

## In re Fresenius Medical Care AG & Co. KGaA (2019)

### Nature of the Business.

Fresenius Medical Care AG & Co. KGaA ("Fresenius") is a global medical products and services provider addressing chronic kidney failure based in Germany.

Fresenius maintains American Depositary Shares which are publicly traded on the NYSE and are registered with the SEC pursuant to Section 12(b) of the Exchange Act.

### Influence to be Obtained.

According to the DOJ, Fresenius and its subsidiaries were involved in schemes in Mexico, Saudi Arabia, Angola, Morocco, Spain, Turkey, and the West African region that violated the FCPA's anti-bribery, internal accounting controls, and books-and-records provisions. According to the DOJ, Fresenius, through its management, employees, and third-party agents (distributors) bribed public officials and doctors to win contracts at hospitals and in certain countries used "means and instrumentalities of U.S. interstate commerce" such as email from U.S. providers. Fresenius, through its executive and employees "knowingly and willfully" engaged in these schemes and did not have controls in place to guard against such activity nor did it accurately account for them in their books and records.

Fresenius subsidiaries were involved in entering into joint business ventures with government officials and doctors in Angola and provided them shares in the venture, false consultant contracts, and false storage contracts in order to sell Fresenius' products at the public clinics and hospitals the doctors were associated with.

Similarly, in Saudi Arabia Fresenius entered into a check-cashing scheme with an third party to direct funds to doctors working in public hospitals and, through the same third party agent, entered into sham consultant contracts with doctors in order to gain an advantage in tenders with the hospital the doctors were affiliated with. Fresenius also provided these doctors with gifts, donations to their charities, and funded their travel in order to win a tender at affiliated hospitals.

Fresenius engaged in similar behavior in Morocco, Spain, Turkey, and West Africa by paying officials and doctors bribes in the form of sham commissions and bonuses for services that were not rendered, sham consultant contracts, paying for their travel (in Spain), entering into joint ventures that benefitted the doctors (in Turkey).

### Enforcement.

On February 25, 2019, the DOJ issued a Non-Prosecution Agreement (signed on March 28, 2019), explaining that it had declined to prosecute Fresenius for these alleged violations. Fresenius is to pay a monetary penalty of \$84,715,273. The DOJ noted that this decision was informed by various factors: Fresenius's cooperation and voluntary disclosure of information and violations, internal investigation conducted, took remedial measures including terminating the employment of those involved in the schemes, strengthened its compliance procedures and policies, and the company's agreement to disgorge profits to the SEC and to enter into an agreement to utilize an internal compliance monitor.

On March 29, 2019, the SEC settled its enforcement action against Fresenius for violations of the FCPA's anti-bribery, books-and-records, and internal accounting controls provisions. Fresenius was ordered to pay disgorgement of \$135 million and prejudgment interest of \$12 million.

### Key Facts

**Citation.** *In re Fresenius Medical Care AG & Co. KGaA*, Letter to Maxwell Carr-Howard from Andrew E. Lelling, US Attorney of the District of Massachusetts, Jordi de Llano, Assistant US Attorney, and Robert Zink, Acting Chief Fraud Section, DOJ (Mar. 28, 2019).

**Date Filed.** February 25, 2019.

**Country.** Morocco, Spain, Turkey, West African region, Angola, Saudi Arabia, Turkey.

**Date of Conduct.** 2007-2016.

**Amount of the Value.** Not stated.

**Amount of Business Related to the Payment.** Over \$140 million.

**Intermediary.** Third-party agents.

**Foreign Official.** Unnamed doctors/government officials in Mexico, Saudi Arabia, Angola, Morocco, Spain, Turkey, and Western Africa.

**FCPA Statutory Provision.** Not stated.

**Other Statutory Provision.** None.

**Disposition.** Non-prosecution agreement.

**Defendant Jurisdictional Basis.** Issuer.

**Defendant's Citizenship.** Germany.

**Total Sanction.** \$84,715,273.

**Compliance Monitor/Reporting Requirements.** Two-year compliance monitor.

**Related Enforcement Actions.** *In the Matter of Fresenius Medical Care AG & Co. KGaA*, Admin. Proc. File No. 3-19126 (Mar. 29, 2019).

**Total Combined Sanction.** \$231.7 million.