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### FCA Lawsuit Alleges MultiCare Kept Billing for Surgeon's Procedures Despite DOJ Warning

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By Nina Youngstrom

Almost four years before filing a False Claims Act (FCA) complaint alleging that medically unnecessary spine surgeries were performed at MultiCare Deaconess Hospital in Spokane by neurosurgeon Jason A. Dreyer, D.O., the U.S. Attorney's Office for the Eastern District of Washington gave MultiCare a heads-up it was investigating the neurosurgeon. Although the investigation was at an early stage, the U.S. attorney's office wrote MultiCare that Dreyer allegedly presented a potential danger to patient safety based partly on "his fraudulent billing supported by falsified diagnoses" and included data from Dreyer's former employer, Providence St. Mary's Medical Center in Walla Walla, Washington. There were specific allegations about procedures that weren't performed or had fake or exaggerated diagnoses of kyphosis, scoliosis, spondylolisthesis or were otherwise medically unnecessary, according to the FCA complaint in intervention filed against MultiCare Jan. 26.<sup>[1]</sup>

Despite the warning, MultiCare allegedly didn't follow up with the U.S. attorney's office. Dreyer worked at MultiCare for another year—while he was also under investigation by the state Board of Osteopathic Medicine and Surgery, according to the FCA complaint, which alleges that MultiCare fraudulently billed Medicare, Medicaid, TRICARE, the Veterans Administration and the Federal Employees Health Benefits Health Program \$8.4 million for Dreyer's spine surgeries between July 2019 and March 2021.<sup>[2]</sup>

The FCA complaint comes on the heels of two separate FCA settlements stemming from Dreyer's spine surgeries. In March 2022, Providence Health & Services paid \$22.69 million to settle false claims allegations over medically unnecessary neurosurgeries performed by Dreyer and another surgeon at Providence St. Mary's.<sup>[3]</sup> A year later, Dreyer himself entered into an FCA settlement with the U.S. attorney's office, agreeing to pay \$1.174 million in connection with his procedures at both Providence and MultiCare.<sup>[4]</sup> Dreyer also agreed to be excluded from Medicare and other federal health care programs for nine years.

MultiCare denied the false claims allegations and said it would "vigorously defend" itself in this matter.

The fact that the U.S. attorney's office alerted MultiCare to its concerns about Dreyer in 2020 was seen through different lenses. "It's a lesson for providers that if you get that phone call you need to take it very seriously and conduct your due diligence about physicians practicing in your hospital," said attorney Asher Funk, with Goodwin Procter LLP in Washington, D.C. Normally he'd expect MultiCare to have potentially settled before the U.S. Department of Justice (DOJ) filed its complaint in intervention because the alleged damages are relatively small and the physician at the heart of the allegations has already settled an FCA case related to his professional services at MultiCare and agreed to a long exclusion. But that hasn't happened here. "It signals to me" that MultiCare is fighting because it "believes it has some defenses and disagrees with the government about the medicine," Funk said. "They must believe the care the physician rendered was medically necessary and appropriate or at least that there's a reasonable disagreement."

Relying on its earlier call to establish FCA knowledge by MultiCare may also be a sign of overreach by DOJ, said

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attorney Judy Waltz, with Foley & Lardner LLP. “Assuming there are quality issues that have been identified, as there were here, those issues should be working their way through medical boards and the quality review processes at the hospital. Those processes allow thorough evaluation of quality complaints, with peer review protections and privileges that encourage free discussions,” she said. It shouldn’t be DOJ reaching conclusions based on its views of Dreyer’s care, “especially if their investigation is in an early stage or if concurrent allegations have been settled without admission of liability and then DOJ later uses its information-sharing against the hospital in an FCA complaint.”

Waltz also thinks the merging of quality and compliance—which was emphasized in the HHS Office of Inspector General’s new General Compliance Program Guidance—has its risks.<sup>151</sup> “I respect and support the government’s focus on quality, but DOJ’s FCA liability approach—if its calls are not heeded—may discourage some people from coming forward with quality complaints.” But she echoes the suggestion for providers to take a call from DOJ very seriously.

The case is also “a cautionary tale” about the risks of not paying attention to red flags during credentialing and privileging, said Alan Weintraub, M.D., physician consultant at BerryDunn. According to the complaint, MultiCare hired Dreyer even though it allegedly knew Providence St. Mary’s allowed him to resign. “If red flags come up, you have to give them credence,” added Christa Bernacchia, director of credentialing services at BerryDunn. For example, organizations have reporting obligations to the National Practitioner Data Bank and state and federal agencies.

Even if it slows down the process of putting physicians to work, “you can’t rush diligence,” Bernacchia noted.

“The thorough verification of credentials and privileges should be distinct from the hiring process, although organizations may accomplish this via varied mechanisms,” Weintraub added.

## **Patient Was the Whistleblower in MultiCare Case**

The case against MultiCare was set in motion by whistleblower Deannette Palmer, a Medicare beneficiary from Spokane. Dreyer operated on her at MultiCare Deaconess Hospital in September 2020, and she filed an FCA lawsuit a year and a half later. The U.S. attorney’s office intervened.

Before MultiCare, Dreyer was employed in the neurosurgery department of Providence St. Mary starting in July 2013. There were two other neurosurgeons in the department at the time, including David Yam, the medical director of neurosurgery, who was ultimately the whistleblower in the Providence FCA case. Yam and others raised concerns about Dreyer. For example, Dreyer allegedly performed medically unnecessary and overly complex surgery, according to the complaint. In May 2018, the hospital allowed him to resign.

Physicians elsewhere had their misgivings about Dreyer. In March 2019, a neurosurgeon identified as “M.F.” sent a 116-page complaint to the Washington Department of Health (DOH) detailing how Dreyer allegedly “falsified diagnoses and conducted medically unnecessary surgeries” while at Providence. The complaint to the state described 11 cases that M.F. considered the “most egregious,” according to the U.S. attorney.

Around that same time, Dreyer emailed two MultiCare surgeons about practicing there. During the hiring process, MultiCare neurosurgeons discussed the fact that Dreyer had lost his hospital privileges at Providence St. Mary’s, the complaint alleged. The regional administrator also warned the president of Deaconess Hospital of “red flags” about Dreyer. “The reference to ‘red flags’ was a direct reference to MultiCare’s concerns regarding Dr. Dreyer’s surgical case selection,” but he was offered a job anyway and accepted it on May 3, 2019. That got the credentialing ball rolling.

“The credentialing process was fast tracked due to MultiCare’s urgent need for neurosurgeons at that time and other factors including Dr. Dreyer traveling to South Africa for a film project he was working on. At no time during the MultiCare credentialing process did those involved in the hiring process for Dr. Dreyer, including MultiCare’s President of Deaconess Hospital, L.D., MultiCare’s Regional Administrator, M.D., or MultiCare’s Medical Director for Surgical Services, Dr. J.D, inform MultiCare’s credentialing committee of any of the red flags, concerns, and direct evidence regarding Dr. Dreyer’s medically unnecessary surgeries while he was practicing as a neurosurgeon at Providence St. Mary nor any of the concerns they had regarding Dr. Dreyer’s clinical judgment,” the complaint alleged.

## **DOJ: No Limit on Surgeon’s wRVU Compensation**

After he was credentialed, Dreyer began operating on patients in July 2019 at MultiCare Deaconess Hospital and MultiCare Rockwood Neurosurgery. Two months later, he was switched from a flat salary to a work relative value unit (wRVU) compensation model with no cap.

“Dr. Dreyer immediately began performing complex surgeries on a high volume of patients, producing far more wRVUs than any other neurosurgeon at MultiCare,” the complaint alleged. “This allowed MultiCare to maximize its spinal surgery revenue from insurance providers including Medicare, Washington Medicaid, and other federal health care programs. This further allowed MultiCare to increase its profit margins on its spinal surgeries.”

After the U.S. attorney’s office contacted MultiCare about Dreyer in 2020, its chief medical officer (CMO) created a document summarizing leadership’s understanding of what was going on. The document—situation, background, assessment and recommendations (SBAR)—contained four recommendations. One recommendation was informing Dreyer of the investigation. That’s when Dreyer revealed the state was investigating him. “MultiCare took no action to suspend or even curtail Dr. Dreyer’s surgeries despite this admitted lack of candor during the hiring and credentialing process,” the complaint alleged.

Another SBAR recommendation was to have the site medical manager of neurosurgery do concurrent review and surgical oversight of Dreyer’s surgeries. But the site manager—who didn’t know about the U.S. attorney’s investigation—“never engaged in concurrent proctoring of Dr. Dreyer in the operating room and never canceled one of Dr. Dreyer surgeries out of the hundreds Dr. Dreyer conducted while credentialed at MultiCare,” the complaint alleged.

Dreyer was also an outlier in terms of Medicare billing. The complaint alleged that at the time MultiCare was billing Medicare Part B for his services, Dreyer was in the 97th percentile for 14 neurosurgery codes in terms of total payments to 4,143 neurosurgery providers nationally with a similar practice size.

The complaint includes a few examples of patients who had multiple surgeries performed by Dreyer. One example is patient “D.P.,” a 64-year-old woman with asthma, kidney disease and other comorbidities. Dreyer performed what the complaint alleged was a “medically unnecessary anterior and posterior reconstruction” on D.P. at MultiCare Deaconess Hospital on Sept. 16, 2020, after MultiCare knew about the federal investigation—and Medicare Advantage paid \$13,138 for it.

## **State Investigation Moved Ahead**

Wheels were turning elsewhere because of the 116-page complaint filed with the state. The DOH Office of Investigative and Legal Services informed Dreyer about the complaint in May 2019, and he submitted his response based on expert reviews. The state also commissioned an outside expert, who found that in seven of the 11 surgeries, “the preoperative imaging and physical exams did not provide the medical indications for the various planned surgeries.”

When top MultiCare medical leaders met with Dreyer in February 2020 to talk about the U.S. attorney’s allegations, he said he was unaware of them. All he knew was that Providence St. Mary’s did a “broad inquiry” of neurological services while he was there and “he underwent an external review of some kind but that no material findings were disclosed to him,” according to the complaint. “Dr. Dreyer’s representations to MultiCare at the February 26, 2020 meeting were contrary to MultiCare’s direct knowledge that Dr. Dreyer had been suspended from Providence St. Mary due to allegations of medically unnecessary surgeries. MultiCare conducted no follow up with Dr. Dreyer, Dr. Dreyer’s attorney, Providence, the Washington State Department of Health Board of Osteopathic Medicine and Surgery, the USAO, or any outside entity to determine the truth or accuracy of Dr. Dreyer’s representations.”

## **State: Neurosurgeon Was ‘Immediate Threat’**

But things were starting to change. The state board on March 12, 2021, concluded Dreyer posed “an immediate threat to public health and safety, and summarily prohibited Dr. Dreyer from performing spinal surgeries pending further proceedings,” according to the complaint. MultiCare allegedly tried to overturn or change the prohibition, partly with “misleading assurances that there appeared to be no issues with Dr. Dreyer’s surgeries at MultiCare.”

On April 26, 2021, the state board decided Dreyer could only do spinal surgeries if they were approved by two board-certified neurosurgeons, one of whom didn’t work for MultiCare or have any financial interest in it. After Dreyer’s practice was restricted, his patients were assigned to other MultiCare neurosurgeons, including one dubbed “Dr. A.T” in the complaint. “Dr. A.T. determined that none of the twelve former patients of Dr. Dreyer were appropriate for spinal surgery,” the complaint alleged.

## **‘Physicians Should Have Skin in the Game’**

Compensation for high performers is also at issue in the FCA complaint. Compensation was based on an assessment of physician productivity through wRVUs, allegedly encouraging the performance of more complex procedures, which have higher wRVUs. Generally, when there’s no cap on wRVU generation, hospitals run the risk of encouraging overutilization, Funk said. “But you will sometimes have physicians at the top of their game who are practicing lawfully and are extremely productive,” he noted. If that’s the case, hospitals must ensure the compensation structure will withstand scrutiny and that the physician’s services are monitored for medical necessity. At the same time, when payers recoup money from hospitals, “there should be a corresponding reduction in wRVUs or impact on compensation,” Funk said. “Physicians should have skin in the game.”

Waltz agreed the compensation method described in the complaint is common, but “it can be spun as an incentive to upcode or perform more complex or unnecessary procedures.” The payer or employer should create mechanisms to check periodically that services provided are medically necessary and reasonable because wRVU compensation creates an incentive for physicians to ramp up the value of their services.

The allegations may also raise eyebrows at commercial payers, who could audit MultiCare’s claims for Dreyer’s surgeries, Bernacchia said. “If it’s in one place, it will trickle down elsewhere,” she noted.

In a statement, MultiCare said “MultiCare has not yet been served with the complaint filed by the DOJ. We can assure you that MultiCare’s commitment to our mission – partnering for healing and a healthy future – and our dedication to the health of the communities we serve is as strong as ever. The safety of our patients is and will always be our highest priority. We are aware of the Department of Justice’s allegations, and we believe them to be unfounded and without merit.”

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**1** United States of America and the State of Washington v. Multicare Health System, Case No: 2:22-cv-00068-SAB (E.D. Wash. 2024), <https://bit.ly/3ueodYH>.

**2** U.S. Department of Justice, U.S. Attorney’s Office for the Eastern District of Washington, “United States and State of Washington File False Claims Act Complaint Against MultiCare for Knowingly Endangering Patients and Fraudulently Billing for Spinal Surgery Procedures,” news release, January 26, 2024, <https://bit.ly/3vRN1cf>.

**3** Settlement Agreement, United States and State of Washington ex rel. v. Providence Health & Services, Case No: 4:20-cv-05004-SMJ (E.D. Wash. 2022), <https://bit.ly/3O18T14>.

**4** U.S. Department of Justice, U.S. Attorney’s Office for the Eastern District of Washington, “Former Physician to Pay More than \$1.1 Million to Resolve Allegations He Performed Medically Unnecessary Procedures,” news release, April 24, 2023, <https://bit.ly/3SGHtdy>.

**5** U.S. Department of Health and Human Services, Office of Inspector General, *General Compliance Program Guidance*, November 2023, <https://bit.ly/3FREWGe>.

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