

# Healthcare Law Alert – Yates Memo – Individuals are New Focus of DOJ Enforcement Efforts

## Yates Memo – Individuals are New Focus of DOJ Enforcement Efforts

On September 9, 2015, Sally Quillian Yates, Deputy United States Attorney General, issued a memorandum to Department of Justice (DOJ) officials entitled “Individual Accountability for Corporate Wrongdoing.” The memorandum explains a new policy requiring DOJ personnel handling criminal and civil enforcement actions related to alleged corporate wrongdoing to also focus on individual bad actors, not just the corporate entity. This directive to identify and hold accountable responsible individuals will impact a broad array of DOJ enforcement actions, including health care–related qui tam or “whistleblower” lawsuits and possibly self-disclosures made to the DOJ. Evidence of this new focus on individual culpability can be seen in recent settlements in which private physicians involved in financial arrangements with hospitals that failed to comply with the federal Stark law have personally paid large settlements in addition to the settlements paid by the hospitals.

Ms. Yates identified the following six principles for guiding DOJ personnel:

1. “To be eligible for any corporation credit [which can serve to reduce penalties that might otherwise be assessed against the corporation], corporation must provide to the Department all relevant facts about individuals involved in corporate misconduct.
2. Both criminal and civil corporate investigations should focus on individuals from the inception of the investigation.
3. Criminal and civil [DOJ] attorneys handling corporate investigations should be in routine communication with one another.
4. Absent extraordinary circumstances, no corporate resolution will provide protection from criminal or civil liability for any individuals.
5. Corporate cases should not be resolved without a clear plan to resolve related individual cases before the statute of limitations expires and declinations as to the individuals in such cases must be memorialized.
6. Civil [DOJ] attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond the individual’s ability to pay.”

Ms. Yates further explained why the focus on individual culpability and accountability is critical to the effectiveness of DOJ efforts to stem corporate wrongdoing. Specifically, she advised that holding individuals accountable “deters future illegal activity; ... incentivizes changes in corporate behavior; ... ensures that the proper parties are held responsible for their actions and

... promotes the public’s confidence in our judicial system.”

The new initiative, which is effective immediately for both new and pending matters, raises the bar for employees in health care settings. While most corporate compliance programs have long held individual employees responsible for their own actions, the Yates memo indicates that DOJ will now also evaluate individual behavior at the highest levels with an eye toward prosecuting, in appropriate circumstances, individuals who are personally responsible for the transgressions of the corporate entity. DOJ's position going forward is that any individual called upon to engage in questionable conduct has an obligation to speak up, not only for their own good but for the good of the company, and failure to do so could make that individual a prosecution target.

The practical impact of the Yates memo for health care entities is multifaceted. For lawyers who represent corporations in internal compliance investigations and enforcement activities, it will be more critical than ever to make sure employees understand that the lawyer represents the corporation, not the employee. As a result, more employees involved in compliance investigations may seek out, or be advised to retain, their own lawyer. This new focus could also have a chilling impact on internal investigations and compliance reports. It is possible that concern over individual culpability could have the unintended impact of encouraging less robust internal reviews.

View the entire DOJ memo here: <http://www.justice.gov/dag/file/769036/download>

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