



Kickback Scheme for Cancer Pain Medication Implicates Former Employee, Prescribing Physicians

July 19, 2017

By: Jennifer Girod and Andrew Sylora, Plews Shadley Racher & Braun LLP

A former employee of an Arizona-based pharmaceutical company faces up to \$250,000 in fines and possible jail time for her involvement in a kickback scheme that provided illegal financial incentives to medical professionals prescribing the company's cancer pain management medication.

Announced in a press release by the U.S. District Attorney for the District of Connecticut on July 11, 2017, the former employee pleaded guilty to paying medical professionals fees ranging from \$1,000 to several thousand dollars to participate in "Speaker Programs." In reality, these "Speaker Programs" were non-educational gatherings of the employee's family and friends, often at high-end restaurants, with the medical professionals simply being paid for their attendance. These medical professionals later prescribed or induced others to prescribe the company's pain management medication over other viable alternatives, resulting in false charges to Medicare Part D totaling approximately \$4.5 million.

In addition to the former employee, several other individuals associated with the pharmaceutical company, including some prescribing physicians who accepted fees, have been charged in connection with the kickback scheme.

Key takeaways:

- 1) This enforcement action comes as part of a larger national healthcare fraud initiative publicly announced by the United States Attorney General on July 13, 2017. Nearly 300 healthcare providers are being suspended or banned from federal healthcare programs in this nationwide sweep for instances of fraud and abuse.
- 2) Healthcare providers, particularly those dealing with pharmaceuticals, should be cognizant of how their incentive programs are structured. Programs that could be interpreted by the government as providing improper incentives to medical providers or that potentially affect a medical provider's unbiased medical judgment may be closely scrutinized as a kickback.
- 3) Fees provided to medical professionals by drug marketers and other similarly situated individuals must be for bona fide consulting services or other related bona fide services. Provision of fees that do not fit this definition may result in potential criminal kickback liability for all parties involved in such a transaction.

The health care practice group at Plews Shadley Racher & Braun LLP regularly works with physicians, dentists, nurses, physician assistants, and other health care providers to counsel on False Claims Act, Anti-Kickback Statute and other regulatory issues. Additional information about Plews Shadley Racher & Braun LLP and its health care practice is available at www.psrb.com.