

How Improper Business Relationships Cost One Practice \$14.75 Million

A jury recently reached a \$14.75 Million verdict in Florida in a case between two



clinical laboratory companies arguing over sales and marketing practices that were potential violations of various state and federal laws. The lessons that follow are important for all medical practices. **Background** The case began when Ameritox, Ltd. filed suit against its competitor, Millennium Laboratories, Inc. Each practice provides urine testing and medication monitoring services. Ameritox claimed that Millennium was violating the Stark Law and the Federal Anti-Kickback Statute ("AKS") and claimed a private right of action based on those alleged violations. It is interesting to note that those statutes provide rights to the government to enforce compliance, but they do not provide for a private right of action for one company to sue another. **The Claims** Among various claims, Ameritox claimed Millennium was (a) deceptively marketing the profits a provider might receive from using Millennium's services; (b) advising providers on how to manipulate lab test coding to create multiple billings for a single test sample; and (c) selling providers testing cups at below market or no cost and requiring the provider use Millennium's services. Millennium denied those claims and made similar counterclaims against Ameritox. Millennium also made other claims including that Ameritox was engaging in unfair and deceptive trade practices, unfair competition, and tortious interference with business relationships. **The Jury Verdict** The judge severely limited the claims that actually went to the jury, specifically asking the jury whether Millennium's provision to medical practices of testing cups under certain circumstances would constitute prohibited remuneration under the Stark Law and the AKS. The jury determined that Millennium was in violation of both of the Stark law and the AKS when it provided testing cups to providers who agreed not to bill for the tests in exchange for referrals. The jury also found that Millennium tortiously interfered with Ameritox's business relationships and generally held in favor of Ameritox on all of the other matters presented to it. We will watch future decisions to see if this Florida decision is followed in other jurisdictions. **The Takeaway** The risk to all health providers from noncompliance with Stark and the AKS just expanded radically. At least in Florida, not only might you find yourself in trouble with government regulators, you may end up facing private claims by competitors. Accordingly, it is even more critical that all financial relationships between referral sources and health care providers be evaluated and monitored to ensure compliance with federal and state laws, especially Stark and AKS. If you need help with your compliance matters, be sure to contact one of our Health Care Attorneys today. Image: Thinkstock/Randy Faris/Fuse **This article is very general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.*