



United States ex rel. Mikes v. Straus, 274 F.3d 687 (2d Cir. 2001)

Topics Covered: Fraud and Abuse

Outcome: Very Favorable

Issue

The issue in this case was whether physicians could be held liable for a violation of the False Claims Act (FCA) under a theory of “false implied certification.”

AMA Interest

The AMA has consistently maintained that FCA liability should require a violation of definite and understandable laws.

Case Summary

Patricia S. Mikes, MD, sued Mark J. Straus, MD, and two other physicians under the FCA qui tam (“whistleblower”) provisions. The defendants were partners in a medical group specializing in problems of oncology and hematology. Mikes was a former employee of the defendants, and she had been involuntarily terminated.

The defendants had submitted Medicare claims for spirometry tests, which measure breathing capacity. According to Mikes, these tests were performed improperly, because the measuring equipment was calibrated incorrectly and the technicians who performed the tests were insufficiently trained to do so. Mikes contended that the defendants’ protocol for calibrating the measuring equipment fell beneath the standards recommended by the American Thoracic Society (ATS).

The trial court held for the defendants. It found that, when they submitted their payment claims, the defendants had neither explicitly nor implicitly promised that the tests met any specific standard of care. The defendants had complied with the standards set forth by the equipment manufacturer, which were less rigorous than the ATS recommendations, and this was sufficient. The court rejected Mikes’s theory that, by submitting the claims, the defendants implied that they satisfied the customary standard of care.

Mikes appealed, and the Second Circuit affirmed.

Litigation Center Involvement

The Litigation Center, along with the Medical Society of the State of New York and several specialty medical societies, filed an amicus brief on behalf of the defendants.