

In The News

Akerman Partners William Spratt and Noam Fischman Caution Healthcare Buyers and Sellers During Transactional Diligence Phase

September 7, 2022

Healthcare partners William Spratt in Miami and Noam Fischman in Washington, D.C. co-authored an article in *Compliance Cosmos* offering a cautionary tale to healthcare buyers and sellers during the transactional diligence phase. An increase in healthcare deal activity and intense diligence have resulted in False Claims Act (FCA) settlements in which the government has focused on both the seller and buyer. The authors explain that third-party buyers may be exposed to liability after a sale related to their diligence findings, the seller's pre-sale operations, and the post-sale response of both parties. They explore the genesis of this relatively new development and the government's approach to the liability of third-party buyers, while offering some preventive measures to mitigate risk exposure.

Compliance Cosmos is published by the Society of Corporate Compliance and Ethics (SCCE) and the Health Care Compliance Association (HCCA).

The authors wrote, "As the parties proceed to close the transaction, it would be prudent to develop a to-do list gleaned from issues that surfaced in pre-sale internal diligence and management calls, diligence memoranda of the buyer's counsel, and audit reports

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prepared by consultants. The parties responsible for following up on each of the action items should be identified and a time frame established for completion. Issues noted may be logged by the compliance officer for follow-up and included in status reports to the board of directors. Critically, robust remedial action plans can be used (and have been successfully used) to show the absence of scienter (i.e., guilty knowledge or intent) to win FCA cases.”

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