

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA and)	
STATE OF INDIANA ex rel. Thomas P.)	
Fischer,)	
)	
Plaintiffs,)	
)	
v.)	No. 1:14-cv-01215-RLY-DLP
)	
COMMUNITY HEALTH NETWORK, INC.,)	
<i>et al.</i> ,)	
)	
Defendants.)	

ORDER

This matter comes before the Court on Plaintiff-Relator's Motion for Leave to File Second Amended Complaint, Dkt. [108]. On March 17, 2020, Defendant Community Health Network, Inc.¹ filed a response in opposition. (Dkt. 115). On March 24, 2020, the United States of America and the State of Indiana filed Statements of Interest. (Dkts. 120, 121). On March 31, 2020, Plaintiff-Relator filed a reply in support of the Motion for Leave to Amend. (Dkt. 47). On April 14, 2020, with this Court's permission, Community Health Network filed a sur-reply in opposition to Plaintiff-Relator's request for leave. (Dkt. 129). The Motion is now fully briefed and ripe for decision. For the reasons discussed below, Plaintiff-Relator's Motion is **GRANTED**.

¹ Community Health Network, Inc. is the only Defendant that has been served with a Complaint and entered counsel appearances in this matter.



I. BACKGROUND

In October 2015, Community Health Network, Inc. ("CHN") recruited Plaintiff-Relator Thomas P. Fischer ("Relator") from his private practice to serve as CHN's Chief Financial Officer. (Dkt. 1 at 6). CHN is a non-profit health system located in Indianapolis, Indiana which includes hospitals, surgery centers, urgent care centers, and patient facilities. (Id. at 7). CHN employs over 350 physicians through subsidiaries and affiliates, primarily through its subsidiary Community Physician Network ("CPN"). (Id.).

In December 2012, CHN promoted Relator to serve as its Chief Operating Officer and Chief Financial Officer. (Id. at 6-7). In this dual role, Relator became aware of significant, unexpected monetary losses at CPN. (Id. at 45). As a result, he began asking CPN management for explanations regarding the losses and expressed concern that he believed the losses were directly tied to CHN paying physicians "commercially unreasonable rates." (Id. at 46). Starting in July 2013, Relator began requesting financial information regarding Visionary Enterprises, Inc. ("VEI")² surgery centers and continued expressing concern about excessive physician compensation to a number of individuals, including CHN senior management. (Id. at 47). On November 27, 2013, CHN terminated Relator from his positions. (Id. at 48).

On July 21, 2014, Relator, on behalf of the United States of America (the

² VEI is a for-profit subsidiary of CHN which acquires and manages ambulatory surgical centers on behalf of CHN. (Dkt. 1 at 8). Ownership in many of the surgical centers is shared with CPN physicians. (Id).

"Government") and the State of Indiana (the "State"), initiated this *qui tam* lawsuit pursuant to the False Claims Act ("FCA")³ against Defendants Community Health Network, Inc., Community Health Network Foundation Inc., Community Physicians of Indiana, Inc., VEI, Community Surgery Center-North, Community Surgery Center-South, Community Surgery Center-East, Community Surgery Center-Hamilton, Community Surgery Center-Kokomo, Community Surgery Center-Northwest, Hancock Surgery Center, Community Endoscopy Center, and Community Digestive Center (collectively, the "Community Defendants"). (Id. at 2).

The original Complaint consists of two main parts.

First, Relator alleged that the Community Defendants knowingly defrauded the Government and State by engaging in a fraudulent scheme to pay physicians improper and excessive compensation to ensure that they referred patients, including Medicare and Medicaid patients, to CHN. (Id. at 4, 31-39). This fraudulent scheme, Relator alleged, violates the Stark Law,⁴ the Anti-Kickback Statute,⁵ and the FCA. (Id. at 25). Specifically, Relator asserted that Defendants paid kickbacks and illegal remunerations to induce physicians to refer patients to CHN, (Id. at 25), solicited and received kickbacks from Indianapolis nursing home

³ The FCA prohibits, among other acts, presenting to the government "a false or fraudulent claim for payment or approval." *U.S. v. UCB, Inc.*, 970 F.3d 835, 840-41 (7th Cir. 2020) (citing 31 U.S.C. § 3729(a)(1)(A)). The Indiana FCA prohibits the same conduct. Ind. Code § 5-11-5.7-2.

⁴ The Stark Law is a wide-ranging federal statute that prohibits a physician who has a "financial relationship" (including compensation and ownership interests) with an entity from referring patients to the entity for "designated health services" covered by Medicare unless an exception is available. 42 U.S.C. § 1395nn.

⁵ The Medicare and Medicaid Fraud and Abuse Statute, or the Anti-Kickback Statute, prohibits knowingly and willfully making any false statement or representation of a material fact in any application for any benefit or payment under a federal health care program. 42 U.S.C. § 1320a-7b.

facilities in exchange for patient referrals, (Id. at 25-26), ensured the profitability of ambulatory surgical centers in which its physicians had ownership interests, (Id. at 29, 39), and provided lucrative medical directorships to referring physicians. (Id. at 43). Relator alleged that all claims submitted to Medicare, Medicaid, or a government funded healthcare program for services rendered pursuant to a referral from a physician who was paid an illegal remuneration are false claims that violate the FCA and Indiana FCA. (Id. at 4, 25-26).

Second, Relator alleged that CHN retaliated against him in violation of the applicable FCA and Indiana FCA anti-retaliation provisions. Relator alleged that he was discharged in retaliation for expressing concern to CHN leadership that operating losses and budget variances were a direct result of illegal activities related to physician compensation, referral patterns, and business practices. (Id. at 7, 46, 49). Relator's original complaint alleged eight counts for: (1) FCA violations; (2) Indiana FCA violations; (3) retaliation under the FCA; (4) retaliation under the Indiana FCA; (5) breach of contract; (6) breach of oral contract; (7) promissory estoppel; and (8) quantum meruit. (Id. at 51-58).

As required by the FCA statutory provisions, Relator filed the original Complaint under seal. *See* 31 U.S.C. § 3730(b)(2). The original Complaint remained under seal while the Government and State investigated Relator's allegations to determine the appropriateness of intervention. On October 15, 2015, Relator filed a First Amended Complaint under seal. (Dkt. 32).

Relator's allegations in the original Complaint and the First Amended Complaint are nearly identical, except that Relator provided greater factual detail regarding nursing home kickbacks in exchange for patient referrals, (*see* Dkt. 32 at 50-51), and added a ninth count for blacklisting asserting that CHN knowingly provided false information to Relator's prospective employers after his termination. (*See* Dkt. 32 at 59-60, 63-64, 68-69).

On August 7, 2019, the Government filed a Notice of Election to Intervene in Part and Decline to Intervene in Part. (Dkt. 86). The Government opted to intervene "in that part of the action which alleged that [D]efendant Community Health Network, Inc. violated the FCA by submitting claims to Medicare that were referred by physicians with whom [it] had employment relationships that violated the Stark Law." (Dkt. 86 at 1). The Government declined to intervene with respect to the remaining allegations and requested that this Court unseal the Complaint. (*Id.*) In its Notice, the Government did not explicitly indicate whether its decision to intervene was based on the original Complaint or the First Amended Complaint, but a subsequently filed Statement by the Government refers to the First Amended Complaint as the operative Complaint in this matter.⁶ The Court agrees.

On December 23, 2019, this Court granted the Government's request to unseal the Complaint and ordered that it serve its own complaint on Defendant CHN within 120 days. (Dkt. 93 at 1). This Court further ordered that the seal be

⁶ On March 24, 2020, the Government filed a Statement of Interest Regarding Relator's Standing to Pursue Non-Intervened Claims. (Dkt. 120). The Government requested that this Court unseal Relator's First Amended Complaint, as it is the operative Complaint in this matter. (*Id.* at 9). The Court unsealed the First Amended Complaint on November 24, 2020. (Dkt. 132).

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