

# STARK LAW

## Open Forum

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Robert A. Wade, Esq.  
Partner  
Barnes & Thornburg LLP  
700 1st Source Bank Center  
100 North Michigan  
South Bend, Indiana 46601  
Telephone: 574.237.1107  
Email: bob.wade@btlaw.com

Lester J. Perling, Esq.  
Partner  
NELSON MULLINS BROAD AND  
CASSEL  
100 S.E. 3rd Avenue  
Fort Lauderdale, FL 33394  
Telephone: 954.745.5261  
Email: lester.perling@nelsonmullins.com

Daniel H. Melvin, Esq.  
Partner  
McDermott Will & Emery LLP  
444 West Lake Street, Suite 4000  
Chicago, IL 60606-0029  
Telephone: 312.984.6935  
Email: dmelvin@mwe.com

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## Learning Objectives

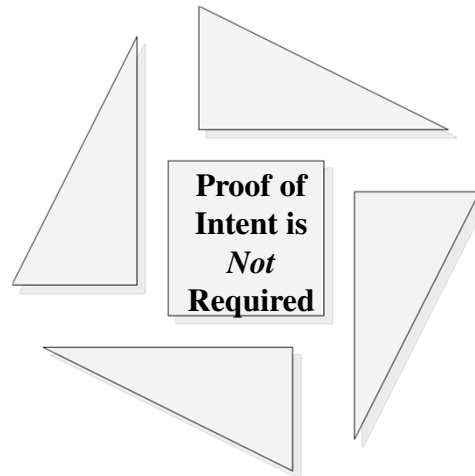
- Recognize when the Stark Act is implicated
- Comply with the components for exceptions for a physician practice

## Stark Act § 42 U.S.C. 1395nn

- The Stark II Act prohibits a physician from making a *Referral*
  - to an *Entity*
  - for the furnishing of a *Designated Health Service*
  - for which payment may be made under Medicare
  - if the physician (or an immediate family member)
  - has a *Financial Relationship* with the entity

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## Stark II Act



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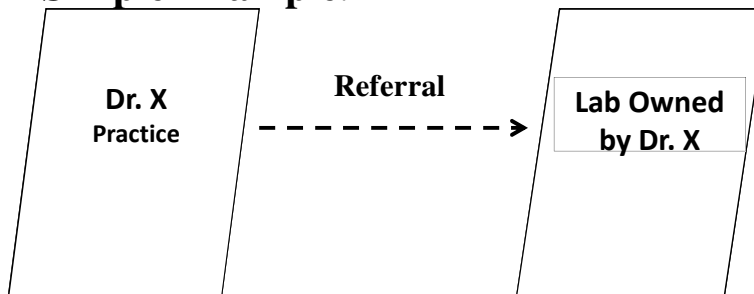
## Penalty

Denial of payment or refund; civil money penalties (up to \$100,000) and exclusions from federal and state programs for improper claims or schemes

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## Examples

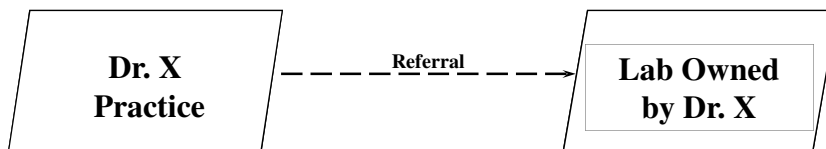
### Simple Example:



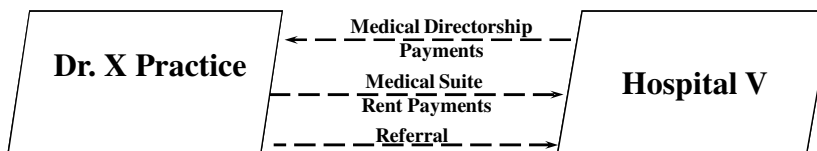
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# Examples

## Simple Example:



## How Stark II has been applied:



In both examples, the referrals violate Stark unless an exception applies

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# What is a Referral?

***A referral includes:***

Request for an item or a service by a physician

Request by physician for consultation with another physician, and any tests or procedures the other physician orders, performs or supervises

Request for or of plan of care that includes provision of designated health services

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## What is a Referral?

- **A *referral* is not a DHS personally performed by a physician**
- A referral does not include a request by:
  - Pathologists for clinical diagnostic laboratory tests and pathological examination services
  - Radiologists for diagnostic radiology services
  - Radiation Oncologists for Radiation Therapy
- If the request for such additional services results from a consultation initiated by another physician

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## Designated Health Services

- ***Designated Health Services* include:**
  - Clinical laboratory services;
  - Physical therapy and occupational therapy services;
  - Radiology or other diagnostic services (including MRI, CAT scans);
  - Radiation therapy services;
  - Durable medical equipment;
  - Parental and enteral nutrients, equipment and supplies;
  - Prosthetics, orthotics and prosthetic devices;
  - Home health services;
  - Outpatient prescription drugs; and
  - Inpatient and outpatient hospital services (encompassing almost every type of medical procedure).

**Note:** *Ambulatory Surgery Centers services are not DHS!*

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## What is a DHS Entity?

- Entity that bills for DHS service
- Entity that performs DHS service
  - “Perform” is given common meaning

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## What Is a Financial Relationship?

A *Financial Relationship* includes:

- Ownership interests
  - Through equity, debt , compensation or other means;  
and
- Compensation arrangements
  - Includes virtually any form of direct or indirect **remuneration** (i.e., personal service contracts, medical directorships, lease agreements, consulting arrangements, medical service provider arrangements)

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## What Is a Financial Relationship?

Remuneration is defined (42 CFR § 411.351) as “any payment *or other benefit* made directly or indirectly, overtly or covertly, in cash or *in kind* ...”



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## What Is a Financial Relationship?

### Benefits:

- Payments for services rendered
- Use of space
- Use of personnel
- CME
- Dinners
- Trinkets
- Parking



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## Nature of Exceptions

**If *Financial Relationship* exists  
with an *Entity*, and patients  
are being *Referred* for  
*Designated Health Service*,  
then activity must either  
comply with an exception or  
the activity is illegal**

