

Eli's Hospice Insider

Hospice News: Whistleblower Lawsuit Decision May Benefit Other Hospices

The ongoing issue of how much sway medical experts' opinions carry is addressed in a new court decision.

Recap: In 2018, a federal district court judge granted summary judgment to New Jersey hospice Care Alternatives Inc. "on the ground that the Plaintiff-Relators had failed to show falsity," says a new decision handed down on Dec. 15. The U.S. Court of Appeals for the Third Circuit reversed, remanding the case to the district court.

"Upon review of the record, the Court concludes that Plaintiff-Relators have again failed to produce sufficient evidence to create a genuine issue of material fact on the element of materiality. Summary judgment will therefore again be entered in favor of Care Alternatives," the new district court decision says.



The whistleblowers, four former All-Care employees, filed suit in 2008. The government chose not to intervene but remained an "interested party," according to the decision. The subsequent court proceedings revolved largely around whether the whistleblowers' medical experts' opinions could "create a genuine dispute of material fact as to falsity," it notes.

"There is indeed significant evidence in the record of this matter that Care Alternatives had longstanding problems with maintaining necessary and proper documentation and that it was well aware of those problems," the decision says. But that doesn't necessarily add up to false claims.

"After 13 years, this decision ends a case that was flawed from the start," **William Jordan** of Alston & Bird, Care Alternatives' lawyer, told Reuters in an email.

This is the latest case to weigh in on the legal issue of whether a difference in medical experts' opinions can be used as a basis for false claims.