

# HEALTH LAW

## Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

### Individual Liability for Hospital Executives: A \$64,000 Sign of Things to Come?

October 30, 2009

The former CEO of Community Memorial Hospital ("CMH") in Ventura, California, Michael Bakst, Ph.D., has entered into a \$64,000 settlement with the government to resolve allegations that he violated the Civil Monetary Penalties Law and provisions of the federal physician self-referral (or "Stark") law. As reported in an October 5, 2009 press release, the Office of Inspector General for the Department of Health and Human Services ("OIG") alleged that from May 2002 through September 2003, Mr. Bakst personally negotiated financial arrangements with physicians and directed improper payments to them in violation of the Stark law.<sup>1</sup> The OIG further alleged that Mr. Bakst caused the submission of false claims to the Medicare program that should not have been paid because of the underlying Stark law violations.

This settlement demonstrates the OIG's willingness to pursue individual hospital executives for alleged violations of health care laws. In the OIG's press release, Lew Morris, Chief Counsel to the OIG, stated: "The Office of Inspector General strongly believes that, in addition to holding corporations accountable for health care fraud, individuals who caused the fraud should also be held accountable." Mr. Morris also stated that "[h]ealth care executives and compliance officers have a vital responsibility to ensure the compliance of the organizations that they serve."<sup>2</sup> The OIG's press release noted that Mr. Bakst held the position of compliance officer of the hospital in addition to being CEO.

Mr. Bakst has denied the allegations and contentions in the settlement agreement. No civil monetary penalties judgment or finding of liability has been made against Mr. Bakst, and he is not excluded from future participation in federal healthcare programs. Mr. Bakst's attorney has been quoted in newspaper articles as saying that he settled because of the economic realities and the federal government's superior resources.<sup>3</sup> The attorney has stated that he was pleased with the settlement considering the fact that the OIG was originally seeking \$5 million from Mr. Bakst.<sup>4</sup>

<sup>1</sup> Available at <http://oig.hhs.gov/publications/docs/press/2009/BakstCMPNewsRelease508.pdf>

<sup>2</sup> *Id.*

<sup>3</sup> See <http://www.vcstar.com/news/2009/oct/05/former-cmh-executive-pays-64000-federal-penalty/>

<sup>4</sup> *Id.*

OIG settlement agreements with individual executives have been relatively infrequent to date, so this settlement could signal an uptick in healthcare fraud enforcement activity against individuals. On the other hand, this individual enforcement action may have occurred because the OIG considered the violation to be particularly egregious or clearly the result of Mr. Bakst's personal activities.

Although Mr. Bakst's settlement agreement does not appear to have been publicly released to date, some additional details are included in a previous settlement agreement involving the hospital. In this December 2007 civil settlement, CMH paid \$1.5 million to resolve the hospital's liability for some of the same alleged activity.

Mr. Bakst had served as CEO of the hospital for nearly 25 years before being terminated in 2003. After he was replaced, the new hospital administration conducted compliance audits and made voluntary self disclosures to the government in 2005 and 2006. It was these self-disclosures that led to the 2007 settlement with the hospital and apparently to the subsequent 2009 settlement with Mr. Bakst.

The December 2007 settlement with CMH states that the hospital engaged in a series of improper financial relationships with physicians and their family members including:

- Paying a physician's family member \$160,000 pursuant to an oral, rather than written, contract for public relations and marketing services over the course of three years
- Making unsecured, interest-free loans to two physicians in the amounts of \$40,000 and \$155,000
- Making an interest-free loan to another physician in the amount of \$450,000 to assist the physician in purchasing a home
- Providing a \$16,667 monthly cash flow guarantee to a medical group pursuant to a letter, rather than a mutually signed written contract, in connection with the recruitment of a physician
- Providing a \$1,000,000 line of credit to a physician
- Leasing office equipment and space to a physician pursuant to a lease agreement and then failing to collect rent
- Giving expensive gifts to various physicians and their family members including: a digital camera worth \$4,000, a stereo system worth \$1,300, airline tickets worth \$4,300, a Rolex watch worth \$15,000, a \$250 iPod, a \$320 gift certificate to Circuit City, and a Louis Vuitton handbag worth \$661 for a physician's family member<sup>5</sup>

With respect to the gifts, the 2007 settlement agreement states that the hospital "reimburse[ed] ... the former CEO" (i.e. Mr. Bakst) for all of the gifts. In other words, the OIG alleged that Mr. Bakst personally purchased these gifts for physicians and then sought reimbursement from the hospital. In addition, as noted above, the OIG's 2009 press release states that Mr. Bakst "personally" negotiated various improper financial arrangements and payments. Mr. Bakst's

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<sup>5</sup> Settlement is available at:

<http://www.taf.org/LegalZone/settlements/Community%20Memorial%20Health%20System%20Settlement%20Agreement.pdf>.

level of alleged personal involvement may partially explain the OIG's decision to pursue enforcement against him individually after settling with the hospital.<sup>6</sup>

Regardless of what additional details may emerge about Mr. Bakst's settlement, the OIG appears to be sending a message that it will pursue both corporations and individuals when it believes that violations of health care laws have occurred. If you have any questions on this Health Law Update, please contact any of the attorneys in our Healthcare Practice Group listed below.

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<sup>6</sup> See also an AIS Health Business Daily article which quotes anonymous sources as saying that Mr. Bakst was targeted because he allegedly personally struck the deals that led to CMH's 2007 settlement. Available at: <http://www.aishealth.com/Bnow/hbd102009.html>.

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