



Health Care Beat Health Law Recap

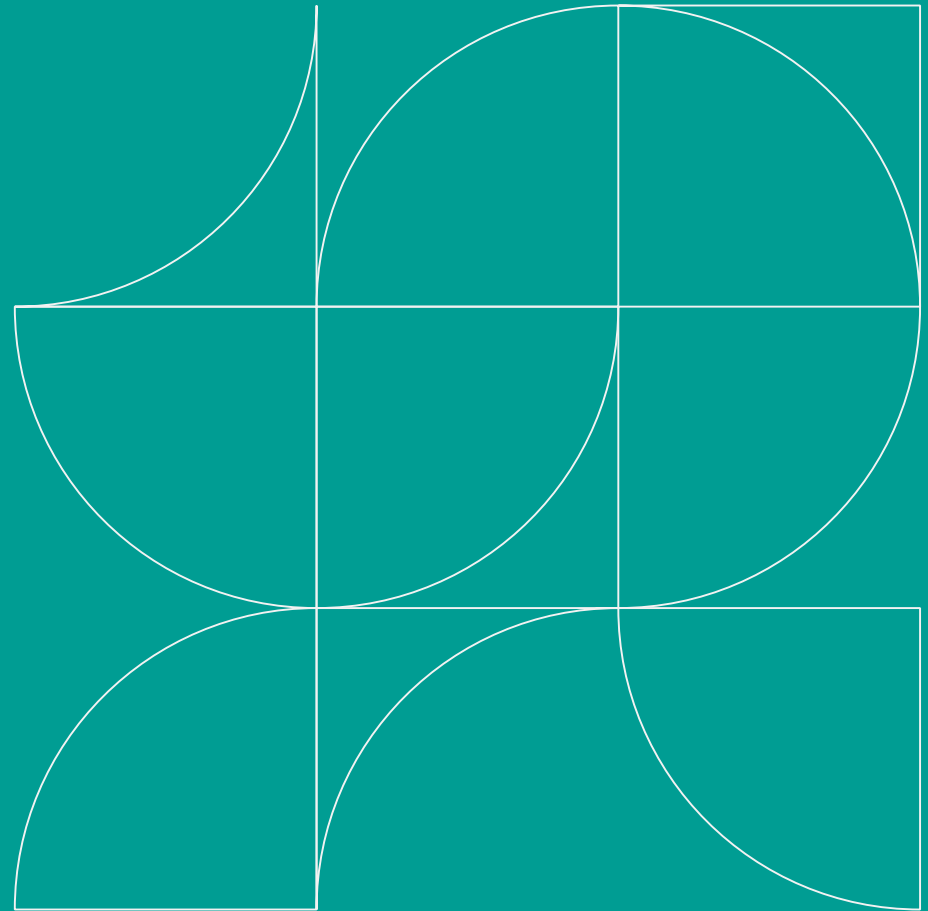
2022 Episode Materials

Seyfarth Shaw LLP

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January 2022



Fraud and Abuse Enforcement

- 01** Department of Justice FCA Report
- 02** Guilty Plea in First COVID-19 PRF Case
- 03** New Standard for “Granston” Dismissals

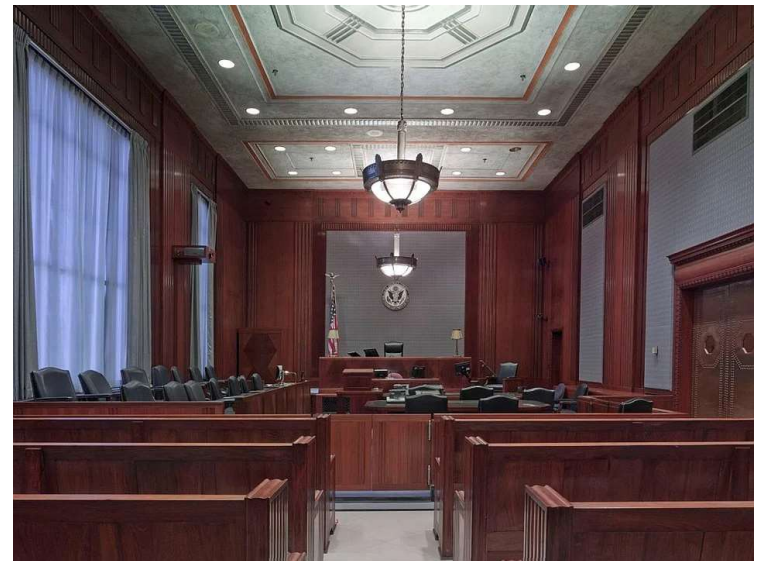
Department of Justice

- \$5.6 billion in civil FCA settlements and judgments
- \$5 billion involving the health care industry
 - Combatting the opioid epidemic
 - \$2.8 billion settlement with Purdue Pharma in 2020, which had been delayed during defendant's bankruptcy proceeding
 - Medicare Advantage Program (Medicare Part C)
 - Unlawful kickbacks
 - Unnecessary medical services
 - Holding individuals accountable
 - \$3.9 million from 2 co-owners of now-defunct Austin Pain Associates
- \$1.6 billion arose from qui tam litigation
 - Lowest since 2008



COVID-19 PRF Guilty Plea

- 1 on 1 Home Health Agency requested over \$37,000 in PRF funds, even though it had closed months earlier in February
 - Over \$36,000 funneled to relatives for personal use
- Charged in February 2021; plead guilty January 31, 2022
- 6-12 months prison
- Restitution of approximately 10% of misappropriated amount



New Standard for “Granston” Dismissals

- *John Borzilleri, et al. v. Bayer Healthcare Pharmaceuticals Inc., et al.* (1st Cir., December 21, 2021)
- Pharmaceutical companies and PBMs colluded to cause false claims to Medicare Part D
- Circuit Split
 - 9th Circuit: “Sequoia Orange” – dismissal is rationally related to valid government purpose
 - D.C. Circuit: Unfettered Discretion
 - 7th Circuit: FRCP 41
- New Standard
 - Government must provide its reasons for seeking dismissal;
 - Relator attempts to convince court to withdraw its motion;
 - If not, motion must be granted unless it is unconstitutional or perpetrates a fraud on the court.

Thank you

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