

Prime Healthcare, its founder, and doctor pay \$37.5M to settle whistleblower case alleging kickbacks, Stark violations and fraud

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Prime Healthcare, its founder and CEO, Dr. Prem Reddy, and a California cardiologist have agreed to pay a total of \$37.5 million to the federal government and the state of California to settle a whistleblower lawsuit filed by Phillips & Cohen LLP that alleged the for-profit hospital chain paid kickbacks to the cardiologist, buying his practice and surgical center for far more than they were worth.

Phillips & Cohen partnered with Cotchett, Pitre & McCarthy (CPM) to litigate the qui tam case.

This appears to be the largest settlement of a case brought against a hospital over kickbacks allegedly paid to a single physician. Prime operates one of the biggest hospital systems in the nation.

It also is significant that the governments' funds were recovered through litigation pursued by the whistleblower and his attorneys as allowed by the federal False Claims Act and the California False Claims Act. The government investigated the case but did not take it over, or "intervene," by the deadline the court had set.

According to the complaint, Prime and its affiliates:

- Bought Dr. Siva Arunasalam's cardiology business, High Desert Heart Institute (HDHI), and his surgery center in Victorville, California, in 2015 for an amount that was at least three times their total fair market value.
- Paid Dr. Arunasalam a "steeply inflated" salary in exchange for referring patients to Prime's Desert Valley Hospital in Victorville and shutting down his independent practice and surgery center.

Attorneys

Justin T. Berger

Practice Areas

False Claims / Whistleblower Law

PRIME HEALTHCARE, ITS FOUNDER, AND DOCTOR PAY \$37.5M TO SETTLE WHISTLEBLOWER CASE ALLEGING KICKBACKS, STARK VIOLATIONS AND FRAUD

- In a second fraudulent scheme, submitted falsified invoices to government healthcare plans to claim higher prices for implantable medical devices such as pacemakers than Prime had actually paid. Higher prices meant higher reimbursement for Prime.

“Doctors are permitted to sell their practices to hospitals and other competitors, but the payment must be for fair market value,” said Edward H. Arens, a whistleblower attorney and partner at Phillips & Cohen in its San Francisco office. “Throwing inflated sums of money at doctors for their medical practices and salaries as a hidden way to get patient referrals isn’t allowed.

“Our client alleged that Prime baked a kickback into the price it paid Dr. Arunasalam so that he would send his patients to Prime,” Arens said. “Such arrangements usually result in higher prices charged to Medicare and Medicaid, which is why Congress prohibited them.”

The complaint alleges that both Dr. Reddy and Dr. Arunasalam “knew and intended that [Dr. Arunasalam] would receive an outsized salary and above-market payment for his practices in exchange for referring his patients to [Desert Valley Hospital] where they would receive the same services at higher prices.”

“Fraud drives up healthcare costs for all of us,” said Justin T. Berger, a partner at CPM. “Whistleblowers are a powerful check on corporate greed and runaway healthcare spending. This settlement exemplifies the power and importance of whistleblowers in our civil justice system.”

The whistleblower lawsuit alleges Prime, Dr. Reddy and Dr. Arunasalam violated the Stark Law, the Anti-Kickback Statute, the US False Claims Act and the California False Claims Act. Those laws help ensure that government healthcare programs are not cheated through inflated claims for services.

Dr. Reddy is the board chairman and president of Prime as well as its founder and chief executive officer.

Out of the total \$37.5 million settlement, Prime will pay \$33,725,000, Dr. Reddy will pay \$1,775,000 and Dr. Arunasalam will pay a total of \$2 million over an extended time.

The whistleblower, Martin Mansukhani, was a regional chief financial officer for Prime from 2012 to 2017. Phillips & Cohen filed a qui tam lawsuit on his behalf in 2018 in federal district court in Riverside, California.

“Our client expressed concerns to upper management about the asset purchase arrangement and the employment agreement, but he was ignored and then sidelined,” said Arens.

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To carry out its alleged scheme involving reimbursement for implantable devices such as pacemakers and joint replacements, Prime centralized its billing and collections using a small team of employees.

“We allege that one office became a ‘falsification factory’ that systematically altered invoices and purchase orders to make it appear that Prime spent more on implants than it really did,” said Molly Knobler, a whistleblower attorney at Phillips & Cohen. “Since Medi-Cal and other government healthcare programs reimburse healthcare providers based on the cost of implantable devices, inflating those costs is a way to fraudulently generate additional revenue.”

A second qui tam lawsuit filed after Mansukhani’s also alleged fraudulent charges for implants and is a small part of the settlement.

Mansukhani said he was glad that his concerns were recognized and that the case has been resolved.

“This outcome wouldn’t have been possible without the skilled and experienced whistleblower lawyers I had on my side and a strong whistleblower law,” Mansukhani said.

Arens and Berger commended the government attorneys and investigators who investigated the case and participated in the settlement. They include Senior Trial Counsel Marie Bonkowski and Assistant US Attorneys Abraham Meltzer and Jack Ross from the US Department of Justice and Supervising Deputy Attorney General Nicholas Paul from the California Department of Justice.

About the Anti-Kickback Statute, the Stark Law and the False Claims Act

The Anti-Kickback Statute prohibits paying or receiving anything of value to induce or reward referrals of patients covered by Medicare and other federal healthcare programs.

The Stark Law prohibits doctors in certain instances from referring Medicare and Medicaid patients to healthcare entities with whom they have a financial relationship and prohibits those entities from submitting Medicare or Medicaid claims for payment. In addition, employment compensation must be consistent with the fair market value of the services.

The False Claims Act authorizes individuals to file “qui tam” lawsuits against those defrauding the federal government and recover funds on the government’s behalf. Whistleblowers who file a “qui tam” lawsuit are entitled to protection against job retaliation and a share of the government’s recovery as a reward. The California False Claims Act is modeled after the federal law and has similar provisions.

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When whistleblowers pursue qui tam cases on their own, they are entitled under the false claims laws to 25% to 30% of the federal recovery and 25% to 50% of California's. Mansukhani will receive 28% and 44%, respectively, of the recoveries as the money is collected.

Case citation: *US and the State of California ex rel. Martin Mansukhani v. Prime Healthcare Services, Inc., et al.*, Civil Action No. 5-18-cv-00371-RGK (C.D. Cal.)