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KEVIN P. MULRY

Farrell Fritz, P.C.

Kevin P. Mulry, a partner at Farrell Fritz, P.C., is a commercial litigator with a focus on health care. Mulry counsels clients and litigates in cases involving health law, commercial law, and government investigations in federal and state courts. He is experienced in compliance and has represented clients before the Centers for Medicare and Medicaid Services and the Office of the Medicaid Inspector General. He is a frequent contributor to Farrell Fritz's New York Health Law blog.

Fifteen years prior to joining Farrell Fritz, Mulry served as an Assistant United States Attorney in the Civil Division of the U.S. Attorney's Office for the Eastern District of New York. From 2005 through 2010, he was Principal Deputy Chief of the Civil Division, with supervisory responsibility for the office's affirmative civil litigation, including health care fraud and the False Claims Act. During that time, he coordinated the national investigation of pharmaceutical health care fraud cases under the False Claims Act. These cases included allegations of off-label marketing, kickbacks and improper billing. He was previously chief of the Long Island Civil Division, supervising the government's affirmative and defensive cases in the Federal Court in Central Islip.

Mulry and his team are closely following a fraud question presented before the Supreme Court: What is the standard for bringing a fraud case under the False Claims Act?

"The Court will decide whether False Claims Act liability attaches when a medical provider bills the government for goods or



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in Health Care Law



services knowing (but failing to disclose) that the goods or services fail to comply with a material statutory, regulatory or contractual requirement, or whether the requirement has to expressly be stated as a condition of payment by the government," Mulry said. "The Supreme Court held a spirited argument in April in *Universal Health Services v. United States ex rel. Escobar*. Some of the Justices

seemed to accept a more expansive definition of fraud under the False Claims Act."

"The current Second Circuit standard, which covers New York, has been more restrictive, but a broad definition of False Claims Act fraud in the *Universal Health Services* case could lead to significantly broader opportunities for the government to argue fraud against medical providers," he said. "In recent years, Federal and State investigators have increasingly expanded their investigation of medical providers for potential health care fraud. Although the Supreme Court's decision may determine whether the government's road will be made easier or more difficult, the aggressive scrutiny of health care providers is sure to continue."

Mulry is a graduate of St. John's University and St. John's University School of Law. A recognized expert in his field, he received the Henry L. Stimson Medal from the Association of the Bar of the City of New York.

With more than 85 attorneys, the law firm of Farrell Fritz in Uniondale is recognized for providing high quality legal services, practical advice and responsiveness. The firm is also known for its deep commitment to the local community. Farrell Fritz handles legal matters in the areas of arbitration and mediation; bankruptcy and restructuring; business divorce; commercial litigation; construction; corporate and finance; eDiscovery; emerging companies and venture capital; eminent domain; environmental law; estate litigation; health law; labor and employment; land use, municipal and zoning; not-for-profit law; real estate; tax planning and controversy; tax certiorari, and trusts and estates for corporations, not-for-profit organizations and individuals.