

## CLIENT ALERT

### Quality of Service Deficiency Rejected as Basis for False Claim

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The Second Circuit Court of Appeals has rejected allegations that a health care provider violated the False Claims Act by billing Medicare for health services deficient in quality. *United States ex rel. Mikes v. Straus* (Dec. 19, 2001).

Government prosecutors and qui tam relators have been increasingly creative in their use of the federal False Claims Act as a means of policing the healthcare industry. Prosecutors have gone so far as to assert that in filing a claim for payment with the government, the claimant certifies that it is operating in conformance with all laws and regulations the claimant is otherwise obligated to abide by, however unrelated to the claim submission those other legal obligations might be. Aggressive prosecutors argue that if this can be proven not to be the case, such a claim has been filed "falsely." Of particular note has been the government's recent positing that "quality of care" deficiencies may give rise to False Claims Act prosecutions.

The attached summary of the Mikes decision makes clear that the False Claims Act cannot be utilized indiscriminately as an enforcement weapon for prosecutors or relators to test a claimant's conformance with all legal obligations. In Mikes, the court specifically chides the government for seeking to use the FCA to enforce quality of care standards "best addressed by those professionals most versed in the nuances of providing adequate health care." This decision should assist significantly in redefining the fair bounds for the application of the False Claims Act in the healthcare arena.

Full [case summary](#), provides further detail on this important False Claims case decision.

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