

DOJ Enforcing Yates Memo Accountability



As further evidence that the tone toward individual accountability set by the Yates memorandum (which we wrote about last Fall) continues to be applied by the Department of Justice, two new settlements were announced last month which corporate executives and independent directors should review.

On September 19 and 27, 2016, the Department of Justice announced separate False Claims Act (FCA) settlements that required senior corporate leaders to pay significant financial penalties to resolve allegations that they violated federal law. The September 19 settlement involved allegations that the nursing home operator North American Health Care, Inc. (NAHC) violated the FCA by submitting false claims for unnecessary services provided to its residents. NAHC agreed to pay a penalty of \$28.5 million, and its board chairman and its senior vice president of reimbursement analysis agreed to pay penalties of \$1 million and \$500,000, respectively. The September 27 settlement involved the payment of \$1 million by the former CEO of Tuomey Healthcare System, to resolve allegations relating to FCA and other violations.

Notably, the settlement included a provision whereby the former CEO waived any rights to indemnification he may have had against the health system. Since the publication of

the Yates memo, the DOJ has continued to express in publications and speeches, and demonstrate by its enforcements and settlements, the theme of requiring individual accountability from Directors and Officers who “lead or participate” in corporate misconduct, and the DOJ’s willingness to apply some “cooperation credit” to the company to the extent it cooperates fully with investigations of the individuals. As these cases show, the healthcare industry in general and FCA claims in particular, have been common targets for DOJ but are by no means the only areas of emphasis.

Management teams and outside directors need to understand the risks and responsibilities for compliance, both with respect to the company and to each individual. Similarly, management and the Board should understand the scope of coverage available to them under D&O policies for such investigations and potential settlements. Contact Simkiss & Block for further information about your company’s risks and protection.

Please contact us at 833.412.4782 to discuss how we can help you.