



Fraud and Abuse

Three-Time Whistleblower Sends Warning to Providers

The story of a single whistleblower who took on three hospital networks and recovered millions of dollars in health-care fraud settlements is a cautionary tale for health-care providers that must learn to take internal fraud reports seriously.

The actions were brought by Cecilia Guardioli—a registered nurse who worked in clinical documentation and case management for three health systems—and demonstrate that whistleblowers can be smart and persistent and raise fraud and abuse issues that health systems cannot afford to ignore. Whistleblowers who discover fraudulent billing schemes can be expected to take their claims to the next level in specific cases and may well, with the assistance of competent lawyers, be able to sue over similar schemes when they encounter them in a position with a new employer, according to attorneys who talked to Bloomberg Law.

The stakes can be high for successful whistleblowers, whose future employment opportunities in health care may be limited because of the litigation they initiate. In Guardioli's case, however, those risks were balanced by the money she received as part of the three cases alleging health systems fraudulently billed Medicare in various ways, including billing inpatient rates for outpatient services. The repeated cases should serve as a reminder to health-care providers that whistleblowers don't always just fade into the woodwork.

Mitch Kreindler, the principal at Kreindler and Associates in Houston who represented Guardioli in all three cases, said that it is very unusual for someone to encounter this kind of fraud multiple times. He clarified that Guardioli did not seek positions with hospitals just so she could uncover wrongdoing. According to Kreindler, she tried to fix the wrongdoing by reporting her concerns at all three hospitals before reporting out.

Brian Markovitz, an attorney at Joseph, Greenwald & Laake in Greenbelt, Md., agreed that these kinds of cases are unusual, but noted they aren't unheard of. "There are clients of mine who work at multiple health-care facilities and they'll see the same or similar types of fraud at these multiple facilities," Markovitz told Bloomberg Law. Markovitz said whistleblowers who call out multiple groups are more common in the health-care and construction industries.

Playing Through the Whistle Stories like Guardioli's remind health-care providers that they need to be open to listening to those who tip them off to problems on the

inside. "You have to do a good job of monitoring your staff to make sure they understand what potential issues could arise and they address them and don't ignore them," Joel Androphy, an attorney at Berg & Androphy in Houston, told Bloomberg Law.

All three of Guardioli's complaints alleged that she informed her employers of the wrongdoing she discovered before taking legal action. The first action was filed against the CHRISTUS Spohn Health System in February 2009 and ended with a \$5 million settlement with the federal government in 2012. The second was filed against Renown Health in June 2012 and led to a \$9.5 million settlement with the federal government in 2016. The third suit against Banner Health ended in an \$18 million settlement announced by the Justice Department April 12.

Androphy said many corporations are willing to take the risk of not listening to internal recommendations. "If you cheat, you may get caught one out of every 10 times," Androphy said. "Does that nine times you're not caught make it worth the one time you're caught cheating? The answer for most companies is yes."

Rafael Villalobos Jr., an attorney with Eckert Seamans in Philadelphia and a former chief legal counsel, senior vice president, and director of insurance and claims for Aria Health System, based in Philadelphia, disagreed with Androphy, saying that only a minority of health networks would intentionally sidestep the law. "Nowadays, you see a culture where people are much more keyed into these issues and willing to make a change," Villalobos told Bloomberg Law. "If, in this day and age, you have people who are voluntarily acting in noncompliance, I don't think the federal government is going to give you a pass."

From the health provider perspective, Villalobos said the takeaways of lawsuits like these are that health-care systems need to do a "deep dive" into their existing compliance measures, support ongoing training and education, and establish a culture that allows for compliance. "You have to have a culture that allows people and encourages people to come through with issues and concerns," Villalobos said. "It cannot be punitive, it has to be focused more on fixing rather than blaming."

Becoming Unemployable Imagine having to call out your employer for committing fraud not once, not twice, but three times. The long-term ramifications of that can be difficult.

"She's really unemployable at this point of her career and she's someone who previously, if her resume was out there, people would be fighting for," Kreindler said of his whistleblowing client.

The possibility of a whistleblower being blackballed did

not surprise Markovitz. “It’s par for the course. The industry will tell you they don’t do that, but they do that,” he told Bloomberg Law.

Hospitals can often find whistleblowers before they hire them because settlements are made public. Markovitz pointed out that it is easier for a whistleblower to get hired again if he has a common name, like John Smith. Androphy said that even one whistleblower action generally removes a whistleblower from consideration for 80 percent of the jobs in their field and by the third action, they are unhireable.

While some whistleblowers, including Guardiola, receive millions of dollars in settlements, Androphy cautioned that settlement money does not make up for not being able to work. “Most whistleblowers want a job,” Androphy told Bloomberg Law. “They just want daily responsibility.”

Villalobos acknowledged that health-care networks need to be careful in their vetting procedures, including looking at information available on social media. “You need to be circumspect with who you are letting in your organization,” he said.

When asked what it says about the health-care industry that hospitals would not want a person who finds problems, Kreindler told Bloomberg Law, “I’m not sure it says much about health care as much as it says something about our society. We all believe there should be shelters to house the homeless, but no one wants to live next to one.”

Renown Health in a statement said the system settled the lawsuit made public by Guardiola in 2013 that involved “technical billing issues” surrounding types of patient care. “These types of lawsuits are becoming increasingly common nationwide,” according to the statement. “After careful consideration we made a decision to settle the lawsuit rather than to pursue a lengthy and costly defense.”

CHRISTUS Spohn Health System and Banner Health did not respond to Bloomberg Law’s request for comment.

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