

DOJ Filing Makes Clear That Current FCA Investigation Focuses on POD, Associated Hospital and Individual Doctor

On February 7, 2014, the United States Department of Justice (“DOJ”) filed an application for summary enforcement (“Application”) of a civil investigative demand (“CID”) against Dr. Aria Sabit in the [U.S. District Court for the Eastern District of Michigan](#). This inquiry demonstrates prosecutors’ view that investment interests by physicians in Physician-Owned Distributors (“PODs”) may constitute kickbacks under the Anti-Kickback Law (“AKL”), and that the target of investigations may not only be individual physicians, but the PODs and even the hospitals that order POD devices.

The DOJ served the CID on Dr. Sabit in August 2013, seeking information in connection with its broader investigation of Reliance Medical Systems, LLC (“Reliance”), which historically operated as a POD. The DOJ is investigating whether Reliance and its investors offered or paid kickbacks to physicians and also whether its physicians performed medically unnecessary spinal fusion procedures. The CID also indicates that the DOJ is investigating whether Reliance and Dr. Sabit caused hospitals to submit improper claims for reimbursement, in violation of the False Claims Act (the “FCA”). According to the Application, Dr. Sabit has so far taken an aggressive stance with prosecutors by refusing to produce documents responsive to the CID, other than his curriculum vitae, prompting DOJ to file the Application.¹

Dr. Sabit was an investor in Apex Medical Technologies, LLC (“Apex”), a subsidiary of Reliance. According to the Application, Dr. Sabit made a \$5,000 investment in Apex and received an average of \$30,000 a month from the company. During the period of his ownership in the POD, the DOJ alleges that his orders of Reliance products “increased dramatically.” Dr. Sabit became the focus of an internal investigation by the hospital, and later an investigation by the California Board of Medicine, when it appeared that his infection and return-to-surgery rates were higher than other attending physicians. DOJ alleges direct violations of the AKL and the FCA by Dr. Sabit as a result of his investment and ownership interest in Reliance. Hospitals and physicians may wish to review their practices with respect to PODs in view of this investigation.

If you have any questions about these developments, please do not hesitate to contact [Tom Bulleit](#) or [Peter Holman, Jr.](#) or your regular Ropes & Gray attorney.

¹ Note that the U.S. District Court in the Central District of California dismissed a lawsuit by Reliance against the U.S. Department of Health and Human Services Office of Inspector General (“OIG”), in which Reliance attempted to invalidate the OIG’s 2013 Special Fraud Alert that pronounced PODs “inherently suspect” under the AKL. Our discussion of that case is available [here](#). It is possible that DOJ delayed filing the Application pending the recent dismissal of Reliance’s lawsuit.