



Federal Court Finds Former Fresenius Employee is an “Original Source”

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A Massachusetts Federal District Court has denied a Motion to Dismiss in a false claims action brought against the nation's largest dialysis treatment provider by its former employee.

The False Claims Act (“FCA”) suit was brought against Fresenius by Christopher Drennen, an area manager of ten dialysis clinics from 2006 until 2008.

Drennen claimed Fresenius fraudulently obtained reimbursements when it performed hepatitis B tests on patients at a rate exceeding the frequency authorized by Medicare. He also alleged Fresenius billed the costs to Medicare to the tune of \$40,338 without showing the medical necessity for tests.

Fresenius moved to dismiss the relator's complaint on two theories: that Drennen failed to plead fraud with sufficient particularity under Rule 9(b) and that Drennen was not an original source of the information and was thus barred by the FCA's public disclosure bar.

The court denied the Motion to Dismiss, holding that the amount of specificity required under Rule 9(b) in false claims cases is not a rigid checklist. Drennen met the burden by identifying the initials of six patients on whom the tests were performed, the type of hepatitis tests performed, and the time period, location, and costs of the tests.

As for being an “original source”, the court cited Drennen's familiarity with Fresenius's business practices, records, computer and billing system as sufficient to establish his “direct and independent knowledge” of the information.

Unfortunately, the court did not shed much light on the new definition of “original source,” as amended by the Patient Protection and Affordable Care Act. The ACA added to the definition of “original source” by including a relator who “materially adds to the publicly disclosed allegations or transactions.”

The “materially adds” language significantly broadens the “original source” exception because it allows a *qui tam* plaintiff to go forward after a public disclosure, so long there is an unspecified amount of “material” new information.

This Federal court did not find it necessary to evaluate whether Drennen’s information materially added to what had been publicly disclosed.

The District Court's opinion can be found [here](#).