

Reproduced with permission from BNA's Health Care Fraud Report, 19 HFRA 88, 2/4/15. Copyright © 2015 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

False Claims

Hospital Dodges FCA Accusations From Former Therapist on False Time Sheets

A federal district court in Tennessee dismissed False Claims Act allegations against a hospital and its parent company Jan. 23 after ruling that accusations of improper outpatient therapy documentation alone didn't support a "strong inference" of false claim submissions without identification of any specific claims made to Medicare (*United States ex rel. McFeeters v. Northwest Hosp., LLC*, 2015 BL 17511, M.D. Tenn., No. 3:13-cv-00467, 1/23/15).

The U.S. District Court for the Middle District of Tennessee said plaintiff relator Kathleen McFeeters, a former occupational therapist with defendant Northwest Hospital LLC, didn't satisfy FCA pleading standards with allegations that Northwest outpatient therapists were told to retroactively input time spent with patients on their charts.

McFeeters alleged that retroactive time documentation violated Medicare guidelines and "likely" resulted in false claims, but the court said McFeeters failed to allege details of specific false claims for payment.

Judge Todd J. Campbell said McFeeters failed to allege that she had any first-hand knowledge of Northwest's billing procedures, whether the therapy patients were Medicare beneficiaries or if the retroactive time documentation led to incorrect time claims on patient charts.

Campbell said that McFeeters's allegations required the court to assume that the retroactive time entries led to false claims without any allegations or specific knowledge of what claims Northwest actually submitted to Medicare.

The court also said that McFeeters wasn't entitled to a relaxation of the FCA's pleading requirements because of her lack of knowledge of Northwest's billing practices, or knowledge of any occupational therapists

intentionally misrepresenting time spent with patients when retroactively marking time on charts.

Retaliation Claim Survives. The court allowed McFeeters's FCA retaliation claim to proceed against Northwest, on allegations that she was harassed and ultimately terminated after she reported the improper documentation to superiors and the government.

Campbell said McFeeters's refusal to retroactively modify outpatient therapy time documentation and reporting of what she believed was a possible FCA violation qualified as "protected activity" under the FCA's retaliation provision.

He said the alleged harassment and termination of McFeeters's employment "sufficiently alleged a causal connection" to her protected activity to support the retaliation claim against Northwest, and denied Northwest's motion to dismiss on that issue alone.

McFeeters also named Northwest's parent company, Community Health Systems Inc. (CHS), as a defendant on the theory that CHS knew about the improper therapy documentation. Campbell said McFeeters failed to "plausibly allege" that CHS had any knowledge about the alleged harassment, or took any action toward her, and dismissed the retaliation claim as to CHS. Campbell dismissed all of the claims against CHS.

Waters & Kraus LLP, Boyd & Associates and Barrett Johnston Martin & Garrison LLC represented relator McFeeters. Bass, Berry & Sims PLC represented Northwest Hospital. Riley, Warnock & Jacobson PLC represented Community Health Systems.

By ERIC TOPOR

To contact the reporter on this story: Eric Topor in Washington at etopor@bna.com

To contact the editor responsible for this story: Ward Pimley at wpimley@bna.com

The opinion is at http://www.bloomberglaw.com/public/document/KATHLEEN_MCFEETERS_v_NORTHWEST_HOSPITAL_LLC_et_al_No_3130467_2015.