

## Escobar: Year One

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***Universal Health Services, Inc. v. U.S. ex rel. Escobar, 136 S. Ct. 1989 (2016)*** was a landmark case in FCA jurisprudence. In *Escobar*, the Supreme Court held that the implied false certification theory can be a basis for liability under the FCA in some circumstances. The Supreme Court also held that the alleged contractual, statutory, or regulatory violation need not be expressly designated a “condition of payment” to trigger implied certification liability.

### Key Facts:

- Relator’s 17-year old stepdaughter died while in the care of a mental health facility owned by Universal.
- Universal’s facilities were investigated by the state of Massachusetts.
- Investigation uncovered that Universal had allegedly violated Massachusetts Medicaid regulations requiring mental health facility staff to have certain qualifications.
- Relator sued on 17-year old’s behalf alleging that Universal violated the FCA under an implied false certification theory.

### Key Holdings:

#### • On Falsity:

- Falsity established in an implied certification case when at least two conditions are satisfied: “first, the claim does not merely request payment, but also makes specific representations about the goods or services provided; and second, the defendant’s failure to disclose noncompliance with material statutory, regulatory, or contractual requirements makes those representations misleading half-truths.”
- “Anyone informed that a social worker at a Massachusetts mental health clinic provided a teenage patient with individual counseling services would probably—but wrongly—conclude that the clinic had complied with core Massachusetts Medicaid requirements
  - (1) that a counselor ‘treating children [is] required to have specialized training and experience in children’s services,’ 130 Code Mass. Regs. § 429.422, and also
  - (2) that, at a minimum, the social worker possesses the prescribed qualifications for the job, § 429.424(C).”

• **On Materiality:**

- **Importance (An Objective Test)** – Whether a “reasonable man [acting on the Government’s behalf] would attach importance to [the representation] in determining his choice of action in the transaction.” *Escobar* at 2003. It follows that a reasonable person would not attach importance to a violation that is “minor or insubstantial.” *Escobar* at 2003.
- **Government Knowledge/Government Treatment of Violations (A Subjective Test)** – Whether the Government knew of a claim’s falsity and nevertheless paid the claim, which would tend to negate a finding of materiality. *Id.* at 2003. This argument is also known as the so-called “government knowledge” defense. Conversely, “evidence that the defendant knows that the Government consistently refuses to pay claims in the mine run of cases based on noncompliance” supports a finding of materiality. *Id.*
- **Option Not Relevant** – “Nor is it sufficient for a finding of materiality that the Government would have the option to decline to pay if it knew of the defendant’s noncompliance.”
- **Labels Used** – Whether the Government has “expressly identif[ied] a provision as a condition of payment,” although such identification is “relevant but not automatically dispositive.” *Id.* at 2002.
- **Essence of the Bargain** – Whether the regulatory, statutory, or contractual violation goes to the “essence of the bargain.” *Id.* at 2003 n.5.

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