

# Cape Girardeau Neurosurgeon Indicted on Federal Anti-Kickback Charges

On September 18, 2014 the U.S. Attorney's office announced that Midwest



Neurosurgeons, LLC and its owner Dr. Sonjay Fonn and DS Medical, LLC and its owner, Deborah Seeger, were indicted for allegedly violating the Medicare Anti-Kickback Statute. Their story is an example of the enforcement agencies' focus upon physician owned medical device distributors and an important reminder to place quality of care and necessity of services over self-interest. **Background** Dr. Fonn and his fiancée, Ms. Seeger, both of Cape Girardeau, MO, stand accused of conspiring to solicit and receive monetary commissions from medical device manufacturers. The two operated DS Medical to serve as the distributor of medical devices and supplies to Dr. Fonn's neurosurgery practice, Midwest Neurosurgeons. The indictment alleges that through DS Medical, Ms. Seeger was paid exorbitant commissions while Dr. Fonn altered the way he performed medicine. According to the indictment, Dr. Fonn completed more surgeries and used more spinal implants than before DS Medical was in business, more than twice as many as his nearest medical peer. The indictment states that he ordered approximately \$1.3 million worth of spinal implants for his surgeries and those manufacturer commissions were allegedly used to purchase a house, a boat, an airplane and various home improvements for Dr. Fonn and Ms. Seeger. **Medicare Anti-Kickback Statute** This indictment serves as another reminder to the provider community that the Medicare Anti-Kickback Statute applies to individuals or entities that "knowingly and willfully (1) receive or solicit or (2) offer or pay remuneration (anything of value) in exchange for or as an inducement to: (a) refer an individual for the furnishing of services or (b) purchase or lease items, services, or facilities paid for by Medicare/Medicaid." The anti-kickback statute exists to protect Medicare and Medicaid from increased costs and abusive practices resulting from provider decisions that are based on self-interest rather than cost, quality of care or necessity of services. **Justice Department Allegations** Dr. Fonn and Ms. Seeger were indicted by a federal grand jury on one felony count of conspiracy to solicit and receive illegal kickbacks and three felony counts of anti-kickback violations. Each of the charges carry a maximum penalty of five years in prison and/or fines up to \$250,000. If found guilty, a judge will be required to consult the U.S. Sentencing Guidelines to determine the actual sentences. Nevertheless, the indictment alone is a reminder of the risks to physicians and other providers of the risks associated with even indirect physician interests in medical device distributors. **What You Should Do** It's important to be familiar with the anti-kickback law in order to avoid potential conflict with its provisions. This is especially important as providers consider financial interests (even indirect ones) in suppliers of other health care items and services which the physician either orders him- or herself or which the physician recommends or refers to his or her patients. If you have additional questions about financial relationships with other providers and suppliers of health care items and services, our Health Care Attorneys welcome the opportunity to advise you at any time. Image: Thinkstock/XiXinXing (460485381) \*This article is very

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general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.