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Client Alert: Enforcement Actions Commence: New York Ophthalmologist Indicted for Defrauding SBA Program

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Within three months of the enactment of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, the Department of Justice has indicted a New York ophthalmologist for fraudulently obtaining government-guaranteed loans from the U.S. Small Business Administration’s (“SBA”) Paycheck Protection Program (“PPP”).

The CARES Act was designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic, including the authorization of hundreds of billions of dollars in forgivable loans to small businesses for job retention and certain other expenses through the SBA’s PPP. The PPP limited each business to one loan, with a maximum loan amount, and required applicants to certify that they have not and will not receive another PPP loan until December 31, 2020.

According to the indictment, the ophthalmologist circumvented the single-loan requirement by submitting two separate applications, with different business names, email addresses, business identification numbers, and loan amounts, for the same underlying practice, while disclaiming on each application that he did not own any other business. Due to these misrepresentations, the ophthalmologist successfully obtained two PPP loans totaling over \$630,000. Additionally, under the rules of the PPP, the ophthalmologist and the ophthalmology practice he owned were ineligible for PPP relief due to the ophthalmologist’s pending criminal charges for health care fraud.

The indictment includes three counts related to the PPP loans – the first count charges health care fraud, which carries a maximum sentence of ten years in prison; the second count charges wire fraud, which carries a maximum sentence of 20 years in prison; and the third count charges making false statements relating to health care matters, which carries a maximum sentence of five years in prison. The remaining three counts address the fact that these acts were committed while on pretrial release on pending, unrelated health care fraud charges.

As the Department of Justice begins investigating and commencing enforcement actions, it is important to ensure your practice is complying with the requirements of the PPP.

Additional details can be found in the press release issued by the U.S. Attorney's Office for the Southern District of New York, available at:

<https://www.justice.gov/usao-sdny/pr/ophthalmologist-previously-charged-healthcare-fraud-indicted-defrauding-sba-program>.