

The MSPs Role in the False Claims Act

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Why MSPS need to understand the

FCA

- Common Misunderstandings
 - “It’s not my problem. Compliance will handle.”
 - “So what if the reappointment is a little late? It’s just a clerical error.”
 - “Yes, those temporary privileges expired. What do you mean she has been working?”
 - “No one granted those privileges... can we make them retroactive?”
 - “The PA no longer has a supervising physician but he knows what he is doing in the clinic so it should be okay.”

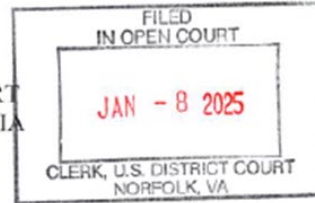




even telling women they
had cancer when they
didn't.

But what about
the hospital??

- January 8, 2025 – Department of Justice Press Release
- Norfolk, Va. - A federal grand jury returned an indictment today charging Chesapeake Regional Medical Center (CRMC) with healthcare fraud and conspiracy to defraud the United States and interference with government functions.



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 2:25-cr- <u>1</u>
)	
CHESAPEAKE REGIONAL MEDICAL)	18 U.S.C. § 371
CENTER,)	Conspiracy to Defraud the United States
)	and Interfere with Government Functions
)	(Count 1)
a/k/a CHESAPEAKE GENERAL)	
HOSPITAL,)	18 U.S.C. §§ 1347 & 2
)	Health Care Fraud
a/k/a CHESAPEAKE REGIONAL)	(Count 2)
HEALTHCARE,)	
)	Criminal Forfeiture
Defendant.)	

INDICTMENT

January 2025 Term – At Norfolk, Virginia

THE GRAND JURY CHARGES THAT:

At all times relevant to this Indictment, unless otherwise stated:

Introductory Allegations

Health Care Benefit Programs

1. The term “health care benefit program” is defined in 18 U.S.C. § 24(b) to mean any public and private plan and contract, affecting commerce, under which any medical benefit, item, and service is provided to any individual, and includes any individual and entity who is providing



Chesapeake Regional Medical Center

- On staff 1984 – 2019
- Hospital knew he had been terminated from another hospital for performing unnecessary surgeries – Dept. of Surgery had recommended against appointment
- Convicted of two Federal Felonies in 1996
- License suspended and reinstated
- From 2010 – 2019
 - CRMC and Perwaiz agreed to Perwaiz continually performing procedures in violation of rules, regulations, and healthcare benefit programs
 - Elective inductions at 39 weeks that were not medically necessary
 - Submitted OB flow sheets with two different delivery dates
 - Review of flowsheets in 2019 showed that 64% were altered
 - “CRMC employees and practitioners allegedly observed or were made aware of such discrepancies, but nonetheless allowed Perwaiz to continue these practices and continued billing for them.”

CRMC's credentialing of Perwaiz

- **CRMC periodically reviewed the credentials of practicing physicians, including Perwaiz, every two years. It continually re-credentialed Perwaiz approximately every two years between 1984 and 2019. Credentialing recommendations are ultimately approved by CRMC's CEO. Perwaiz was last re-credentialed in or around June 2019, and his re-credentialing packet contained information regarding his tax conviction and Maryview suspension.**
- Perwaiz's credentialing file also contained notes regarding medical malpractice lawsuits resulting from procedures he performed at CRMC. Public court records reflect that **Perwaiz was a defendant in at least eight medical malpractice** lawsuits between 1988 and 2019, including two where CRMC was named as a co-defendant.



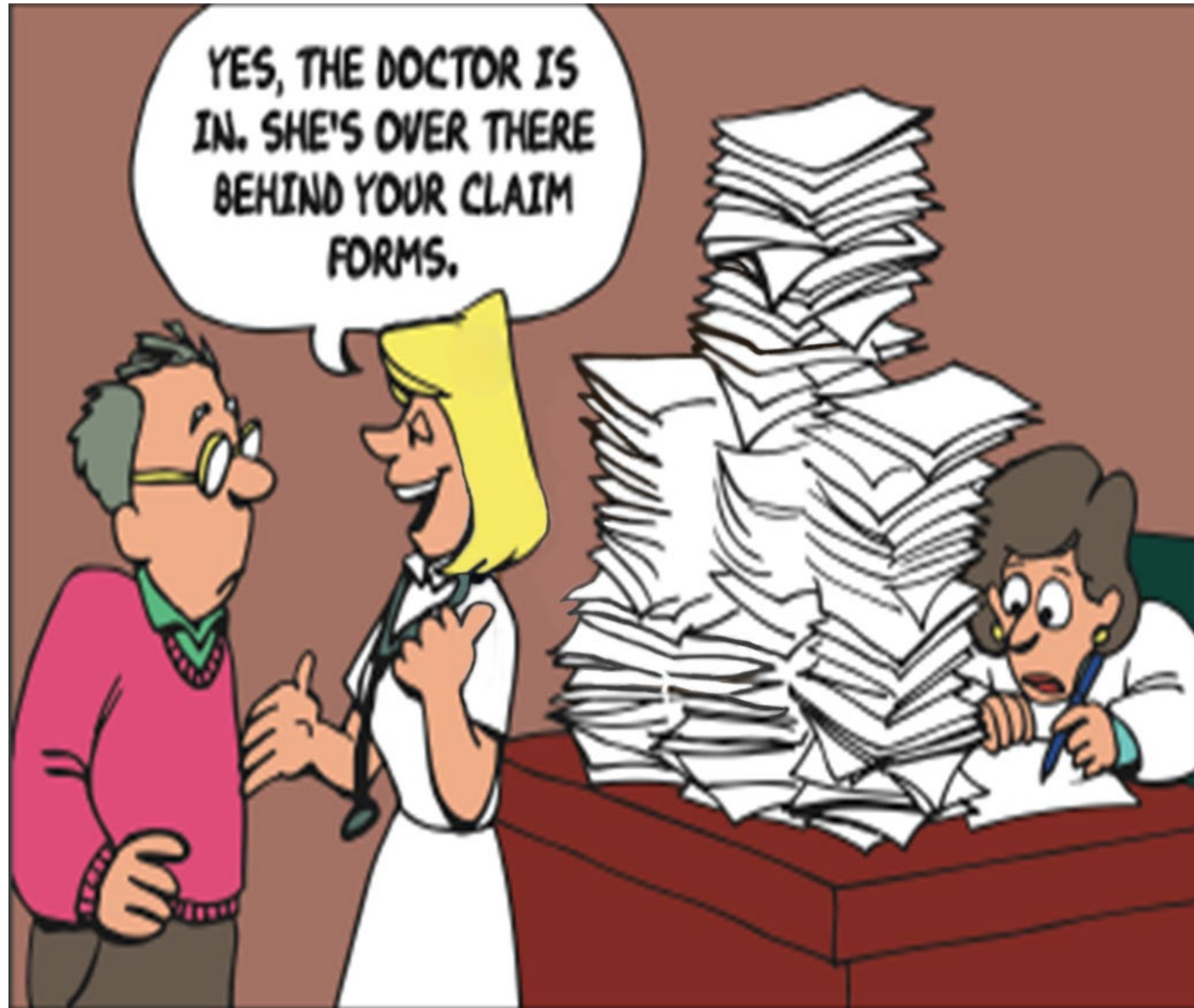
Chesapeake General Hospital
736 S. Battlefield Blvd.
Chesapeake VA, 23320

RECEIVED 07/27/07 09:51:07
Chesapeake General Hospital

Dear Sirs:

After reviewing a recent operating room schedule where Dr. Perwaiz had seven cases scheduled back to back in one day with one case involving a 22 year old who was having both ovaries removed and none of the patients older than 44 years, I believe Dr. Perwaiz has returned to the type of behavior that has had him to be dismissed from two hospital staffs, convicted of two felonies, an admission that his life-style was out of control, and that he had bribed health professionals to maintain his practice.

After I was brought before this body last year to explain my testimony to the Virginia Board of Medicine, I was asked to go through proper channels if I saw any medical care that was inappropriate. I believe this body needs to look into Dr. Perwaiz's surgical indications and review his activities. I have elected not to go through the Department of OB/GYN since this department had not taken any action prior to his previous convictions and because the individuals in power in the department almost unanimously supported his bid to return immediately to the staff after his last dismissal. Enclosed is an operative schedule from November.



The False Claims Act

- Federal False Claims Act 31 U.S.C. §§ 3729-3733: imposes civil liability on any person who “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval.” 31 U.S.C. § 3729(a)(1)(A).
 - Civil penalties and treble damages
 - Criminal component
 - Strong whistleblower incentives (up to 30%)

False Claims Act

- Enacted in 1863
- Civil War supplies
- Thoroughbreds were ordered

False Claims Act



False Claims Act

- *Knowingly* submitting False Claims for payment
 - “*Claim*” – *any demand for payment*





False Claims Act

- Knowledge of Falsity
 - Actual knowledge
 - Deliberate ignorance of the truth or falsity of the information
 - Reckless disregard of the truth or falsity of the information

Anti -Kickback Statute



Anti-Kickback Statute 42 U.S.C.

- §1320(a)-7(b): targets individuals who knowingly and willfully pay, solicit, offer , or receive remuneration directly or indirectly to induce or reward referrals of services and items reimbursed by federal healthcare programs.

Penalties: 3 times amount of kickback, plus up to \$100,000 per kickback



Relevant safe harbors

Personal services
Employment

Stark Law

- **Physician Self-Referral (Stark) Law, 42 U.S.C. §1395nn:** prohibits providers from making referrals for certain designated healthcare services reimbursable by federal healthcare programs to an entity in which the provider (or immediate family member) has an ownership or investment interest or with which he has a compensation agreement.

False Claims Act recoveries



\$2.92 Billion

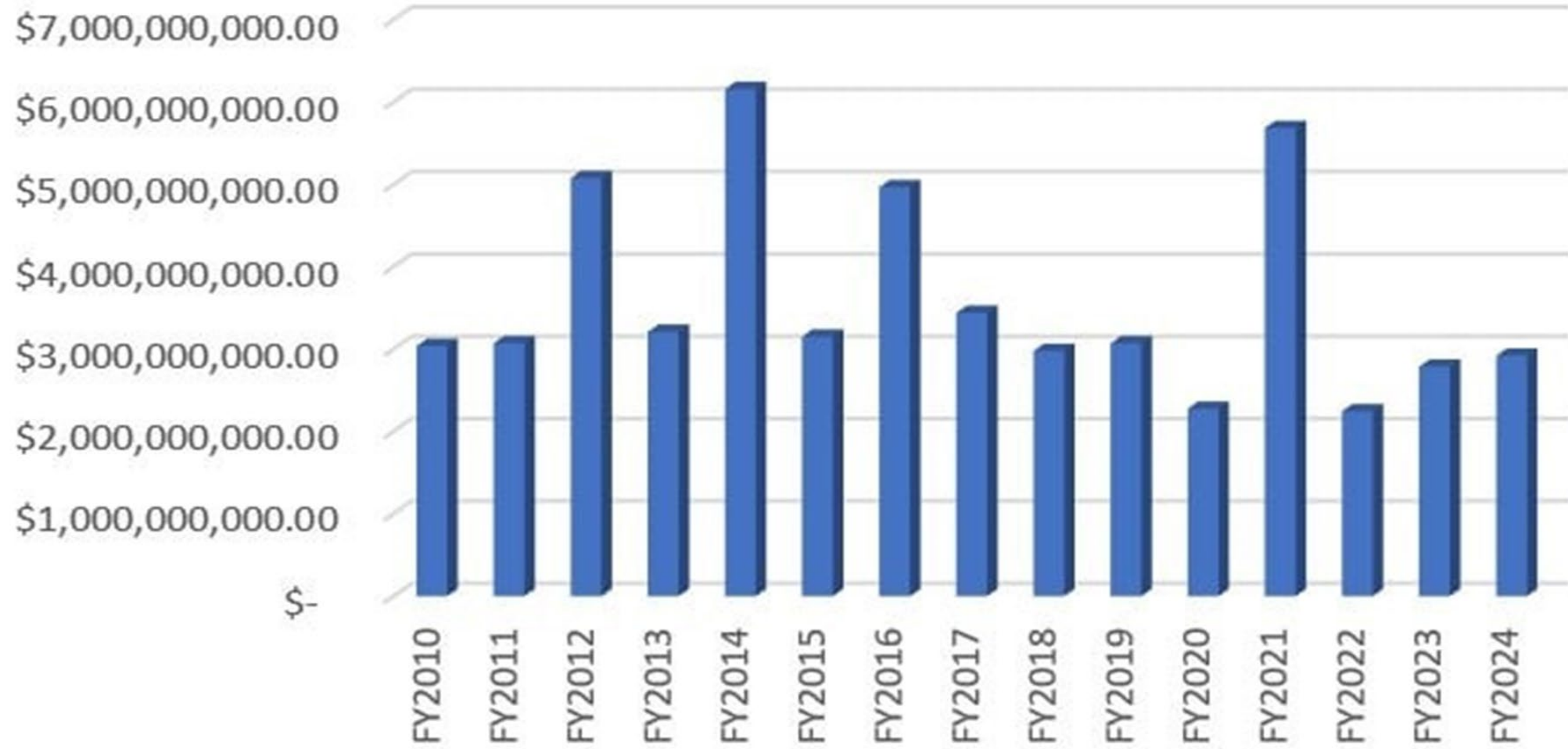


979 Newly filed *qui tam* lawsuits

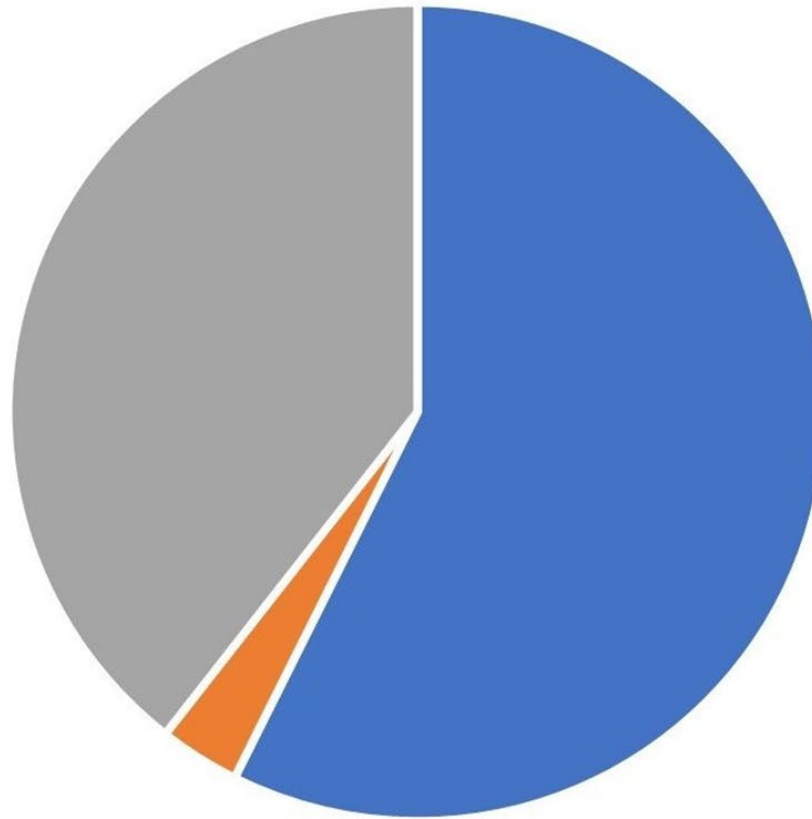


Over 400 new FCA matters opened by DOJ that did not originate from *qui tam* lawsuits

FCA Recoveries by Year



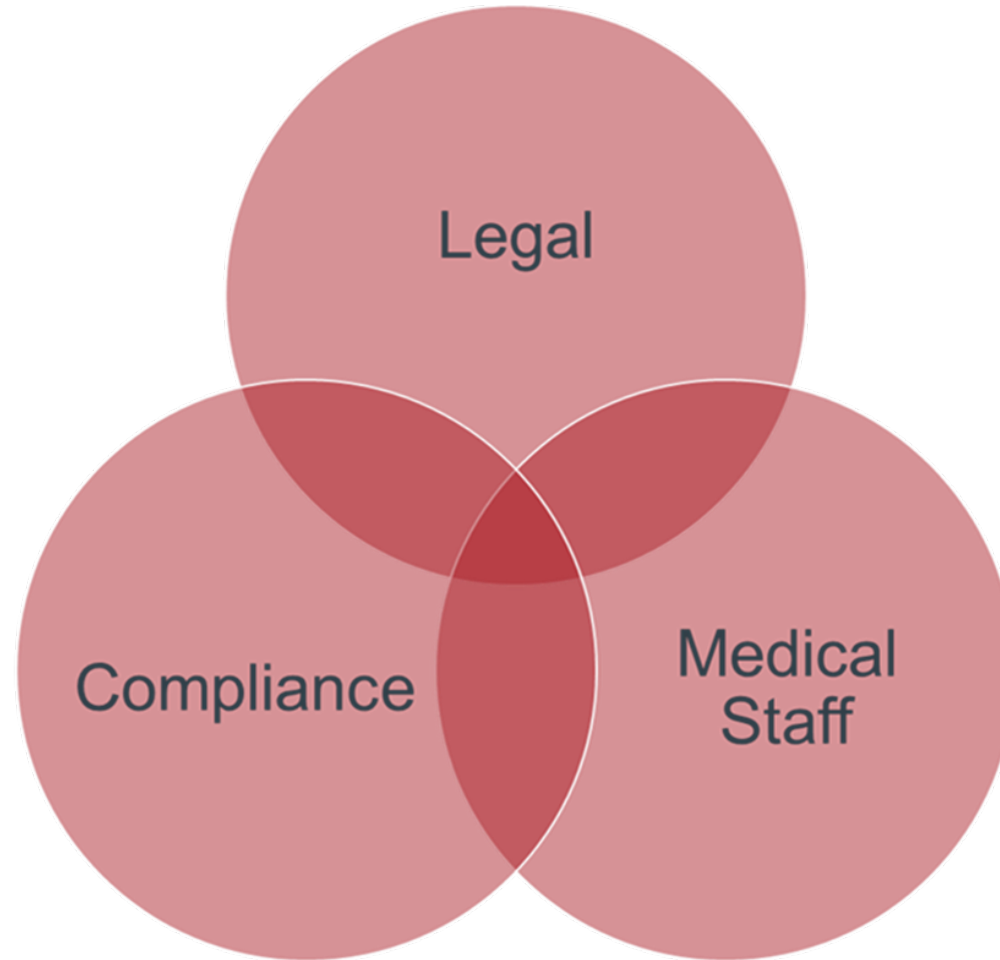
FY2024 FCA Recoveries



■ Healthcare ■ Defense ■ Other



Legal, compliance and the medical staff



First-line reviewers

- Via credentialing, governance, and peer review the medical staff (and the attorneys that advise them) may be the first to see:
 - A medical necessity issue;
 - An inappropriate financial relationship;
 - A billing or coding issue
- And therefore, FCA liability.

Management of multiple processes

- Best Practices:
 - Don't ignore complaints!
 - Take peer review/quality improvement seriously
 - Use external review when warranted
 - Review diagnostic testing to support procedures
 - Scrutinize significant outliers
 - Refer issues discovered to legal
 - Coordinate with Compliance Department where appropriate

Takeaways

Maintain independent med staff processes

Follow all relevant bylaw procedures in a timely manner

Consult legal, compliance, HR

Maintain peer review privilege and attorney client privilege

Patient safety always the key guiding principle



Criminal v. Civil Liability



Medicare attestation

- Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. **Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.**
 - 42 CFR 412.46(b)



Expansion of False Claims

Universal Health Services

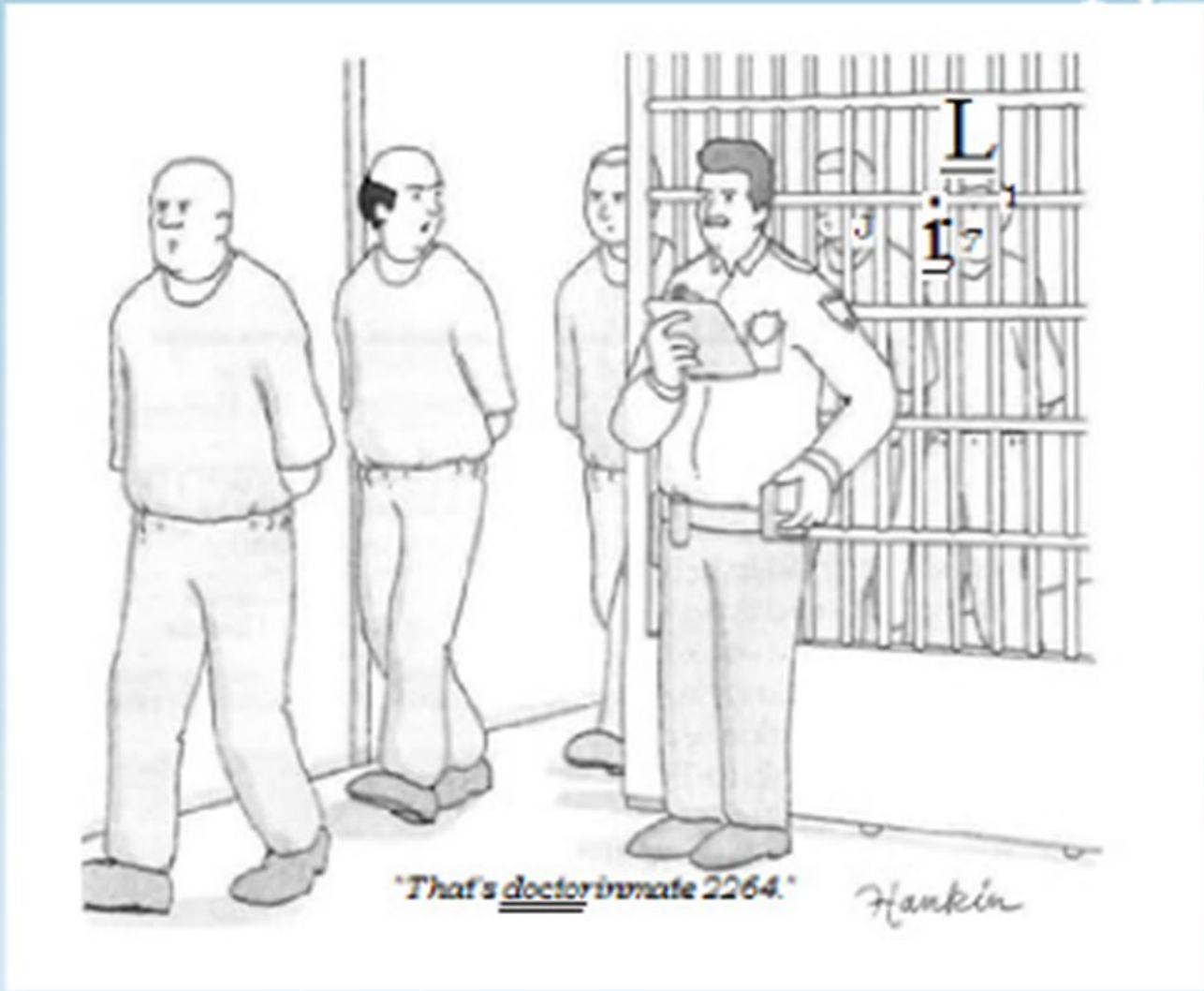
v.

*United States ex. rel.
Escobar*



- Patient died from seizure after receiving mental health treatment
- UHS employed unlicensed and unsupervised personnel
- UHS billed for treatment
- Only one of five individuals treating decedent were properly licensed or supervised







Notwithstanding any other provision of this title, **no payment may be made** under part A or part B **for any expenses incurred for items or services (1) (A) which**, except for items and services described in a succeeding paragraph, **are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.**




Redding Hospital

How Peer Review Failed at
Redding Hospital

A Congressional Report


<http://www.allianceforpatientsafety.org/redding-failure.pdf>





...the performance of the service is so deficient that for all practical purposes it is the equivalent of no performance at all.

Mikes v. Straus (2001)



...services that were not reasonable and necessary, were incompatible with standards of acceptable medical practice, and were worthless and of no medical value.

U.S. v. Azmat, Satilla Regional Medical Center



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DOJ decision to p r o s e c u t e

- Nature of the procedure/service at issue
- Harm or potential for harm
- Error rate and nature of errors
- Evidence of knowledge
- Value of claims
- Revenue driven scheme

Red Flags

- Dept. chair selects all the cases for peer review
- Complaints of incompetence or unnecessary procedures are ignored
- High volume producers are not subjected to meaningful peer review
- Patients with significant deviations are not addressed
- Privileges are granted without documented evidence of competency

Avoiding liability

Arthur S. DiDio, M.D., J.D.,
Fraud Division DOJ

- Follow your bylaws
- Thorough credentialing
- Don't ignore complaints!
- Take peer review/quality improvement seriously
 - Use external review when warranted
 - Review diagnostic testing to support procedures



Multi-hospital systems

- EMR Access Considerations
- Site Specific Privileges
- Diagnostic Services



Hospital based outpatient services/ clinics

- Licensure Status
- Privileging vs. Credentialing
- Services Offered



Partnerships and education

- Corporate Compliance is your friend!
- Partner and Educate:
 - Surgical/Procedural Scheduling
 - Operations Leaders
 - Medical Staff Leaders
 - Administration



Have the information ready

- Full description of what happened (who, what, where, when)
- List of patients effected (Name, MRN, etc)
- Any quality concerns
- Actions taken to resolve
- Actions taken to error proof for future





Proactive Monitoring

- Thorough review of case logs at initial and reappointment
- Robust OPPE Data and Review Processes
- Expirables tracking



“EAT WHAT YOU KILL”

Hailed as a savior upon his arrival in Helena, Dr. Thomas C. Weiner became a favorite of patients and his hospital's highest earner. As the myth surrounding the high-profile oncologist grew, so did the trail of patient harm and suspicious deaths.

St. Peter's agrees to pay \$10.8 million to settle federal investigation

Authorities accused the Helena hospital of submitting false claims to federal health programs.



U.S. Attorney Jesse Laslovich announces a 2024 settlement reached with St. Peter's Health over charges that the hospital submitted false claims to federal health programs. Credit: JoVonne Wagner / MTFP



PROPUBLICA

A Hospital Helped a Doctor's Practice Flourish Even as It Suspected He Was Hurting Patients



Contact me



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