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BOSICK & RASPANTI, LLP

NEWS: Cooper Health System,  
Whistleblower, False Claims Act Settlement,  
Anti-Kickback Statute

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## **COOPER HEALTH SYSTEM PAYS \$12.6 MILLION TO RESOLVE FALSE CLAIMS LAWSUIT OVER KICKBACKS PAID TO REFERRING PHYSICIANS**

**Philadelphia, Thursday, January 24, 2013:** A federal lawsuit filed by prominent Delaware Valley cardiologist Nicholas L. DePace, M.D., sparked a multi-year investigation by the United States Department of Justice and the New Jersey Attorney General's Office that has resulted in New-Jersey based Cooper Health System, and Cooper University Hospital paying \$12,600,000 to settle Medicare and Medicaid fraud allegations.

The *qui tam* lawsuit filed in federal district court in New Jersey in 2008 by Dr. DePace alleged that the Cooper Health System and Cooper University Hospital (collectively referred to as "Cooper") paid millions of dollars in illegal kickbacks to physicians to induce them to refer patients to Cooper for expensive in-patient and out-patient cardiac services. A copy of Dr. DePace's *qui tam* Complaint, which both the United States and the State of New Jersey joined, along with a copy of the Settlement Agreement can be found at [www.falseclaimsact.com](http://www.falseclaimsact.com); and [www.usdoj.gov/usao/nj/](http://www.usdoj.gov/usao/nj/). The United States and State of New Jersey did not file their own Complaint.

### **Details of Cooper's Alleged Kickback Scheme**

According to Dr. DePace's Complaint, since 2004, Cooper funneled illegal kickbacks to referring physicians through an advisory board known as the Cooper Heart Institute Advisory Board ("CHIAB"). Cooper established the CHIAB in 2004, with the stated purpose of utilizing prominent New Jersey physicians to advise the Cooper Heart Institute regarding innovative technologies, new management strategies, community needs, and appropriate educational and research initiatives.



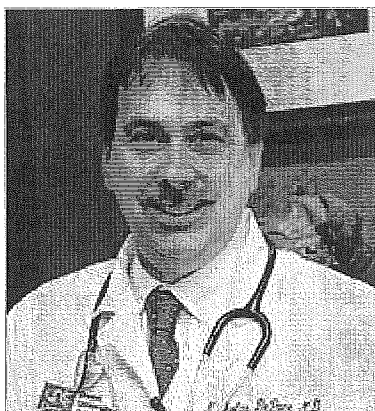
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In reality, the CHIAB was a sham, in which Cooper paid physicians with high-volume medical practices upwards of \$18,500 each to do little more than watch four lectures per year hosted at an elegant banquet facility. These lectures consisted mostly of marketing presentation on cardiac care at Cooper. Additional lectures included generic subjects that were irrelevant to the stated mission of the CHIAB, including a 2008 lecture entitled: "The Healthcare Plans of the Two Presidential Candidates."

## Relator Dr. Nicholas L. DePace

Dr. Nicholas L. DePace is a nationally-recognized expert in cardiology, a prolific author, and noted philanthropist. He runs a busy solo-cardiology practice with offices in Philadelphia and Sewell, New Jersey.



Dr. Nicholas L. DePace

Dr. DePace has practiced medicine in New Jersey and Pennsylvania for more than 30 years. He is Board Certified in both Cardiology and Internal Medicine. He is also certified in Echocardiology, Nuclear Cardiology, and Lipidology. Dr. DePace has, since age 33, served on the faculty of numerous medical schools, including the Medical College of Pennsylvania, Thomas Jefferson University, and Drexel University College of Medicine (formerly Hahnemann University). He is a Fellow of the American College of Cardiology and the American College of Chest Physicians.

Dr. DePace is a prolific and widely-acclaimed author. He has written more than 70 manuscripts, contributed to 7 medical text books, and was a co-author of the book: "The Heart Repair Manual: The Philadelphia Formula for Preventing & Reversing Atherosclerosis," published by W.W. Norton & Company. Additionally, Dr. DePace has served on the Editorial Board of the American Journal of Cardiology.

Dr. DePace is also a well-known philanthropist. He has founded several non-profit organizations in the Delaware Valley. Dr. DePace also received national recognition when, in



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2011, he aided the Order of the Sisters of Notre Dame by salvaging a failed commitment to purchase a 100-year old Honus Wagner baseball card that had been donated to the Roman Catholic religious order. See "A Windfall in Cardboard," *New York Times*, Jan. 31, 2011. This aided in subsidizing dozens of foreign missions run by the religious order. That card, which was later blessed by the Archbishop of Camden, New Jersey, will be included in a sports museum for public display.

## **Dr. DePace Exposes Cooper's Kickback Scheme**

In the spring of 2007, Cooper invited Dr. DePace to join the CHIAB. After attending his first CHIAB lecture, Dr. DePace quickly realized that the CHIAB was a thinly-veiled kickback scheme. Dr. DePace observed that the other CHIAB members were family physicians with high-volume practices. These physicians were all in the position to direct millions of dollars in patient care to Cooper.

Dr. DePace also observed that the CHIAB physicians were paid \$18,500 for doing nothing more than sitting and listening to marketing presentations from and lectures on irrelevant topics. The physicians did not discuss the lecture topics, and were not required to perform any additional work in exchange for the payments from Cooper.

In exchange for Cooper's kickback payments, CHIAB physicians referred their patients to the Cooper Heart Institute for expensive in-patient and out-patient cardiac services. At least one CHIAB member admitted to Dr. DePace that, when making referrals, he knew that Cooper, through the CHIAB, "butters his bread."

Dr. DePace was alarmed by the CHIAB scheme because patients were being referred to Cooper because of the kickbacks paid to physicians, instead of basing that referral on the best medical interests of the patients. Dr. DePace filed his *qui tam* lawsuit in 2008 in an effort to stop this kickback scheme.

## **Cooper's Scheme Violated Federal and State Anti-Kickback Statutes and Physician Self-Referral Laws**

Cooper's scheme is alleged to have violated federal and state Anti-Kickback Statutes, Physician Self-Referral laws, and the federal and New Jersey False Claims Act.

The federal Anti-Kickback Statute, along with similar state laws, generally prohibits the offering or paying anything of value to induce the referral of a service or item paid for by the Medicare or Medicaid programs. 42 U.S.C. §1320a-7b(b)(1) and (2), and N.J.S.A. 30:4D-17(c).

Because of the extent to which a physician controls the health care decisions of his or her patients, federal and state law regulates patient referrals between a physician and an entity in



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which the physician (or an immediate family member) has a financial interest. The federal Stark Law, also referred to as the Physician Self-Referral Law, and New Jersey's analogous Codey Law, sets forth extensive civil prohibitions on the referrals that physicians can make to any entity in which they have a financial interest.

## Details of the Government Settlement

The settlement with the United States, and the State of New Jersey, announced today, will require Cooper to pay the United States \$10,000,000 and the State of New Jersey \$2,600,000. The settlement is one of the largest against a hospital for operating a kickback scheme, and is one of the largest recoveries for the State of New Jersey under its recently passed state False Claims Act. Cooper denies that it is liable for violating federal or state laws.

As required by statute, Dr. DePace is entitled to receive a minority share of the governments' recovery for reporting Cooper's fraudulent kickback scheme. In addition, the False Claims Act requires Cooper to pay Dr. DePace's reasonable attorneys' fees and costs expended in the investigation and prosecution of this case.

In keeping with his lifelong commitment to charity, Dr. DePace plans to donate a portion of his recovery in this case to the Sisters of Notre Dame along with other charitable organizations.

Dr. DePace was represented by Marc S. Raspanti, Michael A. Morse, and Pamela C. Brecht, of the national whistleblower law firm of Pietragallo Gordon Alfano Bosick & Raspanti, LLP.

Attorney Marc S. Raspanti praised Dr. DePace's courageousness in exposing Cooper's kickback scheme, adding: "Dr. DePace exhibited tremendous courage exposing a kickback scheme run by one of the largest, most-powerful hospitals and health systems in New Jersey. Dr. DePace's motivation throughout this case was to ensure that decisions on patient care are based solely on the medical needs of the patient, and not because of the kickbacks Cooper paid to the referring physicians."

Attorney Michael A. Morse commented: "The government team at the United States Department of Justice, the United States Attorney's Office in New Jersey, and the New Jersey Attorney General's Office, have done a tremendous job investigating Dr. DePace's case and in recovering millions of dollars in taxpayer funds. The close partnership forged between Dr. DePace, his attorneys, and the tenacious federal and state prosecutors and investigators was essential to the successful recovery reached in this complex case. It was an honor to represent Dr. DePace throughout this important case."



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Attorney Pamela C. Brecht added: "If every doctor had the courage to do what Dr. DePace did in this case, the Medicare and Medicaid programs would be better protected against fraud, waste, and abuse."

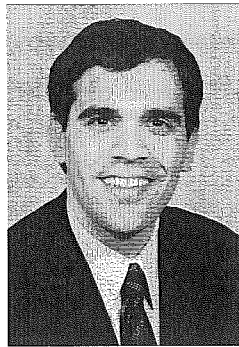
## The Federal False Claims Act

The False Claims Act allows private persons (known as "relators") to file a lawsuit against those business and individuals that have directly or indirectly defrauded the federal government. The False Claims Act was enacted by Congress at the request of President Lincoln, who signed it into law on March 2, 1863. The Act was strengthened in 1986, and again with amendments enacted in 2009 and 2010. The Act is the government's primary tool against fraud by its contractors, as evidenced by the recovery of more than \$33 billion since 1986.

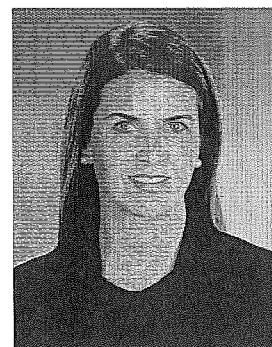
Pietragallo Gordon Alfano Bosick & Raspanti, LLP, is one of the largest and most successful whistleblower law firms in the United States. Lawyers in the nationwide whistleblower practice group of Pietragallo Gordon Alfano Bosick & Raspanti have served for more than 25 years as lead counsel in whistleblower cases that have recovered more than \$1.8 billion for federal and state taxpayers. For more information on the Federal False Claims Act, State False Claims Acts, SEC Whistleblower Program, the IRS Whistleblower Reward Program, or the nationwide whistleblower practice of Pietragallo Gordon Alfano Bosick & Raspanti, visit [www.falseclaimsact.com](http://www.falseclaimsact.com), [www.pietragallo.com](http://www.pietragallo.com), [www.fraudwhistleblowersblog.com](http://www.fraudwhistleblowersblog.com), or call (215) 320-6200.



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