This presentation provides general information and should not be construed as legal advice. Opinions expressed herein or otherwise are those of the speaker and do not necessarily reflect the views of the U.S. Attorney’s Office for the Northern District of Texas or the United States Department of Justice.
Hypothetical # 1

A disgruntled employee calls a hospital’s compliance hotline and reports that the Hospital has been mis-coding. The hospital is in the process of expanding and the whole system is short on cash. The disgruntled employee ends up leaving and begins working for a competitor hospital. The compliance officer investigates the allegation and discovers the Hospital was improperly billing cardiology procedures to the tune of over a $1 million.

Hypothetical # 2

Happy Heart Hospital hears through the rumor mill that Share The Wealth Hospital is entering into various “quality” arrangements with physicians where Share the Wealth Hospital is freely handing out financial “perks” to its physicians to help get them to refer to Share the Wealth Hospital. The physicians at Happy Heart are happy, but they want Happy Heart to share the wealth and match the arrangements. The Chief Financial Officer at Happy Heart comes to you saying “If Share the Wealth Hospital can do it, then why can’t we? It is industry standard!” What options does the Happy Heart have?
Hypothetical #3

A health system has agreed to purchase a failing hospital. In the course of the due diligence, the hospital’s chief financial officer finds the following:

- Several issues exist with MOB leases
  - One lease expired 7 months ago. The physician tenant remains in the space paying rent at the lease rate. The lease has a hold-over clause, but it calls for a 5% rent increase if triggered.
  - One lease remains in effect, but has a rent escalator clause based on CPI that was to take effect 4 months ago, has not been implemented.
  - The hospital’s highest admitting neurosurgeon group has been getting paid for a neurosurgeon’s services as a medical director even though the contract expired seven months ago.
  - Medicare payments to the Hospital for the surgeon’s patient’s over this period total $2.5 million.
  - The CEO took Dr. Smith, a cardiac surgeon to dinner and things got out of control with the wine list. The total dinner tab totaled $425. Dr. Smith has already received $275 in non-monetary compensation this year.

What do you do?

About the Presenters

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Josh and Ashley provide counsel to health care providers on complex operational, transactional and compliance issues. They have experience advising hospitals, ambulatory surgery centers, independent diagnostic testing facilities, physicians and other health care providers on various issues, including matters implicating the Federal Anti-Kickback Statute, the Physician Self-Referral (“Stark”) Statute, the Texas Illegal Remuneration Statute, The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the False Claims Act, and the Emergency Medical Treatment and Active Labor Act (“EMTALA”). Josh and Ashley also advise clients with respect to reimbursement issues and payor audits. Their transactional experience includes drafting and negotiating a variety of health care contracts, including professional services agreements, physician employment agreements, asset purchase agreements, management and co-management agreements, business associate agreements, operating agreements, and equipment and space leases, among others.

Josh and Ashley are both Board Certified in Health Law by the Texas Board of Legal Specialization.
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Michael Elliott has been an Assistant United States Attorney since 2008. Michael is the Criminal Health Care Fraud Coordinator and the Lead Prosecutor for the Medicare Strike Force in the Northern District of Texas. His focus is investigating and prosecuting health care fraud involving corporations, hospitals, partnerships and individuals. He has tried over a dozen federal criminal trials and has lead investigations into matters implicating Health Care Fraud, Corporate and Insurance Fraud, Federal Program Fraud, Wire Fraud, Mail Fraud, Bank Fraud, Tax Fraud, violations of the Food and Drug Act, the False Claims Act and associated Qui Tam lawsuits. Before becoming an Assistant United States Attorney Michael worked as a civil litigator in New York City.