

Bodies on the Table and a Trial by Jury

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A close-up photograph of several hands holding white puzzle pieces. The hands are positioned as if they are about to fit the pieces together. The background is a soft, out-of-focus blue and white. A semi-transparent orange banner is overlaid across the middle of the image, containing the title text. In the bottom right corner, there is a logo for 'armanino' with a small yellow and black triangle icon.

Healthcare Fraud and False Claims Act (Qui Tam)

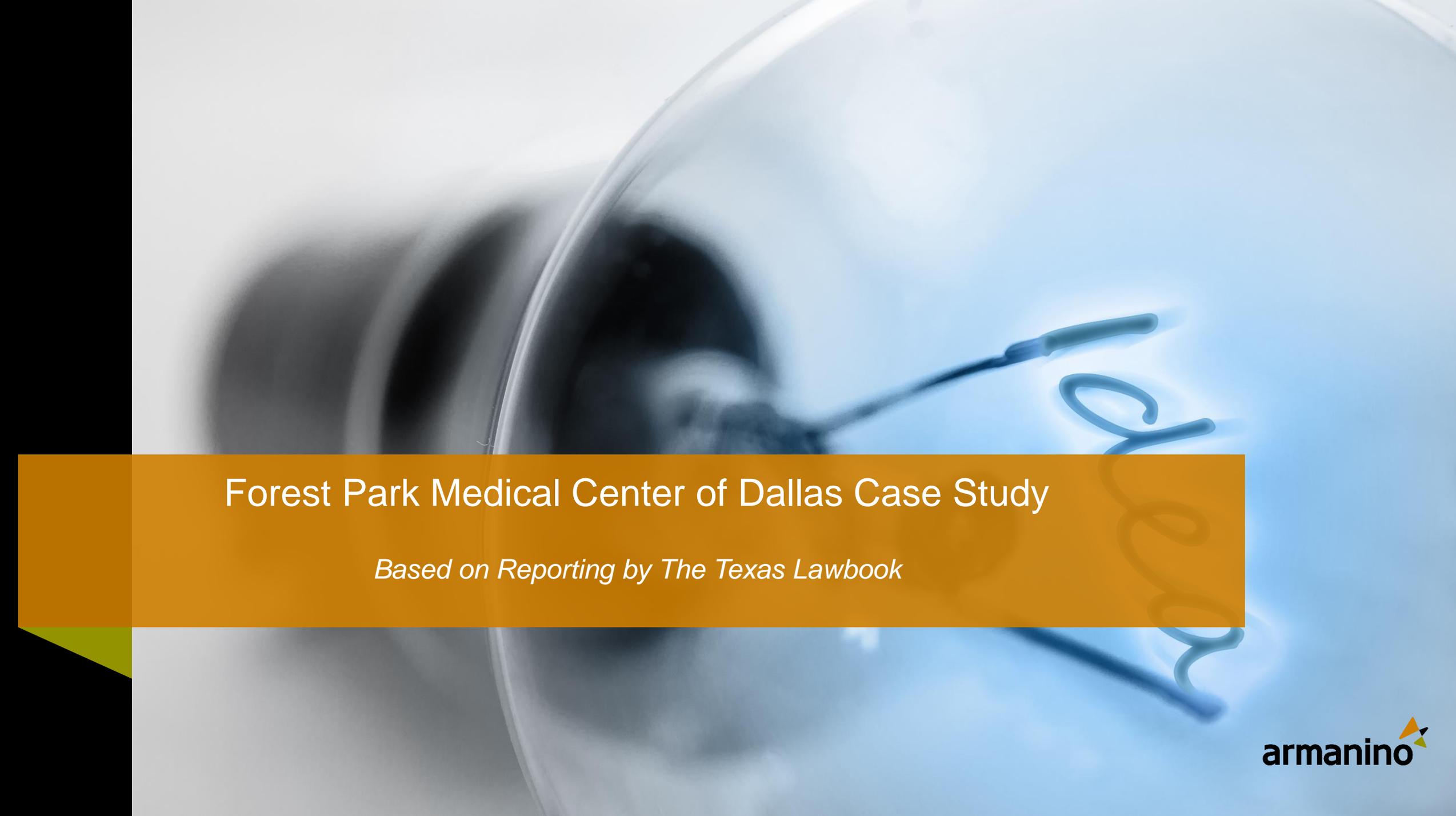
Types of Fraud



- Occupational Fraud
 - Asset Misappropriation
 - Corruption
 - Fraudulent Financial Reporting
- Healthcare Related Fraud
 - Kickbacks for referrals
 - Upcoding
 - Billing Schemes
 - Billing for services not rendered
 - Providing unnecessary treatments or tests
 - Medical Necessity

False Claims Act (Qui Tam) and Healthcare

- Allows private individuals to sue perpetrators of fraud on behalf of the federal government.
- Individuals who become aware of fraudulent health care claims, like those in the billing department of a health care provider, can sue under the FCA and, if successful, may be able to receive up to 30% of any funds recovered.



Forest Park Medical Center of Dallas Case Study

Based on Reporting by The Texas Lawbook

Forest Park Medical Center of Dallas

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- Advertising Executive
- Alan Beauchamp
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Forest Park Medical Center of Dallas - The Beginning



- “Ritz Carlton” of surgical hospitals
- Physician-owned hospital, spacious, modern and well-appointed
- Premiere facility with advanced technologies
- State-of-the-art surgery center with the latest in medical technology

Masterminds

- Dr. Richard Toussaint – Anesthesiologist – Forest Park Founder
- Dr. Wade Barker – Bariatric Surgeon – Forest Park Founder
- Alan Beauchamp – Chief Operating Officer
 - “We washed their cars for them. We served them gourmet breakfasts. We got them front-row, courtside seats to the Dallas Mavericks games.” *Alan Beauchamp*
 - If a surgeon wanted the use of two operating rooms, he got it. If a surgeon wanted to operate at night or on weekends, he could. If a surgeon requested a piece of equipment that the hospital didn’t have, Forest Park would find it for him.

Allegations and Indictments

- “Surgeries for dollars. And dollars for surgeries.” *Prosecutor*
- Forest Park received \$200 million mostly in out-of-network insurance payouts and paid \$40 million in “marketing payments”
- 21 people indicted, including eight doctors.
 - Ten people plead guilty and some agreed to testify against the defendants
- “...Forest Park marketing program had been blessed by lawyers.”
defense attorney

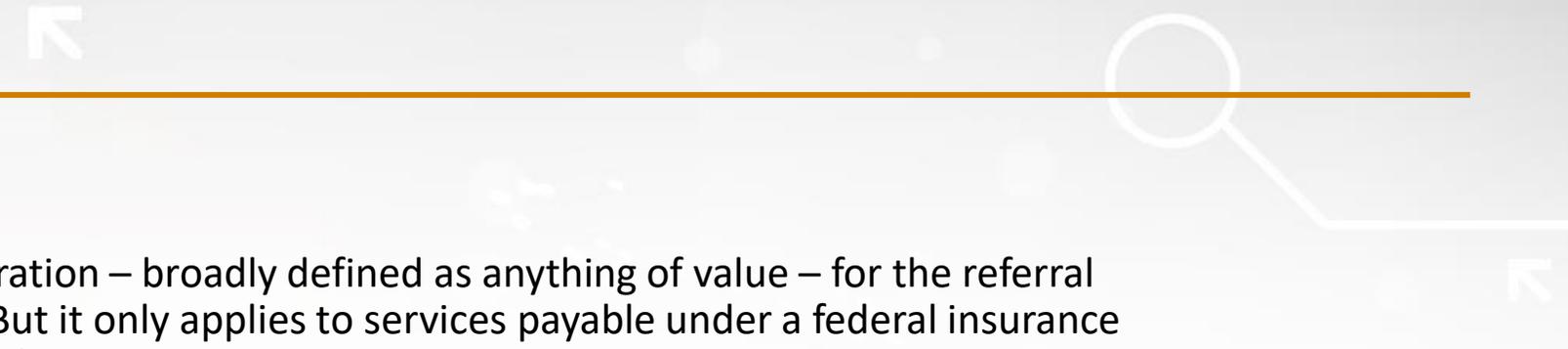
The Ethical and Legal Standard

“Patients must be able to trust that their physicians will be honest with them and will make treatment recommendations, including referrals, based on medical need, the skill of other health care professionals or facilities to whom the patient is referred, and the quality of products or services provided.”

American Medical Association’s Code of Ethics

The crimes alleged in the Forest Park case required a finding of intent: To convict, jurors had to conclude that defendant “knowingly and willfully” acted unlawfully.

The Law



- **Federal Anti-Kickback statute**

- Prohibits the exchange of remuneration – broadly defined as anything of value – for the referral of patients for medical services. But it only applies to services payable under a federal insurance program, like Medicare or Medicaid.

- **The International Travel and Tourism Act of 1961 (“Travel Act”)**

- Makes the act of traveling (or using the mail or engaging in interstate commerce) in the furtherance of certain crimes an indictable federal offense separate from the underlying state or federal crime.
- By invoking the Travel Act, the government could investigate suspected bribes and kickbacks involving referrals to *privately* insured patients. The underlying offense they used to apply the act was a state criminal statute, the Texas commercial bribery law.

- **Texas Commercial Bribery Law**

- The Texas commercial bribery law had never been used to charge a doctor with improperly referring patients and it does not have the “safe harbor provisions” that are contained in the 1999 Texas Solicitation of Patients Act.

The Accused

Doctors

1. Dr. Douglas Won – Spine Surgeon
2. Dr. Michael Rimlawi – Spine Surgeon
3. Dr. Shawn Henry – Back Surgeon
4. Dr. Nick Nicholson – Bariatric Surgeon
5. Dr. Mika Shah – Pain Management Physician

Administrators

1. Mac Burt – Co-Administrator at Forest Park
2. Jackson Jacob – Owned Marketing Company
3. Iris Forrest – Nurse and Worker's Comp Insurance Consultant
4. Carli Hempel – Director of Bariatric Services

Chiropractor and Referral Coordinator

- West Texas Chiropractor testified that he referred 514 patients, 108 of whom ended up on the operating table and he received \$385,000 in “bribes and kickbacks” disguised as consulting fees
- Ms. Smith was Forest Park’s “referral coordinator” and testified that she kept meticulous tracking of number of patients referred and surgeries performed by each doctor
- Ms. Smith’s tracking list would be included with the month checks to doctors
- She was instructed to tell Mr. Beauchamp if anyone’s numbers were trailing off.
- Beauchamp wrote in an email to one doctor “I want to sit down...to find out why my \$150K investment has not produced Jack”.

Advertising Executive ↖

Prosecution

- Ms. Loter ran an advertising agency that received hundreds of thousands of dollars from Forest Park to cover the cost of marketing campaigns for doctors who referred patients
- \$100,000 per month to promote Dr. Won and Dr. Rimlawi for Minimally Invasive Spine Surgery
- \$70,000 per month to promote Dr. Nicholson for Weight Loss Surgery
- The payments to Loter came from shell companies controlled by Beauchamp
- Ads included billboards, television and radio, in magazines and online

Defense

- No money went to the doctors and the defense argued marketing programs are commonplace in the health-care industry
- Loter acknowledged that payments remained the same each month even though the number of surgeries fluctuated
- Dr. Nicholson and other doctors continued to perform surgeries at Forest Park – 2,000 in all – long after the marketing funds dried up in late 2012

Alan Beauchamp



Prosecution

- Mr. Beauchamp stated “We papered it up to make it look good”.
- Stated each doctor participated and the others knowingly took part in the conspiracy.
- Stated “If I was paying for their surgeries, I wanted to make sure I was getting a return.”
- Beauchamp and a partner were paid 3 percent of Forest Park’s collectible revenues through a management company totaling “in excess of \$1 million” per year for each of them.
- Bariatric and spinal surgeries could be billed out-of-network at \$50,000 to \$100,000 or more per operation. (three or four times the typical in-network rate)
- Beauchamp told patients not to worry about the higher co-pays, “We just didn’t collect it.”
- Dr. Henry got \$30,000 a month and payments were disguised as “consulting fees” paid by a real estate company owned by Forest Park founders
- Dr. Henry asked Forest Park to buy him four season seats to the Dallas Cowboys in Jerry Jones’ luxury box for \$1 million, Mr. Beauchamp said no.

Alan Beauchamp

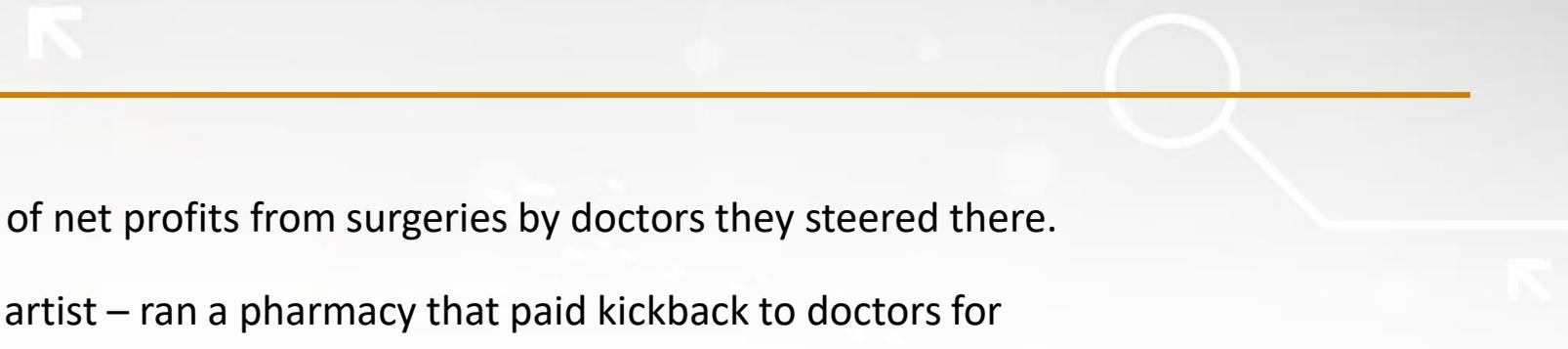
Defense

- Mr. Beauchamp stated he did not present himself as a fraud while recruiting doctors
- Beauchamp admitted that he told doctors he was seeking to sign up that the payments were legal
- Beauchamp testified that it was a pay-to-play scheme but admitted that the records do not reveal a direct correlation
- Beauchamp admitted he took over \$1 million from Adelaide Business solutions which was a shell entity for funneling payments to doctors and others
- Beauchamp would submit invoices to Adelaide for \$20,000 to \$25,000 and be paid, for doing nothing.
- Attempted to “sell” lower paying Medicare and Medicaid patients to another hospital, although it never came to fruition
- Beauchamp stated he was placed on administrative leave from Forest Park in October 2012 due to a sexual harassment allegation that he demoted employees because they refused to reciprocate his sexual advances.

Dr. Kim

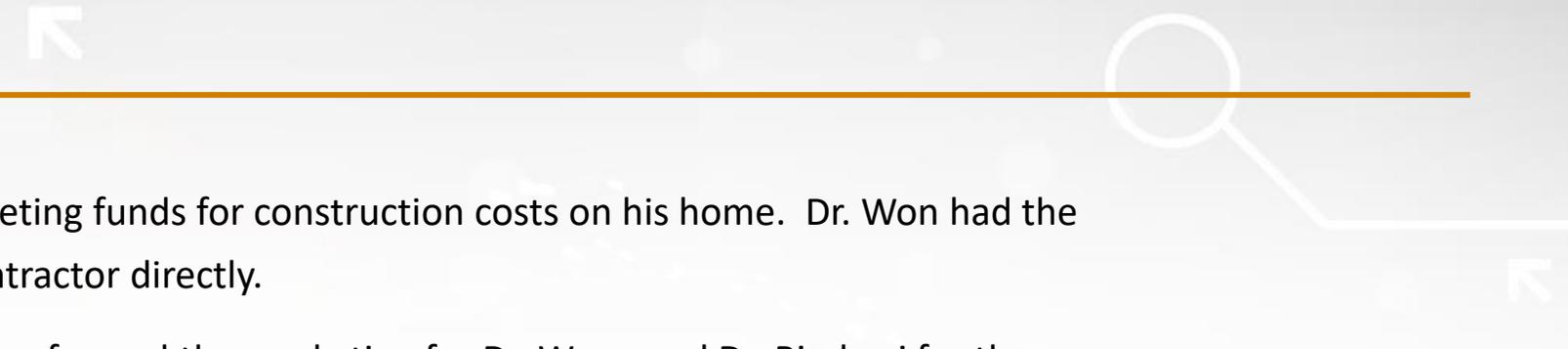
- Dr. Kim testified for the prosecution, after pleading guilty two felonies and agreeing to pay \$5.1 million in restitution, against his friend Dr. Nicholson. Dr. Kim also relinquished his medical license in 2017.
- He acknowledge under cross examination that the medical board would have yanked his medical license after pleading guilty to two federal felonies.
- Dr. Kim also admitted to being involved in a scam to pass off weight-loss surgeries as surgeries to repair hiatal hernias, which are covered in insurance policies.
- Dr. Kim testified he had a conversation with Beauchamp about Nicholson not sending enough surgeries in exchange for the \$70,000 in marketing money each month. Dr. Kim stated he told Nicholson if he could not “bring a weight-loss surgery, bring gall bladders – something”. He stated Nicholson said “I understand and I will.”
- He stated Nicholson was a friend but he did not know where he lived, had never visited his home, didn’t know the names of his two sons, and couldn’t say where they went to school.

Andrew Hillman



- Hillman and partner received 10% of net profits from surgeries by doctors they steered there.
- Andrew Hillman was a serial scam artist – ran a pharmacy that paid kickback to doctors for sending costly prescriptions, regardless of whether the prescribed drugs were “in the best interest of patients.” He also gave strangers \$50 gift cards to pee into cups at Whataburger restrooms then sent the urine samples to their own labs for costly, pointless testing which they billed insurance.
- Bought a medical marijuana dispensary in California and shipped 100 kilograms of marijuana to Texas
- After the Forest Park collapse in 2012, Hillman and partner started a new chain of hospitals, Victory Medical Centers, to carry on the same illegal practices.

Follow the Money



- Dr. Won spent \$158,000 of the marketing funds for construction costs on his home. Dr. Won had the marketing entity pay the general contractor directly.
- An advertising executives stated he performed the marketing for Dr. Wong and Dr. Rimlawi for the Minimally Invasive Spine Institute and received \$200,000 to \$225,000 a month through a marketing entity associated with Forest Park. Dr. Won received a total of \$5.9 million and Dr. Rimlawi received a total of \$4.9 million.
- Neal Richards Group, a real estate firm created by Forest Park founders, hired Dr. Henry, a Fort Worth back surgeon, as a medical consultant for an expansion of a hospital. Dr. Henry was paid \$30,000 a month although he never sent an invoice and never consulted about anything. Dr. Henry received a total of \$840,000. Forest Park paid \$35,000 a month to Neal Richards Group and the two founders of Forest Park split the additional \$5,000 a month.

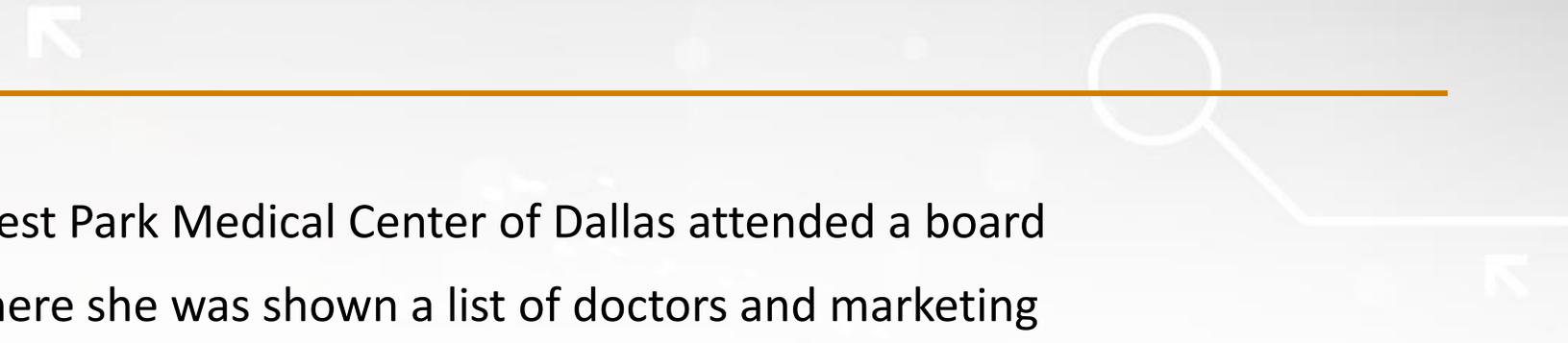
Dr. Barker

- Dr. Barker, Forest Park owner, took \$100,000 to \$125,000 a month in exchange for performing surgeries.
- He and Dr. Toussaint, an anesthesiologist, decided to start the hospital after learning the previous hospital was making many times as much on each surgery.
- Stated that all the owners, administrators, and recruited doctors knew it was illegal.
- “We basically wanted high-volume, high-margin surgeries.”
- Dr. Barker admitted to participating in the recruitment of physicians but he admitted that when they recruited Dr. Nicholson there was not a conversation about marketing money or the number of surgeries. Additionally, he could not cite a single email or text exchange with Nicholson in the 1.5 million documents in evidence.

The Controller and Bookkeeper

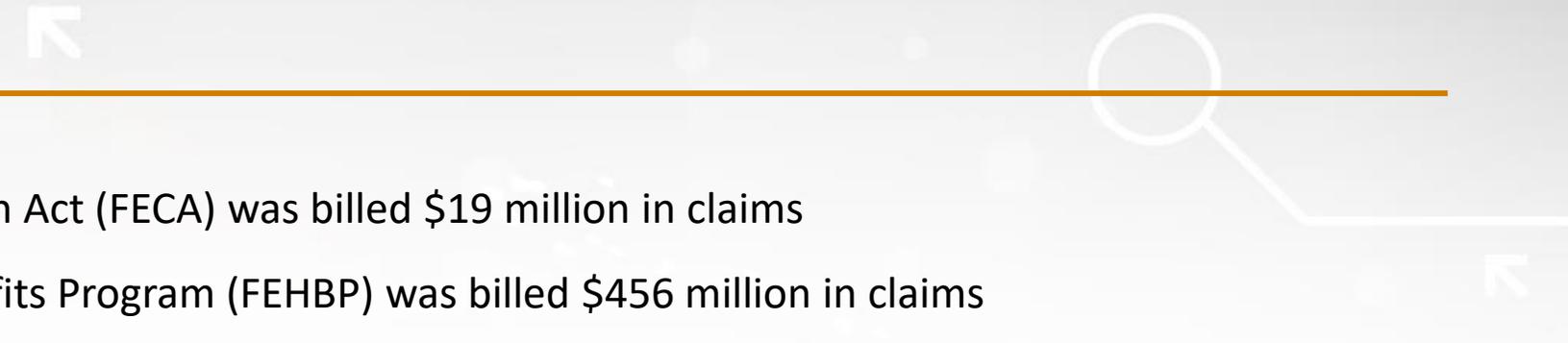
- Former Controller and CPA quit after 13 months because he thought the hospital's books were fishy and when he raised questions he never got satisfactory answers.
- Dr. Wong's bookkeeper stated she was forced to resign after expressing concerns about his office's financial practices and stated she didn't think she would "look good in orange."
- Six patients testified that their doctors steered them to Forest Park, that they did not know the hospital was billing their insurance at higher rates, or that their physicians were getting marketing money.

General Counsel



- Assistant legal counsel at Forest Park Medical Center of Dallas attended a board meeting in February 2012 where she was shown a list of doctors and marketing companies affiliated with them. Penciled in next to the names were the monthly marketing payments Forest Park was making through a shell company to each entity on the list. Her reaction, “Oh, shit.”
- She stated “Reviewing the agreement for what it is and how it’s implemented,” can be two very different things.

The Government



- Federal Employee Compensation Act (FECA) was billed \$19 million in claims
- Federal Employees Health Benefits Program (FEHBP) was billed \$456 million in claims

Certified Fraud Examiner

- Traced tens of millions of dollars from health insurance companies to Forest Park Medical Center of Dallas to shell companies then to physicians or to companies physicians controlled
- She used insurance claims, bank accounts, corporate filings, real estate records, Forest Park documents and other sources.
- Doctors used the funds to market their own practices, finance building improvements, cover payroll and other office expenses, travel, and buy luxury items.
- A company co-owned by Dr. Won and Rimlawi spend \$21,700 on a party to celebrate the grand opening of their Minimally Invasive Spine Institute
- She stated the Forest Park made payments to mostly shell companies, principally one called Adelaide Business Solutions. She claimed it had no business purpose “except to write checks.”
- During cross-examination, defense counsel pointed out all the bank records, credit card statements, IRS filings, and testimony she had not considered in developing her opinion.
- Defense counsel also pointed out that her firm only does work for the government thereby her firm is a “captive” of federal authorities.

\$47,000



\$73,000



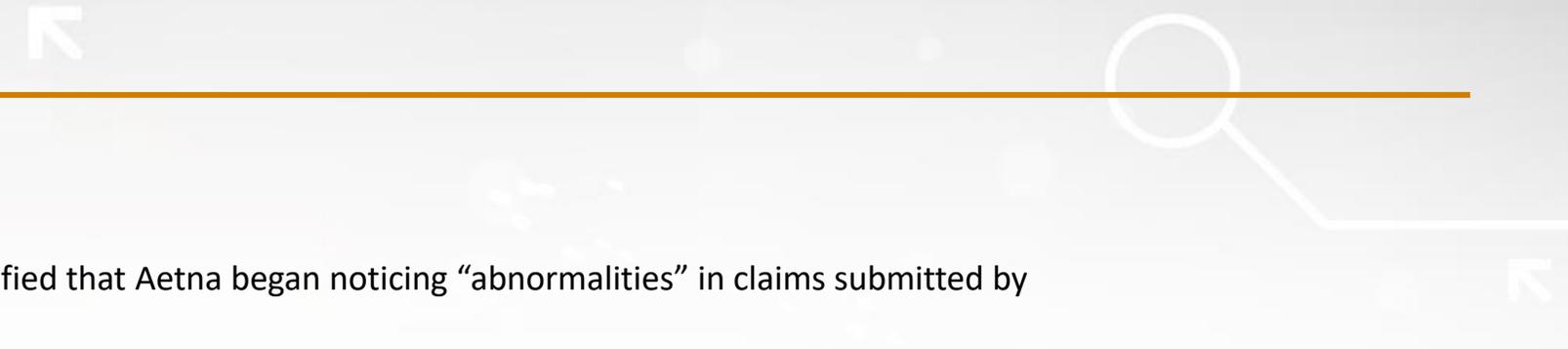
\$1,678



\$10,000



Insurance Carriers



Aetna

- Aetna healthcare analytics executive testified that Aetna began noticing “abnormalities” in claims submitted by Forest Park.
- Very high per-case costs and an oddly large number of policyholders having “out of network” surgeries at Forest Park.
- Aetna’s special investigation unit learned that Forest Park was reducing or simply waiving patients’ co-payments.
- Forest Park patients should have owed \$24 million in co-payments but only \$1.2 million, about 5 percent, was collected.
- The city of Allen and city of Dallas stopped offering out-of-network benefits through its self-funded program due to the “astronomically high” hospital bills

United Healthcare

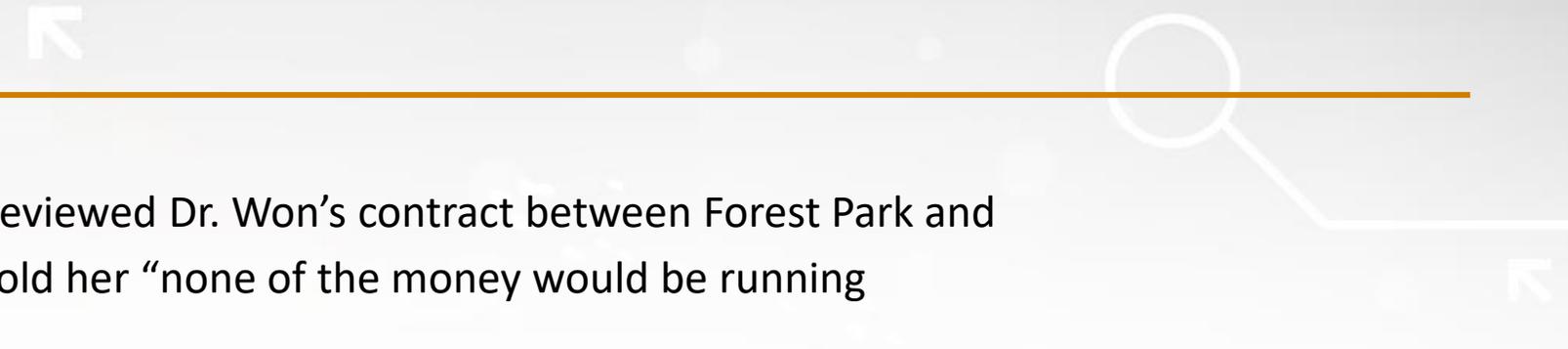
- United Healthcare received complaints from employers providing health coverage due to “egregious billings and the dollars concerned.”
- Forest Park was “an outlier, off the charts on costs”

Hospital Administrator ↖

- Carli Hempel's initial responsibility was recruiting surgeons. She was told by Mr. Beauchamp that he wanted "bodies on the table."
- She stated "Everyone at the hospital knew we were marketing doctors," and "We do marketing to increase business, and our business was surgery."
- "I took the word of my boss, who'd worked in healthcare for 30 years."
- She was surprised to hear federal agents use the phrase "bribery and kickbacks" however during her interview she described the payments as "money for surgeries" and she had instructed people to discount the patients' portion of bills or waive payments so they wouldn't raise questions that would draw scrutiny for insurers or regulators.

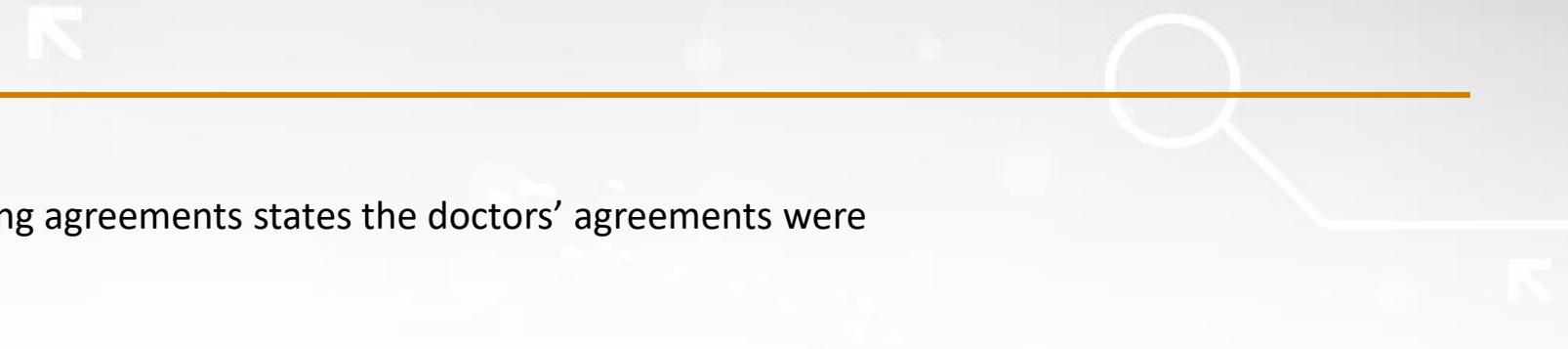
Joint marketing by doctors and hospitals is legal and not uncommon in the industry. Buying patient referrals is different: It's felonious.

Doctors' Teams



- Healthcare attorney stated she reviewed Dr. Won's contract between Forest Park and a media company and Dr. Won told her "none of the money would be running through his practice."
- CPA prepared the tax return for marketing company affiliated with Dr. Won and stated that it appeared legitimate.
- Dr. Rimlawi's office administrator said "The type of insurance the patient had played a role," but there was not a concerted effort to steer Rimlawi's best-insured patients to Forest Park. Dr. Rimlawi's surgery scheduled stated there was never pressure to steer patients to Forest Park and a patient's insurance benefits played no role in determining where the surgery would take place.

Healthcare Lawyer

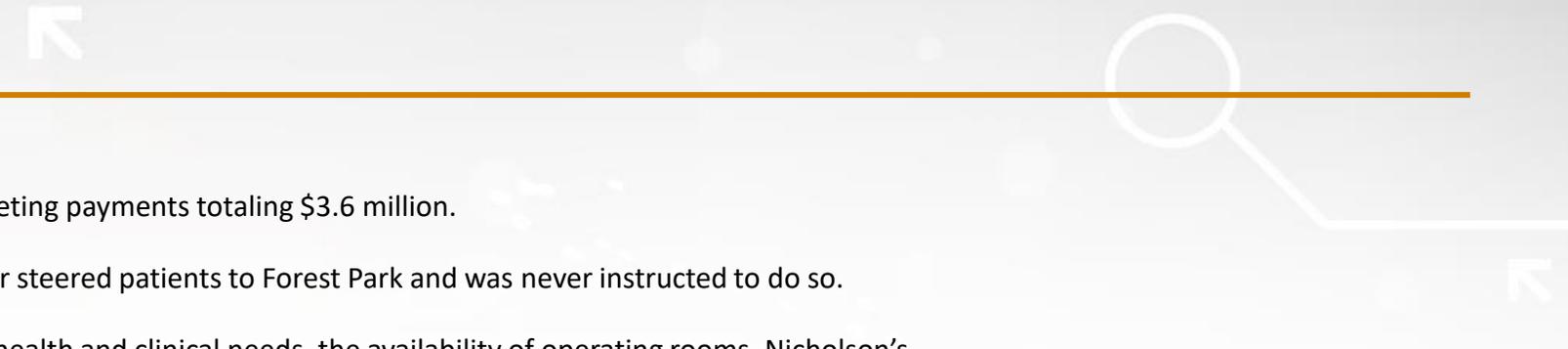


- The lawyer who drafted the marketing agreements states the doctors' agreements were legitimate.
- He advised Drs. Rimlawi and Won that accepting marketing payments from Forest Park, if done appropriately, was perfectly lawful. He made sure to include language to bring them in conformity with "safe harbor" provisions to protect doctors.
- He rejected the prosecution's allegation that the language of the contracts was meaningless and stated that Drs. Won, Rimlawi and Nicholson were sincerely interested in making sure the arrangements were legitimate.
- "If they were scammers and fraudsters and only wanted an agreement for show," they wouldn't have spent hundreds of hours consulting with their lawyer and "they wouldn't have had to spend hundreds of thousands of dollars, either."
- He stated "I spent weeks with these gentlemen," and "they clearly demonstrated their intent to me."

Dr. Rimlawi

- “I’m totally confused sometimes why I’m even here.”
- “I never for one second thought it was illegal. Not for a second.”
- He stated that after he was approached by Forest Park, he consulted with his business lawyers about how to properly set up a marketing contract and he followed their advice.
- “This is just crazy...There was no side deal.”
- “I’m actually saving healthcare dollars, not costing more,” he explained that because his minimally invasive surgical technique, compared to traditional back surgeries, shortens hospital stays and recovery times, necessitates fewer blood transfusions and reduces post-surgical infections helped hold down the costs of treatment.

Dr. Nicholson



- Dr. Nicholson received \$70,000 a month in marketing payments totaling \$3.6 million.
- His practice manager testified that his boss never steered patients to Forest Park and was never instructed to do so.
- The surgery location depended on the patient's health and clinical needs, the availability of operating rooms, Nicholson's schedule, the patient's schedule, and what the patient's insurance would and would not cover.
- He acknowledged that Nicholson's clinic kept in touch with Forest Park personnel about which if Nicholson's patients the doctor-owned hospital would accept.
- In an email exchange in December 2008, Dr. Nicholson states that he is negotiating with Forest Park about the possible marketing agreement and he acknowledges Beauchamp might not be entirely trustworthy. He stated "We all know they're probably functioning in the grey zones," but we need to "make sure we're acting ethically and within all legal bounds." "As long as we behave in an ethical fashion and take care of patients, I think we can leave them to their own creative reporting of their P&L statements to the public."
- Dr. Nicholson's attorney stated the he "acted in good faith" and that people at Forest Park may have been running a dollars-for-surgeries racket "but they didn't share that with Dr. Nicholson." "This was their bribery scheme...Dr. Nicholson was different."



What Do You Think The Verdict Will Be?

The Verdict

Doctors

1. Dr. Douglas Won – Spine Surgeon
 - Convicted on one count; Sentenced to 5 years in federal prison
2. Dr. Michael Rimlawi – Spine Surgeon
 - Convicted on three counts; Sentenced to 7 ½ years in federal prison
3. Dr. Shawn Henry – Back Surgeon
 - Convicted on three counts; Sentenced to 7 ½ years in federal prison and restitution of \$6 million
4. Dr. Nick Nicholson – Bariatric Surgeon
 - Acquitted of all charges
5. Dr. Mika Shah – Pain Management Physician
 - Convicted on four counts; Sentenced to 3 ½ years in federal prison

Administrators

1. Mac Burt – Co-Administrator at Forest Park
 - Convicted on 10 counts; Sentenced to 12 ½ years in federal prison and restitution of \$4.6 million
2. Jackson Jacob – Owned Marketing Company
 - Convicted on four counts; Sentenced to 8 years in federal prison
3. Iris Forrest – Nurse and Worker’s Comp Insurance Consultant
 - Convicted on two counts; Sentenced to 3 years in federal prison
4. Carli Hempel – Director of Bariatric Services
 - No verdict
 - Later plead guilty and was sentenced to three years probation

Masterminds Sentences

- Richard Toussaint – Anesthesiologist – Forest Park Founder
 - Sentenced to 5 ½ years in federal prison
- Wade Barker – Bariatric Surgeon – Forest Park Founder
 - Sentenced to 5 years in federal prison
- Alan Beauchamp – Chief Operating Officer
 - Sentenced to 5 years and three months in federal prison

Key Takeaways

- Payments for anything other than professional case services must be carefully scrutinized.
- Retain separate and independent counsel.
- There can be no hint of a relationship between compensation and patient referrals.
- Hire competent healthcare financial experts to assist in understanding the implementation of agreements.