

Insights

No "Privilege Against Self-Incrimination" (Fifth Amendment) for Corporate Documents in a Fraud and Abuse Investigation

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In a federal grand jury investigation into illegal physician kickbacks paid by a laboratory, Circuit Court Judge Cohen, writing for the U.S. Court of Appeals for the Third Circuit, affirmed the U.S. District Court for the District of New Jersey's order of contempt against a physician and his practice after refusing to produce documents, including patient records, from his Professional Association organized in 1973. *In re In the Matter of the Grand Jury*, decided May 15, 2015.

Specifically, a blood laboratory was suspected of paying kickbacks to physicians for patient referrals spanning a seven year period. A grand jury was impaneled to investigate and it issued a subpoena to the sole owned practice for certain documents that included patient records. The doctor agreed that the business was not entitled to protection, but that the implication would be he supplied the documents violating his Fifth Amendment rights. The Court noted that a custodian of records may not refuse production even if production might be incriminating, citing well established U.S. Supreme Court precedent. Noted further was that the subpoena was carefully crafted to produce only the necessary documents. Thus, it was not overly broad in violation of the Fourth Amendment. The practice was found in civil contempt by the District Court and sanctioned in the amount of \$2,000 per day for noncompliance.

If you have any questions or concerns, please feel free to contact Meghan M. Linvill McNab at mmcnab@kdlegal.com.