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Fata case concerns: Who collects judgment, who else to blame

By CHAD HALCOM



Farid Fata: \$10 million seized to pay \$17.6 million criminal judgment.

Former oncologist Farid Fata may have taken responsibility at sentencing for an excessive chemotherapy treatment scheme that afflicted cancer patients for years, but who will share blame with him in upcoming civil court hearings is unclear.

Federal officials have collected about \$10 million in various cash and asset seizures since Fata's 2013 arrest to go toward satisfying a \$17.6 million criminal judgment that was part of his July 10 sentencing. U.S. District Judge Paul Borman will decide at a restitution hearing within 90 days how much of the judgment will go to the government — because Medicare and Medicaid paid millions for his fraudulent treatments — or to benefit his victims.

But Fata also faces 27 pending civil lawsuits from victimized patients and their families before Oakland County Circuit Judge Rudy Nichols, plus a whistleblower lawsuit in federal court from his former practice business manager, George Karadsheh, and a dispute with creditors against his Michigan Hematology-Oncology PC practice centers.

The victim suits were put under a stay last month pending an out-of-court facilitation that has yet to begin, but attorneys hope to know by late August if it will yield any results.

Those cases from various law firms also name several co-defendants, including Crittenton Cancer Center, St. Joseph Mercy Health System and McLaren Regional Medical Center and several physicians who allegedly made referrals to Fata's cancer centers or collaborated with him on treatment. Fata leased office space from McLaren in Clarkston and Crittenton in Rochester Hills.

Fata, 50, pleaded guilty last September to 16 of more than 20 criminal charges including fraud, money laundering and conspiracy in a federal indictment alleging he administered medically unnecessary chemotherapy and other cancer treatments and billed Medicare and private insurers for tens of millions of dollars. The government identified 553 victims, along with insurance companies, in treatments going back to at least 2007.

Donna MacKenzie, partner at Berkley-based Olsman, MacKenzie

& Wallace PC, which is handling 13 victim lawsuits, said the firm is trying to pursue the malpractice insurance carrier for Fata as well as McLaren and Crittenton as hospitals that had an association with him.

"There's been some indication as we've been preparing that the insurance carrier may try to claim an exemption from covering (Fata) because this is outside the scope of malpractice coverage, because it's fraud or another kind of (mis)conduct," said Brian McKeen, president of Detroit-based McKeen & Associates PC, which is handling about eight other victim suits.

"But he's covered for claims of malpractice, and we allege malpractice. This is treatment well outside the standard of care. Is an insurer allowed to simply recharacterize our allegations? I don't think so."

MacKenzie also told *Crain's* via email last week that the facilitation process could take up to three months, and if it succeeds, an arbitrator would determine how a court award gets divided among the various victims. If those talks break down, however, the cases will return to court.

The federal government and state of Michigan have previously asserted liens on several of the victim lawsuits, where Medicare or Medicaid was a payer for the patient — but attorneys said it is not yet clear if the government will waive its claims, take part in the facilitation process or try to resolve its own claims via the criminal restitution hearing before Borman.

Randall Juip, partner at Livonia-based Foley, Baron, Metzger & Juip PLLC and attorney for Michigan Hematology in the civil suits, said all sides in the lawsuits have agreed on a facilitator and are working on a schedule to discuss settling the cases.

"Nearly everyone wants to get started as soon as possible, and I'm pleased that we were able to agree to get all these cases on hold to allow us to productively discuss a reasonable settlement," he said. "But there is a good deal of complexity built into the process."

Juip also said all the health care companies and the government are "aware of the facilitation and can use that process in resolution of their own concerns," but would not be specific on who has agreed to participate or give any further details about it.

John Toth, partner at Sullivan, Ward, Asher & Patton PC in Southfield and an attorney for Fata in the victim cases, and attorney Bruce Bigler, of Giarmarco Mullins & Horton PC in Troy representing Crittenton, did not return phone calls seeking comment.

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