



Podiatrist Indicted for Alleged Foot Bath Scheme and Other Machinations

Get rich quick schemes often result in legal troubles.

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What follows is the anatomy of an alleged criminal conspiracy by a podiatrist from Mississippi, along with others, to commit healthcare and wire fraud. With appropriate legal advice, it never had to happen. Back in July 2016, a podiatrist practicing in Mississippi was running a podiatry clinic. He allegedly hatched an idea that involved prescribing high-adjudication antibiotic and antifungal drugs to be used in a foot bath. High-adjudication simply means high rates. In other words, the medications that the podiatrist prescribed were reimbursed at higher rates than most medications. Most medications are reimbursed at AWP, or Average Wholesale Price. The medications prescribed in the foot baths did not require any pre-authorization from Medicare and were not subject to any single prescription quantity.

Medications such as vancomycin, clindamycin, and calcipotriene cream were prescribed for the patient to mix into a foot bath for soaking of feet with various alleged infections. This scheme would continue until July 2021, for a total of five years. Most of the money involved federal funds from Medicare and Medicare HMOs. Some of it, through the HMOs, involved wire transfer of money across state lines. Multiple nursing facilities served as sites where the podiatrist treated these patients.

With no pre-authorization or dosage review, due to the foot bath exception, vancomycin was prescribed with 360 capsules in one prescription, along with other expensive medications at the same time. Another one of those prescriptions, an anti-fungal, ketoconazole, was not even water soluble.

A further element of the alleged fraudulent scheme involved prescribing molecular diagnostic testing for very unusual organisms. *Bartonella henselae* is the name of an organism that causes what is commonly known as “cat scratch disease”. This is a highly unlikely diagnosis. The lab would analyze samples of toenail clippings provided by the podiatrist.

An investigation by both the FBI and the HHS-OIG discovered an inter-related cast of characters who acted as alleged co-conspirators in this fraudulent profit-making scheme. The podiatrist teamed up with a medical sales representative who was willing to market this alleged scheme to another podiatrist, pharmacies, and laboratories. The sales representative

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tative would keep a percentage of the profits that the pharmacies and laboratories were making. The podiatrist also allegedly got a percentage of the take. Keep in mind that true medical necessity for any of these tests or treatments was never established on these patients.

It did not end there. The podiatrist became owner of the pharmacy that dispensed the medications for the foot bath. According to the investigation, patients had no real choice of pharmacies. The podiatrist, through the pharmacy, allegedly received a percentage of that money too. Furthermore, the podiatrist routinely waived the Medicare co-payment. He even advertised that there would be no cost to the patient. Routine waiver of copayments and deductibles is not allowed under Medicare. In most, if not all states, that in and of itself is considered fraudulent.

The indictment referenced phone conversations and texts that were extremely damaging to the podiatrist. The government must have

and real property to repay what was gained because of his alleged crimes.

In such situations, it is of the utmost importance that the defendant immediately seek counsel. The attorneys must have a deep knowledge of pharmacy law. The attorney should have experience in defending self-owned physician pharmacies.

where well-meaning healthcare providers can go astray without knowing it. Health law can be quite complex. When a practice implements a comprehensive compliance program with a competent designated compliance officer, it will change the culture of the practice. The members of the practice, from top to bottom, will feel

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One must keep in mind that physician-owned pharmacy laws vary tremendously from state to state. A competent law firm, with a deep bench of attorneys in pharmaceutical law, would have been able to advise the healthcare provider on a legal model to own a pharmacy, if such existed in that state. The law firm would also have to have knowledge about nursing homes in this case.

If the podiatric physician had contacted a competent health law firm prior to his alleged offenses, an

free to report possible problems before they get out of hand.

Another source of legal problems for the healthcare provider is a lack of knowledge when it comes to the business side of practice. Often the podiatrist is approached by a lab, a nursing home, or a pharmacy to arrange “a deal” that in the end involves a quid pro quo to obtain more business. Sometimes, it involves giving “lectures” at restaurants for enormous sums of money. Sometimes, it involves renting space in your office for sums well above the market value of the space. A good rule of thumb is that if it is too good to be true, it is not true! A better rule of thumb is to consult first with an experienced health law attorney. As podiatrists, you are subject to many rules as to what is and is not allowed, that do not apply to the rest of the business world.

Many general corporate law firms are not aware of these differences. Other examples involve so-called management companies of non-physicians, who do much more than simply manage; in effect, they control the money in the practice. Often, they ask/demand a signature stamp of the podiatrist, and deposit the money earned by treating patients, in a checking account that they, the managers, control. In most states, this is illegal.

The alleged scheme in the above indictment also involves kickbacks, self-referrals, billing with lack of medical necessity, and hoping that one never gets caught due to the lack of pre-approval for the medication prescribed with the foot bath. It is

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tapped one or more of the co-conspirators’ telephones. Interestingly, the podiatrist is the only named conspirator on the indictment. Perhaps, one or more of the co-conspirators cooperated with the prosecutors in making the case. Competent attorneys would attempt to discredit the cooperating witnesses. Unindicted co-conspirators usually have quite an incentive to cooperate. In the hands of a competent health law trial attorney, their credibility can be damaged on this point.

The podiatrist was indicted on a total of eleven counts of conspiracy to commit health fraud, wire fraud, soliciting, and receiving kickbacks. He may receive a total of over 45 years imprisonment, with high fines and forfeiture of both his personal

alternate and legal model of practice could have been composed that did not run afoul of the law. In that regard, many practices would benefit from a written compliance program. If followed, there would be an inference of lack of intent to violate the law. If followed, it is unlikely that the law would have been violated. Again, compliance programs are effective only if used by the practice. A good health law firm would have been able to assist in drafting such a plan.

Of course, if the healthcare provider’s plan involved larceny, no compliance program would successfully shield a practitioner from prosecution. Looking for loopholes and shortcuts can be fatal to your professional health. There are many cases

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important to point out that the recent pandemic has seen many physicians, not just podiatrists, solicited by various “specialty pharmacies”. The physicians are given phone numbers of so-called patients to call. The physicians are given a list of preferred prescriptions. Just coincidentally, they virtually all involve very high-cost medications, with a high profit margin for the pharmacy.

One by one, the federal government is investigating and finding the perpetrators of these schemes. These physicians are looking for a telehealth source of income due to the pandemic, and the way it is presented to them, it seems like a nice way to earn money while taking care of patients through telemedicine. Many of the physicians see through the scheme within a few days and quit. Others succumb to the “easy money” and continue until

caught. When in any doubt, ask a lot of questions prior to starting a new way of earning money. Bring in a competent healthcare attorney to look it over before signing anything.

Finally, if indicted, a capable health law firm will make sure that your legal rights are respected. This would include making certain that a government phone tap was appropriately obtained and performed. If not, it might not be allowed as evidence at trial. The same goes for GPS devices the government might have surreptitiously placed on your car. They will make sure that you, the defendant, obtain any exculpatory evidence held by the prosecution. In a trial several years ago, attorneys obtained the entire GPS readout of their client’s cars that the government had refused to turn over. The judge felt otherwise. It turned out that the GPS data was extremely helpful to the physician’s defense team.

As with medicine, there are many

different specialty areas of the law. You must choose the appropriate law firm with the appropriate experience and skills to defend you. If it is a federal case, such as this one, you should choose a firm with experience in federal law and federal courts. Proceed with caution. **PM**



Dr. Kobak is Senior Counsel at Frier Levitt, a national health law firm. Larry has extensive experience representing physicians in connection with licensure issues, as well as successfully defending physicians before Medical Boards, OPMC,

OPD investigations, as well as Medicare Fraud, Fraud & Abuse, Hospital Actions, RAC Audits, Medicare Audits, OIG Fraud, Health Care Fraud, Medical Audits, and Health Plan Billing Audits. As a licensed podiatrist prior to becoming an attorney, he served as the international president of the Academy of Ambulatory Foot and Ankle Surgery.