

THE
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Northern District of California Dismisses FCA Claim with Prejudice for Inability to Point to Particular Claims for Payment

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On October 1, 2018, the District Court for the Northern District of California dismissed with prejudice a relator's *qui tam* suit against Carelink Hospice Services, Inc. (Carelink) for failure to meet the heightened pleading standards mandated by Federal Rule of Civil Procedure 9(b). The court's decision largely rested on the relator's inability to specifically plead the existence of identifiable false claims—a strong affirmation that, in the Ninth Circuit, courts continue to hold relators to their pleading burdens.

The relator worked for Carelink, a hospice provider, for a three-month period in 2015. As a hospice provider, Carelink needed to provide certifications of terminal illness to justify admissions to the facility and, in turn, receive reimbursements from Medicare for services rendered. The relator, without identifying particular claims for reimbursement or patients, alleged that Carelink violated the FCA by seeking reimbursement for patients who Carelink knew were not terminally ill. The court seized upon the relator's inability to point to specific claims in rendering its dismissal of the case.

Relying on Rule 9(b)'s particularity requirement, the court dismissed the relator's complaint due to her failure to identify, with the required specificity, actual false claims. The court noted that the relator "relies on general allegations that Carelink presented false claims" but failed to "identify any reimbursements from Medicare[.]" The court came to this conclusion despite the relator's citation to four patients about whom she alleged to have raised eligibility concerns. The court reasoned that these allegations, without "describ[ing] the nature of [her] concerns or her basis for believing the four individuals" were not eligible for Medicare reimbursements, were not enough to satisfy Rule 9(b).

The court concluded that the relator "fail[ed] to identify with particularity what 'claims' Caremark submitted" that were false because the allegations "do not provide a reasonable basis for [the court] to infer that claims had been submitted on behalf of any particular patient." The court specifically dispelled the relator's argument that, based on her extremely limited tenure with Carelink, the Rule 9(b) requirement should be relaxed in her case.

This decision confirms that, in the Ninth Circuit, a relator must allege the existence of specific, particularized, identifiable false claims submitted to the government. This confirmation serves as a strong defense against relators who do not sufficiently allege the "who, what, when, where, and how" of their FCA claims.

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