

# LEGAL EAGLE EYE NEWSLETTER

April 2015

*For the Nursing Profession*

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## Nurse's Unsupervised Psychiatric Services: Court Upholds US False Claims Act Lawsuit.

A teenage patient was referred to a mental health clinic for counseling after exhibiting behavioral problems at school.

The girl was eligible for medical care through MassHealth and the clinic participated in that program, the state Medicaid agency in Massachusetts.

Her parents complained repeatedly to the lead counselor at the clinic that their daughter was not benefitting from counseling. Twice the lead counselor changed the therapist whom the girl was seeing.

After a time the school gave notice that the girl would not be able to attend classes unless and until she started seeing a psychiatrist.

The clinic's lead counselor referred the patient to a "Dr. Ortiz" at the clinic. "Dr. Ortiz" was not a physician but was in fact a nurse practitioner.

The nurse practitioner diagnosed the patient with bipolar disorder and prescribed Trileptal, an anticonvulsant used to treat seizure disorders.

When the girl starting having a reaction to the medication her parents tried to call the nurse, but their phone calls were not returned.

Because her symptoms were getting worse, and they could not reach the nurse, the parents decided on their own to have her stop taking the medication.



***The parents can sue the clinic on behalf of the US government to recoup all the clinic's Medicaid billings for care that was out of compliance with state regulations.***

***That includes the daughter's twenty-seven visits and all the patients of the same unsupervised or unlicensed providers going back six years.***

UNITED STATES COURT OF APPEALS  
FIRST CIRCUIT  
March 17, 2015

Abruptly stopping the medication led to a seizure for which the patient had to be hospitalized.

After the parents were able to speak with the nurse practitioner they allowed their daughter to resume treatment with her, still under the impression that the nurse practitioner treating their daughter was a psychiatrist.

Five months later the patient experienced another seizure. That seizure proved fatal.

In the process of filing complaints with various state agencies the parents learned that the facility was not in compliance with a number of state regulations for mental health facilities, compliance being a condition for billing the state's Medicaid agency for payment.

**Parents Can Use US False Claims Act As Basis For Civil Lawsuit**

The US Court of Appeals for the First Circuit (Massachusetts) ruled that the US False Claims Act is a valid legal vehicle for the parents to pursue a civil lawsuit against the clinic for their daughter's untimely death.

The parents can sue to recoup not only the Medicaid billings for her care but also for the other clinic patients of the same unsupervised and unlicensed providers going back six years.

*Continued on page three.*

Inside this month's  
issue...

April 2015

New Subscriptions  
See Page 3

Unsupervised Nurse Practitioner/US False Claims Act/Civil Lawsuit  
Post-Surgical Complications - Labor & Delivery Nursing  
Family And Medical Leave Act/Nurse's Serious Health Condition  
Pregnancy Discrimination/Nurse/Unequal Disciplinary Measures  
Nurse Reported To Board/Intentional Infliction Of Emotional Distress  
Nurse Patient Race-Matching/Civil Rights Act/Race Discrimination  
Narcotics Diversion/Federal Regulations/Skilled Nursing Facility  
Nurse/Drainage Tube Care - Pressure Sores/Urinary Tract Infection

# Nurse's Unsupervised Psych Services: Court Upholds US False Claims Act Suit (Continued).

Continued from page one.

## Nurse Practitioner Was Not Supervised By a Board-Certified Psychiatrist

State regulations require a psychiatric nurse practitioner to be supervised by a board-certified psychiatrist.

The staff psychiatrist in the clinic was licensed as a physician but was not board-certified in psychiatry.

The nurse practitioner's services were not in compliance with state regulations and thus could not justifiably be billed to the state Medicaid agency.

The Court did not delve into the fundamental question of the competence or incompetence of the nurse practitioner's care or question her being held out or allowing herself to be held out as a psychiatrist when she was not.

Those questions were irrelevant and did not have to be answered in the context of a lawsuit under the False Claims Act.

### Unlicensed Personnel

#### Providing Psychotherapy Services

Three others who provided psychotherapy services to the patient held no professional licenses. That was a blatant violation by the clinic of state regulations and in turn was a violation of Medicaid conditions of participation and payment.

The lawsuit did not have to question their competence or allege malpractice.

***The parents' daughter died after receiving treatment that was out of compliance with over a dozen state regulations, as determined by an independent investigation by the state Department of Public Health.***

***The parents' attorneys have carefully compiled information regarding the names of unlicensed or unsupervised providers and the dates, amounts and codes for their services falsely submitted to Mass-Health for payment. That satisfies the False Claims Act's requirement that allegations of false claims must be specific and particular.***

***Conditions of participation and of payment are essentially the same in this context and the Court will not look for any distinction.***

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### False Claims Act

The US False Claims Act authorizes a private individual to sue on behalf of the US government in order to recover funds that have been defrauded from the US government.

If the suit is successful, the private individual can keep a certain percentage of the government's money recovered.

The US or the state government may elect to join in the lawsuit and assist with prosecuting it, or may decline to do so.

The Act outlaws false or fraudulent claims for payment. A false or fraudulent claim may be one which requires a condition for payment which has not been met.

Pertinent to this case, state regulations for Medicaid reimbursement explicitly provide that a mental health clinic, among other things, must meet certain requirements as to staff supervision.

The clinic director, a social worker, responded to the parents' lawsuit with a statement that he was unaware of the requirement that a board-certified psychiatrist was necessary on staff to supervise the nurse practitioner and others and that regular supervisory sessions had to be conducted and documented.

However, reckless disregard or deliberate ignorance of regulatory requirements is no defense. Disregard or ignorance of pertinent regulations is proof of intent to submit a false or fraudulent claim for services that were not in compliance with regulatory requirements, the Court said.

**US v. Universal Health, \_\_\_ F. 3d \_\_\_, 2015 WL 1189555 (1st Cir., March 17, 2015).**

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