



# Health Law Diagnosis

## Monitoring the Pulse of Health Care and Life Sciences

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### [Stark Settlement Targeting Hospital and Physicians a Reminder for Health Care Organizations](#)

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On March 29, 2023, the Department of Justice's (DOJ) Office for the Eastern District of Michigan [announced](#) a notable set of three settlements (collectively, the Settlement) in excess of \$69 million dollars total with a regional hospital system (Hospital) and two individual physicians, respectively.

The Settlement resolves alleged violations of the False Claims Act (FCA), the Anti-Kickback Statute (AKS), and the physician self-referral "Stark" law (Stark Law) between 2006 and 2016 related to various arrangements between the Hospital and physicians (and a physician-owned investment group). The Settlement is notable for both the total dollar value, but also because DOJ pursued individual physicians as part of its resolution; in its press release a DOJ official noted in part that the Settlement "emphasizes [DOJ's] commitment to pursuing justice against parties on both sides of those relationships—the hospital seeking to influence the physician via certain compensation schemes and the physician accepting the compensation."

According to DOJ, the Settlement and alleged violations relate to four separate types of relationships involving the Hospital that each bear hallmarks of suspicious arrangements under the AKS and Stark Law:

- Medical director agreements with individual referring physicians between 2006 to 2016 which did not comply with a Stark Law exception or AKS safe harbor;
- A physician employment arrangement between 2006 to 2009 that did not satisfy the Stark Law employment exception;
- An office space rental arrangement with a physician-tenant, where the Hospital allegedly forgave the physician's rent payments in exchange for referrals; and
- A physician-owned investment entity that purchased large medical equipment to lease to the Hospital received an equipment lease through non-arm's-length negotiations, allegedly in order to induce referrals.

The Hospital ultimately paid \$69 million as part of the Settlement, and the two physicians together paid approximately \$750k.

DOJ actually settled with the Hospital in 2021 and kept that initial settlement under seal until reaching the settlements with individual physicians. This Settlement is therefore a timely reminder as COVID-19-era flexibilities are ended that all parties to an arrangement which may violate the AKS or Stark Law are subject to scrutiny and potential exposure under those laws, and that violations of the AKS and Stark Law can result in extensive penalties under the FCA. In connection with the end of the COVID-19 public health emergency, health care organizations would be well-advised to review their physician arrangements to ensure they align with Stark and AKS requirements to minimize the risk of such scrutiny and penalties.

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