Private Equity Firm Settles False Claims Act Complaint

On September 18, 2019, the U.S. Department of Justice entered into a $21M settlement with compounding pharmacy, Diabetic Care Rx LLC, or Patient Care America ("PCA"), two PCA executives, and PCA's private equity sponsor Riordan, Lewis & Hayden Inc. ("RLH"). The settlement resolves a lawsuit alleging violations of the False Claims Act and is notable because it is believed to be the first False Claims Act settlement requiring the inclusion of the private equity sponsor as a party.

WHAT YOU NEED TO KNOW

In February 2018, the DOJ intervened in a *qui tam* (whistleblower) False Claims Act case against PCA, named executives and RLH. The complaint centered on alleged kickbacks paid to prescribing physicians, and improper marketing practices. The complaint alleged that, as an investor in healthcare companies, RLH knew or should have known about PCA's obligation to comply with the False Claims Act and the Anti-Kickback Statute. The complaint further alleged that RLH's representatives on PCA's board actively encouraged PCA to engage in marketing practices that violate the Federal Anti-Kickback Statute ("AKS") – despite receiving advice of counsel against the practices in question.

The specific factual allegations include:

- In 2012, RLH, a Los Angeles-based private equity firm, made a controlling investment in PCA, a Florida-based compounding pharmacy.
- Two partners in RLH became officers and board members of PCA. One of the partners recommended the board hire co-defendant Patrick Smith as CEO.
- PCA engaged third party marketing firms that were paid on a percentage of sales basis and engaged in the following inappropriate marketing practices:
    - Specifically targeting federal healthcare program patients
    - Pressuring patients to agree to unnecessary prescriptions
    - Using sham telemedicine arrangements to process prescriptions without the existence of a physician-patient relationship, or patient consent
    - Routine payment of patient co-payments by the marketing firm, which funneled these co-payments through a sham charitable organization
- PCA's CEO and board members (including RLH representatives) had been informed of compliance concerns raised by PCA legal counsel but continued the inappropriate practices.

This settlement reinforces the importance of the role of PE sponsors generally, the Board's role (which Board may be dominated by PE sponsor members or designees) in providing effective oversight of compliance matters, and signals the DOJ's intent, expressed in the press release for the settlement, to "hold all responsible parties to account for the submission of claims to federal health care programs that are tainted by unlawful kickback arrangements."

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FOR MORE INFORMATION

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