

## Tom Melsheimer Discusses Key Takeaways for Health Care Professionals and Their Lawyers with *Texas Lawbook*

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In April 2019, a Winston & Strawn team led by Partner Tom Melsheimer secured a major victory for client Dr. William Daniel “Nick” Nicholson as the sole defendant acquitted in *United States v. Michael Alan Beauchamp, et. al.* The jury found seven of the nine defendants affiliated with Forest Park Medical Center in Dallas guilty of criminal charges, including violations of the Travel Act, a 1960s federal statute originally intended to federalize state bribery laws in the context of organized crime. Those seven defendants now face the prospect of prison sentences up to 12 years.

This case serves as an important reminder that physicians, practice groups, and health care executives should carefully examine their contractual relationships with hospitals, consultants, vendors, and employees. In this *Texas Lawbook* article, Tom offers some important takeaways to guide health care professionals in their contracting relationships. Following is an overview:

### **Trust Your “Spidey Sense”**

Spiderman’s “Spidey Sense” warned him of approaching danger, but it’s just as relevant in the legal sense. It’s that vague but insistent sense that something is wrong with a transaction. When that happens, listen to your Spidey sense! Payments for anything other than professional patient care services must be carefully scrutinized for possible Anti-Kickback, bribery or similar implications.

### **Consult Counsel and Follow Their Recommendations**

Several defendants relied on an “advice of counsel” defense. But it is important to select the right counsel and even more important to follow counsel’s recommendations. Due to the high risk connected with health care contracts, the complexity of the regulatory landscape and the potential for federal prosecution, counsel should be well-versed in health care law as well as employment law for review of physician and health care executive employment agreements, professional services agreements and consulting/marketing arrangements.

### **Focus on the Patient and Watch Out for Emails**

A key piece of evidence for the acquitted Forest Park defendant was introduced late in the defense case: a series of emails between Nicholson and his father (also a surgeon and financial advisor to his son). In that email conversation which was admitted into evidence, his father noted some inconsistencies between the financials provided by the Forest Park founders and what they stated anecdotally about how much they were making. Health

care professionals should be cautious in all email correspondence, but particularly those involving financial arrangements.

### The Prosecution's Net Can Trap Lower-Level Employees

The prosecution did not limit its focus on the owners of Forest Park, senior administrators, and physicians. Proper training of all staff concerning Anti-Kickback and bribery laws is highly recommended, with appropriate open-door policies that permit employees to report concerns without fear of reprisal.

### Going Forward

With continued media focus on health care fraud and the rising costs of medical care, there is no end in sight to the prosecution of kickback, bribery, and conspiracy claims. Federal prosecutors have demonstrated their intent to aggressively pursue criminal enforcement at all levels of health care organizations. Caution is advised with contracting for marketing and consulting fees or paying incentive compensation that correlates to numbers of procedures or referrals.

Read the full *Texas Lawbook* article [here](#).

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