

No Such Thing As A Free Lunch: A Compliance Warning on Lavish Entertainment and Bogus Educational Meetings

Connecticut Health Law

03.22.2018

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Health care practitioners should need no reminder that government authorities closely scrutinize practitioner relationships with the medical device and pharmaceutical industries. Reports of payments under the federal Physician Sunshine Act represent just one way the authorities become aware of payments to practitioners.

Still, a recent settlement under the Anti-Kickback Statute concerning physician entertainment expenses is worth noting. In that case, a series of high-end meals involving a Massachusetts-based heart pump manufacturer and physicians led to a \$3.1 million agreement between the device maker and the United States to settle the kickback allegations.

In announcing the settlement on March 8, 2018, United States Attorney for Massachusetts Andrew E. Lelling remarked: “We expect today’s settlement with Abiomed to serve as a warning to medical device manufacturers who try to improperly influence the treatment decision of physicians.” He continued: “Providing doctors with lavish meals, or meals that focus on entertainment rather than education or science can impair a physician’s independent medical judgment – something each and every patient is entitled to.”

The list of restaurants where the physicians dined includes Menton in Boston, Nobu in Los Angeles, Spago in Beverly Hills and Eleven Madison Park in New York City. According to the government Abiomed paid for meals “where attendees ordered alcohol in an amount inconsistent with legitimate scientific discussion.”

Physicians’ spouses attended even though the spouses had no legitimate business for attending. The cost per attendee exceeded Abiomed’s guidelines. Company employees on occasion misrepresented the number of attendees at the dinners and used fictitious or “generic” names in documenting the encounters – an example: “Mike Anesthesia.”

The meals came to the government’s attention as a result of a former Abiomed employee’s False Claims Act whistleblower complaint. The whistleblower will receive \$542,400 of the settlement. The FBI, United States Department of Health and Human Services Office of Inspector General and the Massachusetts United States Attorney’s Health Care Fraud Unit and Affirmative Civil Enforcement Unit participated in the investigation of the case.

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Healthcare kickback cases can be criminal and civil and the Connecticut United States Attorney's Office also aggressively pursues these sorts of cases. Last July, the Connecticut U.S. Attorney's Office successfully prosecuted a kickback case related to Fentanyl spray prescriptions. The case involved payment to practitioners for "Speakers Programs." The speakers were paid a fee that ranged from \$1,000 to several thousand dollars. The programs usually turned out to be a gathering of persons who did not have the ability to prescribe the spray and no educational component took place. At times the sign-in sheets for the Speaker Programs were forged to make it appear that an audience of healthcare professionals had attended.

The case included charges against medical practitioners involved in the programs. Three prescribers alone allegedly caused a loss of approximately \$4.5 million from hundreds of prescriptions for the spray.

Physicians and other healthcare providers should know that illegal marketing to them jeopardizes their licenses and livelihoods. State and federal government fraud units and strike forces police illegal marketing activities and whistleblowers abound to bring questionable practices to the government's attention. Practitioners with compliance programs in place to protect against their and their practices becoming involved unwittingly or otherwise in fraud prosecutions should revisit their compliance programs with colleagues and staff. Those without active monitoring programs in place should school themselves in what is required and obtain assistance from knowledgeable health care counsel on what is needed to avoid violating state and federal anti-kickback and similar laws.

One resource that may be particularly useful in dealing with vendors can be found on the United States Department of Health and Human Services Office of Inspector General website at <https://oig.hhs.gov/compliance/physician-education/04vendors.asp>.

Tags: U.S. Department of Health and Human Services (HHS)