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## When health care fraud turns criminal



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How does civil health care fraud result in criminal convictions? What might start small can quickly snowball when greed eclipses medical judgment.

When supervision and peer review get overshadowed by revenue, civil fraud can be a crime.

Some recent headlines have included:

- Dr. Aria Sabit, a Michigan neurosurgeon, received a 235-month prison sentence for health care fraud connected to performing medically unnecessary, invasive spinal surgeries, implanting unnecessary medical devices and kickbacks to his Physician Owned Distributorship. His license was also stripped for gross negligence and “dishonest and corrupt acts.”
- Dr. Cully White, a Wisconsin osteopath, received a six-month prison sentence as well as six months of house arrest after pleading guilty to health care fraud stemming from paying another physician to dictate fabricated surgical reports for services that were not rendered. An unrelated medical board investigation into substandard spinal surgeries resulted in the surrender of his license.
- Dr. Abubakar Atiq Durrani, an Ohio spine surgeon, pleaded not guilty to health care fraud

and fled the country following a 10-count indictment charging that he convinced patients to undergo medically unnecessary spinal surgeries. The state also permanently revoked his license.

- The president of a Houston hospital and eight co-conspirators were convicted of a massive Medicare fraud scheme to bill for more than \$158 million worth of psychiatric services that were not rendered and the payment of kickbacks to recruiters to deliver Medicare-ineligible patients. The hospital president was sentenced to 45 years in prison, his son to 20 and a co-conspirator to 12 years in prison.

How do these cases come about? On the whole, health care fraud has infinite variations, but in the end, the majority of cases involve:

- Medically unnecessary procedures or services not actually rendered;
- Kickbacks; or
- Fabricated records or bills.

The government has task forces set up to investigate, but they have to be tipped off. In all of the above examples, the fraud began to be uncovered when either the patients sued for malpractice or patients or physicians blew the whistle in sealed filings under the False Claims Act, which immediately get investigated by the government. In the above cases, after the initial disclosure, other investigations followed, resulting in licensing issues, civil

finances and even jail time.

### Criminal lens

In the Sabit case, the cover was blown when 30 patients sued for medical malpractice in less than 18 months. The medical board later investigated, stripping him of his license. Two False Claims Act suits were also filed, one by his physician colleagues. That suit alleges that the hospital's peer review committee had found the doctor responsible for 71 percent of unplanned returns to surgery and that his infection rate was two times the national average.

Sabit's fraud was lucrative. It produced an alleged \$8.4 million in Medicare revenue to the hospital and \$1.4 million to the doctor for the instruments he used in surgery. The whistleblower suit alleges that the hospital turned a deaf ear to complaints about his recklessly performed surgeries and it failed to properly supervise him due to the high revenues.

With Durrani, the unraveling seems to have begun with medical malpractice lawsuits claiming that more than 500 spinal surgeries were botched. The federal authorities investigated when some of his former patients filed suit under the False Claims Act alleging health care fraud stemming from unnecessary spine procedures. UC Health and West Chester Hospital paid \$4.1 million in a civil fraud settlement related to the unnecessary surgeries. In all False Claims Act cases, the government does an initial parallel criminal review. In a case like Durrani's, that

criminal review resulted in arrest.

Former Assistant Attorney General Leslie R. Caldwell told the Health Care Compliance Association last April that the government is looking at health care fraud through a criminal lens and is getting results.

“In the last fiscal year alone, the (Medicare fraud) strike force charged 391 defendants who had collectively billed the Medicare program approximately \$1.4 billion,” she said. “During the last fiscal year, the strike force had a conviction rate of 92 percent – a spectacular rate of success considering the volume and the complexity of the prosecutions – and secured prison sentences averaging 56 months.”

While these examples are certainly rare and extreme, all practices are wise to review and strengthen supervision, quality assurance reviews and compliance and to ensure and encourage a robust and independent peer review process. When these processes and protocols are in place, fraud is stopped before it starts and it cannot spiral out of control.

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