

Texas Clinic CEO Sentence Highlights Risks of Upcoding

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The recent sentencing of the Chief Executive Officer (CEO) of a Plainview, Texas, non-profit urgent care medical clinic substantiates the perils of upcoding and other aggressive health care billing practices for health care providers and organizations, regardless of the size or corporate character. On March 14, 2008, a Texas federal court sentenced former CEO Angela Edwards to 30 months (2 ½ years) in prison and ordered her to pay \$370,657 in restitution after Ms. Edwards plead guilty to one count of health care fraud. Ms. Edwards must report to prison on April 18th. Once her prison term ends, she will be in supervised release. Ms. Edwards also lost her nursing license in February 2008 as a result of this conduct and will face exclusion shortly. In other words, Ms. Edwards' career in health care is over. The clinic is now in bankruptcy.

The sentence was imposed after Ms. Edwards admitted that for nearly 3½ years, from 2002 to 2005, she upcoded claims and diagnoses on the claims in order to obtain higher reimbursements from payers. Although she knew that only physicians were permitted to determine the level of visits and make diagnoses, Ms. Edwards admitted to personally changing the codes on bills. She also taught the billing staff how to upcode, with the result that others in the office routinely submitted bills for visits at higher levels than the ones assigned by the physicians. Finally, Ms. Edwards and the staff also added fake symptoms, diagnoses, laboratory tests and procedures to claims. As a result of the clinic staff's fraudulent activities, commercial insurers overpaid over \$264,000. Medicaid overpaid \$52,300, and Medicare overpaid approximately \$44,000. The case was jointly investigated by the FBI and the Texas Medicaid Fraud Unit of the Texas Attorney General's office, which will be a continuing trend.

One key aspect to this case is that Ms. Edwards had a hand in drafting the organization's bylaws, which gave the board of directors a role in medical and clinical oversight, but excluded the board from the clinic's financial operations. The board could only access financial information if there was a suspected violation of the Texas Medical Practice Act. Had the board been able to review the clinic's finances, the directors would have had the ability to monitor billings and perform audits earlier in the fraud scheme. Instead, the board did not become suspicious until late May 2005, when checks were drawn on the Oasis clinic's account to pay a local company for items and services that were not related to clinic operations. Subsequent audits ordered by the board revealed substantial overbillings.

This case proves that substantial health care fraud occurs even in the small settings. Non-profit organizations are also not immune to fraud. The details also highlight the need for appropriate oversight and governance by an organization's board of directors and implementation of a corporate compliance program. It's not clear if the clinic had a compliance program, but it certainly did not have effective board oversight and control. Furthermore, any elements of a compliance program that did exist were effectively undercut by the CEO not only ignoring fraud, but actually directing the fraud and teaching her staff how to create documentation for the fraud.

With ever increasing scrutiny and evidence that fraud can occur anywhere, it is imperative that health care providers, whether for-profit or non-profit, enact and enforce appropriate corporate governance elements and controls. Health care providers should seek consult with qualified legal counsel within the scope of attorney-client privilege about the adequacy of their current policies and procedures and the development, implementation and enforcement of appropriate policies and practices to manage exposures to health care fraud or other liabilities taking into account the specific nature and scope of that health care provider's health care operations. As part of this process, health care providers should work with their legal counsel within the scope of attorney-client privilege to decide and implement appropriate oversight and audit procedures and processes for investigating and addressing any issues that might arise in connection with an audit. While each health care provider generally should work with their legal counsel to define the scope and other particulars of such audit, every health care provider as part of this effort generally should undergo an annual assessment by an independent auditor or consultant of the accuracy of its billing at least annually. Furthermore, health care providers should proactively audit high-risk elements of their billing and other practices annually and at other times as dictated by the risk factors attendant to the health care provider's billing and other practices taking into account existing regulations and enforcement priorities.

For assistance in reviewing and updating your billing or other corporate compliance practices or program, assessing the

strength of your corporate governance controls, or in addressing other compliance or health care concerns, please contact Cynthia Marcotte Stamer at cynthiastamer@solutionslawyer.net, 972-419-7188, or Heidi Kocher at hkocher@solutionslawyer.net, 972-419-7107.

About Cynthia Marcotte Stamer & Heidi Kocher

Cynthia Marcotte Stamer, P.C., a member of the law firm of Glast, Phillips & Murray, P.C, has extensive experience advising, and representing health care providers and other health industry clients health care operations, reimbursement, regulatory and public policy, risk management, human resources, credentialing, technology, privacy, and other concerns. Her clients include hospitals, physicians, clinics, IPAs, PHOs, skilled nursing facilities, assisted living and home health, rehabilitation, imaging and other diagnostic services providers, DME, physician practice management companies and other management services organizations, health care technology, and other health industry clients. Recognized in the International Who's Who of Professionals and bearing the Martindale Hubble AV-Rating, Ms. Stamer is a highly regarded legal advisor and consultant, author and speaker, who regularly conducts management and other training on health care reimbursement and other health industry operational, regulatory, and public policy matters.

Chair of the American Bar Association (ABA) Health Law Section Managed Care & Insurance Interest Group and known for her practical, direct problem-solving approach, Ms. Stamer also applies her extensive industry experience in numerous professional and industry leadership roles. In addition to her ABA Health Law Section involvement, Ms. Stamer serves on the editorial advisory boards of and is a contributing author for the Bureau of National Affairs and other publications, served as the Compliance Committee Chair and a member of the Board of the National Kidney Foundation of North Texas Board of Directors, serves on the continuing education and conference planning committees of the ABA Joint Committee On Employee Benefits (JCEB), the HFMA Lone Star Chapter, TAHFA, the IRS TEGE Advisory Council, and numerous other health industry groups. She also is the past-president of the Alliance for Health Care Excellence, and founder of its Health Care Heroes and Patient Empowerment Programs. She also is active in numerous other industry organizations including the American Health Lawyers Association, the Medical Group Management Association, the Alliance for Healthcare Excellence, the Dallas Bar Association Health Law Section,

Ms. Stamer is a widely published author and highly sought-after speaker nationally and internationally sought out for her strategic knowledge and insights on operational and technical health care risk management and operational concerns. A columnist for MD News and recurring author for various other health industry publications, Ms. Stamer's insights have been quoted by the Wall Street Journal, the Bureau of National Affairs (BNA), HIPAA Comply, Private Payer News, Modern Health Care, Managed Healthcare Executive, Health Leaders, Caring for The Elderly Magazine, For The Record, the Dallas Morning News, Spencer Publications, the Dallas Business Journal, the Houston Business Journal, and a various other national and local publications. Ms Stamer is the author of 100s of publications on health industry matters including numerous highly regarded works published by the American Bar Association, Aspen Publishers, BNA, the American Health Lawyers Association, the Medical Group Management Association, Government Institutes, Inc., Decision Health and others.

Heidi Kocher has over 10 years experience in healthcare law, having represented many kinds of healthcare providers, from small DME companies to large national health care organizations. Prior to returning to private practice, Ms. Kocher was in-house at one of the largest national hospital companies. Her wide-ranging experience includes advising corporate and individual clients on the myriad federal and state fraud and abuse laws, such as Stark, the Anti-kickback statute, and False Claims Act, structuring mergers, acquisitions, joint ventures, employment agreements, and other deals, developing compliance programs and plans, interfacing with fiscal intermediaries, carriers, and other payers, resolving reimbursement issues, conducting investigations, assisting with preparing for and responding to JCAHO surveys, obtaining advisory opinions from the OIG, and representing providers in relation to federal and state agencies. She has worked with hospitals, physicians, mid-level practitioners, pharmacies, DME companies, LTACs, SNFs, home health and hospice agencies, inpatient rehab facilities, clinical laboratories, as well as allied health practitioners. She is active in the Health Care Compliance Association, and has written numerous articles and provided training on various healthcare law topics.

For more information about Ms. Stamer and Ms. Kocher, a listing of selected publications and other health industry links, information about workshops and other training and other health industry information and resources or other details about Cynthia Marcotte Stamer, P.C. and Glast, Phillips & Murray, P.C., see CynthiaStamer.com or contact Ms. Stamer or Ms. Kocher.

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