act which is based on the information.

11. The United States, through the Department of Health and Human Services (“HHS”), administers the federal Medicare program, which is a health insurance program funded by taxpayer revenue. Medicare assists state governments with the payment for medical services to persons over the age of 65 and others who qualify under the Medicare program.

12. Defendant Beaumont Health System is a Michigan not-for-profit health system operating throughout Metro Detroit. Defendant Beaumont is one of the largest health systems in Michigan, including several hospital locations and numerous other care locations.

13. Defendant Troy Internal Medicine, P.C., is a domestic professional service corporation with headquarters at 4600 Investment Drive, Suite 300 in Troy, Michigan.

14. Defendants John Does 1-100 are unidentified Beaumont assumed names, subsidiaries, affiliates and joint ventures receiving referrals for designated health services under illegal arrangements as described herein that can be identified through records of Defendants Beaumont and Troy Internal Medicine as well as through billing records available to the United States but not readily available to the relator.

Statutory Requirements that Provide Basis for Relator’s Claims

15. The Stark Act bans Medicare payment to an entity for “designated health services” (DHS) when they are referred by physicians who have a financial relationship with the entity (unless an exception applies). 42 U.S.C. § 1395nn(a). Under §1395nn(a)(1)(A), a

physician may not refer Medicare patients to an entity for "designated health services," including inpatient and outpatient hospital services, if the referring physician has a nonexempt "financial relationship" with such entity. Under § 1395nn(a)(1)(B), the entity is prohibited from presenting or causing to be presented a Medicare claim for services furnished pursuant to a prohibited referral.

16. The Anti-Kickback Act prevents receiving or paying any remuneration based on a referral for any medical services covered by a Federal health care plan. See 42 U.S.C. § 1320(a)-7(b).

17. Falsely certifying compliance with the Stark or Anti-Kickback Acts in connection with a claim submitted to a federally funded insurance program is actionable under the False Claims Act.

18. The False Claims Act provides that any person who knowingly submits a false or fraudulent claim to the Federal Government for payment or approval is liable to the government for a civil penalty of not less than \$5,500 and not more than \$11,000 for each claim, plus three times the actual damages that the government sustained. 31 U.S.C. §3729(a). The Act also permits assessment of the civil penalty even without proof of specific damages.

19. For the reasons stated below, Defendants have, in reckless disregard or in deliberate ignorance of the truth or the falsity of the information involved, made or used false or fraudulent records and statements in order to get false or fraudulent claims paid or approved. Such conduct violates the False Claims Act. 31 U.S.C. §3729(a)(1) and (a)(2).

20. This conduct primarily relates to a knowing disregard of the requirements of the anti-kickback statute and the Stark Act as evidenced in a series of repeated transactions that run

afoul of those laws and make any Medicare or Medicaid payment received on the basis of those laws unlawful.

Allegations of the Scope, Method, and Duration of the Fraudulent Practice

I. Referral of CT Scan Patients to Troy Internal Medicine

21. Troy Internal Medicine is located in a facility on Investment Drive in Troy, Michigan. At this location, Troy Internal Medicine owns a CT scan machine and holds a valid Certificate of Need for the operation of that machine.

22. At the exact same location, in the exact same suite, Beaumont holds the Certificate of Need on another CT scan machine. Beaumont lists their CT machine as being available at “Unasource Health.”

23. Both of these Certificates of Need date from March of 2001.

24. Unasource Health is the name of the building owner, which houses numerous health care providers, including multiple providers affiliated with Beaumont Hospital.

25. Beaumont patients calling for a CT scan at the Unasource location are scheduled on either the Beaumont machine or the Troy Internal Medicine machine. Under this unwritten arrangement, Beaumont agreed to provide half of the patient scans for the Unasource building to Troy Internal Medicine’s machine. This arrangement was in exchange for Troy Internal Medicine’s agreement to refer (or promote referrals from its partner Doctors) designated Health Services to Beaumont and Beaumont related entities.

26. Patients schedule their services by calling a Beaumont scheduling center. Patients will call the center and be told about locations for CT scans, including at Unasource. This location includes both Beaumont’s own scanner and Troy Internal Medicine’s scanner.

27. If the patient is scheduled on the Troy Internal Medicine machine, then Troy Internal Medicine bills Medicare or Medicaid the facilities cost of running the scan, even though the patient originated from Beaumont's referral.

28. There is no commercially reasonable justification for Beaumont to refer half of its scanner business to a machine that is owned by Troy Internal Medicine for services to be billed by Troy Internal Medicine, and no justification at all except to induce referrals of designated health services to Beaumont and Beaumont-related entities.

29. For all effective purposes, the system operates as if it is one coherent facility that provides CT scans. However, the two CT scanners are owned by the two separate entities, Beaumont and Troy Internal Medicine. On information and belief, Patients are not notified that they are being referred to a separate entity for scanning.

30. This arrangement is contrary to both the Anti-Kickback Act and the Stark law. Defendants have entered into an agreement to share the space at this facility and comingle their CT scanners. As such, all referrals and business sent to this facility at Unasource necessarily benefits both parties. Both parties then have an incentive to increase the number of referrals to that site to increase their own profits.

31. Relator has personal knowledge of this arrangement based on her previous role as Director of Radiology. While this particular facility is administered by the Troy, Michigan office, the practice was understood throughout the various facilities, including Royal Oak where Relator worked.

32. This arrangement is a financial relationship between Troy Internal Medicine and Beaumont.

33. Troy Internal Medicine refers numerous patients to Beaumont Hospital for designated health services, including in-patient hospitalization and outpatient diagnostic exams.

34. In return, Troy Internal Medicine gets half of the Beaumont business on its CT scanner at the Unasource building.

II. Beaumont provides “block leases” to significant referral sources at below market value.

35. Beaumont has a practice of providing block leasing to referring doctors and medical groups. The block leasing plan provides facilities at below market rates, contrary to both the Anti-Kickback Act and the Stark Law.

36. Over the past few years, Beaumont developed a sophisticated system to track referral sources. The system was designed by Steve Touhy, from the ambulatory division, with the help of Beaumont Information Technology Department.

37. Based on this information, Beaumont management has open access to “real time” tracking of its most important referral sources. Management decisions relating to block leasing can be tuned to reward the highest referring doctors.

38. This practice involves multiple facilities, including the Nuclear Medicine Facility in West Bloomfield, Michigan.

39. For example, in her professional work at Beaumont, Relator is intimately familiar with the efforts to provide block leasing for a Dr. Brodsky in West Bloomfield, Michigan. As part of Relator’s own job assignment, she researched and assisted in the analysis of the proposed block lease throughout 2006.

40. Relator identified multiple problems and underestimates of costs to Beaumont in the proposed block lease. For instance, the proposed lease did not account for all indirect costs, such as administrative and general, and may not have accurately reflected financial feasibility if

procedure volumes and/or machine utilization were overstated. The indirect expenses were radically underrated, meaning Dr. Brodsky would not be charged anything near what Beaumont's cost of operating the facility actually was.

41. Dr. Brodsky was an important referral source for Beaumont and appeasing him was valuable to Beaumont.

42. Relator raised her concerns with Beaumont and was told to stop attempting to account for the actual cost to Beaumont and that expenses in her estimates needed to come down.

43. Relator was eventually removed from the project, as was Beaumont's assigned legal counsel, when Relator began to express concerns about the pricing structure Beaumont was offering to Dr. Brodsky, in that it does not account for indirect costs.

44. Today, Dr. Brodsky has executed a block lease for this facility, and on information and belief, the lease does not represent the fair market value of the benefit offered to Dr. Brodsky.

45. Relator is also aware of a block leasing arrangement for Dr. David Brill, a cardiologist who began working at a facility under the Beaumont name in Lake Orion, Michigan in 2006.

46. Based on these impermissible block leasing arrangements, Beaumont's continued billing based on referrals from these sources all are false claims.

III. Beaumont Regularly Provides Medical Director and Other Benefits to Top Referral Sources Where the Compensation Far Outstrips the Fair Market Value of the Labor Provided.

47. Defendant Beaumont has engaged in a consistent practice of rewarding top-referral sources with medical directorships and other "perk" appointments where they are required to perform little if any work in return for sizable salaries.

48. Beaumont has a policy and practice of creating Director positions and other appointments for top referrers.

49. Relator has personal knowledge of who the various high referral sources were and had access to that information.

50. As stated above, Beaumont maintains accurate lists of its referral sources for ready tracking of which sources provide the most valuable referrals.

51. For instance, Relator knows that Harry Herkowitz receives a substantial salary from Beaumont although he is unable to provide substantial services because he maintains his own full-time orthopedic practice.

52. Multiple high-referring cardiologists have received medical directorships entitling them to more than \$700,000 from Beaumont despite maintaining their own independent practices that prevent them from providing full-time services to Beaumont despite the substantial compensation received.

53. This includes a number of doctors who all work together at the Academic Heart and Vascular Group located in Royal Oak and Woodhaven, Michigan.

54. This policy is not limited to medical directorships. Beaumont has, for instance, created the Beaumont Oncology Network, who has an amorphous mission and no tangible accomplishments.

55. The President of the Beaumont Oncology Network is Dr. Jeffrey H. Margolis. Dr. Margolis is one of the highest referral sources for CT Scans and PET CT. Dr. Margolis is also the Vice Chief of Oncology Services at Beaumont Hospital.

56. Instead, the Beaumont Oncology Network is primarily an opportunity for Beaumont to provide remuneration to high-referring doctors in oncology, which provides great

value to Beaumont. These referral sources provide numerous patients covered by Medicare and lead to substantial billing by Beaumont for services.

57. Beaumont continues to provide these and other salaries without any systematic approach. Beaumont has developed the “CART Methodology,” which stands for Clinical, Academic, Research, and Training. This methodology provides objective criteria for doctor remuneration. Despite its development, Beaumont has yet to implement it.

58. In addition, Beaumont has begun purchasing Gamma Cameras from referring cardiologists in an effort to financially assist these referring physicians. Recent changes to Medicare reimbursement have made owning these machines less-profitable. Beaumont is paying for these machines even though the Gamma Cameras it owns are already underutilized.

59. To provide medical directorships and other remuneration in direct return for high-volume referrals is a violation of both the Anti-Kickback Act and the Stark law.

60. These arrangements are not commercially reasonable and do not lead to necessary services that Beaumont needs to provide.

61. These and other doctors are not providing the necessary hours to Beaumont to justify the salaries they are being paid.

62. Instead, the appointments and related salaries they receive from Beaumont are merely a reflection of the value they provide to Beaumont as referral sources.

COUNT I:
VIOLATION OF ANTI-KICKBACK ACT AND STARK LAW AT
TROY INTERNAL MEDICINE

63. Relator re-alleges and incorporates the allegations of paragraphs 1-62 as if fully set forth herein.

64. Defendants violated both the Anti-Kickback Act and the Stark law and continued to submit billing to Medicare and Medicaid for referrals based on their illegal arrangement CT referral-splitting arrangement.

65. Defendants falsely certified that they were in compliance with relevant Medicare regulations and that it had complied with the Anti-Kickback Act and the Stark law.

66. Since 2003, Beaumont has billed Medicare and Medicaid for services provided to patients referred by Troy Internal Medicine, even though it was impermissibly providing a benefit to Troy Internal Medicine in return. Likewise, Troy Internal Medicine has billed Medicare and Medicaid for services provided to patients referred by Beaumont.

67. Defendants made these misrepresentations to obtain payment funds to which they would otherwise not have been entitled.

68. This course of conduct violated the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*

69. The U.S. Government, unaware of the falsity of the claims and/or statements, and in reliance on the accuracy thereof, was damaged to the extent that these funds paid for services not reimbursable by Medicare.

COUNT II
VIOLATION OF ANTI-KICKBACK ACT AND STARK LAW
THROUGH “BLOCK LEASES”

70. Relator re-alleges and incorporates the allegations of paragraphs 1-69 as if fully set forth herein.

71. Beaumont violated both the Anti-Kickback Act and the Stark law and continued to submit billing to Medicare and Medicaid based on referrals from doctors to whom it provided illegal kickbacks and other remuneration. Specifically, such an arrangement was created through

block leases provided to Dr. Brodsky and Dr. Brill who reached such agreements in 2005 and 2006 that continue to this day.

72. These two doctors continue to refer patients for services from Beaumont, and Beaumont continues to bill Medicare and Medicaid for those services.

73. Beaumont falsely certified that it was in compliance with relevant Medicare regulations and that it had complied with the Anti-Kickback Act and the Stark law.

74. Beaumont made these misrepresentations to obtain payment funds to which it would otherwise not have been entitled.

75. This course of conduct violated the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*

76. The U.S. Government, unaware of the falsity of the claims and/or statements, and in reliance on the accuracy thereof, was damaged to the extent that these funds paid for services not reimbursable by Medicare.

COUNT III
VIOLATION OF ANTI-KICKBACK ACT AND STARK LAW THROUGH
MEDICAL DIRECTOR POSITIONS AND OTHER IMPROPER BENEFITS
TO REFERRAL SOURCES

77. Relator re-alleges and incorporates the allegations of paragraphs 1-76 as if fully set forth herein.

78. Beaumont violated both the Anti-Kickback Act and the Stark law and continued to submit billing to Medicare and Medicaid for referrals based on providing medical directorships and other titles with large compensation packages to its most-valued referral sources.

79. Beaumont continues to receive referrals from these sources and bill Medicare and Medicaid for services provided.

80. Beaumont falsely certified that it was in compliance with relevant Medicare regulations and that it had complied with the Anti-Kickback Act and the Stark law.

81. Beaumont made these misrepresentations to obtain payment funds to which it would otherwise not have been entitled.

82. This course of conduct violated the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*

83. The U.S. Government, unaware of the falsity of the claims and/or statements, and in reliance on the accuracy thereof, was damaged to the extent that these funds paid for services not reimbursable by Medicare.

COUNT IV
CONSPIRACY TO COMMIT FALSE CLAIMS

84. Relator re-alleges and incorporates the allegations of paragraphs 1-83 as if fully set forth herein.

85. As stated above, Defendants have entered numerous illegal arrangements with high-valued referral sources.

86. In return for valuable referrals, Defendants offer various perks to the referral source, in violation of the Anti-Kickback Act and Stark Law.

87. These parties knowingly entered into an agreement to violate the Anti-Kickback Act and Stark Law with the intention of then allowing Defendants to bill Medicare for the impermissibly obtained referrals.

88. This course of conduct violated the False Claims Act, 31 U.S.C. §§ 3729(a)(1)(C).

89. The U.S. Government, unaware of the falsity of the claims and/or statements, and in reliance on the accuracy thereof, was damaged to the extent that these funds paid for services not reimbursable by Medicare.

COUNT V
FAILURE TO RETURN OVERPAYMENTS

90. Relator re-alleges and incorporates the allegations of paragraphs 1-89 as if fully set forth herein.

91. An overpayment is a payment by a federal entity to a provider or supplier in excess of what was due and payable. An overpayment may include payment for non-covered items or services including services that are not reasonable and necessary in accordance with the Medicare rules. An overpayment may be received through an innocent billing error or through a mistake of the contractor. 42 U.S.C. § 1320a-7k(d)(3) warns that “returning the overpayment . . . is an obligation (as defined in 3729(b)(3) of title 31) for purposes of section 3729 of such title.”

92. As of May 24, 2010, the effective day of the legislation that established subsection 7k(d)(1), each day that a person retains an overpayment beyond the deadline under subsection 7k(d)(2) for reporting and returning the overpayment, it is violating the Federal False Claims Act.

93. Defendants received overpayments under Medicare. They have known this because Relator or others had brought to their attention each of the problems enumerated in the above of causes of actions. Despite this knowledge, Defendants have wrongfully retained these overpayments.

94. Defendants’ failure to calculate or estimate or report the amount of overpayment refunds owed is a separate violation of 31 U.S.C. §3729(b)(3) of the False Claims Act.

RELIEF REQUESTED

WHEREFORE, Relator respectfully requests this Court to enter judgment against Defendants, as follows:

- a) The U.S. be awarded damages in the amount of three times the damages sustained by the U.S. because of the false claims and fraud alleged within this Complaint, as the Civil False Claims Act, 31 U.S.C. §§ 3729 *et seq.* provides;
- b) That civil penalties of \$10,000 be imposed for each and every false claim that Defendants presents to the U.S.;
- c) That pre- and post-judgment interest be awarded, along with reasonable attorneys' fees, costs, and expenses which the Relator necessarily incurred in bringing and presenting this case;
- d) That the Court grant permanent injunctive relief to prevent any recurrence of the False Claims Act for which redress is sought in this Complaint;
- e) That the Relator be awarded the maximum amount allowed to her pursuant to the False Claims Act;
- f) That this Court award such other and further relief as it deems proper.

Respectfully submitted,
BLANCHARD & WALKER, PLLC

/s/ David M. Blanchard
David M. Blanchard (P67190)
Daniel Tai (P76798)
Attorney for Relator
221 N. Main Street, Ste. 300
Ann Arbor, MI 48104
(734) 929-4313
Blanchard@bwlawonline.com
Tai@bwlawonline.com

Dated: March 26, 2016

DEMAND FOR JURY TRIAL

Relator hereby demands a trial by jury in the above-captioned matter.

Respectfully submitted,
BLANCHARD & WALKER, PLLC

/s/ David M. Blanchard
David M. Blanchard (P67190)
Daniel Tai (P76798)
Attorney for Relator
221 N. Main Street, Ste. 300
Ann Arbor, MI 48104
(734) 929-4313
Blanchard@bwlawonline.com
Tai@bwlawonline.com

Dated: March 26, 2016

CERTIFICATE OF SERVICE

I, hereby certify that on May 27, 2016, I sent via first class mail the foregoing paper to the Assistant United States Attorney at their address of record.

Respectfully submitted,

BLANCHARD & WALKER, PLLC

/s/ David M. Blanchard
David M. Blanchard (P67190)
Attorney for Plaintiff
221 North Main Street, Suite 300
Ann Arbor, MI 48104
(734) 929-4313
blanchard@bwlawonline.com

Dated: May 27, 2016