

White Collar Defense

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Virginia Hospital Indicted for Allegedly Turning a Blind Eye to Doctor's Crimes

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In an unusual criminal prosecution, the Chesapeake Regional Medical Center (CRMC), a hospital in Chesapeake, Virginia, was **indicted** last week by a federal grand jury in Virginia for conspiring to defraud the United States and interfere with government functions and for health care fraud. The indictment alleges that CRMC knew of, was complicit in, and profited from a former doctor's egregious crimes.

Allegations

The following facts are allegations only. They are taken from the indictment in Virginia.

In 1983, Dr. Javaid Perwaiz applied to CRMC for privileges. While that application was pending, CRMC's President was notified by another hospital that Perwaiz's privileges had been terminated earlier that year for "performing unnecessary gynecological surgeries, including irreversible hysterectomies on approximately a dozen patients, including young patients of child-bearing age." After initially declaring Perwaiz unacceptable for appointment, CRMC granted him privileges in 1984. In 1995, Perwaiz pled guilty to two counts of felony tax fraud. Perwaiz's medical license was then revoked by the Virginia Board of Medicine but was later reinstated. He continued to practice at CRMC.

Perwaiz was eventually charged in 2019 with health care fraud and other crimes and was later convicted. The indictment here alleges that "approximately 38 of [Perwaiz's] convictions were for procedures performed at CRMC, including unnecessary hysterectomies and other invasive and irreversible surgeries, elective inductions prior to 39 weeks gestation without medical justification, and sterilizations of Medicaid patients without consent forms signed 30 days in advance."

According to the indictment, Perwaiz was a rogue physician who flouted the normal constraints and rules of the hospital and health insurers, including Medicare, but did so with CRMC's knowledge. For example, the indictment alleges that CRMC knowingly allowed Perwaiz to perform inpatient surgeries as outpatient procedures—even though inpatient surgeries draw greater scrutiny because they are more serious—and sought improper reimbursements for such operations in violation of the rules and regulations of health insurers, including government payors. In 2015, an internal CRMC analysis showed that Perwaiz was "repeatedly improperly classifying inpatient procedures as outpatient." Yet CRMC did next to nothing to stop Perwaiz from doing so. When the applicable health insurer denied reimbursement because an inpatient procedure was performed on an outpatient basis, CRMC's practice was to seek payment directly from the patient.

CRMC also allegedly conspired with Perwaiz to seek reimbursements for treatments performed in violation of rules and regulations by agreeing to (1) perform surgeries without sufficient medical documentation, (2) perform sterilization procedures without a consent form signed 30 days in advance, and (3) provide medical treatment that was not medically necessary or otherwise not within the standard of care.

Perwaiz also "routinely scheduled his patients for elective inductions or Cesarean sections at CRMC on Saturdays for no medical reason prior to 39 weeks of gestation in order to ensure he was there to perform the delivery (and to bill insurance for it)." These obstetric deliveries were "contrary to medical necessity and the standard of care." CRMC allegedly knew of this scheme, allowed it to continue, and billed for the procedures.

The Government claims that from 2010 to 2019, CRMC received approximately \$18.5 million in reimbursements for surgical and obstetric procedures that Perwaiz performed.

What's Notable

Department of Justice (DOJ) guidance from 2021 and 2022 emphasized that, in the [words of Deputy Attorney General Lisa Monaco](#), the Department's "number one priority is individual accountability." For this reason, it is somewhat unusual for DOJ to prosecute a company or an organization like a hospital without also charging an individual employee of the company. In fact, a company or an organization can only act through its employees, and thus, under agency principles, DOJ could have charged CRMC with the crimes here only if it believed there was sufficient evidence to charge an individual with the same crimes. That DOJ opted not to—at least for now—suggests that it had prudential or other reasons for not charging an individual but instead charging solely the hospital itself. (Note that Perwaiz had privileges at the hospital but was not an employee, so he could not have been the individual DOJ used to impute liability to the organization.)

The charges also indicate that DOJ wanted to send a strong message to hospitals in Virginia and around the country. DOJ policy counsels in favor of charging a corporation when "public benefits ... can flow" from it. Justice Manual, 9-28.200. Those benefits include activating other hospitals to take prompt remedial action and to fortify their compliance programs. In this case, the charges could also force drastic internal change in compliance within CRMC itself. Perhaps most importantly, "certain crimes that carry with them a substantial risk of great public harm" might create a "substantial federal interest" in charging the corporation itself. The indictment here lays bare allegations that, if true, reveal shocking conduct by a doctor that put patients at risk of grave harm. CRMC's complicity in such egregious conduct—and failure to effectively police it—very well could have impelled DOJ to charge the hospital even without individual charges.

DOJ's Principles of Federal Prosecution of Business Organizations (or the Filip Factors, as they are colloquially known) also likely motivated prosecuting the hospital here. The indictment is replete with emails between executives at the hospital—including those in the C-suite—discussing Perwaiz's conduct and how it violated hospital rules and policy. Yet CRMC allowed his conduct to continue unabated for years. Such pervasive wrongdoing at the highest levels of the organization undoubtedly influenced DOJ's decision to charge the hospital here. Justice Manual, 9-28.500. CRMC's complicity in multiple violations of hospital policy and law for an extended period also exposed either a nonexistent or a woefully poor compliance program—one that was not empowered to put an end to clearly wrongful conduct (if true). Justice Manual, 9-28.800. The involvement of high-ranking executives, the duration of the offending conduct and failure to stop it, and the weak compliance program also likely played significant roles in DOJ forgoing other options it often uses to resolve criminal cases against corporations, like non-prosecution agreements or deferred prosecution agreements, which protect innocent third parties (like other employees and shareholders) from the collateral consequences of criminal charges.

Takeaways

There is no better way to protect a hospital (or any company or organization) from government intervention—whether an administrative action, civil lawsuit, or criminal investigation and charges—than a well-resourced and well-supported compliance program. That includes having a fully staffed compliance department relative to the size of the hospital; providing incentives, including increased compensation, to executives and employees for behaving in a compliant manner; and disciplining those executives and employees who do not.

Such a program can root out problematic conduct early on. That permits the hospital to identify the offending individuals and take appropriate remedial action quickly. A strong compliance program can also help on the back end; even if the government starts investigating, the adequacy of a compliance program is a factor the government will consider when deciding whether to charge the company at all and how to resolve the case. Moreover, prosecutors will analyze the compliance program both at the time of the offense and when they are making a charging decision. So even if its compliance program is inadequate when an investigation begins, a hospital still has time—and incentive—to strengthen the program before the government makes a charging decision or an offer to resolve the case. The improved compliance department can then serve as a linchpin of the hospital's arguments for leniency.

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