

Whistleblowers accuse Erlanger of illegal billing for concurrent surgeries that left patients unsupervised

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A federal whistleblower lawsuit filed against Erlanger Health System accuses hospital leaders of illegal billing practices by knowingly overlapping surgeries and allowing trainees to operate on patients without physician supervision, among other patient safety and compliance issues.

The complaint, brought under the federal False Claims Act and Tennessee Medicaid False Claims Act and filed in April 2021 in U.S. District Court, alleges surgeons who practice at Erlanger violated state and federal law by regularly billing for two or three different surgeries in the same timeframe while leaving residents and interns alone to complete operations without proper oversight or patient consent.

Medicare and Tennessee's Medicaid program, TennCare, require a supervising or teaching physician to be present for the "key and critical" portions of each surgery in order to bill for the procedure and receive payment.

DOCUMENT

- [Read the lawsuit](#)

As a teaching hospital, Erlanger is supposed to use young doctors in training, known as residents, during surgeries. It's up to the teaching physicians to decide what aspects of the surgery are key and critical because it can vary significantly depending on the individual patient, procedure or the skills of the resident.

"The surgeries were often scheduled to start within fifteen to thirty minutes of one another and, in the case of three overlapping bookings, two or more surgeries frequently occurred entirely within the duration of a third," the suit

alleges. "This routine practice meant unwitting patients were subjected to longer-than-necessary operating-room times and charges, often under anesthesia, often in the care of trainees, and nearly always without the backup of a properly qualified surgeon, despite legal requirements."

The plaintiffs -- Erlanger's former chief information officer, Dr. Stephen Adams, and orthopedic surgeons Dr. Julie Adams and Dr. Scott Steinmann -- say in the suit that they raised those concerns about patient safety and compliance with Erlanger leadership, which ultimately cost them their jobs.

"Erlanger deliberately turned a blind eye to the problems, deciding, instead, to focus negative attention upon those who dared to raise such issues," the suit alleges.

The three are also seeking payment for damages they claim came as part of a "malicious and unlawful campaign of retaliation" under former Erlanger CEO Dr. Will Jackson, according to the suit.

The False Claims Act is a longstanding statute that allows individuals with non-public information to bring a suit in the name of the government to allege false statements or fraudulent representations have been used to secure government payment.

The law offers financial incentives for those suits as a way to safeguard public funds spent on critical services, such as health care, military support, infrastructure and disaster relief.

If successful, the whistleblower -- also known as the relator -- typically receives a portion of the recovery ranging between 15% and 30%, according to

the U.S. Department of Justice website.

By law, those suits must be filed under seal to afford the government an opportunity to investigate the allegations and decide whether to take the case forward -- which occurs in about 20% of cases filed. If the government declines to intervene, the whistleblowers have the option to proceed themselves.

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Erlanger spokesperson Blaine Kelley said in an emailed statement that the state of Tennessee has already declined to intervene in the case. Erlanger officials are still awaiting confirmation of the U.S. Attorney's office's decision, she said.

"Erlanger has worked with and otherwise fully cooperated with the government's review of the claims as they relate to Erlanger over the past 18 months," Kelley wrote. "Erlanger disputes the merit of the allegations."

She added, "No instances of patient harm relating to these allegations have been identified."

Reuben Guttman, an attorney representing the whistleblowers, said his clients are unable to discuss the case.

"The three renowned physicians and professors of medicine have alleged issues of significant public importance, and they look forward to a full airing of their concerns in court," Guttman said by email. "They hope that whatever comes out of this litigation will ultimately lead to better medical care for the vulnerable and the voiceless."

Dr. Stephen Adams is board-certified in both family medicine and medical informatics and is a professor in the department of family medicine at Erlanger's academic affiliate, the University of Tennessee College of Medicine Chattanooga, where he has worked since 1997, according to the suit.

Dr. Julie Adams and her husband, Steinmann, are leaders in their field and were recruited in 2019 to join the college of medicine faculty and Erlanger. At the time, Steinmann was appointed chairman of the Department of Orthopedic Surgery. He is now an emeritus professor of orthopedics at the Mayo Clinic College of Medicine.

In fiscal year 2022, whistleblowers filed 652 False Claims Act suits, with health care fraud representing the most common type of cases, according to the Department of Justice.

In February 2022, Massachusetts General Hospital -- the renowned teaching hospital affiliated with Harvard -- agreed to pay \$14.6 million to settle a federal lawsuit alleging it fraudulently billed government insurers by overlapping surgeries as supervising surgeons worked in other operating rooms, according to a report in the Boston Globe.

Just last month, the University of Pittsburgh Medical Center, University of Pittsburgh Physicians and one of the group's leading surgeons agreed to pay \$8.5 million to the United States to resolve claims over improper billing for concurrent surgeries.

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