

January 25, 2017

## POD Update: Physician Investor of Physician-Owned Distributor Sentenced to Nearly 20 Years in Prison

On January 9, 2017, a physician was sentenced in federal court in the Eastern District of Michigan to 19 years, 7 months in prison for his role in criminal health care fraud totaling \$2.8 million. The settlement has some important implications not only for physicians involved in POD ownership, but for the hospitals that deal with them.

According to the Department of Justice (DOJ) [press release](#), the fraud spanned activity in both Michigan and California, and included the physician's actions stemming from his partial ownership of Apex Medical Technologies LLC (Apex), a physician-owned distributorship of implantable medical devices (POD) in California. Specifically, as part of his guilty plea, the physician admitted that, in exchange for an investment in Apex—and the share of profits he received as a result—the physician agreed to convince the hospital where he practiced to purchase Apex devices. The physician also admitted that the financial incentives of the POD induced him to perform medically unnecessary procedures. Additionally, he admitted that he and Apex purposefully concealed his ownership interest in the POD from hospital purchasers.

Although dealing with the actions of only one physician, this settlement and the associated admissions are nonetheless an important indicator that the government takes seriously the concern that PODs pose significant risks to patients and federal health care programs. That the government sought and obtained admissions tying the ill consequences of the financial conflict of interest present in POD ownership to “health care fraud” would seem to be a good indication that this theory of legal liability is here to stay. Further, of concern to hospitals should be the admission of purposeful concealment of the POD relationship from the California hospital where the physician practiced. As we [noted](#) last year following a highly critical report on PODs from the majority staff of the Senate Finance Committee, one common concern with PODs has been their lack of transparency with hospitals regarding physician ownership. That fact is laid bare in this case, and supports the Senate Finance Committee's admonition to hospitals to attend to these concerns through robust policies that are consistent with the [2013 Special Fraud Alert on PODs](#).

The sentencing brings to a close this first-ever federal prosecution based on the use of implantable medical devices acquired through a POD owned by the referring physician, although a related civil False Claims Act case against the POD's affiliate (Reliance Medical Systems) and its owners continues. That case, which we have described before [here](#), may have slowed pending the decision of the criminal proceedings in Michigan. Now that the criminal case has been resolved with such favorable results for the government, we anticipate that interest in the Reliance litigation will resume, with eventual results that likely will include more bad news for PODs and those who choose to deal with them.