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Sanford Health Entities to Pay \$20.25 Million to Settle False Claims Act Allegations Regarding Kickbacks and Unnecessary Spinal Surgeries

The Department of Justice announced today that hospital entities Sanford Health, Sanford Medical Center, and Sanford Clinic (collectively, Sanford), of Sioux Falls, South Dakota, have agreed to pay \$20.25 million to resolve False Claims Act allegations that they knowingly submitted false claims to federal healthcare programs resulting from violations of the Anti-Kickback Statute and medically unnecessary spinal surgeries. The Anti-Kickback Statute prohibits offering, paying, soliciting, or receiving remuneration to induce referrals of items or services covered by Medicare, Medicaid, and other federally-funded programs.

“Kickbacks can compromise a physician’s medical judgment, result in unnecessary procedures, and increase healthcare costs for everyone,” said Assistant Attorney General Jody Hunt of the Department of Justice’s Civil Division. “We will continue to hold healthcare providers accountable when they violate the rules intended to safeguard the integrity of federal healthcare programs and the welfare of their beneficiaries.”

The settlement announced today resolves allegations that Sanford knew that one of its top neurosurgeons was improperly receiving kickbacks from his use of implantable devices distributed by his physician-owned distributorship (POD). Sanford allegedly received warnings from the neurosurgeon’s physician colleagues and others about the alleged kickback scheme and was aware of the heightened compliance risks associated with PODs. In addition, the neurosurgeon’s colleagues and others repeatedly warned Sanford that the neurosurgeon was performing medically unnecessary procedures involving the devices in which he had a substantial financial interest. The United States alleged that, despite these repeated warnings, Sanford continued to employ the neurosurgeon, continued to allow him to profit from the devices he used in surgeries performed at Sanford, and continued to submit claims to federal healthcare programs for these surgeries, including procedures that were medically unnecessary.

“Kickback schemes and other improper financial incentives create inherent conflicts of interest and warp the medical decision-making process,” said U.S. Attorney Ron Parsons for the District of South Dakota. “This office will continue to aggressively pursue anyone who colludes to violate federal law and compromise the integrity of our healthcare system.”

Contemporaneous with the civil settlement, Sanford entered into a Corporate Integrity Agreement (CIA) with the Department of Health and Human Services Office of Inspector General. The CIA requires, among other things, that Sanford maintain a compliance program, implement a risk assessment program, and hire an Independent Review Organization to review Medicare and Medicaid claims at Sanford Medical Center. It also increases individual accountability by requiring compliance-related certifications from Sanford Medical Center’s board of directors and key executives.

“More than six years ago the Department of Health and Human Services Office of the Inspector General warned in a fraud alert that PODs were inherently suspect under the Anti-Kickback Statute. Unfortunately, these distributors remain questionable,” said Curt L. Muller, Special Agent in Charge, Office of Inspector General at the U.S. Department of Health and Human Services (HHS-OIG). “Patients in government healthcare programs rightly expect that surgeries are medically indicated, not performed to increase provider profits.”

The settlement resolves allegations originally brought in a lawsuit filed by Drs. Carl Dustin Bechtold and Bryan Wellman, surgeons at Sanford, under the whistleblower, or *qui tam*, provision of the False Claims Act, which allows private parties to bring suit on behalf of the government and to share in any recovery. The whistleblowers will receive \$3.4 million of the settlement proceeds.

The settlement was the result of an investigation by the Department of Justice’s Civil Division, the U.S. Attorney’s Office for the District of South Dakota, and HHS-OIG. As part of the settlement, Sanford has agreed to cooperate with the Department of Justice in litigation related to alleged co-defendants, and the hospital system has taken various remedial steps, including terminating the

employment of the neurosurgeon in question and prohibiting all Sanford physicians from profiting from their use of medical devices at Sanford.

The lawsuit is captioned *United States ex rel. Bechtold, et al. v. Asfora, et al.*, No. 4:16-cv-04115-LLP (D.S.D.). The claims resolved by the settlement are allegations only, and there has been no determination of liability.

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