

CLIENT ALERT

Supreme Court Opts Not to Revisit FCA Materiality Post-*Escobar*

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On March 18, 2019, the Supreme Court again refused to clarify its seminal ruling in *United States ex rel Escobar* (discussed [here](#)) by denying certiorari in *Brookdale Senior Living v. United States, ex rel. Prather*, instead sending the case back to district court, where the country's largest senior living provider faces allegations of untimely certifications of medical necessity. Brookdale had petitioned the Supreme Court to grant cert and address what Brookdale characterized as an "irreconcilable and growing circuit split" over the application of *Escobar's* materiality standard after the Sixth Circuit reversed the lower's court's dismissal of a *qui tam* suit against Brookdale (previously discussed [here](#)), finding that the relator sufficiently had alleged materiality under the factors articulated in *Escobar*.

Since *Escobar* was decided in 2016, courts have struggled with the opinion's fact-specific materiality analysis. At the start of this Supreme Court term, there was speculation that the Court might address the materiality question after the justices sought the views of the solicitor general in connection with the pending petition in *United States ex rel Campie*. However, since then, the Justices have denied cert in three materiality related petitions, including *Campie*, suggesting that the Court is not inclined to revisit *Escobar* at present, opting instead to let the lower courts grapple with further developing materiality case law.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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