

Orange is Not Your Color: Staying Out of Trouble with the Law

Kevin A. Hickman, DMSc, MJ (Health Law), MHA, CHC, PA-C

Objectives

- Discuss federal laws supporting compliant and administrative healthcare delivery and their impact on healthcare teams

- Cite cases demonstrating the impact of violating laws and regulations of healthcare delivery to staff and healthcare leaders

- Describe ways to identify and report concerns of potential legal violations within healthcare delivery

Disclosures



All opinions presented are my own and do not represent those of my employers.



This information is intended for educational purposes. The information presented should not be construed as legal advice, nor advice on state or federal laws and regulations. Legal counsel should be obtained for those needing legal clarification for professional practice concerns.



All attempts were made to present the most up-to-date information.



All questions should be theoretical with the intent of an academic discussion.



generated by midjourney

Laws set boundaries for protection from or liability for punishment

Morals motivate our speech and behavior

Ethics reveals and directs our decisions when a dilemma arises

Fences set boundaries to define and protect the garden from pest pressure

Water splits and spouts seeds.

Plants lean toward sunlight for nourishment

Gardeners tend, train, and prune growth, and select ripened fruits

What Guides Our Actions?

law = formal rules that govern how we behave, what we must and must not do, creating an enforceable standard of behavior^{C1}

morality = framework of values, principles, beliefs, customs, & ways of living, not usually enforced by the state in the U.S., which usually guides us unconsciously^{C1}

ethics = process of conscious reflection for determining what action to take based on values, principles and purpose^{C1}

law ≠ morality ≠ ethics

^{C1} What is the difference between Ethics, Morality, and the Law? The Ethics Centre, 2020 <https://www.youtube.com/watch?v=Xki2fRA0bY8>

Morals in Medicine

Professional

- Public servants must act in the public interest. ^{C3}
- Nonmaleficence forbids selfish action or inaction ^{C4}
- Discernment entails recognizing ethical, legal, and moral dimensions of each healthcare decision ^{C4}

Personal

- PAs are people with morals
- Healers provide care with compassion - empathetic action to alleviate suffering ^{C5}
- Moral judgements are made in context ^{C6}
- Dissonance between morality and action is distressing ^{C6}

^{C3} Savulescu J. Conscientious objection in medicine. *British Medical Journal*, 332(7536);2016., 294 <https://pubmed.ncbi.nlm.nih.gov/16455733/>

^{C4} Lo B. *Resolving Ethical Dilemmas: A Guide for Clinicians*. 2020. Philadelphia: Wolters Kluwer eISBN 9781975142155
<https://meded.lwwhealthlibrary.com/book.aspx?bookid=823>

^{C5} McGonigal K. *The Practical Science of Compassion*. Compassion in Therapy Summit. 2021

^{C6} Taylor CR, Dell'Oro R. *Health & Human Flourishing: Religion, Medicine, and Moral Anthropology*. 2006. Georgetown University Press ISBN 9781589010796
<https://meded.lwwhealthlibrary.com/book.aspx?bookid=823>

Morals in Medicine

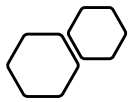
moral distress

- psychological distress of being in a situation in which one is constrained from acting on what one knows to be right ^{C7}
- leads to anger, anxiety, frustration, helplessness, fatigue, burnout ^{C4}

[!] Actions dissonant with conscience elicit moral distress

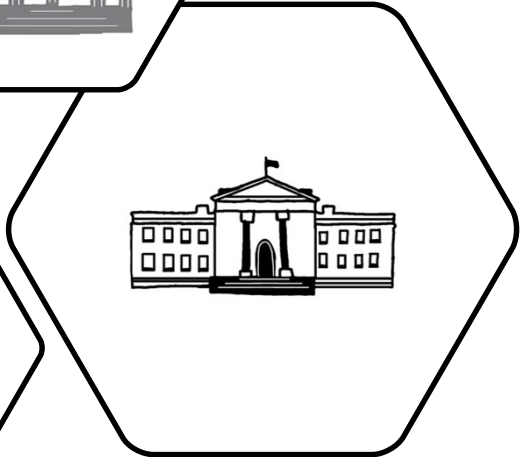
^{C7} Petriceks AH. A clinical catharsis: Moral distress and the uses of tragedy in palliative care. *Palliative and Supportive Care*. 2022;1-2. doi:10.1017/S1478951522000359
<https://pubmed.ncbi.nlm.nih.gov/35317882/>

^{C4} Lo B. *Resolving Ethical Dilemmas: A Guide for Clinicians*. 2020. Philadelphia: Wolters Kluwer eISBN 9781975142155
<https://meded.lwwhealthlibrary.com/book.aspx?bookid=823>



Branches of Government

The U.S. Constitution created 3 branches of government



Copyrighted, Hickman 2021

False Claims Act

The False Claims Act (FCA) is a federal law enacted during the Civil War in 1863 to combat fraud against the government

- Prohibits knowingly submitting false claims for payment to the government.

Broadly applies to various industries receiving federal funds, including healthcare, defense contracting, and government procurement.

Encompasses a wide range of fraudulent conduct,

- such as billing for services not rendered,
- providing substandard goods,
- making false certifications.

False Claims Act

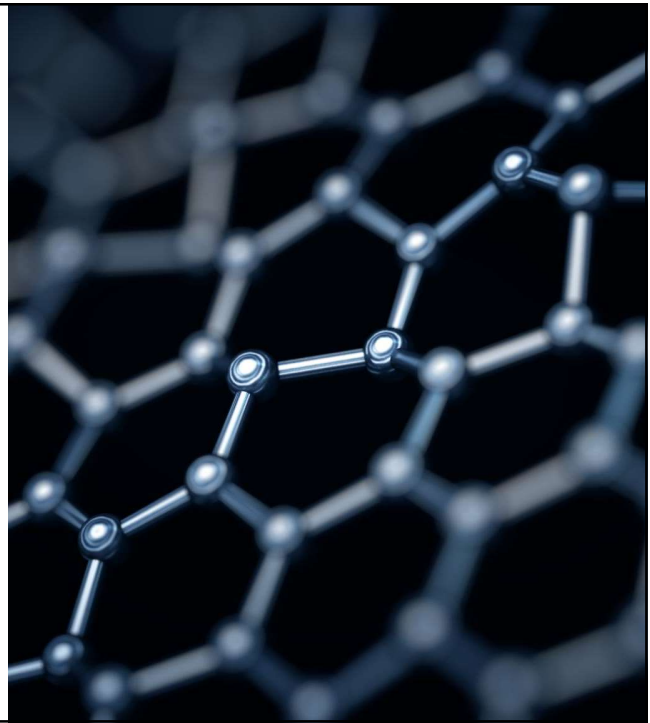
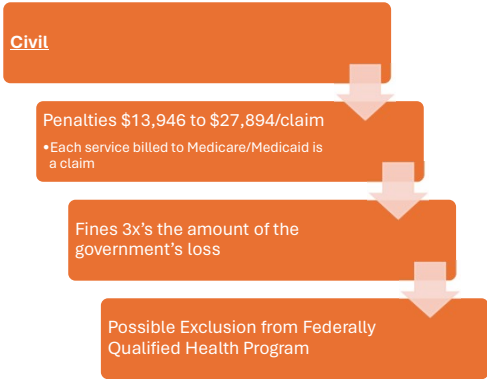
Imposes liability for "false" or "fraudulent" claims,

- including those made with deliberate ignorance or reckless disregard for the truth.

Allows whistleblowers (qui tam relators) to file lawsuits on behalf of the government and receive a portion of recovered damages.

Investigated and prosecuted by various federal agencies

False Claims Penalties

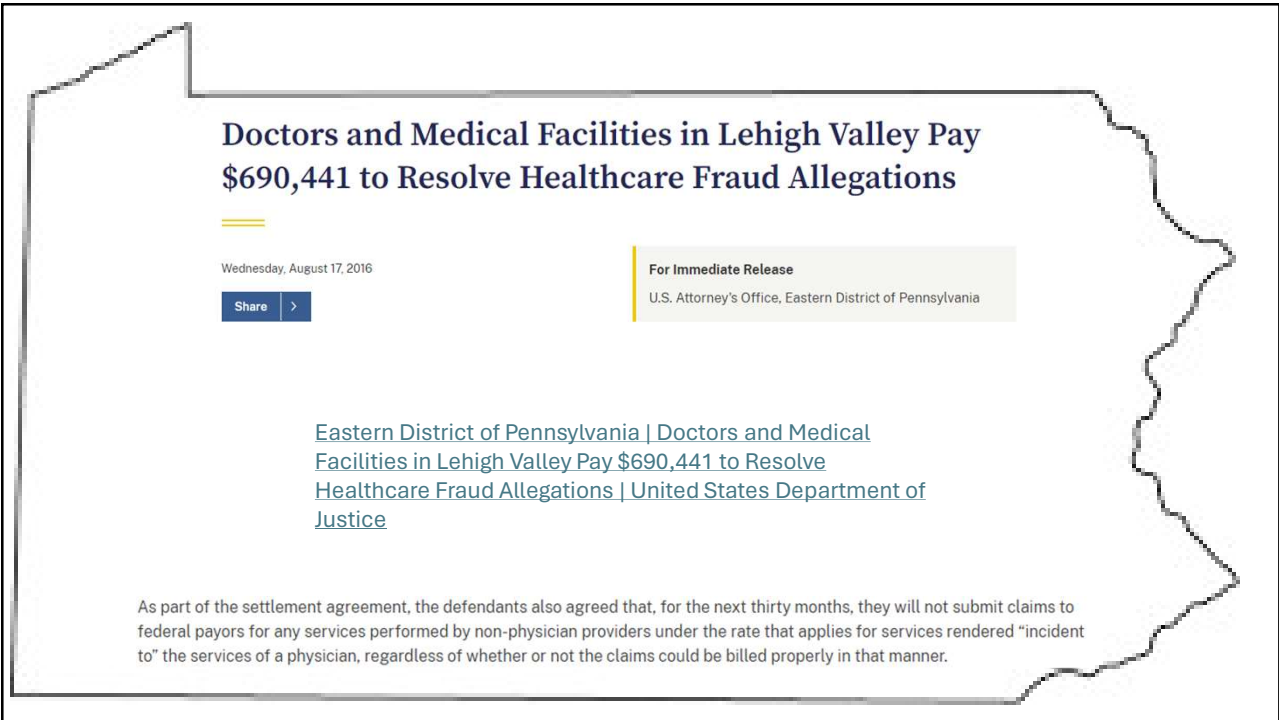




inSite Digestive Health Care Agreed to Pay \$1.7 Million for Allegedly Violating the Civil Monetary Penalties Law by Submitting Claims for Services by Uncredentialed Providers and Claims Out of Compliance with Incident-To or Split/Share Rules

The Mythical, Magical 15%

| | |
|---|--|
| <p>PRESS RELEASE</p> <p>Memphis Physicians Agree To Pay More Than \$340,000 for Alleged Overbilling</p> | <p>Lansing-Area Health System Agrees To Pay \$671,300 To Settle False Claims Act Allegations Relating To Improper Billing</p> <p>Wednesday, July 26, 2023</p> <p>For Immediate Release</p> |
| | <p>Another expensive incident-to incident</p> <p>by: Julia Kyles, CPC Nov 3, 2020</p> |



Doctors and Medical Facilities in Lehigh Valley Pay \$690,441 to Resolve Healthcare Fraud Allegations

Wednesday, August 17, 2016

[Share](#) >

For Immediate Release
U.S. Attorney's Office, Eastern District of Pennsylvania

[Eastern District of Pennsylvania | Doctors and Medical Facilities in Lehigh Valley Pay \\$690,441 to Resolve Healthcare Fraud Allegations | United States Department of Justice](#)

As part of the settlement agreement, the defendants also agreed that, for the next thirty months, they will not submit claims to federal payors for any services performed by non-physician providers under the rate that applies for services rendered "incident to" the services of a physician, regardless of whether or not the claims could be billed properly in that manner.

Anti-Kickback Statute

01

Is a federal criminal law, although some states have state law

02

The law applies to the federal health care program

03

"Prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs."

- INTENT

04

Remuneration includes anything of value and can take many forms besides cash, such as free rent, expensive hotel stays and meals, and excessive compensation for medical directorships or consultancies

Anti-Kickback Statute

Up to 5 years in prison

\$25,000/claim

Additional \$10,000-\$50,000 under Civil Monetary Penalties Law

Mandatory Exclusion Federally Qualified Health Program

AND Penalties under the False Claims Act

PRESS RELEASE

Telemedicine Nurse Practitioner Charged with \$7.8 Million Durable Medical Equipment Fraud Scheme

Friday, October 6, 2023

Share >

For Immediate Release

U.S. Attorney's Office, District of Massachusetts

- Individuals acquired through telemarketing to Medicare beneficiaries
- Signed prepopulated orders for braces with an established patient-provider relationship
- Orders were sold to DME suppliers and laboratories, and claims were submitted to Medicare
- Resulted in \$7.8 million in claims
- Facing
 - 10 years in prison
 - 3 years of supervised release
 - Fine up to \$250,000

Nurse Practitioner Sentenced for \$192M Medicare Fraud Scheme

Thursday, December 21, 2023

Share



For Immediate Release

Office of Public Affairs

- Individuals acquired through telemarketing to Medicare beneficiaries
- Signed orders for genetic testing and braces
- During the conspiracy timeframe she ordered the most genetic cancer screening in the country
- Billed over 24hr in a day for telemedicine
- Received \$1.6 million used for expensive cars, jewelry, travel, and home renovations.
- \$192 million in claims
- Sentenced: 20 years.

NP tells jury Insys gave her \$82K in kickbacks for overprescribing opioids

Mackenzie Bean - Tuesday, February 12th, 2019 [Print](#) | [Email](#)

- “If I was going to choose between one drug or another, I would choose the Subsys because that’s what I was getting paid for.”

- Physician assistant paid more than \$40,000 for over 30 speeches between 2013-2014
- 2015 the PA was reprimanded by the Board of Medicine for overprescribing opioid drug and barred him from prescribing opioids.
- License eventually permanently revoked
- He was indicted in 2017
- Medicare and Medicaid programs paid \$2.6 million for Subsys.
- Sentenced to four years in federal prison

U.S. Attorneys » District of New Hampshire » News

Department of Justice
U.S. Attorney's Office
District of New Hampshire

FOR IMMEDIATE RELEASE Monday, June 3, 2019

Former Physician Assistant Sentenced To 48 Months For Kickback Scheme



SPECIAL ARTICLE

Flying too close to the sun: Navigating changes to CMS' Open Payments program

Kevin A. Hickman, PA-C, MHA, MJ (Health Law), CHC

ABSTRACT

Increasingly, physician assistants (PAs), advanced practice nurses, and physicians are financially involved with healthcare product manufacturers. Although the relationships themselves might not be illegal, when the transaction influences the healthcare provider's medical decision-making, patients can be harmed and the healthcare provider and manufacturer can face accusations of violating federal and state law. In 2019, the federal government recouped \$2.6 billion from healthcare fraud and abuse by healthcare stakeholders. PAs' and NPs' behaviors violating the Anti-Kickback Statute (AKS) and False Claims Act (FCA) were partially responsible for the reported amount. To increase the transparency of the financial relationships between healthcare providers and healthcare manufacturers, the federal Centers for Medicare and Medicaid Services, under statutory obligation, created the Open Payments program, which will begin reporting PAs' and advanced practice nurses' financial relationships with manufacturers in 2022.

Keywords: physician assistant, NP, False Claims Act, Anti-kickback Statute, healthcare fraud, Open Payments program

Kevin A. Hickman practices in neurosurgery at Geisinger Medical Center in Scranton, Pa., and is a doctoral student at A.T. Still University. The author has disclosed no potential conflicts of interest, financial or otherwise.

Acknowledgment: The author would like to thank Sarah Elizabeth Campbell, JD, MHA, CHC, CHRC, Tricia Marriott, PA-C, MPAS, MJ (Health Law), CHC, DFAAPA, and Sandra M. DePalma, DHSC, PA-C, DFAAPA, for their assistance with this manuscript.

DOI:10.1097/01.JAA.00000735780.35691.e5

Copyright © 2021 American Academy of PAs



© DELCARTOSHUTTERSTOCK.COM

Sunshine Act

Kickbacks, but not what you think

But the defendants took the conspiracy to the next level when they began loaning out mid-level medical professionals — physicians assistants and nurse practitioners — to doctors free-of-charge in return for patients, the government [argued in its own closing statement](#) on Thursday, calling it “kickbacks on steroids.”

- *United States v. Edward Novak, et al.*
- United States District Court, Northern District of Illinois, Eastern Division (2015)
 - *SACRED HEART HOSPITAL*

Kickbacks, but not what you think

PRESS RELEASE

Detroit Medical Center, Vanguard Health Systems, and Tenet Healthcare Corporation Agree to Pay Over \$29 Million to Settle False Claims Act Allegations

Sutter Health to pay \$30 million to settle secret kickback lawsuit; whistleblower to get slice

BY SAM STANTON AND CATHIE ANDERSON
NOVEMBER 14, 2019 03:53 PM



Wednesday, May 31, 2023

For Immediate Release

OIG Advisory Opinion



[R1292 Redacted Advisory Opinion \(hhs.gov\)](#)



acute-care hospital



utilizes its employed nurse practitioners to assist in rendering certain care to Participating Physicians' patients who are inpatients or in observation status in two designated medical units



Not surgical or specialty care

OIG Advisory Opinion



First: Restricted to non-surgical and non-specialty units

Mainly family practice physicians
Referral volume was not considered



Second: All duties are in collaboration with the Participating Physicians

Physicians rounded daily
Protocols



Third: No increased cost to Federal payors

Services performed by NPs are not submitted



Qui Tam Relators

- Typically, an employee of the organization
- Brings a suit on behalf of the government
- Government decides whether to join the case after investigating
- Relators are awarded 15-25% of what the government collects
- 25-30% if the government did not join the case
- False Claims Act protects against retaliation against those attempting to prevent fraud



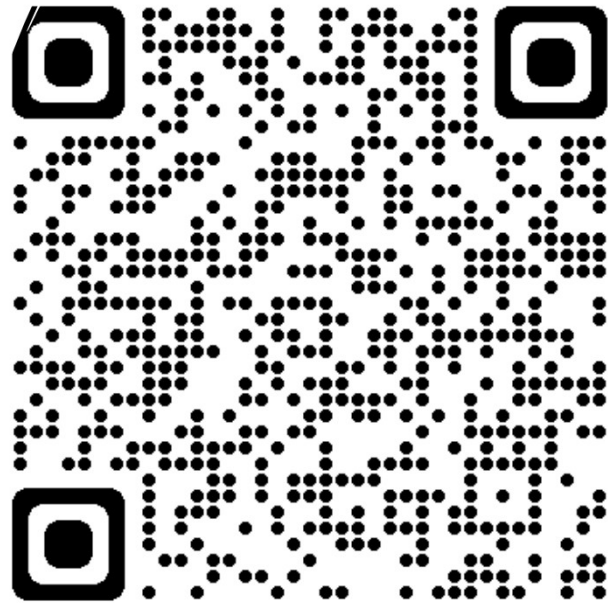
How do we move forward?

- Review your policy and procedures.
 - Don't assume PAs/NPs were considered
- Are PAs/NPs represented on the Medical Exec Committee?
- Stay alert to state regulatory changes.
 - Reach out to PA/NP State Academies
- Partner with PA/NP leadership for staff education
- Engage your PAs/NPs in shared billing practice education
- PAs and NPs should be filling out annual Conflict of Interest
- PAs should report through the medical leadership
- NPs typically report through nursing leadership
- PAs and NPs are becoming more aware of healthcare delivery
 - Mitigate your risk



Questions?

- Follow me on LinkedIn
 - <https://www.linkedin.com/in/kevin-hickman-PAC/>
- Feel free to contact me in the future!
kevin.a.hickman.pac@gmail.com



Resources & References

- [Office of Public Affairs | Memphis Physicians Agree To Pay More Than \\$340,000 for Alleged Overbilling | United States Department of Justice](#)
- [Microsoft PowerPoint - YIR Combined 2-20-24 \(justice.gov\)](#)
- [Office of Public Affairs | Nurse Practitioner Convicted of Opioid Distribution Conspiracy | United States Department of Justice](#)
- [Sparrow to pay settlement for alleged misuse of 'incident-to' billing \(beckershospitalreview.com\)](#)
- [PA Reprimanded for Secretly Pushing Ivermectin | MedPage Today](#)
- [Reduction in Hospital System Opioid Prescribing for Acute Pain Through Default Prescription Preference Settings: Pre-Post Study - PMC \(nih.gov\)](#)
- [Evaluation of Prescription Drug Monitoring Program Integration With Hospital Electronic Health Records by US County-Level Opioid Prescribing Rates | Health Disparities | JAMA Network Open | JAMA Network](#)

References & Resources

- [Evaluation of Prescription Drug Monitoring Program Integration With Hospital Electronic Health Records by US County-Level Opioid Prescribing Rates | Health Disparities | JAMA Network Open | JAMA Network](#)
- [inSite Digestive Health Care Agreed to Pay \\$1.7 Million for Allegedly Violating the Civil Monetary Penalties Law by Submitting Claims for Services by Uncredentialed Providers and Claims Out of Compliance with Incident-To or Split/Share Rules | Office of Inspector General | Government Oversight | U.S. Department of Health and Human Services \(hhs.gov\)](#)
- [Office of Public Affairs | Detroit Medical Center, Vanguard Health Systems, and Tenet Healthcare Corporation Agree to Pay Over \\$29 Million to Settle False Claims Act Allegations | United States Department of Justice](#)
- [District of Massachusetts | Telemedicine Nurse Practitioner Charged with \\$7.8 Million Durable Medical Equipment Fraud Scheme | United States Department of Justice](#)
- [Office of Public Affairs | Nurse Practitioner Sentenced for \\$192M Medicare Fraud Scheme | United States Department of Justice](#)
- [Office of Public Affairs | “Rock Doc” Sentenced for Opioid Distribution Conspiracy | United States Department of Justice](#)
- [Southern District of California | Two Former U.S. Marines and Nurse Practitioner Sentenced in \\$65 Million TRICARE Fraud | United States Department of Justice](#)