Trending: Physician Self-Referrals & Stark Law Violation

Where is the fine line separating lawful hospital employed physician compensation and a Stark Law violation? For insight, take a look at the recent $17 million settlement in United States ex rel. Hammett v. Lexington County Health Services District. It's yet another example of False Claims Act cases attacking employed physician compensation as a Stark Law violation. It continues the trend of whistleblower initiated cases that have resulted in substantial settlements such as the Adventist Health System settlement of $115 million and the North Broward Hospital District Settlement of $69.5 million. Common factors in such cases include:

- High compensation relative to what the employed physicians made in private practice and relative to peer group data;
- Compensation that exceeds hospital receipts from the physician's professional services; and
- Overt non-Stark compliant referral requirements and/or tracking of DHS referrals.

A key takeaway from these cases is the apparent stance of the DoJ and whistleblowers' counsel that hospital employed physician compensation cannot be commercially reasonable if the hospital loses money on the physician's practice. The settlements seem to indicate that, up to this point, the hospitals believe the stakes are too high to go to the mat on this issue. These cases further illustrate the need for extra care in supporting the fair market value and commercial reasonableness of employed physician compensation. They also demonstrate the need for educating hospital personnel against tracking DHS referrals and pressuring physicians to conform. *This article is very general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.