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TOP Health Care LAWYERS 2019

KATHERINE A. LAUER

In early November, Lauer was in Washington, D.C., to moderate a Health Care Compliance Association symposium on a topic the Latham & Watkins partner knows very well: “Anatomy of a False Claims Act Case.”

As a former global co-chair of her firm’s health care and life sciences practice group, Lauer and colleagues discussed the investigation, negotiation and resolution phases of typical whistleblower events.

Her expertise is extensive in defending clients in the qui tam and government healthcare fraud arena.

“I’m currently handling about 20 such cases, many of them still under seal,” she said.

Lauer has represented clients such as HCA Healthcare Inc., Tenet Healthcare Corp., Sutter Health and Adventist Health West. She provides ongoing healthcare regulatory and compliance advice and has extensive experience in matters involving the federal Anti-Kickback Statute, the Stark Laws banning physician self-referrals of Medicare or Medicaid patients and the False Claims Act.

She said she’s seen a recent increase in some whistleblower cases, including those where there’s no government intervention.

“It’s true that any case is more likely to succeed when the government intervenes,” she said. “But now class action and trial firms have started to participate as relators’ counsel because the success of a few such cases for some has apparently made it seem worth it.”

Her job is to defend the targets of such litigation. In one case, the government in-

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tervened in part of the matter but declined to do so for the rest of the claims. The complaint was filed by a former coding manager and was unsealed in December 2018 following more than two years of government investigation of the defendants, Sutter Health and Palo Alto Medical Foundation. The relator alleged that defendants submitted diagnosis codes to the Medicare Advantage program that they should have known were not adequately documented by medical charts, reaping inappropriate reimbursement from the government. *U.S. ex rel. Ormsby v. Sutter Health*, 15-cv-01062 (N.D. Cal., filed March 6, 2015).

“Because the case is a hybrid, we have filed two motions to dismiss,” Lauer said. “It’s somewhat more complicated, and there are tens of millions of dollars involved.”

Her motions contend that the claims involve an outdated view of the Medicare Advantage program that prior courts have repeatedly rejected. In a recently completed matter, the 11th U.S. Circuit Court of



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Appeals affirmed a district court dismissal of a whistleblower case against Lauer’s client HCA, the nation’s largest healthcare system. *Bingham v. HCA Inc.*, 16-17059 (11th Cir., filed Nov. 9, 2016).

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— John Roemer