

Kansas Court: Physician's Unjust Enrichment Claim Not Precluded by Stark Law

A Kansas court, in what appears to be the first reported opinion on the issue, recently determined that the "Stark law" would not bar the claim of a physician for unjust enrichment for services performed for a hospital and for which he was not compensated. Judge Richard D. Rogers of the United States District Court for the District of Kansas so ruled in refusing to dismiss the claim filed by the physician. (Braun v. Promise Regional Medical Center-Hutchinson Inc., D. Kan., No. 2:11-cv-2180, 12/16/11)

BACKGROUND

Dr. Steven Braun had a written contract with Promise Regional Medical Center–Hutchinson Inc. (PRMC) to serve as Medical Director of the Department of Radiation Oncology. After over ten years of service, PRMC terminated the contract in April 2008 under the terms of the agreement. Despite PRMC's termination of the contract, Braun continued to perform his duties as medical director until December 22, 2010. During that time period, PRMC continually accepted Braun's services and even billed for his time. However, Braun was not compensated for any of his work subsequent to the termination. Braun subsequently sued PRMC for, among other claims, unjust enrichment. To recover under an unjust enrichment theory, Kansas law requires Braun to prove that: (1) he conferred a benefit on PRMC; (2) PRMC acknowledged or appreciated the benefit; and (3) PRMC accepted or retained the benefit under such circumstances that make it inequitable for PRMC to refuse to pay Braun. Unjust enrichment claims are generally brought where there is an absence of a written agreement; in fact, the court said a valid written contract would preclude recovery on such a claim. PRMC countered with a motion to dismiss the unjust enrichment claim, arguing that any recovery under such a claim would violate or frustrate the purpose of the Stark law which requires a written contract, and prohibits a compensation arrangement arising from an unwritten implied contract.

DISTRICT COURT HOLDING

The court denied PRMC's motion to dismiss, ruling that the unjust enrichment claim does not necessarily create an illegal arrangement. The court explained that the Stark law "does not by its terms prohibit unwritten agreements or limit the power of a court to issue equitable remedies where there are no agreements," but instead it simply "carves out an exception from its prohibition of referrals for persons and entities who have certain written personal service arrangements." The court further reasoned that an unjust enrichment finding is the equivalent of the court finding an implied-in-law contract or quasi-contract, a fiction of a contractual relationship which permits the courts to impose an equitable remedy—it doesn't require the court to find that a contractual relationship actually existed. Accordingly, the court held that an unjust enrichment claim will not violate the Stark law because "it requires the court to engage in a fiction at law where there [is no] agreement between the physician and the health care entity." Accordingly, a judgment for Braun on his unjust enrichment claim would not constitute an agreement between Braun and PRMC that would be illegal under the Stark law. The court denied PRMC's motion to dismiss. It will be interesting to see if the physician is ultimately paid under a settlement or judgment in the case and if so, whether CMS will agree with the district Court's reasoning and not seek a recovery from the hospital.