

# Tenet Healthcare Can't Dodge Doc-Referral Kickback Suit

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By **Brian Mahoney**

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Law360, New York (March 27, 2013, 7:13 PM ET) -- A Florida federal judge Wednesday declined to dismiss a False Claims Act suit accusing [Tenet Healthcare Corp.](#) of defrauding state and federal medical programs by regularly taking patient referrals from doctors who lease space from the company at below-market rates.

U.S. District Judge Paul C. Huck said relator Marc Osheroff can rely on so-called corporate integrity agreements, provider agreements and annual cost reports to help show the company flouted its duty to abide by the FCA and the so-called Stark Law by allegedly offering lower rents to doctors in exchange for referrals.

“The court holds that the representations Tenet made in its Medicare provider application and agreement as well as the hospital cost reports are enough to ground a claim under the False Claims Act,” Judge Huck said.

Tenet had argued that the hospital cost reports were too generally worded to trigger liability under the False Claims Act, the opinion said. Tenet had said that while the papers certified compliance with all applicable health care laws and regulations, that doesn't mean it certified compliance with “any particular law or regulation.”

But Judge Huck disagreed, saying the documents sufficiently showed that Tenet had represented that it would not violate laws like the Anti-Kickback Statute, and any action to the contrary may have violated the FCA.

“The problem with Tenet’s argument is that it misapprehends the standard to find liability under the False Claims Act,” Judge Huck said. “If relator’s allegations that Tenet violated the Anti-Kickback Statute and Stark are true, Tenet’s representations to the contrary in its hospital cost report can easily qualify as a misrepresentation of material fact.”

Tenet also criticized Osheroff’s methodology for arriving at the benchmark of fair market value for the offices in question, but Judge Huck said the motion to dismiss stage was not the proper time to consider that argument.

“Under the Court’s very circumscribed review, the court’s role is only to determine whether relator plausibly alleges that Tenet was charging its physician-tenants rent that was inconsistent with fair market value — not to determine definitively whether the figure relator advances, in fact, represents fair market

value," the judge said.

Judge Huck did dismiss one claim alleging Tenet made a fraudulent statement to avoid or decrease its obligation to the government, allowing Osheroff to amend the claim.

In the suit, launched in July 2009, real estate company owner Osheroff claims Tenet's below-market rent and other compensating perks offered to doctors created a financial relationship under the Stark Law, which prohibits doctors from referring patients to medical facilities in which they have a financial interest.

Tenet allegedly owns or leases more than 70 medical office buildings close to its hospitals, according to court records.

Osheroff also alleges that the below-market rental rates and other perks granted to the physicians violate the Anti-Kickback Statute.

Osheroff filed the suit on behalf of the federal government, as well as Florida, California, Georgia, Tennessee and Texas, where Dallas-based Tenet operates hospitals. All declined to intervene in the action, though the U.S. has filed two statements of interest in support of the relator's position, according to court records.

Attorneys for the defendants could not immediately be reached Wednesday for comment.

Osheroff is represented by Jonathan Evan Kroner.

Tenet is represented by Martin B. Goldberg and Michael L. Ehren of [Lash & Goldberg LLP](#), Stacy L. Brainin, George William Morrison, Jeremy D. Kernodle and Nicole Somerville of [Haynes and Boone LLP](#) and Katherine A. Lauer, Jason M. Ohta and Christopher S. Olson of [Latham & Watkins LLP](#).

The case is U.S. ex rel. Marc Osheroff v. Tenet Healthcare Corp. et al., case number [1:09-cv-22253](#), in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Carolina Bolado. Editing by Richard McVay.