



BURR ARTICLE

Physicians Maintain High Standards

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By the time this article goes to print, a lot could change, so there's no apparent use in guessing what will come of the next Repeal and Replace efforts or what's happening at Main Justice. Nobody knows. The only certainties from Washington are that there will be change in the payment and insurance models, and that there will be more reports of arrests and prosecutions for alleged fraudulent schemes. Some practitioners express concern, but physician quality and innovation do not have to suffer because of these changes in law because physicians maintain high standards.

Neither Obamacare nor Ryan care nor Trump care nor the next iteration will actually change health care. Instead, they guide how health care services are paid. Payment certainly can influence quality, just as who pays for care can perhaps impact patient compliance. But quality care is neither guaranteed nor premised on any particular actual or proposed national structure. These laws do not provide anyone health care. You do, as physicians and nurses and hospitals. MASA began with 30 physicians having a common goal of higher standards in an era with no insurance market at all, nor anesthesia like we know it today. It has always been appropriate for physician entrepreneurship to drive innovation and quality care with it, but there are limits.

The limits have always been there. Whether the changes of today will raise or lower the standard of care within any specialty, or chill entrepreneurship and innovation, is up to each provider. Understanding the legal bounds is often difficult for physicians, and sound legal advice is crucial to success because for every one announced prosecution or indictment there are untold stories of civil corporate misdeeds and aggressive strategies where specialized counsel could have maintained the high standard.

The Department of Justice under Attorney General Jeff Sessions announced in a July 13 news conference that 412 people were charged for participating in health care fraud amounting to more than \$1.3 Billion. Pharmacists in Mississippi recently pleaded guilty to fraud charges, with one admitting "that he conspired with others to select compounded medication formulas based on profitability, rather than on effectiveness or patient need," and that he dispensed medically unnecessary medications. The other pharmacist admitted to "soliciting physicians and other medical professionals to write prescriptions without seeing patients for medically unnecessary compounded medications dispensed by the pharmacy." In Virginia, "[a] medical doctor and entrepreneur was sentenced to [ten years] in prison . . . for defrauding his former company's shareholders and for failing to account for and failing to pay employment taxes." Ohio-based companies and their executives recently "agreed to pay approximately \$19.5 million to resolve allegations pertaining to the submission of false claims for medically unnecessary rehabilitation therapy and hospice services

to Medicare," not that the therapy wasn't performed or quality care - just that it was excessive and driven by profit over patients. Louisiana clinical psychologists were sentenced for a \$25.2 million Medicare fraud scheme involving both unnecessary therapy and therapies never performed. A Florida physician pleaded guilty for his role in pain pill diversion and Medicare fraud scheme. An Alabama federal court enjoined a pharmacy from "distributing adulterated, misbranded and unapproved new drugs in violation of the federal Food, Drug, and Cosmetic Act." A Tennessee physician settled false claims allegations of distributing and billing Medicare for drugs that had not been FDA-approved. This is all according to the Department of Justice in just the last month. Expect more, whether it's from General Sessions or a successor.

These headlines should educate rather than frighten the physician entrepreneur with high standards. Each case can educate an intelligent professional that while billing guidelines and corporate laws may have positive or negative impacts on quality, usually indirectly, your standard of care owed to your patient and your business partners does not have to regress. These providers who fell into trouble with the Department of Justice may truly be outliers. The Virginia "physician and entrepreneur" sentenced in July abused his investors' trust, stole their money, and provided fraudulent financial statements. That's an extreme case, perhaps, but consider the same case but where the physician and his investors *lost trust* in each other purely because of a lack of communication after a series of misunderstandings, and maybe some ego or fear. Perhaps the misunderstandings were fueled by further misunderstandings of medicine by the investors and misunderstandings of business by the physician. But I speculate on a hypothetical ripped from these DOJ Headlines. Further, though, consider where the physician did not intend to *steal* anything but made blindly ignorant mistakes because he failed to ask for help or just maintained business as usual despite corporate changes. Consider the same story but where the financials were not intentionally fraudulent but in error or premised on aggressive billing practices, or an unwillingness to fully engage accountants for their services to pinch pennies. These seemingly more benign circumstances could be all too common, aggravated further by ego and competing visions or interests, and if unchecked and don't make the DOJ alert then they could also lead to civil lawsuits.

A health care lawyer can answer questions and guide physicians to maintain high standards. The honest physician in need of compounded pharmaceuticals for patients could unwittingly become a co-conspirator like the Mississippi physician. The honest clinician is being driven to cut costs and increase revenue. The honest physician is brought into seemingly prudent arrangements that can turn sour. When a physician goes beyond medicine and into business, retaining legal counsel is critical to maintaining the same high business standards as physician strives for high standards in caring for patients. Specialists and trained sub-specialists are available.



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