

# Ask the Stark Law Professionals

## Open Forum

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## Stark Law Questions for the Stark Law Professionals

- To Ask Stark Law Questions, either
  1. Go to a microphone
  - or -
  2. Send question through Conference App.,  
Session #701. There may be a limitation of  
characters.



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## Polling Question

- What is the degree of experience that the audience has with respect to the Stark Law?
  - a) I have heard of the Stark Law;
  - b) I have worked with the Stark Law to some extent;
  - c) I have worked with the Stark Law considerably; or
  - d) I am an expert regarding the Stark Law.

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## 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

**Proof of  
Intent is  
*Not*  
Required**

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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.**

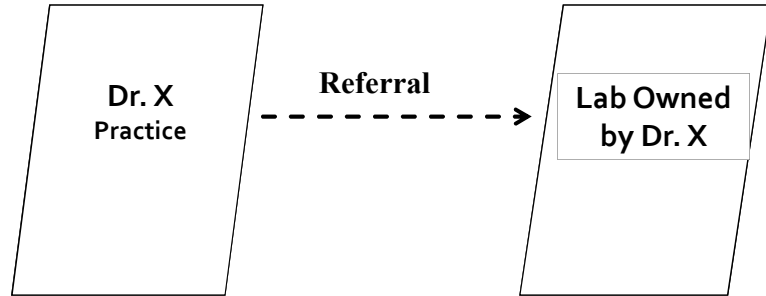
**Potential  
False Claims Act  
liability of treble  
damages *and* up to  
\$11,500 per claim  
submitted.**

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# Examples

## Simple Example

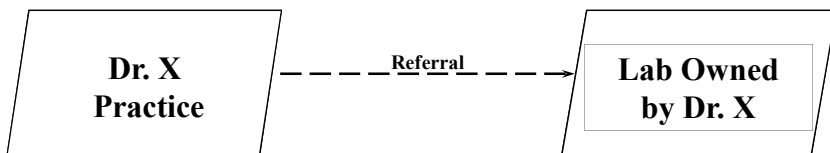


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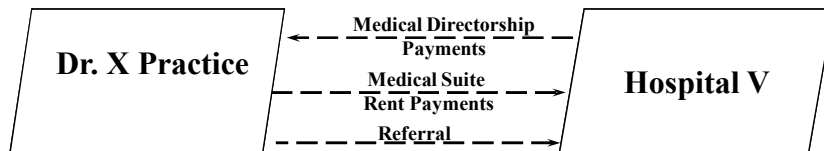
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# Examples

## 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**



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