

US False Claims Act: Nurse Practitioner's Accusations Against Doctor Dismissed.

A private citizen can file a civil lawsuit in the name of the US Government to recoup money the US Government has paid out for a false claim, for example, a fraudulent Medicare or Medicaid billing wrongfully collected by a healthcare provider.

There is a major incentive. If the civil lawsuit is successful, the private citizen is entitled to receive 15%-25% of all the money recouped by the US Government from the wrongdoer, depending upon the extent to which the citizen's involvement contributed to winning the case. Hypothetically that could mean millions.

In a recent case a nurse practitioner and several co-workers undertook a covert investigation of a physician's billings to Medicare for weekend visits to nursing home patients.

They reckoned the physician would have to put in at least nine hours on each weekend day to actually see all the patients, while his time records had him out of the office only five hours per day. The daughter of a resident told the nurse practitioner her mother told her that no doctor saw or treated her at the nursing home on the weekend in question.

The US District Court for the District of Massachusetts dismissed the nurse practitioner's case for recoupment of monies allegedly billed fraudulently by the physician and for damages for retaliation against her by firing her after she went public with her accusations.

False Claims Act Requires Specific Information

The Court pointed out that allegations in a successful False Claims Act civil lawsuit must include very specific details of the fraudulent practices committed, including dates, patients' identities, names of the nursing homes, exact contents of the claim forms, including billing codings for treatments claimed, identification numbers of the forms and the exact amounts of money involved.

Imprecise allegations are not sufficient that a provider's office time sheets do not match the level of his or her billing activity or that the daughter of a particular nursing home resident said that her mother told her that the doctor never came in that day. Without very specific, exact and precise details to support it, the lawsuit must be dismissed. US v. Compass Medical, 2011 WL 5508916 (D. Mass., November 10, 2011).

Incident Reports: Court Approves Jury Verdict Based On Inferences About Missing Evidence.

A case we reported in February 2009 was recently upheld on appeal: *Missing Incident Report: Jury Returns \$9,000,000+ Verdict After Judge Instructs Jury On Spoliation Of The Evidence*. Legal Eagle Eye Newsletter for the Nursing Profession (17)2 Feb. '09 p. 7.

The patient experienced a substantial unexpected blood loss during surgery. The surgeons ordered a blood sample sent to the blood bank for typing and cross matching and blood sent back to the O.R. for transfusion.

What should have taken at most forty-five minutes took almost seventy. By the time the blood was transfused the patient had suffered major anoxic brain damage.

The nurse who was responsible for getting the blood for transfusion gave a

If the nurse prepared an incident report containing important information about what really happened during the patient's surgery, and the hospital intentionally and in bad faith lost or destroyed the incident report, the jury is allowed to infer that the information in the incident report was damaging to the hospital's position on the liability issues in the lawsuit and favorable to the patient.

SUPREME COURT OF KENTUCKY
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pre-trial deposition stating she did not prepare an incident report.

However, at trial she testified she did fill out an incident report when requested by her charge nurse and placed the report in the outgoing paperwork bin on the front desk.

No witness from the hospital was able to say anything further one way or the other about an incident report or its contents.

The Supreme Court of Kentucky ruled it was correct for the jury to have been instructed that they could decide whom to believe, whether or not there really was an incident report and, if there was, whether the missing incident report must have contained information damaging to the hospital, which is what the jury apparently decided. University Med. Ctr. v. Beglin, __ S.W. 3d __, 2011 WL 5248303 (Ky., October 27, 2011).