

SEPTEMBER 2014 FCA UPDATE

Only one FCA case of interest was decided by a U.S. Circuit Court in September. In *US ex rel Parikh v Brown*, the Court found that a county hospital and its administrator's participation in a "simple, brazen kickback scheme" could not be shielded by qualified immunity. The hospital and its administrator split pain center revenues with emergency room doctors who referred Medicare and Medicaid patients to the center. It entered into an agreement with a cardiologist for an above-market guaranteed salary and below-market office space in exchange for patient referrals. Finally, it created a bonus system for gastroenterologists referring patients to the hospital's colonoscopy screening program.

The defendant administrator and cardiologist claimed qualified immunity as government officials. They argued that the law on the application of the FCA to Stark Law and Anti-Kickback Statute ("AKS") violations had not been clearly established; therefore, they could not have known their violations of those laws could be false claims. The court rejected the argument, noting that after its decision in 1997 in *US ex rel. Thompson v. Columbia/HCA Healthcare Corp.* finding that a Stark or AKS violation could form the basis for an FCA claim, any reasonable official would know they were in violation of the FCA if they certified a knowingly violative claim for payment.

If you have any questions or would like more information on this topic, please contact:

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