

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DR. KAREN BARBARA CARBONE, on
behalf of the UNITED STATES OF AMERICA
and the STATE OF MICHIGAN,

Plaintiff/Relator

Case No:11-cv-12117
Hon. Judge Bernard A. Friedman
Magistrate Judge R. Steven Whalen

v.

FILED UNDER SEAL

WILLIAM BEAUMONT HOSPITAL, a
Michigan nonprofit corporation,

Defendant.

MAYER MORGANROTH (P17966)
JEFFREY B. MORGANROTH (P41670)
JEFFREY M. THOMSON (P72202)
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There is no other pending or resolved civil action arising out of the
same transaction or occurrence as alleged in this First Amended
Complaint.

FIRST AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff/Relator, Dr. Karen Barbara Carbone (“Dr. Carbone”), on behalf of
the United States of America and the State of Michigan, by and through her attorneys, Morganroth
& Morganroth, PLLC, and for her Complaint against Defendant, William Beaumont Hospital
 (“Beaumont”), states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff/Relator, Dr. Carbone, is and has been a resident of Oakland County, State of Michigan, at all times relevant hereto.

2. Defendant, William Beaumont Hospital (“Beaumont”), is a Michigan nonprofit corporation which has its principal place of business located in, and has conducted business in, Oakland County, State of Michigan, at all times relevant hereto.

3. Beaumont is classified as a Section 501(c)(3) organization under the internal revenue code.

4. This action arises under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* and the Michigan Medicaid False Claims Act, MCL §§ 400.601 *et seq.*

5. Subject matter jurisdiction over the claims arising under the False Claims Act is appropriate in this Court pursuant to 31 U.S.C. § 3732(a) (False Claims Act) and 28 U.S.C. § 1331 (Federal Question).

6. Subject matter jurisdiction over the claims arising under the Michigan Medicaid False Claims Act is appropriate in this Court pursuant to 28 U.S.C. § 1367(a) (Supplemental Jurisdiction).

7. Venue is proper in this Court pursuant to 31 U.S.C. § 3732(a).

8. Before filing the original complaint, Dr. Carbone served a copy of same upon the United States, together with a written disclosure statement setting forth and enclosing all material evidence and information she possesses, pursuant to the requirements of 31 U.S.C. § 3730(b)(2).

9. At the time of filing the original complaint, Dr. Carbone served a copy of same upon the Michigan Attorney General, together with a written disclosure statement setting forth and

enclosing all material evidence and information she possesses, pursuant to the requirements of MCL § 400.610a(2).

10. Dr. Carbone is the original source of, and has direct and independent knowledge of, all publicly disclosed information on which any allegations herein might be deemed based, and has voluntarily provided such information to the United States Government and the State of Michigan Government before filing this action.

GENERAL ALLEGATIONS

Dr. Carbone's Employment with Beaumont.

11. On June 11, 2010, Dr. Carbone received an offer of employment from Beaumont for the position of Executive Vice President & Chief Operating Officer ("COO") of Beaumont.

12. Dr. Carbone began her employment with Beaumont on July 26, 2010.

13. As Beaumont's COO, Dr. Carbone was responsible for managing and overseeing Beaumont's organization-wide operations and physician contracts, among other things.

14. During the course of her employment with Beaumont, Dr. Carbone discovered many compliance issues, which she investigated and began to attempt to correct.

15. Dr. Carbone repeatedly urged Gene Michalski, then Beaumont's CEO, and Beaumont's Board of Directors to self-disclose the violations of state and federal laws and regulations that Dr. Carbone had discovered. However, Beaumont refused to self-disclose any legal and regulatory compliance issues, and further refused to take the appropriate steps to rectify such issues.

16. Dr. Carbone also brought Beaumont's legal and regulatory compliance issues, including but not limited to Beaumont's numerous improper financial relationships with physicians, to the attention of Deloitte & Touche, LLP ("Deloitte"), Beaumont's independent

auditors. Specifically, Dr. Carbone asked one of the Deloitte auditors assigned to Beaumont whether or not such legal and regulatory compliance issues, including Beaumont's improper financial relationships with physicians, needed to be disclosed in Deloitte's audit. The Deloitte auditor responded to Dr. Carbone to the effect that "if Beaumont has not determined that it should self-disclose such violations, it is not necessary to disclose them in the audit."

17. Notwithstanding Beaumont and Deloitte's refusal to disclose the above-described violations of state and federal laws and regulations, Dr. Carbone was determined to ensure that such violations were reported to the appropriate public bodies.

18. Dr. Carbone was terminated by Beaumont's Board of Directors on February 23, 2010 upon the recommendation of Gene Michalski.

Beaumont's Systematic Violation of State and Federal Laws and Regulations.

19. Prior to Dr. Carbone's assumption of the COO position:

- (A) Beaumont did not have any physician contract management system in place, and many of Beaumont's physician contracts were not reviewed for compliance with the Stark and Anti-Kickback statutes. In addition, there had not been any fair market value salary assessments for the overwhelming majority of Beaumont's contracts. In fact, at that time, Beaumont's contracts: (1) were stored in a locked safe accessible by only the Chief Medical Officer, Ananias Diokno; (2) did not contain job descriptions; (3) were not periodically reviewed for legal and regulatory compliance; (4) provided for automatic renewal of the contract term; and (5) did not provide for appropriate monitoring of output and productivity; and
- (B) Beaumont's lease agreements with many physician owned facilities

provided for leases without any fair market value justification and having no formal fair market value assessment in order to provide a financial incentive for physicians to increase patient admissions to Beaumont and use of Beaumont's services.

20. In approximately May 2009, FTI Consulting, a third party consulting firm who had been engaged by Beaumont, notified Kenneth Matzick (Beaumont's CEO at that time), Gene Michalski and Ananias Diokno, among others, that the vast majority of Beaumont's contracts were not compliant with State and Federal laws and regulations, however Beaumont completely disregarded such notifications.

21. In September 2010, Dr. Carbone reported her compliance concerns to Gene Michalski, as well as Beaumont's Board of Directors, and subsequently arranged to have a number of Beaumont's questionable contracts reviewed for compliance by an independent law firm, McGuire Woods, LLP.

22. Dr. Carbone identified, reported and attempted to correct a number of Beaumont's contractual relationships which were in violation of the Stark and Anti-Kickback statutes and the Michigan Medicaid False Claims Act, including but not limited to Beaumont's contracts with the following entities/doctors:

- (A) Beaumont Oncology Network ("BON");
- (B) Premier Radiation Oncology Services ("PROS");
- (C) Millennium Group and Oakland Medical Group;
- (D) Academic Heart Physicians;
- (E) Dr. Abdelkader Hawasili;
- (F) Dr. George Ghanem;

- (G) Michigan Institute of Urology and Comprehensive Urology;
- (H) Michigan Head and Spine Institute; and
- (I) Greater Michigan Gamma Knife, LLC.

23. All of Beaumont's contracts identified in the preceding paragraph were designed and intended to provide private physicians with financial incentives to admit patients to Beaumont and/or utilize Beaumont's services in violation of the Stark and Anti-Kickback statutes and the Michigan Medicaid False Claims Act. Specifically, such contracts create improper financial relationships between Beaumont and physicians in violation of 42 U.S.C. § 1395nn, 42 U.S.C. §§ 1320a-7b, and MCL § 400.604.

24. Beaumont routinely uses leases as a vehicle to provide financial incentives for private physicians to increase patient admissions to Beaumont and/or utilize Beaumont's services.

25. Beaumont has a substantial surplus of available space, however, continues to lease large amounts of space from private physicians at rates above fair market value in order to provide private physicians with financial incentives to admit patients to Beaumont and/or utilize Beaumont's services.

The Bon Contract.

26. The BON contract is a Physician Management Services Agreement (also known as an "MSA") between Beaumont and BON.

27. Pursuant to the BON contract, BON is to provide management and administrative services, clinical oversight and management in support of the oncology-related clinical services provided by Beaumont to its patients in exchange for compensation.

28. BON's shareholders are all physicians and consist of medical oncologists, urologists, and surgeons.

29. BON receives a management fee which is based upon the number of physicians providing management services under the BON contract.

30. In addition, BON receives additional bonus compensation in the event that it meets certain performance targets specified in the contract.

31. Beaumont's relationship with BON is inherently conflicted inasmuch as Drs. Jeffrey Margolis and Frank Vicini, BON's President and Vice-President, respectively, also have administrator-level positions with Beaumont.

32. Dr. Margolis is Vice Chief of Beaumont's Oncology Services and Dr. Vicini is Beaumont's Chief of Oncology Services.

33. The "double-hatting" nature of Drs. Margolis and Vicini's roles creates a serious conflict of interest between BON and Beaumont which is particularly acute given that BON is a private entity which is wholly owned by its physician shareholders.

34. Beaumont's BON contract was signed in April 2009, however, it failed to include any position descriptions with a list of specific services that BON was to provide on behalf of Beaumont and/or provide any fair market salary justification until the Summer of 2010—such omissions in and of themselves are clear violations of the Stark and Anti-Kickback statutes.

35. The bonus compensation structure was not finalized at the time that the BON contract became effective, and therefore failed to meet the requirement that compensation be "set in advance" under the Stark Statute.

36. Initially, approximately 40 to 45 physicians provided administrative and management services under the BON contract. Over time, the number of physicians providing administrative management services under the BON contract has increased to approximately 150 as of the present time.

37. Physicians providing services under the BON contract did not adequately keep and submit time sheets and activity logs in order to track the services performed thereunder, and ensure that such services were consistent with fair market value.

38. Dr. Frank Vicini, Beaumont's Oncology Service Line Leader admitted that BON was created to "get more money to the doctors," i.e, allow the doctors to receive payments in excess of the fair market value of the services rendered.

39. Hospital admissions for radiation oncology increased by approximately 25% immediately after Beaumont's BON contract was signed.

The PROS Contract.

40. Beaumont directly employs a number of Radiation Oncologists whose employment agreements allow the physician to also be a member of PROS, and to provide professional services through PROS at the Beaumont Gamma Knife facility.

41. However, the Radiation Oncologists' employment agreements provide for compensation based upon a 1.0 full time equivalent, without taking into consideration the services provided through PROS, and despite the fact that such physicians are not actually providing full-time services to Beaumont, are seeing consults at Botsford hospital and are billing for services performed outside of their relationship with Beaumont.

42. The PROS contracts require that each physician performing marketing and outreach activities thereunder keep accurate and complete time logs, however the time logs were not appropriately maintained by PROS physicians.

43. The failure to maintain the required time logs made it impossible for Beaumont to confirm whether the PROS physicians were actually working full-time on behalf of Beaumont in addition to their PROS activities.

44. The PROS contracts further require monitoring and documentation of the marketing and outreach activities performed by PROS.

45. PROS did not adequately document the marketing and outreach services that it performed, and Beaumont management did not take any steps to ensure that PROS was in fact performing the marketing and outreach services under the PROS contract.

46. Upon information and belief, many radiation oncology cases performed at and on behalf of Beaumont are billed through PROS in order to allow the physician members of PROS to receive their full-time salary from Beaumont plus the additional incremental compensation for each case from PROS.

47. Additionally, the PROS contracts do not provide for PROS to reimburse Beaumont for PROS' use of Beaumont's space and equipment at all, let alone for reimbursement based upon fair market value.

Beaumont's Lease of MRI Facilities from Millennium Group.

48. Beaumont's contracts with Millennium Group and Oakland Medical Group improperly provide financial incentives for physicians to excessively utilize Beaumont's own diagnostic services in violation of the Stark and Anti-Kickback statutes and the Michigan Medicaid False Claims Act.

49. Beaumont had its own MRI facilities, however, leased MRI facilities from Millennium Group in order to provide Millennium Group with a financial incentive to increase patient admissions to Beaumont.

The Academic Heart and Vascular Contract.

50. Academic Heart and Vascular is a physician group that leases space from Beaumont, and uses such space for business and teaching purposes. Several physicians receiving

compensation from Academic Heart and Vascular are also full-time Beaumont employees.

51. Beaumont's Academic Heart and Vascular contract was, and continues to be, noncompliant and in violation of the Stark and Anti-Kickback statutes, Michigan Medicaid False Claims Act, in the following respects:

- (A) Beaumont is leasing space and equipment to Academic Heart and Vascular at rates which are less than fair market value;
- (B) American Heart Physicians is receiving mid-level provider services from Beaumont without any reimbursement to Beaumont;
- (C) The Academic Heart and Vascular contract does not provide formal job descriptions;
- (D) Physicians receiving compensation under the Academic Heart and Vascular contract are not maintaining time logs; and
- (E) Physicians are receiving salaries far in excess of fair market value under the Academic Heart and Vascular contract.

Dr. Hawasili's Contract.

52. Beaumont's contract with Dr. Abdelkader Hawasili and Eastside Surgical Specialists provides for payment of \$800,000 annually to Dr. Hawasili which grossly exceeds the fair market value of the services rendered by Dr. Hawasili on behalf of Beaumont in violation of the Stark and Anti-Kickback statutes and the Michigan Medicaid False Claims Act.

53. Dr. Hawasili routinely performs sleeve gastrectomies while fraudulently billing for such procedures under the DRG code for "partial gastrectomy and hiatal hernia repair" in order to be reimbursed by private insurers, Medicare and Medicaid inasmuch as sleeve gastrectomies are often not covered by private insurers, Medicare and Medicaid.

54. Beaumont, and its officers and directors, were aware of Dr. Hawasili's fraudulent billing practices.

Beaumont's Lease with Dr. Ghanem.

55. Upon information and belief, Beaumont's contract with Dr. George Ghanem leases Beaumont-owned space at rates substantially below fair market value, and Dr. Ghanem's admissions to Beaumont dramatically increased after Beaumont leased him space at a below market rate in violation of the Stark and Anti-Kickback statutes and the Michigan Medicaid False Claims Act.

56. Dr. Ghanem's admissions to Beaumont increased dramatically immediately after the contract was signed.

Michigan Institute of Urology and Comprehensive Urology.

57. The Michigan Institute of Urology and Comprehensive Urology are private physician groups owned and controlled by urologists.

58. Beaumont has entered into MSA agreements with both the Michigan Institute of Urology and Comprehensive Urology.

59. Beaumont's MSA agreements with both the Michigan Institute of Urology and Comprehensive Urology failed to include adequate job descriptions, were not reviewed on an annual basis and provided for compensation to both practice groups far beyond the fair market value of the management and administrative services rendered on behalf of Beaumont pursuant to the MSAs.

60. Beaumont's MSA contracts with both the Michigan Institute of Urology and Comprehensive Urology were specifically designed to provide urologists with financial incentives

in exchange for patient referrals and admissions inasmuch as urologists are one of the primary sources of referrals for radiation oncology cases in violation of the Stark and Anti-Kickback statutes and the Michigan Medicaid False Claims Act.

Michigan Head and Spine Institute.

61. The Michigan Head and Spine Institute is a private physician group owned and controlled by neurosurgeons.

62. Beaumont's contract with the Michigan Head and Spine Institute is an MSA, pursuant to which, the Michigan Head and Spine Institute is to provide management and administrative services on behalf of Beaumont.

63. Beaumont's MSA with the Michigan Head and Spine Institute provides for compensation far in excess of the fair market value of the management and administrative services rendered thereunder.

64. Beaumont's MSA with the Michigan Head and Spine Institute is designed to provide neurosurgeons with financial incentives in exchange for performing neurosurgery cases at Beaumont inasmuch as such cases generate extremely high profit margins for Beaumont in violation of the Stark and Anti-Kickback statutes and the Michigan Medicaid False Claims Act.

Greater Michigan Gamma Knife, LLC.

65. Greater Michigan Gamma Knife, LLC ("GK") is a Michigan limited liability company which is wholly owned and controlled by physicians.

66. Beaumont entered into an MSA agreement with GK pursuant to which GK is to provide ongoing management of the delivery of Gamma Knife treatment at Beaumont's Gamma Knife facility.

67. In exchange for the management services provided by GK, Beaumont is to pay GK

a management fee equal to 4% of Beaumont's monthly revenue from its Gamma Knife facility.

68. Beaumont's GK MSA is a direct and blatant violation of the Stark and Anti-Kickback statutes, and the Michigan Medicaid False Claims Act, inasmuch as Beaumont's GK MSA provides the physician members of GK financial compensation in exchange for referring patients to Beaumont's Gamma Knife facility. In fact, under the GK MSA, GK receives 4% of Beaumont's revenue from each patient it refers to Beaumont's Gamma Knife facility.

Salaries in Excess of Fair Market Value.

69. In addition to the above-described compliance issues, a number of the physicians directly employed by Beaumont are paid salaries exceeding fair market value and/or are paid stipends which grossly exceed the fair market value of the services rendered by such physicians in violation of the Stark and Anti-Kickback statutes and the Michigan Medicaid False Claims Act.

70. The following categories of individual physicians employed by Beaumont (among others) exhibit serious legal and regulatory compliance issues: radiologists; cardiologists; surgeons; and medical directors, including but not limited to Beaumont's Chief Medical Officer.

71. For example, Beaumont's directly employed radiologists are classified as full-time employees, but are additionally receiving compensation through a private entity which is wholly owned by the radiologists, and as such are receiving compensation grossly in excess of fair market value in violation of the Stark and Anti-Kickback statutes and the Michigan Medicaid False Claims Act.

Operating Without Appropriate Certificate of Needs.

72. Dr. Carbone identified, reported and corrected violations of the Michigan Public Health Code wherein Beaumont was operating facilities without obtaining the appropriate Certificate of Needs ("CON") from the Michigan Department of Community Health, including but

not limited to the following:

- (A) The Beaumont Urology Center was improperly operating for more than two years without the appropriate CON, which is required in order to perform general anesthesia. This was discontinued in January 2011 at Dr. Carbone's insistence after she identified the violation; and
- (B) The West Bloomfield Ambulatory Surgery Center was improperly operating at a level for which 4 CONs were required, despite having obtained only 2 CONs from the State of Michigan. This violation was identified and corrected based upon Dr. Carbone's initiative and urging.

73. Gene Michalski specifically informed Dr. Carbone, that he was reluctant to shut down the Beaumont Urology Center because doing so would affect Beaumont's referral pattern

Inurement Violations of Internal Revenue Code.

74. Dr. Carbone identified, reported and attempted to correct a number of Beaumont's practices which constitute inurement in violation of the Internal Revenue Code and regulations promulgated by the Internal Revenue Service, including but not limited to the following:

- (A) Providing signage to private physicians, who are not employed by Beaumont, without receiving any reimbursement from such physicians;
- (B) Providing the services nurse practitioners and physician assistants that are employed by Beaumont to private physicians, who are not employed by Beaumont, without billing such private physicians to reimburse Beaumont for the services rendered by Beaumont's nurse practitioners and physician assistants; and
- (C) Providing software to private physicians without requiring such physicians

to reimburse Beaumont for at least 20% of the cost as required by applicable federal regulations.

Billing for Health Services in Violation of Stark and Anti-Kickback Statutes and the Michigan Medicaid False Claims Act.

75. Beaumont, through its officers, directors, employees and agents, has submitted and/or caused to be submitted, thousands of bills and/or claims for reimbursement, to Medicare, Medicaid and private insurers, and has been reimbursed by such entities, for health services performed in violation of the Stark and Anti-Kickback statutes, and the Michigan Medicaid False Claims Act, as described above.

COUNT I - VIOLATION OF THE FEDERAL FALSE CLAIMS ACT

76. Plaintiff, Dr. Carbone, hereby incorporates by reference and realleges Paragraphs 1 through 75 of this Complaint as if fully restated herein.

77. As described above, Beaumont, by and through its officers, agents, and employees: (i) knowingly presented, or caused to be presented, to the United States Government, a false or fraudulent claim for payment or approval; (ii) knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the United States Government; and (iii) knowingly made, used, or caused to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the United States Government.

78. As a direct, natural, and proximate consequence of the foregoing, the United States has suffered, and continues to suffer, damages for which it is entitled to recover.

WHEREFORE, Plaintiff/Relator, Dr. Carbone, demands judgment be entered against

Beaumont as follows:

- A. Three times actual damages sustained by the United States, with interest 31 U.S.C. § 3729(a);
- B. A civil penalty of \$10,000 for each of Beaumont's violations of the False Claims Act pursuant to 31 U.S.C. § 3729(a);
- C. In the event the United States Government intervenes in this action, awarding Dr. Carbone an amount for bringing this action of at least 15% but not more than 25% of the proceeds of the action, plus costs and attorneys fees, pursuant to 31 U.S.C. § 3730(d)(1);
- D. In the event the United States Government does not intervene in this action, awarding Dr. Carbone an amount for bringing this action of at least 25% but not more than 30% of the proceeds of the action, plus costs and attorneys fees, pursuant to 31 U.S.C. § 3730(d)(2); and
- E. Such other and further relief as is warranted and appropriate.

COUNT II - VIOLATION OF THE MICHIGAN MEDICAID FALSE CLAIMS ACT

79. Plaintiff, Dr. Carbone, hereby incorporates by reference and realleges Paragraphs 1 through 78 of this Complaint as if fully restated herein.

80. As described above, Beaumont, by and through its officers, agents, and employees: (i) knowingly presented, or caused to be presented, to Medicaid, a false or fraudulent claim for payment or approval; (ii) knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by Medicaid; and (iii) knowingly made, used, or caused to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to Medicaid.

81. As a direct, natural, and proximate consequence of the foregoing, Medicaid has suffered, and continues to suffer, damages for which it is entitled to recover.

WHEREFORE, Plaintiff/Relator, Dr. Carbone, demands judgment be entered against Beaumont as follows:

- A. Three times actual damages sustained by the State of Michigan, with interest pursuant to MCL § 400.612;
- B. A civil penalty of \$10,000 for each of Beaumont's violations of the False Claims Act pursuant to MCL § 400.612;
- C. In the event the Attorney General intervenes in this action, awarding Dr. Carbone an amount for bringing this action of at least 15% but not more than 25% of the proceeds of the action, plus costs and attorneys fees, pursuant to MCL § 400.610a(9)(a);
- D. In the event the Attorney General does not intervene in this action, awarding Dr. Carbone an amount for bringing this action of at least 25% but not more than 30% of the proceeds of the action, plus costs and attorneys fees, pursuant to MCL § 400.610a(9)(b); and
- E. Such other and further relief as is warranted and appropriate.

Respectfully submitted,

MORGANROTH & MORGANROTH, PLLC

By: /s/ Jeffrey M. Thomson
MAYER MORGANROTH (P17966)
JEFFREY B. MORGANROTH (P41670)
JEFFREY M. THOMSON (P72202)
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(248) 864-4000

Dated: November 8, 2011

DEMAND FOR TRIAL BY JURY

NOW COMES Plaintiff/Relator, Dr. Karen Barbara Carbone, M.D., on behalf of the United States of America and the State of Michigan, by and through her attorneys and hereby demands a trial by jury in the above captioned matter.

Respectfully submitted,

MORGANROTH & MORGANROTH, PLLC

By: /s/ Jeffrey M. Thomson
MAYER MORGANROTH (P17966)
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Dated: November 8, 2011

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2011, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record.

MORGANROTH & MORGANROTH, PLLC

By: /s/ Jeffrey M. Thomson

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