



Down a Lonely Path: One Whistle-blower's Journey

By John Schilling, CPA

Executive Summary

As professionals, we are all required to adhere to the high ethical standards of our profession and to obey the laws of the land. Auditors play a unique role by assessing and reporting how a company controls its internal systems and directs its employees to properly carry out their responsibilities. Much like an auditor, when things go terribly wrong, often, a person of integrity may step forward and do what's right. They call that person a whistle-blower. This article talks about the experience of one such person involved in reporting one of largest healthcare frauds ever.

Introduction

One has only to pick up the newspaper, or watch the evening news on television, to learn of yet another crime against the American taxpayers. The National Health Care Anti-Fraud Association (NHCAA) estimates *conservatively* that 3% of all healthcare spending—or \$68 billion—is lost to healthcare fraud. That is more than the gross domestic product of 120 different countries, including Iceland, Ecuador, and Kenya¹. Daily, these frauds are perpetrated against every American taxpayer; not only stealing from you, but also eroding the Medicare healthcare program designed to care for the elderly citizens of America. One of the strongest weapons against healthcare fraud is the whistle-blower.

Whistle-blowers' and internal auditors' activities, in many ways, are similar. As an internal auditor, your objective is to ferret out ineffective or missing controls, and identify abuse, so changes can be made within the organization. Likewise, whistle-blowers expose abuse within a company by bringing it to the appropriate person's attention, through in-house mechanisms. If necessary, a whistle-blower takes the next step by exposing the abuse to a higher authority. As such, internal auditors and whistle-blowers share common processes and goals when exposing fraud.

Encountering Fraud

What would you do, if you came to the conclusion your employer was perpetrating Medicare fraud? I was a rookie accountant, having recently relocated my young family 1,400 miles from our hometown when I reached this realization. In a fast-growing, publicly traded healthcare company, my new position as the Supervisor of Reimbursement Services in Southwest Florida seemed to have limitless career opportunities. Six months into my new job, I stumbled across a questionable Medicare accounting practice which I believed to be unethical, if not wholly illegal. I discovered the company was preparing two Medicare cost reports. As you know, the Medicare cost report is a summary of reimbursable costs, submitted to the Medicare program for services provided to Medicare beneficiaries. The cost report determines if the provider is due additional reimbursement from the Medicare program, or if the provider has been overpaid.

The first of the two cost reports, which was the one filed with the Medicare program by my employer, was "aggressive," substantially inflating the Medicare allowable costs of the hospital. By filing these inflated cost reports, the

hospital obtained fraudulent Medicare funding. The second, "reserve" cost report, accurately identified the hospital's true costs. This cost report was kept secret and not revealed to internal or external auditors. Many of the "reserve" reports were stamped "Confidential" and "Do Not Show to Medicare Auditors."

Since there was a substantial monetary discrepancy between the "aggressive" and "reserve" reports, the difference was kept on the company's books as a reserve. If the "aggressive" cost report had been audited by Medicare and the hospital was required to reimburse the Medicare program for the overpayment, the money was readily available in the reserve account. Once the Medicare audit was completed and the "aggressive" dollars overlooked by auditors, the money from the reserve account was reclassified as income. Upon further investigation, I found this practice was widespread throughout the company, resulting in millions of dollars in illegal reserves.

When I questioned the practice, management told me to remain quiet. My job was on the line, I was told. Remember that I was just a few years out of college. Idealistic to be sure, but being young and naive, I didn't want to believe my supervisors, and possibly even my employer, were committing fraud. In meeting after meeting, however, I met with resistance and denial. It was an emotional, lonely, and frightening time for me. I valued the oath of my Certified Public Accountant license, and I was tremendously terrified that I could lose both my job and my career.

After months of research, and unproductive attempts to alter the

¹ NHCAA.org (Anti-Fraud Resource Center)

company's practices, I realized my ideal job trajectory was to be altered forever by my values. I felt I had no choice but to honor what I had sworn to uphold, and the values of my heart. The practice of keeping two sets of books was wrong, unethical, and fraudulent. The next question was, "What can I do?" I ask you, "What would you do?"

Fate Steps In

At the time, I had no idea that the fraud I had stumbled across fell under an obscure federal whistle-blower law signed by Abraham Lincoln. It was simply fate that prompted me to read an article in *The Wall Street Journal* about the False Claims Act (FCA). The FCA, or *qui tam*, law was enacted during the Civil War to encourage citizens to report any fraud perpetrated by contractors (not just healthcare) against the government. The law allows private citizens to sue contractors on the government's behalf, and if the case results in a settlement, the whistle-blower is entitled to receive between 15 and 30 percent of the government's recovery. The law also allows for triple damages, penalties up to \$10,000 per claim, and whistle-blower attorney fees, to be assessed the defendant. An FCA case is filed under seal (in secret), allowing the government time to investigate and confirm the allegations. If convinced the claim(s) are valid, the government has the option to intervene (join) in the case. Upon intervention in a case, the justice department attorneys take the lead in the civil action. Many of these cases result in settlements. However, few *qui tam* cases are successful without government intervention.

It was from *The Wall Street Journal* article, that I learned of a niche law firm. The article seemed to be written for me. Since my attempts to identify and change the illegal practices within the organization had been rejected as naïve, I assumed that I was naïve regarding my liabilities, as well. Contacting the law firm was one of the hardest phone calls I've ever made. I was terrified. Ready for rejection, I felt this was my last chance to change what I perceived as corrupt practices. As it turned out, although I was young and naïve, I was right. After I provided them with an extensive education in Medicare regulations, the law firm and the Justice Department agreed with me.

False Claims Act Statistics

- 80% are declined by the government. Only 20% of those 80% proceed without government intervention.
- Only 20% of the FCA cases filed each year proceed at all.
- The average FCA case takes 39 months to resolve.
- An average of 100 cases are settled yearly;
 - 50 settle for less than \$2 million
 - 50 settle for more than \$2 million
- In 2008, seven cases settled for more than \$50 million, three of them settling for \$100 million+.

Source: Tax Payers Against Fraud

Going Undercover

The dilemma set before me, when I was employed by Columbia/HCA, the hospital giant, is a dilemma you could easily find yourself in today. I was naïve to believe that the simple accounting manipulation was an error. What should have been an easily rectified accounting error mushroomed into a massive criminal and civil healthcare fraud investigation.

I became an undercover FBI informant, supplying the government with a vast amount of evidence. I played FBI spy for nine months. During those months, I was wired by the FBI to record company meetings; covertly taped phone calls; photocopied incriminating documents; and provided a wealth of operational information to the FBI agents investigating the case. A few years later, I found myself in a federal courtroom, pitted against my former managers, now indicted on criminal charges.

In court, I provided key government testimony during the criminal trial. Fueled by information provided by me and several other whistle-blowers, the government also continued a civil investigation into a variety of additional healthcare fraud claims for several years.

Counting the Costs

Over the course of this case, I experienced the loss of my job and many friendships.

As a result of my decision to do the right thing, my family endured financial hardships, and ultimately we had to move back to our home town in order for me to gain employment. My work on the case was constant, much more than a 9 to 5 job. When the phone rang any time of the day or night it was invariably one of my attorneys and we were headed for hours of debate.

The stress was overwhelming. I spent long hours poring over documents; endured months of meetings with federal agents and the Department of Justice; and several days testifying in federal court. The paranoia I felt was constant. Was I being watched? Was my family possibly at risk? Had someone tampered with my car or home? Emotionally, I was drained. The highs and lows for my family and I were very much like being on an emotional rollercoaster.

Seven years later, Columbia/HCA settled both criminal and civil fraud allegations for \$1.7 Billion, and pled guilty to fourteen charges of criminal conduct, including cost report fraud. The entire \$1.7 billion recovery was the result of several FCA cases, filed by a number of whistle-blowers, for a variety of fraudulent practices.

The cost report fraud that I exposed represented over \$600 million of the total settlement. I was among a few whistle-blowers who were awarded multi-million-dollar shares of the settlement. Over the course of the investigation and trial, the company spent over \$300 million in their defense. My moral dilemma was solved. I am proud to say I stood up to corporate corruption and became a whistle-blower.

Qualities of a Whistle-blower

There are three key elements to being a whistle-blower; 1) It is imperative that you are knowledgeable in your field. You must also be knowledgeable concerning the regulations surrounding your industry (in this case Medicare). 2) Without perseverance, you are unlikely to be successful. *Qui tam* cases are not easily sold to the government, nor are they easily resolved. Cases often extend many years, because the government has to be convinced there is fraud; evidence is amassed and evaluated; trials are argued and/or settlements are negotiated. You have to be an active

participant in the process. Nothing gets done in a *qui tam* case without great perseverance, 3) Possibly the most important element to being a whistle-blower, is values. At the end of the day, what is your motivation? Why is this important to you? If it is anything less than doing the right thing, you are on the wrong path.

Understanding the Risks

There are ramifications you must consider when contemplating your role as a whistle-blower. Even though there are federal laws protecting whistle-blowers, you must consider the risk to your career, earnings potential, and reputation within your industry. Are you willing to lose business relationships and/or friendships? Are you willing to risk the safety of yourself and your family? Are you willing to lose some things you take for granted in order to do the right thing?

The label whistle-blower may have negative connotations and risks, but with it comes the inner knowledge that you did what was right.

The statistics are overwhelming. You are more likely to be struck by lightning, than to file and win a *qui tam* lawsuit.

According to Taxpayers Against Fraud, a nonprofit False Claims legal center, on average, 400 False Claims Act cases are filed each year.²

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Most whistle-blowers discover a problem, attempt to correct it, are ignored or retaliated against, and find that filing on behalf of the government is the only way to follow their moral compass. Even though the potential losses seem great, they are minuscule when compared to the potential gains. Most whistle-blowers believe they are doing what's right by following a moral and legal code and protecting their own reputations. For most, it is not about money, it is about integrity.

Summary

I am a whistle-blower, and proud of it. Whistle-blowers play an important role in today's society, and they should be rewarded for exposing fraud. Since 1986, whistle-blowers, using the FCA, have helped our government recover over \$20 billion. That money was defrauded from taxpayers like you and me. My case sent a shock-wave through the healthcare industry, forcing healthcare providers to change the way they conducted business. The entire Columbia/HCA investigation created a compliance-oriented healthcare culture. Compliance is now a priority best practice standard with many healthcare providers. **NP**

John W. Schilling, CPA has 20 years of healthcare financial experience. He currently conducts speaking engagements regarding his whistle-blower experiences, and is a partner with EthicSolutions LLC, a consulting firm that assists whistle-blowers, law firms, and the government with healthcare fraud cases. In 2008, he authored Undercover: How I Went from Company Man to FBI Spy—and Exposed the Worst Healthcare Fraud in U. S. History (Amacom). John may be reached at john@ethicsolutionsllc.com or by telephone at 239-598-5043.

² <http://www.taf.org>

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