

Eli's Hospice Insider

Hospice News: High-Profile Trial In Hospice Whistleblower Suit Begins

One hospice chain's sky-high live discharge rate is getting tested in court.

A whistleblower suit filed in 2009 and unsealed in 2012 is finally going to court in Alabama. In the suit, former **AseraCare Hospice** executive director **Marsha Brown** and clinical manager **Dawn Richardson** accused the company of a variety of misdeeds resulting in ineligible patients receiving hospice services. Press coverage of the suit noted that the Plano, Texas-based chain's Mobile, Ala. location allegedly had a 78 percent live discharge rate.

It's rare for whistleblower cases to go to trial, whistleblower attorney **Mary Inman** with San Francisco law firm **Constantine Cannon** told The Birmingham News. And this case has been "bifurcated," meaning the government is going to have to prove the claims are false before it can present evidence on the non-false-claims portion of the suit, note **Arnall Golden Gregory** attorneys **Aaron Danzig** and **J. Ryan Hood** in analysis of the case. The move "has the potential to provide FCA defendants with a strong weapon against the government's usual tactic of focusing on evidence suggesting the provider was engaged in a fraudulent scheme to cast the provider in a negative light and then presenting their expert's review of specific claims," they say.

AseraCare is trying to cast the allegations as a legitimate disagreement between doctors about whether a patient is dying and is eligible for hospice, Inman said. DOJ attorneys, in a court document filed this year, said its case is not about second-guessing a doctor's prognosis, but about systemic fraud and abuse.

The trial is expected to last about three months.