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James Fredrick Barger
University of Alabama - School of Law, jim@frohsinbarger.com

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SYMPOSIUM ARTICLES

LIFE, DEATH, AND MEDICARE FRAUD: THE CORRUPTION OF HOSPICE AND WHAT THE PRIVATE PUBLIC PARTNERSHIP UNDER THE FEDERAL FALSE CLAIMS ACT IS DOING ABOUT IT

James F. Barger, Jr.*

INTRODUCTION

On October 17, 2013, after being convened for exactly one month and one day,¹ a federal jury in the United States District Court for the Eastern District of Pennsylvania returned a guilty verdict on all thirty five counts against Matthew Kolodesh for various forms of healthcare fraud,² mail fraud,³ money laundering,⁴ aiding and abetting,⁵ and conspiracy,⁶ related to his ownership and operation of Home Care Hospice of Philadelphia, Pennsylvania.⁷ The indictment alleged that Kolodesh and his co-conspirators fraudulently billed Medicare to the tune of an estimated \$12.8 million for end-of-life care for patients who were not at the end of

* Adjunct Professor of Law, University of Alabama School of Law; founding partner Frohsin & Barger, LLC; B.A. Furman University; M.A. University of Mississippi; J.D. University of Alabama. In the interest of full disclosure, the author notes that in addition to his academic interest in the subject, he is an active practitioner who represents whistleblowers nationwide under the *qui tam* provisions of the False Claims Act and is involved as lead trial counsel in many of the completed and pending False Claims Act hospice fraud cases as plaintiffs' counsel. The details of such cases are not the subject of this article and, to the extent the existence of such cases are noted in this article, such notation will be limited to recitation of information found in publicly available legal documents; the author will also make reference to his involvement in any such case by footnote. The author expresses his appreciation to the following: Dean Mark E. Brandon and the faculty, administration, and students of the University of Alabama School of Law for their support and encouragement, particularly Bainbridge-Mims Professor of Law Pamela Bucy Pierson and student researcher Ben Bucy; the author's law partner, Elliott Walthall, who has spent his entire legal career fighting hospice fraud; the author's mentor in the law and dear friend, Henry Frohsin; the author's wife Burch and sons James and George for their patience and support, especially during the research and writing of this article; the attorneys and agents within the Department of Justice and the Office of Inspector General for the Department of Health and Human Services for their valiant efforts on behalf of the United States to combat hospice fraud; and finally to the brave whistleblowers who have risked their careers reporting it. © 2015, James F. Barger, Jr.

1. See Minute Entry, United States v. Kolodesh, No. 2:11-cr-00464 (E.D. Pa. Sept. 17, 2013), ECF No. 77.

2. See 18 U.S.C. § 1347 (2015).

3. See *id.* § 1341.

4. See *id.* § 1957.

5. See *id.* § 2.

6. See *id.* § 1349.

7. See Jury Verdict Sheet, *Kolodesh*, No. 2:11-cr-00464 (Oct. 17, 2013), ECF No. 101; Minute Entry, *Kolodesh*, No. 2:11-cr-00464 (Oct. 17, 2013), ECF No. 100.

their lives.⁸ The indictment alleged that another \$1.5 million was billed and paid to Home Care Hospice for patients who *were* dying, but for whom Kolodesh and his co-conspirators did not provide the in-home around-the-clock-care they promised.⁹ Presumably, many of the patients in this latter category died alone, without care—the exact circumstance that the hospice movement’s benevolent pioneers sought to avoid¹⁰ and that the federal government intended to guard against when it first considered adoption of the Medicare Hospice Benefit.¹¹

According to the indictment, Kolodesh and his co-conspirators created phony schedules to make it look as if hospice caregivers were continuously visiting the dying patients when, in fact, the patients were all alone.¹² Sometimes the patients were already dead when the fraudulent schedules were created.¹³ While the patients missed the care, Kolodesh and his company didn’t miss a payment—some \$800 per day—billed to taxpayers through Medicare.¹⁴ Before it was all over, the Department of Justice (“DOJ”) revised its Medicare losses to estimate that Kolodesh and his co-conspirators stole some \$16.2 million from the Medicare system and the United States taxpayers.¹⁵

Kolodesh used the Pennsylvania hospice and its Medicare-funded revenues as his “private piggy bank,” according to federal prosecutors Suzanne Ercole and Margaret Vierbuchen, and their boss United States Attorney Zane David Memeger.¹⁶ Together with his co-conspirators,¹⁷ including registered nurse Alex Pugman,¹⁸

8. See Sealed Indictment at 7, *Kolodesh*, No. 2:11-cr-00464 (Aug. 17, 2011), ECF No. 1.

9. *Id.* at 8.

10. See *History of Hospice Care; Hospice: A Historical Perspective*, NAT’L HOSPICE & PALLIATIVE CARE ORG., <http://www.nhpco.org/history-hospice-care> (last updated July 23, 2015) (quoting a U.S. Department of Health, Education, and Welfare task force as reporting to Congress that “the hospice movement as a concept for the care of the terminally ill and their families is a viable concept and one which holds out a means of providing more humane care for Americans dying of terminal illness while possibly reducing costs. As such, it is the proper subject of federal support”).

11. *See id.*

12. Sealed Indictment at 8, *Kolodesh*, No. 2:11-cr-00464 (Aug. 17, 2011), ECF No. 1.

13. *Id.*

14. *Id.*

15. Government’s Sentencing Memorandum at 3, *Kolodesh*, No. 2:11-cr-00464 (May 15, 2014), ECF No. 169.

16. *Id.* at 2.

17. Other co-conspirators, named and unnamed, included a team of nurses and physicians. *Id.* at 7–9.

18. Pugman and others, including Pugman’s wife and four hospice nurses, pleaded guilty and testified against Kolodesh. *See id.* Pugman testified in detail at trial that he “routinely apprised” Kolodesh of the day-to-day operations of the hospice and its fraudulent schemes, including:

(1) routinely keeping inappropriate patients on hospice and directing nurses and employees to falsify patient files to make the patients look sicker than they were; (2) paying doctors for referring patients (many who were inappropriate for hospice); (3) fraudulently revoking hospice when a patient was transferred to the hospital (thus forcing Medicare to pay for hospital visits that HCH should have paid); (4) overbilling Medicare for a higher level of care (continuous care) that was not provided; and (5) “manipulating” the Medicare cap so that in 2008 and beyond, Medicare would not seek reimbursement for millions of dollars in overpayment for fiscal years 2005, 2007 and 2008.

who was enlisted to serve as director of the hospice and who admitted to being the chief lieutenant of the fraud, Kolodesh “orchestrated a series of fraudulent schemes that enriched [his and his co-conspirators’] bank accounts and lifestyles by millions of dollars,” claimed prosecutors Ercole and Vierbuchen in their sentencing memorandum.¹⁹ “Simply put, they used [Home Care Hospice] as the vehicle to scam . . . the Medicare program of \$16.2 million in false claims.”²⁰ According to the prosecutors, Kolodesh’s greed infected the hospice’s entire clinical team—harming patients and their families—and not only abused the Medicare payment system, but perhaps more insidiously perverted the medical system itself, corrupting the benevolent mission of hospice and denying the fundamental “altruistic impulse”²¹ that theoretically drives all medicine. The fact that the matter at issue for Home Care Hospice’s patients and their families was quite literally life and death made the breach of ethics and trust by Kolodesh and his co-conspirators all the more egregious.²² The horror of Kolodesh’s crimes was apparently not lost on the prosecutors who described it in terms that in other contexts might be considered hyperbole: “A culture of fraud permeated [Home Care Hospice],” stated the prosecutors in their sentencing memo.²³ “It infected the field clinicians, RNs and LPNs, who provided care for patients, as well as home health aides. Kolodesh and Pugman, motivated by greed, were responsible for creating this monster.”²⁴

On May 28, 2014, seven months after the jury pronounced Kolodesh guilty, United States District Judge Eduardo C. Robreno of the Eastern District of Pennsylvania sentenced him to serve 176 months for his crimes.²⁵ Over his attorneys’ objections, Kolodesh was immediately remanded to the United States Marshals’ custody to begin serving his fourteen and a half years in the federal

Id. at 7. Pugman’s testimony and that of the other co-conspirators included specific examples of patients for whom false claims were made to Medicare and estimated that some thirty percent of the hospice’s \$50,643,600 billings during the five-year period between January 2003 and December 2008 were fraudulent. *Id.* at 7–9.

19. *Id.* at 1.

20. *Id.* at 1–2.

21. See generally T. Gavanescul, *The Altruistic Impulse in Man and Animals*, 5 INT’L. J. ETHICS 197 (1895) (arguing against the ethical theories of egoism and instead stating that there exists within social species an impulse toward altruism that is separate and apart from self-interest and self-preservation).

22. See, e.g., Ira R. Byock, *Ethics From a Hospice Perspective*, AM. J. HOSP. PALLIATIVE CARE 9 (1994) (“Ethical considerations are central to hospice practice. Unlike many areas of medicine in which it is the occasional case that presents an apparent ethical dilemma, care at the end of life is full of ethically poignant and emotionally charged situations.”).

23. Government’s Sentencing Memorandum at 16, *Kolodesh*, No. 2:11-cr-00464 (May 15, 2014), ECF No. 169.

24. *Id.*

25. The sentence breaks down as follows: 176 months on each of counts 1 through 24 and an additional term of 120 months on counts 25 through 35; the court permitted the prison terms on all counts to run concurrently, for a total of 176 months. Judgment as to Matthew Kolodesh at 3, *Kolodesh*, No. 2:11-cr-00464 (May 28, 2014), ECF No. 177.

penitentiary.²⁶ Judge Robreno recommended that the Bureau of Prisons enroll Kolodesh in mental health counseling and treatment programs for alcohol addiction.²⁷ He also sentenced Kolodesh to three years of supervised release upon completion of his prison term on standard terms with additional ongoing monitoring of all of his financial dealings, an order to not use alcohol, and an order to participate in an alcohol treatment program during his supervised release.²⁸

Tellingly, Judge Robreno imposed additional restrictions directed at Kolodesh's financial dealings during his supervised release, requiring him to file monthly financial statements, banning him from opening or applying for any lines of credit, and forbidding him from incurring any credit charges on existing credit accounts.²⁹ These additional supervisory release terms may reveal Judge Robreno's view that extensive supervision of Kolodesh's financial activity is necessary to prevent him from perpetrating further fraud.³⁰

Kolodesh's scheme of deceiving dying patients and their families for profit at the taxpayers' expense may be described as monstrous,³¹ but unfortunately it cannot be described as unique. Beginning in 2000,³² defendants associated with hospices around the country have been forced to re-pay the taxpayers for similar fraud allegations under the federal False Claims Act.³³ In the fifteen years since the first settlement was announced, the United States has used the False Claims Act to recover around \$114,565,290 of fraudulent hospice claims to Medicare, and, in some cases, to bring criminal defendants to justice.³⁴

At the time that this Article was written, all of the major national hospice chains had been accused (some more than once) of civil fraud related to false claims for

26. *See id.* ("The defendant is remanded to the custody of the United States Marshal.").

27. *Id.* ("It is recommended that the defendant be afforded the opportunity to participate in mental health and alcohol treatment programs while incarcerated.").

28. *Id.* at 4–5.

29. *Id.* at 5.

30. *See id.* at 6.

31. *See* Press Release, U.S. Attorney's Office, Eastern District of Pa., Hospice Owner Convicted in Multi-Million-Dollar Health Care Fraud (Oct. 17, 2013), <https://www.fbi.gov/philadelphia/press-releases/2013/hospice-owner-convicted-in-multi-million-dollar-health-care-fraud> (describing Kolodesh's scheme and his subsequent conviction).

32. In 2000, the Department of Justice announced the first-ever civil False Claims Act settlement related to the Medicare Hospice Benefit against Dr. Donald Dreyfuss, a Michigan physician who was forced to pay \$2 million. Press Release, U.S. Dep't of Justice, Michigan Physician to Pay U.S. \$2 Million for Overcharging Medicare & Medicaid Health Care Programs (Dec. 27, 2000), <http://www.justice.gov/archive/opa/pr/2000/December/712civ.htm>. Before settling the False Claims Act allegations, Dreyfuss admitted the fraud in a related criminal action, wherein he pleaded guilty "to three counts of mail fraud and one count of receiving an illegal kickback in connection with some of the same matters covered in [the civil False Claims Act] settlement," resulting in five years incarceration plus two years of home confinement and over \$700,000 in restitution and criminal fines. *Id.*

33. *See* 31 U.S.C. § 3729 (2015).

34. *See infra* note 175; *see also infra* Appendix for complete list of federal False Claims Act hospice fraud settlements and verdicts.

payment under the Medicare Hospice benefit.³⁵ This Article seeks to bring attention to the current trend of hospice fraud enforcement actions and to explore the primary common thread that runs among most of them: their genesis in whistleblower actions under the federal False Claims Act.

As with the vast majority of hospice fraud enforcement actions, a False Claims Act *qui tam* whistleblower first alerted prosecutors of Kolodesh's fraud.³⁶ The Kolodesh investigation,³⁷ culminating in the strictest measure of fraud enforcement and penalty, began when two nurses became whistleblowers, choosing to stand up to the fraud and alert authorities of what they had witnessed by filing a sealed civil False Claims Act *qui tam* complaint.

As this Article will demonstrate, the public-private partnership endorsed by Congress in the federal False Claims Act has been, and will continue to be, the driving force in prosecuting allegations of fraud under the Medicare Hospice Benefit. In the interest of full disclosure, the author reminds the reader that he is lead trial counsel for *qui tam* plaintiffs in many of the pending and completed civil False Claims Act hospice fraud actions.³⁸ Accordingly, this Article will not focus directly upon, nor discuss, any of the details of those cases outside of what is stated in publicly available court documents.³⁹ Rather, the scope of this Article is to examine the general trend of Medicare Hospice fraud enforcement actions, periodically referencing the particulars of the Kolodesh case as a paradigm. Section I will outline the history of hospice in general and the Medicare Hospice Benefit in particular, while examining the emergence of profit motive into the industry and the corresponding rise in fraud enforcement actions. Section II will explore the civil False Claims Act and its use as the primary tool in enforcing the Medicare Hospice regulations. Section III will examine the centrally contested

35. See Complaint at 3–4, *United States v. VITAS Hospice Servs., LLC*, No. 4:13-cv-00449 (W.D. Mo. May 2, 2013), ECF No. 1; Complaint at 2–3, *United States v. AseraCare, Inc.*, No. 2:12-cv-00245 (N.D. Ala. May 2, 2008), ECF No. 1; Complaint at 2–3, *United States ex rel. Rouse v. Odyssey Health Care, Inc.*, No. 2:08-cv-0383 (E.D. Wis. May 2, 2008), ECF No. 1; Complaint at 2–3, *United States ex rel. Romeo v. SouthernCare, Inc.*, No. 2:07-cv-02325 (N.D. Ala. Dec. 26, 2007), ECF No. 1; Complaint at 2–3, *United States ex rel. Russell v. Odyssey Health Care, Inc.*, No. 2:03-cv-00865 (E.D. Wis. Sept. 9, 2003), ECF No. 1.

36. See Complaint—Civil Action, *United States ex rel. Fox v. Home Care Hospice, Inc.*, No. 2:06-cv-04679 (E.D. Pa. Oct. 19, 2006), ECF No. 1.

37. Throughout this Article, I will periodically make reference to the Kolodesh civil and criminal prosecutions as a paradigm for the public-private partnership in hospice fraud enforcement.

38. See *United States ex rel. Wall v. Vista Hospice Care, Inc.*, 778 F. Supp. 2d 709 (N.D. Tex. 2011); *United States ex rel. Willis v. Angels of Hope Hospice, Inc.*, No. 5:11-cv-00041 (M.D. Ga. filed Feb. 7, 2011); *United States ex rel. Willis v. SouthernCare, Inc.*, No. 4:10-cv-00124 (S.D. Ga. filed May 18, 2010); *United States ex rel. Numbers v. Hernando-Pasco Hospice, Inc.*, No. 8:10-cv-00912 (M.D. Fla. filed Apr. 19, 2010); *United States v. AseraCare, Inc.*, No. 2:12-cv-00245 (N.D. Ala. filed May 2, 2008); *United States ex rel. Romeo v. SouthernCare, Inc.*, No. 2:07-cv-02325 (N.D. Ala. filed Dec. 26, 2007).

39. Only the fact of the existence of such cases will be mentioned in this Article, or where there has been a public ruling regarding such a case, the ruling itself may be cited and/or summarized. Otherwise, the cases themselves will not be discussed at all in this Article. In each instance where a case that the author of this Article has made an appearance as counsel of record, that fact will be noted by footnote. See *infra* notes 193 and 202.

legal issue currently at play in civil False Claims Act enforcement actions under the Medicare Hospice Benefit—the role of physicians in certifying patients for hospice—and will argue that a physician’s certification of terminal illness should not be allowed to absolve a Medicare hospice provider of civil False Claims Act liability. Finally, this Article will offer brief conclusions and predictions about the future of Medicare Hospice fraud enforcement actions.

I. THE MEDICARE HOSPICE BENEFIT

The foundation of the modern hospice movement is credited largely to a charismatic British nurse named Cicely Saunders,⁴⁰ who famously administered cocktails of heroin, honey, and whiskey to dying patients and focused on addressing their “spiritual, psychological, social, and practical needs” as opposed to what she viewed as the way hospitals traditionally approached dying patients with—in her words—a “never-ending, intensive treatment carried to the bitter end as patients suffered and became more helpless.”⁴¹ Saunders traveled Great Britain and the United States in the 1950s and 1960s preaching the then-radical idea that end-of-life care should focus primarily on providing comfort for the dying, endorsing the prescription of wine, beefsteaks, violin music, and narcotics rather than debilitating and brutally aggressive medical treatments, such as chemotherapy.⁴² She used an interdisciplinary team approach that put healthcare decisions in the hands of patients, their families, and a team of caregivers, social workers, and clergy rather than “the opinions of specialists or the convenience of nurses or the rules of hospitals, government health programs, or insurance companies.”⁴³ Saunders named her treatment program, “hospice,” from the Latin *hospes*, for “both guest and host” and in honor of the hospices that sheltered members of the early Christian⁴⁴ church and pilgrims of the Middle Ages.⁴⁵

By 1969, just as Dame Cicely Saunders’s ideas were gaining momentum in the United States and elsewhere, a Swiss-born psychiatrist named Elisabeth Kübler-

40. Cicely Saunders was later granted title by Queen Elizabeth II for her transformative work with the dying and became Dame Cicely Saunders. See FRAN SMITH & SHEILA HIMMEL, *CHANGING THE WAY WE DIE: COMPASSIONATE END OF LIFE CARE AND THE HOSPICE MOVEMENT* 14–16 (2013).

41. *Id.* (internal quotation marks omitted).

42. *Id.* at 15–16.

43. *Id.* at 15.

44. Saunders often referenced the Christian Bible, particularly the Gospel of Matthew at Chapter 25, as informing the mission of her work. See *id.* at 16–17. See generally *Matthew* 25:34–40 (“Then the king will say to those on his right, ‘Come, you who are blessed by my Father. Inherit the kingdom prepared for you from the foundation of the world. For I was hungry and you gave me food, I was thirsty and you gave me drink, a stranger and you welcomed me, naked and you clothed me, ill and you cared for me, in prison and you visited me.’ Then the righteous will answer him and say, ‘Lord, when did we see you hungry and feed you, or thirsty and give you drink? When did we see you a stranger and welcome you, or naked and clothe you? When did we see you ill or in prison, and visit you?’ And the king will say to them in reply, ‘Amen, I say to you, whatever you did for one of these least brothers of mine, you did for me.’”).

45. SMITH & HIMMEL, *supra* note 40, at 16–17.

Ross published groundbreaking research on grief and dying followed by a series of lectures in the early 1970s at Harvard University: Kübler-Ross's book *On Death and Dying* remains a seminal treatise on end-of-life care and, for some, marks the beginning in earnest of the hospice movement in the United States.⁴⁶ In 1975, Kübler-Ross testified before the U.S. Senate Special Sub-committee on Aging, imploring for acceptance of hospice and laying the groundwork for eventual federal funding for the new medical discipline: "We should not institutionalize people. We can give families more help with home care and visiting nurses, giving the families and the patients the spiritual, emotional, and financial help in order to facilitate the final care at home."⁴⁷ Her testimony proved influential in the eventual passage of the Medicare Hospice Benefit, which ultimately transformed the nature of hospice forever.

A. *A History of Hospice and its Evolution into Big Business in the United States*

Although no exact date has been agreed upon for the birth of hospice as a medical discipline in the United States, academics generally trace its roots to volunteer efforts beginning in the mid- to late-1960s and early 1970s, building upon the advocacy of Dame Cicely Saunders and the influence of the theories of Elisabeth Kübler-Ross.⁴⁸ The for-profit hospice industry began in the 1980s and can be traced to Reverend Hugh Westbrook, a Methodist minister and pioneer of non-profit hospices in Florida and a pivotal advocate for profitizing hospice care, credited with pushing through legislation authorizing Medicare funding for hospice.⁴⁹ Shortly after his advocacy in Washington resulted in Congressional approval for federal funding for hospice services, Westbrook left behind the non-profits he had previously worked with and opened—to criticism from his peers⁵⁰—the first for-profit hospice in the country.⁵¹

Westbrook quickly built his company into an empire, amassing for himself "yachts, a Florida beachfront mansion, [] a mountain home in North Carolina . . . [and investments] in a string of companies" almost exclusively from taxpayer-funded Medicare dollars all before selling his company, Vitas Healthcare, for \$406 million⁵² to Roto-Rooter, whose only other business unit was the

46. *Id.* at 28–29.

47. *History of Hospice Care*, *supra* note 10 (internal quotation marks omitted).

48. See Joshua E. Perry & Robert C. Stone, *In the Business of Dying: Questioning the Commercialization of Hospice*, 39 J. L. MED. ETHICS 224, 226 (2011).

49. SMITH & HIMMEL, *supra* note 40, at 149–60.

50. See, e.g., *id.* at 158 ("'They had this proprietary model in mind the whole damn time,' said Madalon Amenta, former executive director of the Hospice Nurses Association.').

51. *Id.* at 149–60.

52. When Roto-Rooter purchased Vitas, it was already a half owner in the company through prior purchases that had increased Westbrook's wealth by untold measures; nevertheless, the septic services provider paid an additional \$406 million to obtain full control of the nation's first for-profit hospice provider, nearly half of which

well-known septic tank de-clogging company.⁵³ Thereafter, Roto-Rooter re-branded itself as Chemed Corporation with its two primary businesses being end-of-life care and septic services (with Medicare revenues from healthcare for the dying being by-far the most profitable of the two).⁵⁴

Since that time there have been a vertiginous array of mergers, takeovers, acquisitions, buy-outs, and injections of investment capital into the taxpayer funded care for the dying business—primarily through purchase and consolidation of small hospices, but also a handful of large transactions, including:

- 2004—Roto-Rooter purchased Vitas for \$406 million⁵⁵
- 2008—Vistacare Hospice acquired by Odyssey Healthcare for \$147 million⁵⁶
- 2010—Odyssey acquired by Gentiva Healthcare for approximately \$1 billion⁵⁷
- 2015—Gentiva acquired by Kindred Healthcare for \$1.8 billion⁵⁸

In 2014, journalists Fran Smith and Sheila Himmel published the first in-depth history of the hospice movement in the United States. In addition to tracking hospice from its intellectual birth, Smith and Himmel researched and chronicled the corporate takeover of the hospice movement and reviewed accounts by nurses and clinicians in the field, including tales of “cash blitzes” where hospice employees were “paid \$100 a head for referrals” and the heartfelt account of a long-time hospice nurse who felt “the harried pace of her job, the large caseloads, and the fragmentation of care that left patients in the hands of a parade of unfamiliar nurses and aides, [was] eroding the intimate bond between health care provider and patient that once defined hospice care.”⁵⁹ Smith and Himmel concluded that the current accounts of for-profit hospices they reviewed in their research “eerily echoed the criticisms that Elisabeth Kübler-Ross . . . had leveled at hospitals decades before—the frenzied, impersonal conditions that gave rise to the hospice alternative in the first place.”⁶⁰

went directly to Westbrook. *Id.* at 150. Westbrook’s net personal profit from the sale was approximately \$200 million. *Id.*

53. *Id.*

54. *Id.*

55. Press Release, Chemed Corp, Roto-Rooter Inc. Completes Merger with VITAS Healthcare Corporation (Feb. 24, 2004), <http://ir.chemed.com/phoenix.zhtml?c=72704&p=irol-newsArticle&ID=498462>.

56. *Odyssey Healthcare to Buy VistaCare for \$147.1 mln*, REUTERS (Jan. 15, 2008, 5:50 PM), <http://www.reuters.com/article/2008/01/15/us-vistacare-takeover-odyssey-idUSBNG9903920080115>.

57. Dinah Wisenberg Brin, *Gentiva to Buy Odyssey HealthCare for About \$1 Billion*, WALL ST. J. (May 25, 2010, 12:01 AM), <http://www.wsj.com/articles/SB10001424052748704113504575264143799883542>.

58. Press Release, Kindred Healthcare, Kindred Healthcare Completes Acquisition of Gentiva Health Services Creating Nation-Wide Integrated Care Delivery System (Feb. 2, 2015), http://phx.corporate-ir.net/phoenix.zhtml?c=129959&p=irol-newsArticle_Print&ID=2012773.

59. SMITH & HIMMEL, *supra* note 40, at 151–52.

60. *Id.* at 152.

Today, it cannot credibly be argued that hospice bears any resemblance to the once humble, beloved, charity-based arm of the healthcare industry; rather, it is big business and a major source of investor revenue in the United States. Medicare Hospice payments rose from \$2.9 billion in 2000 to \$15.1 billion in 2013.⁶¹ That represents an increase of Medicare spending on hospice services of more than 400% over the past decade—the majority of which has gone to companies owned by investors seeking a profitable return on their capital.⁶² “Almost every hospice program opened in the past decade has been for-profit,” according to Smith and Himmel.⁶³ It is difficult to imagine any other charitable movement in the United States that has been so completely, quickly, and quietly taken over by an opportunistic breed of capitalism. When money motives supersede charitable interests, it would be irresponsible not to explore whether the ethical cannons might not also be subject to replacement by principles more closely associated with greed.

In light of the explosive growth in profits to both private and publicly traded companies and the wildly increased cost to Medicare,⁶⁴ the Department of Health and Human Services Office of Inspector General identified the abuse of the hospice benefit program as a major concern.⁶⁵ Likewise, the “commercialization” of hospice, and the United States’ medical system at large, have been questioned

61. MEDPAC, REPORT TO THE CONGRESS: MEDICARE PAYMENT POLICY 289 (Mar. 2015), [http://medpac.gov/documents/reports/chapter-12-hospice-services-\(march-2015-report\).pdf](http://medpac.gov/documents/reports/chapter-12-hospice-services-(march-2015-report).pdf); Peter Waldman, *Aunt Midge Not Dying In Hospice Reveals \$14 Billion U.S. Market*, BLOOMBERG (Dec. 6, 2011, 12:01 AM), <http://www.bloomberg.com/news/2011-12-06/hospice-care-revealed-as-14-billion-u-s-market.html>.

62. See Waldman, *supra* note 61.

63. SMITH & HIMMEL, *supra* note 40, at 150–51.

64. From time to time it has been theorized—primarily by for-profit hospices and their lobbying groups—that though hospice reimbursements have increased dramatically, hospice as a discipline may actually save Medicare money due to a theoretical reduction in expensive aggressive treatments. Such a proposition remains unsubstantiated and subject to detraction. See Perry & Stone, *supra* note 48 (“[T]he extent to which the Medicare hospice benefit and corresponding proliferation of hospice service providers has resulted in overall systemic cost savings in the end-of-life context (as was envisioned by the original policy makers) remains contested.” (citing D.E. Campbell et al., *Medicare Program Expenditures Associated with Hospice Use*, 140 ANNALS INTERNAL MED. 269, 275 (2004) (“[F]inding that hospice is cost-neutral to cost-saving for persons who die of cancer, but generally adds cost for those who do not die of cancer.”))). Likewise, the proposition is belied by the parallel increase in Medicare Part A spending generally and hospice spending in particular over the last decade. See *supra* text accompanying note 61 (discussing the increase in hospice spending); *infra* note 117 (discussing the increase in Medicare Part A spending generally). Moreover, the corruption of hospice through schemes such as the ones employed by Kolodesh and Home Care Hospice pervert any cost savings design, particularly the schemes: (1) to admit and bill for non-terminal patients for whom Medicare would not otherwise incur daily costs, and (2) fraudulently “revoking patients” from hospice into the hospital for expensive treatments to be paid directly through the Medicare Part A fee for services after the hospice has already billed Medicare for *per diem* payments, essentially causing Medicare to pay twice. See *supra* note 18.

65. See generally U.S. DEP’T OF HEALTH & HUMAN SERVS., OFFICE OF INSPECTOR GEN., MEDICARE HOSPICES HAVE FINANCIAL INCENTIVES TO PROVIDE CARE IN ASSISTED LIVING FACILITIES (Jan. 2015), <http://oig.hhs.gov/oei/reports/oei-02-14-00070.pdf> (“This report raises concerns about the financial incentives created by the current payment system . . .”).

by academics in the fields of law, business, ethics, and medicine.⁶⁶ Even Westbrook himself—self-proclaimed “son of a struggling Railway Express agent”⁶⁷ turned hospice multi-millionaire—has recently admitted doubts about the for-profit industry he created and the effect it may have on the mission of the hospice movement that he first knew in the early days of the 1970s. Sidelined by a non-compete for eight years after his sellout to Roto-Rooter, Westbrook reflected in 2012 on the changes that he witnessed during that time: “I don’t think the entrance of venture capital and private equity into the hospice world in a very aggressive way is good for what hospice is about and what hospice tries to do I think it’s a threat.”⁶⁸

What little data and commentary exists on the subject tends to confirm Westbrook’s fears. In a 2011 law review article, *The Business of Dying: Questioning the Commercialization of Hospice*, Joshua E. Perry⁶⁹ teamed with Robert C. Stone, M.D.,⁷⁰ to examine and question the introduction of big business into hospice.⁷¹ According to Perry and Stone, treating hospice as a profit-center and dying patients as “customers,” raises potential ethical and policy concerns that should seriously be scrutinized:

The relatively recent emergence of for-profit hospice reflects an increasing commercialization of health care in the United States, the potentially adverse impact of which has been well-documented. Here we refer to the general threats against medicine’s ethical foundations that are made by health care organizations attempting to marry the ‘fundamental objective’ of commerce, i.e., ‘achieving an excess of revenue over costs’ so as to ensure profits for owners and investors, with the delivery of quality care to vulnerable consumers who are often compromised in their ability to make decisions. In the case of hospice, of course, the ‘customer’ suffers from a terminal condition, which intensifies ethical concerns regarding the priority of the patient’s needs (ahead of profit-taking), the importance of dealing with patients ‘honestly, competently, and compassionately,’ and the avoidance of any conflicts of interest ‘that could undermine public trust in the altruism of medicine.’⁷²

66. See, e.g., Byock, *supra* note 22, at 10 (listing “profit motive” as an ethical issue facing hospice); Perry & Stone, *supra* note 48; Joseph J. Fins, *Commercialism in the Clinic: Finding Balance in Medical Professionalism*, 16 CAMBRIDGE Q. HEALTHCARE ETHICS 425, 425 (2007) (recognizing that in the United States clinicians have been “swept along by a new commercialism that is displacing medical professionalism and its attendant moral obligations”).

67. SMITH & HIMMEL, *supra* note 40, at 158.

68. *Id.* at 153 (internal quotation marks omitted).

69. Law professor at Indiana University and Fellow in the Department of Law and Business. Perry & Stone, *supra* note 48, at 224.

70. Medical professor in Indiana University’s School of Medicine. *Id.*

71. See generally *id.*

72. *Id.* at 224 (citations omitted) (quoting J. H. McArthur & F. D. Moore, *The Two Cultures and the Health Care Revolution*, 277 J. AM. MED. ASS’N 985, 986 (1997), and A.S. Relman, *Medical Professionalism in a Commercialized Health Care Market*, 298 J. AM. MED. ASS’N 2668, 2668 (2007)).

Perry and Stone's analysis began the academic discussion about whether profit motives were appropriate in the context of end-of-life care, raising poignant questions that as of yet have gone unanswered by academia but are even now playing out on the real world stage by characters such as Matthew Kolodesh, Alex Pugman, and the clinicians, patients, and families associated with Home Care Hospice. Among the unanswered questions raised by Perry and Stone:

- Will the patient's experience of hospice services (as envisioned by Dame Saunders, i.e., marked by a fundamentally altruistic system of organization and governance) be compromised by the practices of profit-driven competition and additional costs associated with government regulation?⁷³
- What non-financial costs may be borne by patients, their family, and hospice providers if the hospice industry's traditional emphasis on principles of community welfare maximization cannot be reconciled to more individual notions of profit maximization?⁷⁴
- How, in ways that are not unnecessarily paternalistic, will the hospice industry guard against the exploitation of an unsuspecting population that is particularly vulnerable?⁷⁵

At the same time that Perry and Stone introduced these questions as a potential framework for academic discourse, investigative journalists were uncovering independent evidence suggesting that the answers to such questions are bleak, that the mission of hospice—providing palliative end-of-life care—likely has already been ignored or thwarted by the large corporations that have effectively boxed out the smaller, locally-based non-profits. A recent analysis by the Washington Post⁷⁶ of over one million hospice patients' records in California over an eleven-year period revealed a more than fifty percent increase in the number of patients for whom corporations billed daily for hospice care, but who proved ultimately to not be end-of-life patients and who were eventually discharged alive from the corporations' census, presumably after the profitability of the patient had been reaped in full by the corporation.⁷⁷ In other words, 500,000 people in one state alone were led to believe they were dying when they weren't.

73. *Id.* at 231.

74. *Id.*

75. *Id.*

76. Ironically, the Washington Post Company—former owner of its namesake newspaper—recently joined the fray by investing in the for-profit hospice industry through the purchase of Celtic Healthcare, a Pennsylvania hospice company. Thereafter, in 2013, while its writers were busy investigating the for-profit hospice industry, the Washington Post Company “sold the newspaper but kept the hospice holdings.” SMITH & HIMMEL, *supra* note 40, at 151. Apparently Donald Graham, CEO of the Washington Post Company and son of famed publisher Katherine Graham, favored the hospice holdings over the flagship newspaper because the hospice company had “demonstrated earnings potential.” *Id.*

77. Peter Whoriskey & Dan Keating, *Hospice Firms Draining Billions from Medicare*, WASH. POST (Dec. 26, 2013), http://www.washingtonpost.com/business/economy/medicare-rules-create-a-booming-business-in-hospice-care-for-people-who-arent-dying/2013/12/26/4ff75bbe-68c9-11e3-ae56-22de072140a2_story.html.

In an effort to combat rampant Medicare fraud and abuse in the hospice contexts, many concerned individuals—nurses, doctors, marketers, industry-insiders, and executives—have filed actions pursuant to the *qui tam* provisions of the False Claims Act (“FCA”) alleging that health care providers knowingly or recklessly submitted, or caused to be submitted, false claims for payment to Medicare.⁷⁸ Since Congress authorized federal funding for hospice, seventy-one lawsuits brought by whistleblowers have been unsealed to reveal allegations similar to the schemes perpetrated by Kolodesh and his co-conspirators at Home Care Hospice.⁷⁹ Those suits represent over seventy doctors, nurses, marketers, and administrators who have risked their careers to file suit under the federal False Claims Act against what they believed to be fraudulent hospices.⁸⁰

In most cases, the knee-jerk reaction of corporate health care defendants and their lawyers to False Claims Act lawsuits has not been to undergo any self-critical analysis or reform, but rather to operate under complete denial, quickly reacting by filing motions to dismiss based purely upon legal arguments: brazenly claiming that, if a physician certified a patient as eligible for hospice services, then the provider is completely protected from liability under the FCA even where it may have known the claim to be false.

The for-profit hospice community continues its singular focus on profit growth, resulting in little focus on better screening and identification of terminally ill patients, and stricter documentation of patients’ clinical conditions. The lawsuits have been left to the lawyers, a strategy that has proven to be both costly and ineffective for the corporations because their legal defense—focusing on the regulation requiring a physician to certify a patient’s terminal illness for admission into hospice care while ignoring, denying, or downplaying the company’s obligation to monitor and maintain records that would support such a prognosis—thus far have failed to persuade the courts; all of the relevant judicial opinions⁸¹ that have examined and considered the physician certification defense have rejected it as being at odds with the regulations governing the Medicare Hospice Benefit.

78. *See generally id.* (reporting on the rise of fraud and *qui tam* suits involving the Medicare Hospice Benefit, and quoting the author of this Article).

79. *See infra* Appendix for the Department of Justice’s list of unsealed cases. This number was obtained from a list of cases provided to the author upon request to the Civil Division Fraud Section of the United States Department of Justice. A copy of the list is attached to this article in the Appendix. This number does not necessarily reflect the total number of False Claims Act cases because the whistleblower provisions of the federal False Claims Act require such cases to be filed under seal and such cases frequently remain under seal for long periods of time. *See infra* notes 171–75 and accompanying text. Accordingly, the total number of False Claims Act cases, including those that remained under seal at the time this article was written, is not available to the public.

80. *See infra* Appendix.

81. A summary of the relevant opinions can be found in *supra* Section III.

B. The Regulations Governing the Medicare Hospice Benefit

Passed by Congress based upon the sincere beliefs of Saunders and Kübler-Ross and the urging of volunteer (and later multi-millionaire) Westbrook, the Medicare Hospice Benefit is a Medicare funded palliative care interdisciplinary program available exclusively to terminally ill beneficiaries of the Medicare Program who elect hospice care and agree to forego all curative treatment for their terminal illness.⁸² The Medicare Program (“Medicare”) is common parlance for the federal Health Insurance for the Aged and Disabled Program, which was originally established by Title XVIII of the Social Security Act.⁸³ As its formal name makes clear, the purpose of Medicare is “to provide a system of health insurance for the aged and disabled.”⁸⁴ Hospice care is paid through Medicare Part A⁸⁵ for certain terminally ill patients who elect to receive such care through the Medicare Hospice Benefit.⁸⁶ A patient is deemed terminally ill if the patient “has a medical prognosis such that his or her life expectancy is 6 months or less if the illness runs its normal course.”⁸⁷ In electing hospice care, a patient must agree to forego Medicare coverage for curative treatment.⁸⁸ A patient may at any time revoke his or her hospice election and resume Medicare Part A coverage.⁸⁹ Medicare funded hospice covers a broad set of palliative services for qualified beneficiaries who have a life expectancy of six months or less as determined by their physician.⁹⁰ Hospice is designed to provide pain-relief, comfort, and emotional and spiritual support to patients with a terminal diagnosis. Qualified hospice patients may receive skilled nursing services, medication for pain and symptom control, physical and occupational therapy, counseling, home health aide and homemaker

82. See 42 U.S.C. § 1395d (2015).

83. *Id.* §§ 1395–1395kkk-1.

84. *Bryan v. U.S. Sec’y Health & Human Servs.*, 758 F. Supp. 1092, 1094 (E.D.N.C. 1990).

85. Originally divided into two parts—Part A and Part B, which cover inpatient and outpatient medical services, respectively—Medicare has been expanded over time to include private Medicare HMO and PPOs and private health insurance of outpatient prescription drugs, and is now comprised of four distinct parts:

- Part A: Hospital Insurance, covering most medically necessary hospital, skilled nursing, home health, and—central to this article—*hospice care*;
- Part B: Outpatient Services, covering most medically necessary physician’s services, outpatient services, durable medical equipment, and ambulance and medical transport services;
- Part C: Medicare Advantage, authorizing private health insurance companies to offer Medicare benefits through HMO or PPO plans;
- Part D: Outpatient Prescription Drug Benefit, authorizing private contracted insurance companies to provide coverage for outpatient medications for qualified Medicare beneficiaries.

See generally *What’s Medicare?*, MEDICARE.GOV, <http://www.medicare.gov/sign-up-change-plans/decide-how-to-get-medicare/whats-medicare/what-is-medicare.html> (last visited Sept. 14, 2015).

86. See 42 U.S.C. § 1395d(d)(1).

87. 42 C.F.R. § 418.3 (2015).

88. See 42 U.S.C. § 1395d(d)(2)(A).

89. 42 C.F.R. § 418.28(a).

90. See *id.* § 418.202 (describing covered services).

services, short-term inpatient care, inpatient respite care, and other services for the palliation and management of the terminal illness paid entirely by Medicare with no co-payment by the patient.⁹¹

Through Medicare and/or Medicaid (indirectly through the States), the United States reimburses hospice providers for services to qualified beneficiaries on a *per diem* rate for each day a qualified beneficiary is enrolled.⁹² Medicare or Medicaid makes a daily payment regardless of the amount of services provided on a given day and even on days when no services are provided. These *per diem* payments act as a cost-spreading measure for Medicare and are intended to cover all hospice services needed to manage the end-of-life care of the terminal illness and related conditions.⁹³ Payments are made according to a fee schedule with four base payment amounts for the four different categories of care: routine home care (“RHC”), continuous home care (“CHC”), in-patient respite care (“IRC”), and general in-patient care (“GIC”).⁹⁴ In return for payment for services by Medicare, hospices are obligated to provide patients with all covered palliative services.⁹⁵ The hospice must design a plan of care (“POC”) inclusive of all covered services necessary to meet the patient’s needs.⁹⁶ That POC must be in place prior to the hospice submitting a Medicare bill.⁹⁷

Medicare will not pay for hospice services provided to patients who are not terminally ill.⁹⁸ Furthermore, Medicare requires that all hospice care provided be reasonable and necessary for palliation or management of terminal illness.⁹⁹ Federal law authorizes Medicare administrative contractors and fiscal intermediaries to issue determinations as to the extent of Medicare coverage for particular items or services.¹⁰⁰ Accordingly, Medicare administrative contractors and fiscal intermediaries publish local coverage determinations (“LCDs”) establishing requirements for and limitations on hospice coverage.¹⁰¹

Medicare will generally not pay for hospice care provided to a patient who does not meet the LCDs.¹⁰² This payment condition flows both from the “6 months or less requirement,” but also from the broader condition and axiom that Medicare

91. *See id.*

92. *Id.* § 418.302(d)(1).

93. *See* FY 2015 Hospice Wage Index and Payment Rate Update, 79 Fed. Reg. 26538, 26543, 26553 (May 8, 2014) (to be codified at 42 C.F.R. pt. 405 & pt. 418).

94. *See id.* at 26543.

95. *See id.*

96. *See* 42 C.F.R. § 418.202.

97. *See id.* § 418.200.

98. *See* 42 U.S.C. § 1395y(a)(1)(C) (2015).

99. *See id.*; 42 C.F.R. § 418.200.

100. *See* 42 U.S.C. § 1395ff.

101. *See, e.g., JM Home Health and Hospice: LCDs and NCDS*, PALMETTO GBA, <http://www.palmettogba.com/HHH/LCD> (last visited Sept. 14, 2015) (providing access to local coverage determinations).

102. *See* 42 U.S.C. § 1395ff(f)(2)(B); 42 U.S.C. § 1395y(a)(1)(A).

should not and will not pay for treatment that is not “reasonable and necessary.”¹⁰³ In order for hospice treatment to be deemed “reasonable and necessary” under the Medicare Hospice Benefit, the patient must be “terminally ill,” defined by Medicare as having a “medical prognosis that the individual’s life expectancy is 6 months or less.”¹⁰⁴ General medical terminology does not reference a date range for an illness to be terminal but defines it as incurable, advanced, and progressively deteriorating.¹⁰⁵ Hospices submitting claims for payment to Medicare should use the LCDs, the “6 months” requirement, and the basic medical understanding of a terminally ill prognosis together when analyzing whether a Medicare patient is appropriate for hospice care.

Although the patient’s prognosis must be limited to six months or less, Congressional authorization for payment of the benefit recognizes that a patient may in some cases live beyond his or her prognosis.¹⁰⁶ Accordingly, the payment period of the benefit has shifted over time to remain flexible in permitting a person who outlives his or her prognosis but who nevertheless remains terminal to continue to receive hospice care. When first authorized, Congress gave an approximately one month buffer period for payment of hospice care, agreeing to pay a total of 210 days of hospice per Medicare beneficiary.¹⁰⁷ Currently, payment by Medicare for a qualified hospice patient is theoretically unlimited so long as the patient’s prognosis remains six months or less.¹⁰⁸

It is a further condition of payment by Medicare that hospice not be forced upon the patient, but rather that it be a voluntary election by the patient (or the patient’s guardian if the patient is incapacitated).¹⁰⁹ This requirement echoes the concerns of Saunders when she conceived of hospice that the care of dying patients not be based upon “the opinions of specialists or the convenience of nurses or the rules of hospitals, government health programs, or insurance companies.”¹¹⁰ Only a patient may elect hospice under the Medicare regulations.

Accordingly, a hospice seeking payment from Medicare must take its obligation to honestly and fully inform the patient of her rights, and must obtain a signed election form

103. See 42 C.F.R. § 418.22(a)(1), (b)(1); 42 U.S.C. § 1395(y)(a)(1)(A).

104. 42 U.S.C. § 1395x(dd)(3)(A); 42 C.F.R. §§ 418.3, 418.21.

105. See FY 2014 Hospice Wage Index and Payment Rate Update, 78 Fed. Reg. 48234, 48247 (Aug. 7, 2013).

106. See 42 C.F.R. § 418.21 (authorizing an eligible patient to receive an unlimited number of 60-day hospice care periods).

107. See CTRS. FOR MEDICARE & MEDICAID SERVS., MEDICARE BENEFIT POLICY MANUAL § 20.1 (2015), <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/bp102c09.pdf> (explaining that Medicare hospice payments are paid in increments of 90 days for up to 6 months; thereafter the hospice may bill Medicare every 60 days so long as the patient’s conditions continue to support a prognosis of 6 months or less).

108. See 42 C.F.R. § 418.3 (“Terminally ill means that the individual has a medical prognosis that his or her life expectancy is 6 months or less if the illness runs its normal course.”); see CTRS. FOR MEDICARE & MEDICAID SERVS., *supra* note 107, at §§ 10, 20.1.

109. See 42 C.F.R. § 418.24(a)(1).

110. SMITH & HIMMEL, *supra* note 40, at 15.

from the patient before billing Medicare.¹¹¹ This obligation is particularly important because, by electing federally funded hospice care, a patient waives all rights to Medicare coverage for curative treatment for the terminal illness and related conditions.¹¹² Briefing this facet of the Medicare Hospice Benefit to the federal courts, Department of Justice attorneys tasked with enforcing the Medicare Hospice Benefit by prosecuting fraud actions have elaborated upon this sacred trust:

For example, a cancer patient who has a life expectancy of six months or less and elects the Medicare hospice benefit will no longer receive Medicare-covered treatment, such as chemotherapy, intended to cure the cancer, but instead will receive palliative care designed to relieve only the pain and suffering associated with the patient's impending death. Electing the Medicare hospice benefit is often a critical decision for a Medicare participant, because, for many Medicare participants, electing the benefit is electing to cease any further curative care for their terminal illnesses.¹¹³

While it may seem unduly harsh to force terminal patients and their families to choose between curative and palliative care, the policies at play are readily apparent. First, as Saunders recognized in her criticism of hospitals in the 1950s and 1960s, it is futile for a patient whose life expectancy is truly six months or less to be subjected to pain and helplessness by "intensive treatment carried to the bitter end."¹¹⁴ Second and conversely, a patient whose disease is curable and reversible should not readily abandon curative treatment in exchange for a numbed existence under the fog of narcotic painkillers. Third and finally, even if curative treatment and hospice care could be reconciled such that a patient could benefit from both at the same time, Medicare simply does not have the funds to pay for it.

C. Funding for the Medicare Hospice Benefit

The Medicare Hospice Benefit is specifically earmarked as part of the insurance coverage of Medicare Part A.¹¹⁵ Unlike Medicare Parts B and C,¹¹⁶ Medicare Part

111. See 42 C.F.R. §§ 418.24, 418.52.

112. See 42 C.F.R. § 418.24(d).

113. United States of America's Consolidated Complaint in Intervention at 8, *United States ex rel. Fowler v. Evercare Hospice, Inc.*, Nos. 11-cv-00642-PAB-BNB, 14-cv-01647-PAB, 2014 WL 7478719 (D. Colo. Nov. 10, 2014).

114. SMITH & HIMMEL, *supra* note 40, at 16.

115. See 42 U.S.C. § 1395x(dd) (2015).

116. Medicare Part C is technically not a stand-alone benefit, but rather simply a way by which Medicare beneficiaries may elect private Medicare Advantage HMO and PPO plans to insure for covered services, pharmaceuticals, and equipment. For Medicare Part C plans (also known as Medicare Advantage Plans), Medicare pays a fixed amount for beneficiaries care to the companies offering Medicare Advantage Plans, and each Medicare Advantage Plan may charge the beneficiary different out-of-pocket costs depending on the particular plan's specifications. See *How Do Medicare Advantage Plans Work?*, MEDICARE.GOV <https://www.medicare.gov/sign-up-change-plans/medicare-health-plans/medicare-advantage-plans/how-medicare-advantage-plans-work.html> (last visited Oct. 13, 2015).

A requires no co-pay from qualified beneficiaries. Accordingly, it is paid entirely by federal funds through the Hospital Insurance Trust Fund (“HI Trust Fund”).¹¹⁷

Congress established the HI Trust Fund to account for Medicare income (Medicare taxes) and disbursements to beneficiaries, primarily through reimbursements to healthcare providers. The Trust itself—one of four separate trusts managed by the Secretary of the Treasury under the Social Security Act¹¹⁸—is governed by six trustees: (1) the acting Secretary of the Treasury, (2) the acting Secretary of Labor, (3) the acting Secretary of Health & Human Services; (4) the acting Commissioner of Social Security, and (5 & 6) two public representatives¹¹⁹ appointed by the President and Confirmed by the Senate.¹²⁰

According to the most recent summary issued by the two current public trustees, Charles P. Blahous and Robert D. Reischauer, the HI Trust Fund is in dire straits.¹²¹ Although the outlook has improved slightly in recent years, the HI Trust Fund fails to “meet the short-range test of financial adequacy.”¹²² By 2030, the HI Trust Fund asset reserves are expected to “become fully depleted.”¹²³ At the beginning of 2014, the HI Trust Fund ratio, the ratio of projected reserves in the HI Trust Fund to annual cost, was seventy-six percent, “and the projected ratio does not rise to 100 percent within five years.”¹²⁴ In 2013, the trustees report that the HI Fund continued a pattern of grossly outspending income, outpacing its tax and premium income by \$24 billion (\$9 billion in prior interest income and \$15 billion in reserve assets).¹²⁵ Even with modest improvements, Blahous and Reischauer’s summary makes it clear that the HI Trust Fund is not sustainable at present spending and income levels. In short, Medicare Part A spending widely exceeds revenue and will eventually bankrupt the HI Trust Fund. It is not a matter of *if* but *when*. Blahous and Reischauer explicitly describe their summary as part of an ongoing attempt to “warn[] lawmakers and the public of financing shortfalls” facing Social Security at large and Medicare in particular.¹²⁶

Blahous and Reischauer predict that things will continue to get worse due to a number of factors, most notably the increasing and non-reversible inverse propor-

117. See SOC. SEC. & MEDICARE BDS. OF TR., STATUS OF THE SOCIAL SECURITY AND MEDICARE PROGRAMS: A SUMMARY OF THE 2014 ANNUAL REPORTS 1 (2014).

118. *Id.*

119. See *id.* at 6. At the time of the writing of this Article, the two public trustees are Charles P. Blahous III, Research Fellow at the Hoover Institution and Senior Research Fellow at the Mercatus Center, and Robert D. Reischauer, President Emeritus and Distinguished Fellow of the Urban Institute. See *id.* at 14.

120. *Id.* at 13–14.

121. See generally *id.* (“Neither Medicare nor Social Security can sustain projected long-run program costs in full under currently scheduled financing, and legislative changes are necessary to avoid disruptive consequences for beneficiaries and taxpayers.”).

122. *Id.* at 9.

123. *Id.*

124. *Id.*

125. *Id.* at 2.

126. *Id.* at 15.

tion of beneficiaries to taxpayers over the next half-century:

Under the intermediate assumptions employed in the reports and throughout this Summary, costs for the programs increase substantially through 2035 when measured this way because: (1) the number of beneficiaries rises rapidly as the baby-boom generation retires; and (2) the lower birth rates that have persisted since the baby boom cause slower growth of the labor force and GDP Under the projected baseline, Medicare cost rises to 5.4 percent of GDP by 2035, largely due to the rapid growth in the number of beneficiaries, and then to 6.9 percent in 2088, with growth in health care cost per beneficiary becoming the larger factor later in the valuation period.¹²⁷

Nothing can be done to alter the baby boom, the baby boomers' aging and inevitable death, the increased demand for healthcare and end-of-life care, the lower birth rates since the baby boom, and the correspondingly smaller labor force and taxpayer revenue. Accordingly, there emerge two unavoidable conclusions relevant to the subject of this Article: (1) funding for services through Medicare Part A will become increasingly strapped as the baby boomers continue to age toward death; and (2) efforts to curb Medicare Part A spending—particularly fraudulent spending—and to recover for false claims will be redoubled over the next thirty to forty years if bankruptcy of the HI Trust Fund is to be avoided. Therefore, those following the hospice industry should expect to see: (1) a constant increase in scrutiny of payment to Medicare hospice providers, and (2) the overall trend of investigating and prosecuting Medicare Hospice fraud to continue. Thus far, such investigations and prosecutions have almost universally occurred through the public-private enforcement tool of the *qui tam* provision of the federal False Claims Act.

II. THE FEDERAL CIVIL FALSE CLAIMS ACT AS THE PRIMARY ENFORCEMENT TOOL FOR THE MEDICARE HOSPICE BENEFIT

Years before Matthew Kolodesh stood before Judge Robreno to be sentenced and led away to the penitentiary by federal marshals for his role in the Home Care Hospice Fraud, two nurses working for his company filed a sealed civil complaint in federal district court in the Eastern District of Pennsylvania,¹²⁸ thereafter serving Memeger (the United States Attorney for the district), and the Attorney General of the United States. Subsequently, they met with and provided firsthand knowledge of the fraud to agents of the Organized Crime section of the Federal Bureau of Investigation and the Office of Inspector General of the Department of

127. *Id.* at 3 (citations omitted).

128. Complaint—Civil Action, United States *ex rel.* Fox v. Home Care Hospice, Inc., No. 2:06-cv-04679 (E.D. Pa. Oct. 19, 2006), ECF No. 1.

Health and Human Services.¹²⁹ But for the determination of these two whistleblowers and their attorneys, it is highly unlikely that the crimes of Kolodesh and his co-conspirators would have ever come to light.

Other than the Department of Justice attorneys and federal agents investigating the fraud and the court, no one was aware that Maureen Fox and Cathy Gonzales had become government informants—also known as “relators” or “whistleblowers”—against their employer. For four and a half years, the government investigated the allegations that ultimately led to Kolodesh’s indictment and conviction before the case was finally unsealed.¹³⁰ Now pending for more than seven and a half years, the civil False Claims Act case yet remains unresolved at the time of the writing of this Article.¹³¹ Ninety entries have been filed in the court’s docket related to the False Claims Act case. The corporate defendant is now defunct and all of its assets have been frozen. And one of the relators—Maureen Fox—is now deceased.¹³² Yet, the case plods on.

If the government’s case is successful, Kolodesh and his co-conspirators could be held liable for three times¹³³ the amount of the Home Care Hospice fraud: \$48.6 million plus interest, costs, and attorneys fees, and as much as an additional \$11,000 for every false claim made under the Medicare Hospice Benefit.¹³⁴ Of that money, Gonzales and Fox are theoretically entitled to between fifteen and twenty-five percent, some \$12 million or more. It is this hefty incentive authorized by the federal False Claims Act that undoubtedly plays a major role in encouraging healthcare whistleblowers like Gonzales and Fox to come forward when they are witnesses to fraud against the United States.¹³⁵

129. See United States’ Verified Complaint Pursuant to 31 U.S.C. § 3731(c) at 2–3, *Fox*, No. 2:06-cv-04679 (May 21, 2014), ECF No. 37.

130. See Order, *Fox*, No. 2:06-cv-04679 (Nov. 7, 2011), ECF No. 18 (instructing the clerk of court to unseal the complaint, amended complaint, and the order, while keeping the remaining docket entries and documents under seal).

131. See Notice of Rescheduled Hearing, *Fox*, No. 2:06-cv-04679 (Sept. 15, 2015), ECF No. 90.

132. See Amended Complaint—Civil Action at 2, *Fox*, No. 2:06-cv-04679 (Oct. 17, 2011), ECF No. 15.

133. False Claims Act, 31 U.S.C. § 3729(a)(1) (2015).

134. *Id.* § 3729(a); Government’s Sentencing Memorandum at 3, *United States v. Kolodesh*, No. 2:11-cr-00464 (E.D. Pa. May 15, 2014), ECF No. 169; Amended Complaint—Civil Action at 9, *Fox*, No. 2:06-cv-04679 (Oct. 17, 2011), ECF No. 15 (single damages of \$16.2 million with statutory trebling and civil penalties per 31 U.S.C. § 3729). Pursuant to 31 U.S.C. section 3729(a)(1), Kolodesh is subject to a mandatory penalty of “not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104–410), plus 3 times the amount of damages which the Government sustains because of the act of that person.” In 1999, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, the Department of Justice increased the fine for False Claims Act violations to a minimum of \$5,500 and a maximum of \$11,000. 28 C.F.R. § 85.3(a)(9) (2015).

135. See James F. Barger, Jr., Pamela H. Bucy, Melinda M. Eubanks & Marc S. Raspani, *States, Statutes, and Fraud: An Empirical Study of Emerging State False Claims Acts*, 80 TUL. L. REV. 465, 476 (2005) (“The damages and penalty provisions, coupled with the mandatory percentage allocated for the relator, provide a substantial incentive (that is, potentially, a lot of money) to attract knowledgeable insiders to take the risks attendant with serving as whistleblowers.”).

But it is also a long, hard road for False Claims Act whistleblowers. No matter the case's disposition, Maureen Fox will never know resolution. Ms. Fox was Home Care Hospice's Quality Assessment Manager and Director of Performance and Improvement and Education, but when she lived up to her job title and duties by questioning the practices espoused by Kolodesh and his co-conspirators, she was fired.¹³⁶ She assisted agents and attorneys of the United States right up until her death in 2007, according to the team of attorneys handling the civil False Claims Act case.¹³⁷ Her compatriot, Cathy Gonzales, quit her job in disgust because of what she saw at Home Care Hospice, and chose to assist the government in its civil and criminal prosecutions of the principals of the Home Care Hospice fraud.¹³⁸ While her allegations were vindicated and she lived to see the defendants punished, she has also watched her civil case languish for years—at one point being indefinitely stayed by the court—and will likely never see any monetary reward, given that Home Care Hospice has shut its doors and is banned from receiving any more revenues from Medicare. Her only reward may be in knowing that she did the right thing—she stood up for her country, her patients, and her profession—something she undoubtedly could not have done but for the unique statutory scheme provided by the federal False Claims Act.

When the civil False Claims Act was originally passed in 1863,¹³⁹ it could hardly have been foreseen that it would be used a century later as a tool to fight healthcare fraud to recover billions of dollars per year. Rather, the Civil War Era statute was prompted by “[d]iseased mules, defective muskets, and an iconic President’s frustration” in an attempt to give “the federal government a way to combat fraud suffered by the Union Army when it received deliveries of defective supplies.”¹⁴⁰ The most recent report by the Department of Justice on the use of the False Claims Act, however, noted that more than \$5 billion in false claims to the United States were recovered in fiscal year 2014 alone—and that more than one third of that was healthcare fraud.¹⁴¹

Heralding its mounting healthcare recoveries under the False Claims Act, the Department of Justice announced that “[t]he \$2.3 billion in health care fraud recoveries in fiscal year 2014 marks five straight years the department has

136. See United States' Verified Complaint Pursuant to 31 U.S.C. § 3731(c) at 2, *Fox*, No. 2:06-cv-04679 (May 21, 2014), ECF No. 37.

137. *Id.*

138. *Id.* at 2–3.

139. See Act of Mar. 2, 1863, ch. 67, 12 Stat. 696, 698 (enacting “An Act to prevent and punish Frauds upon the Government of the United States”).

140. Barger, *supra* note 135, at 470.

141. See Press Release, U.S. Dep't of Justice, Justice Department Recovers Nearly \$6 Billion from False Claims Act Cases in Fiscal Year 2014 First Annual Recovery to Exceed \$5 Billion; Over 700 Whistleblower Lawsuits for Second Consecutive Year (Nov. 20, 2014), <http://www.justice.gov/opa/pr/justice-department-recovers-nearly-6-billion-false-claims-act-cases-fiscal-year-2014> (reporting that the Department of Justice obtained \$5.69 billion in settlements and judgments in civil claims involving fraud and false claims against the government, for which false claims against federal health care programs amounted to \$2.3 billion).

recovered more than \$2 billion in cases involving false claims against federal health care programs such as Medicare, Medicaid and TRICARE, the health care program for the military.”¹⁴²

The False Claims Act is a bipartisan law that is generally agreed upon to be “our Nation’s most effective fraud-fighting tool.”¹⁴³ Among the Act’s provisions, the most ballyhooed, beloved, or alternately lamented and despised (depending on the speaker and the audience) portion of the statute is its *qui tam* or “whistleblower” provision. This provision derives its name from the latin phrase “*qui tam pro domino rege quam pro se ipso in hac parte sequitur*,” meaning “he who pursues this action on our Lord the King’s behalf as well as his own.”¹⁴⁴ The provision, which has its roots in British and American common law, permits private citizens to bring *qui tam* lawsuits in the name of the United States and to prosecute those suits for fraud against the federal government.¹⁴⁵

The fraud-fighting purpose of the False Claims Act and its *qui tam* provisions, though often under attack since its inception, has been repeatedly clarified and made clear by Congress, most recently in the speeches of legislators after adopting the Fraud Recovery and Enforcement Act of 2009:¹⁴⁶

Since its inception, the central purpose of the False Claims Act has been to enlist private citizens in combating fraud against the U.S. Treasury. Specifically, the Act’s *qui tam* provisions were crafted to provide a clear procedural roadmap, so as to assist and encourage private citizens to not only report fraudulent schemes, but to actively participate in investigating and prosecuting those who steal from the public fisc.¹⁴⁷

While the operation of the False Claims Act (particularly with relation to the *qui tam* provisions) can be unique and complicated, the actual elements of a typical False Claims Act violation are not dissimilar to other basic notions of common law and statutory civil and criminal fraud.¹⁴⁸

The False Claims Act provides in pertinent part that any entity that knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval is liable to the United States for damages and penalties.¹⁴⁹ Under the

142. *Id.*

143. 111 CONG. REC. E1295 (daily ed. June 3, 2009) (speech of Hon. Howard L. Berman).

144. *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 768 n.1 (2000); *see also* Barger, *supra* note 135, at 470 (citing *The History and Development of Qui Tam*, 1972 WASH. U. L.Q. 81, 91–101 (1972)).

145. *See* 31 U.S.C. § 3730(b) (2015) (“A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government.”).

146. Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, 123 Stat. 1617 (2009).

147. 111 CONG. REC. E1295 (daily ed. June 3, 2009) (speech of Hon. Howard L. Berman).

148. *See, e.g.*, Barger, *supra* note 135, at 472–77.

149. *See* False Claims Act, 31 U.S.C. § 3729(a)(1) (2015). There are actually seven different types of conduct covered by the False Claims Act, “all involving the submission of false claims to the federal government, including: the conspiracy to do so; the submission of a false statement in support of a claim; or the making, using, or causing to be made or used a ‘false record or statement to conceal, avoid, or decrease an obligation to pay or

False Claims Act, damages are automatically trebled, and perpetrators are subject to penalties of between \$5000 and \$11,000 per false claim.¹⁵⁰ To be held liable under the False Claims Act, a defendant must be found to have acted “knowingly.” In other words, the person or entity must have: (1) “ha[d] actual knowledge of the information”; (2) “act[ed] in deliberate ignorance of the truth or falsity of the information”; or (3) “act[ed] in reckless disregard of the truth or falsity of the information.”¹⁵¹ It need not be proven that the person or entity had the specific intent to defraud the United States.¹⁵²

Qui tam suits under the False Claims Act are filed under seal; initially, they are not disclosed to the public and are not served on the defendant.¹⁵³ The complaint is served upon the Attorney General of the United States and upon the United States Attorney in the district where the action is filed together with a “written disclosure of substantially all material evidence and information the person possesses.”¹⁵⁴ During the seal period, which by statute must be at least sixty days but may in actuality last years, “the DOJ evaluates the case, tests its merits, assesses its resources, and determines whether it will intervene.”¹⁵⁵

If the United States intervenes, it assumes “primary responsibility” for prosecuting the case, but the relator continues as plaintiff and retains a right to between

transmit money or property to the Government.” See Barger, *supra* note 135, at 471 n.35 (citing 31 U.S.C. § 3729(a) (2000)). Additionally, the FCA was amended in 2009 by the Fraud Enforcement and Recovery Act to expressly clarify, among other things, the “reverse false claims” conduct whereby a False Claims Act defendant fails to fully meet its obligations to the government. See 111 CONG. REC. E1295 (daily ed. June 3, 2009) (speech of Hon. Howard L. Berman).

150. The statute provides for “a civil penalty of not less than \$5,000 and not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Public Law 104-410).” 31 U.S.C. § 3729(a)(1).

151. *Id.* § 3729(b)(1).

152. *Id.* § 3729(b)(1)(B).

153. *Id.* § 3730(b)(2) (“The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders.”).

154. *Id.* The statute requires compliance with Federal Rule of Civil Procedure 4, which provides that “[t]o serve the United States, a party must: (A) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or . . . send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney’s office; (B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and (C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.” FED. R. CIV. P. 4(d)(4). The purpose of the disclosure statement is to assist attorneys and agents of the United States in investigating and evaluating the *qui tam* plaintiff’s claims. See *United States ex rel. Made in the USA Found. v. Billington*, 985 F. Supp. 604, 608 (D. Md. 1997) (indicating that a disclosure statement should comprise much of what will be relied upon to support the allegations in the case).

155. Barger, *supra* note 135, at 474.

fifteen and twenty-five percent of any recovery and may continue to play an active role in the case at the direction of the United States, unless the government seeks and receives a court order restricting the relator's role.¹⁵⁶ If the United States declines to intervene in the lawsuit, then the relator may continue to prosecute the case in the name of the United States and will receive between twenty-five and thirty percent of any recovery (plus interest, reasonable attorneys' fees, and costs).¹⁵⁷ "The relator need not be personally injured or affected by the defendant's conduct, but is deemed to have standing on the theory that the federal government, as the real injured party, may assign its right to sue to a private plaintiff."¹⁵⁸

A relator's share may be reduced in extraordinary instances below those percentages where evidence is based upon publicly disclosed information or where the relator was a participant in the fraud.¹⁵⁹ In any case, the Department of Justice continues to represent the United States as the named plaintiff and "monitors" private relators and their attorneys as the case proceeds.¹⁶⁰

Not to be discounted in the analysis of the strength of the False Claims Act *qui tam* provisions' effectiveness at fraud fighting are the attorneys who represent *qui tam* relators in both intervened and non-intervened cases. "The federal FCA has proven highly effective in recruiting legal talent who possess both the skill and resources to handle complex, time-consuming, and expensive cases."¹⁶¹ The *qui tam* case against Home Care Hospice and Matthew Kolodesh and his co-conspirators is a case in point—it has been pending for over seven years and may never result in a full recovery even though it ultimately resulted in indictments and a number of criminal convictions. Only the most patient and well-funded lawyers could accept the risks and consequences of such a case. However, "[b]ecause of the large recoveries available to private plaintiffs under the federal FCA through statutorily mandated percentages of large, fixed penalties, private plaintiffs' counsel can receive significant fees."¹⁶² In addition to "a percentage of the

156. 31 U.S.C. § 3730(c)–(d) ("Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment," the court may limit the relator's involvement). Likewise, the defendant may seek to restrict the relator's involvement in an intervened case "[u]pon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense." *Id.* § 3730(c)(2)(D).

157. *Id.* § 3730(d)(2).

158. Barger, *supra* note 135, at 471 (citing *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 773 (2000)).

159. *See* 31 U.S.C. §§ 3730(d)(1), (3).

160. *Id.* § 3730(c).

161. Barger, *supra* note 135, at 476.

162. *Id.*

recovery they negotiated pre-trial with their clients,”¹⁶³ most False Claims Act specialists expect to and receive in successful cases “court-awarded attorneys’ fees”¹⁶⁴ under the False Claims Act’s automatic fee shifting provision.¹⁶⁵ In short, the whistleblower provisions of the False Claims Act have been successful at detecting and recovering civil fraud and penalizing those who commit it.

Not only has it been successful at combating fraud, it is hard to imagine that most of the fraud that has been uncovered in the last three decades would have come to light without the FCA. First, “[c]omplex economic wrongdoing cannot be detected effectively without the help of those who are intimately familiar with it.”¹⁶⁶ Second, “[i]nsiders can also guide public regulators as they investigate questionable activity and can help overcome concealment and cover-ups.”¹⁶⁷ Third, “[i]nside information can alert regulators and the public to ongoing or inchoate wrongdoing; in many cases, before harm has occurred.”¹⁶⁸ There is little room to argue that the False Claims Act is not—as legislators and prosecutors are so quick to claim—the “primary civil enforcement tool to combat fraud”¹⁶⁹ and “essential . . . to protect[ing] the integrity of the Medicare program.”¹⁷⁰

The author cross-referenced information from multiple sources¹⁷¹ to compile data on all of the unsealed Medicare Hospice False Claims Act cases to date. A review of the data demonstrates three things. First, in recent years, the number of Hospice False Claims Act whistleblower suits in which the Department of Justice has intervened has risen dramatically, but is currently in a state of fluctuation from year to year:

163. *Id.*

164. *Id.*

165. False Claims Act, 31 U.S.C. § 3729(a)(3) (2015) (“A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.”).

166. Pamela H. Bucy, *Information as a Commodity in the Regulatory World*, 39 *HOUS. L. REV.* 905, 940 (2002).

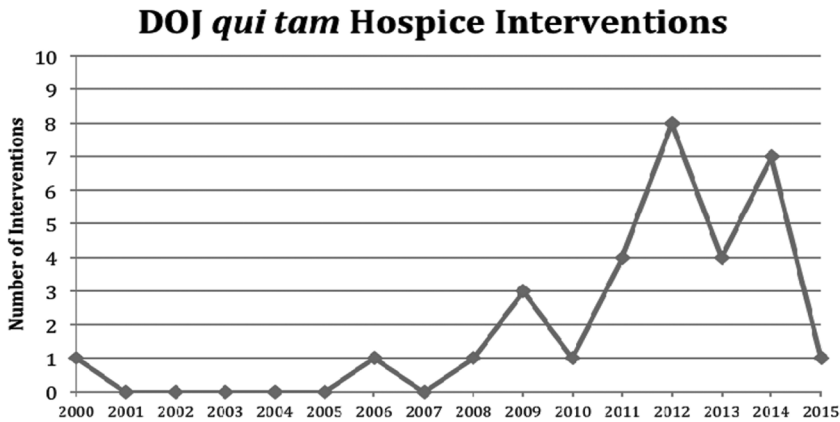
167. *Id.*

168. *Id.*

169. *Surgeons for Sale: Conflicts and Consultant Payment in the Medical Device Industry: Hearing Before the Spec. Comm. on Aging*, 110th Cong. 77 (2008) (statement of Gregory Demske in response to Senator Clinton’s question).

170. *Health Care Initiatives Under the False Claims Act that Impact Hospitals: Hearing Before the Subcomm. on Immigration & Claims of the H. Comm on the Judiciary*, 105th Cong. 15 (1998) (statement of Lewis Morris, Assistant Inspector Gen. for Legal Affairs, U.S. Dept. of Health & Human Servs.).

171. The information was compiled primarily from four sources: (1) the Public Access to Electronic Records (PACER) website available at <http://www.pacer.gov>; (2) BloombergLaw.com docket database (3) the Department of Justice online archives available at <http://www.doj.gov>; and (4) information provided by the Fraud Section of the Commercial Litigation Branch of the Civil Division of the United States Department of Justice at the author’s request.



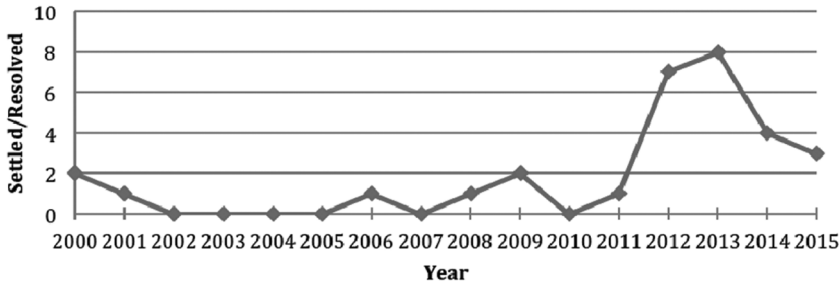
Second, the number of False Claims Act hospice cases that have been successfully resolved in favor of the United States and whistleblowers tracks on a strikingly similar upward trajectory, with some fluctuation in recent years. However, this recent fluctuation can likely be partially explained by the fact that there are ten cases currently pending and the resolution of a multi-year case can vary upon numerous factors.¹⁷² Furthermore, the Department of Justice is consolidating more cases, which can account for some of the recent fluctuation. For instance, two of the nine currently pending cases are consolidated cases—each representing three individual cases.¹⁷³ There is also another currently pending case that is consolidated from two individual cases.¹⁷⁴

172. See *United States v. VITAS Hospice Servs., LLC*, No. 4:13-cv-00449-BCW (W.D. Mo. filed May 2, 2013); *United States ex rel. Fowler v. Evercare Hospice, Inc.*, No. 1:11-cv-00642 (D. Colo. filed Mar. 15, 2011); *United States ex rel. Wall v. Vista Hospice Care, Inc.*, No. 3:07-cv-00604 (N.D. Tex. filed Sept. 29, 2009); *United States v. AseraCare Inc.*, No. 2:12-cv-00245 (N.D. Ala. filed May 2, 2008).

173. *United States ex rel. Gonzales v. Vitas Healthcare Corp.*, No. 4:13-cv-00344 (W.D. Mo. Sept. 25, 2013), *United States ex rel. Urick v. Vitas HME Solutions, Inc.*, No. 4:13-cv-00563 (W.D. Tex. Sept. 25, 2013), and *United States ex rel. Spottiswood v. Chemed Corp.*, No. 1:07-cv-04566 (N.D. Ill. May 20, 2013) consolidated into *United States v. VITAS Hospice Servs., LLC*, No. 4:13-cv-00449 (W.D. Mo. Aug. 11, 2015). See Order, *VITAS Hospice Servs.*, No. 4:13-cv-0049 (Sept. 25, 2013), ECF No. 64. *Richardson v. Golden Gate Nat'l Senior Care, LLC*, No. 2:09-cv-00627 (N.D. Ala. Dec. 17, 2012); *United States ex rel. Micca v. GGNSC Holdings, LLC*, No. 2:12-cv-02262 (N.D. Ga. June 22, 2012), and *United States ex rel. Paradies v. AseraCare*, No. 2:08-cv-00384 (E.D. Wis. Jan. 23, 2012) consolidated into *United States v. AseraCare, Inc.*, No. (N.D. filed May 2, 2008). See Order, *AseraCare*, No. 2:12-cv-00245 (Oct. 17, 2012), ECF No. 144.

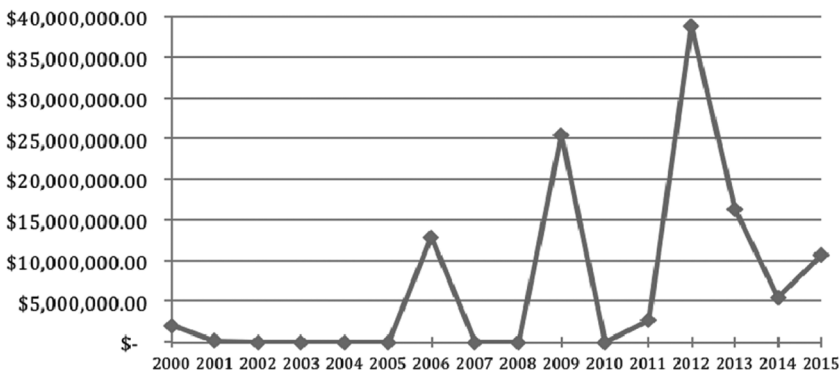
174. *United States ex rel. Rice v. Evercare Hospice, Inc.*, No. 1:14-cv-01647 (D. Colo. June 24, 2014), consolidated into *United States ex rel. Fowler v. Evercare Hospice, Inc.*, No. 1:11-cv-00642 (D. Colo. July 20, 2015). See Order, *Fowler*, No. 1:11-cv-00642 (June 24, 2014), ECF No. 8.

Settled/Resolved FCA Hospice Cases By Year



Third, the amount of Medicare funds recovered by the United States and FCA whistleblowers slowly gained momentum since the resolution of the first case in 2000, and has risen sharply¹⁷⁵ (as well as experiencing the aforementioned fluctuations) in keeping with the sharp rise in reimbursements and an influx of investment capital from the for-profit industry, as noted in Section I of this Article:

Amount Recovered

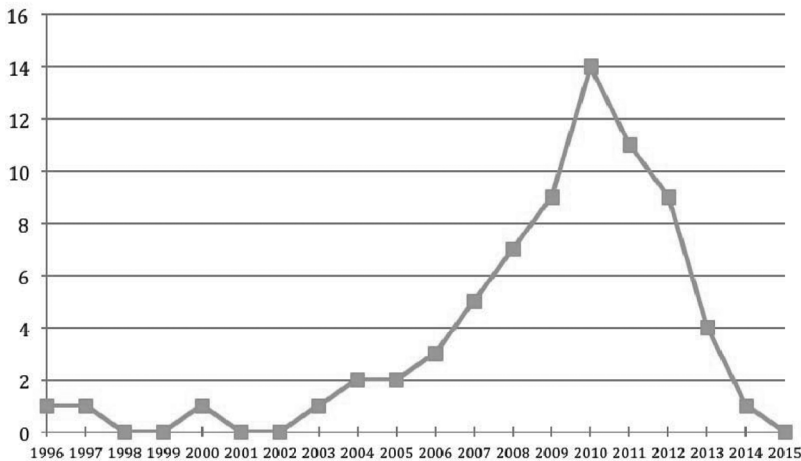


Fourth and finally, is the number of *qui tam* hospice False Claims Act cases that have been filed, which peaked in 2010 but appear to have recently declined. However, this data can be misleading because there are likely numerous *qui tam* hospice cases that are still under seal, and thus unknown as of when this Article was written. Therefore, it is likely that at the time of this Article the true number of *qui tam* hospice cases being filed is still rising, but the available data simply cannot

175. See generally Appendix. Based on the author’s data derived from the cases listed in the Appendix, the total amount recovered by the United States and FCA whistleblowers equals approximately \$114,565,290.

reflect the number of cases still under seal. Accordingly, continued review of the available data will be necessary to analyze the complete picture; only a look back over time will present the complete picture, and data collected for recent years is likely unreliable because of the seal provision of the False Claims Act.

FCA Hospice Cases Filed



Reviewing the data on False Claims Act interventions, successful resolutions, and recovery amounts demonstrates that the False Claims Act public-private partnership between whistleblowers and the Department of Justice is not only an effective fraud fighting tool for healthcare generally, but also that it is particularly effective at fighting hospice fraud.

False Claims Act whistleblowers have been somewhat successful in leading federal prosecutors to uncover criminal frauds in the hospice context; all of the criminal hospice fraud cases revealed by the author's review of hospice fraud actions began with, or in some way included, whistleblower actions under the False Claims Act. However, only a handful of criminal cases have been prosecuted related to the Medicare Hospice Benefit even though the elements of civil False Claims Act hospice fraud are similar to those used to prosecute criminal fraud such as the mail fraud, wire fraud, conspiracy, and healthcare fraud statutes. Also, the author's review of the criminal cases regarding fraud in the Medicare Hospice Benefit revealed that none of the major hospice companies nor their executives have been prosecuted for hospice fraud, even though the amounts of false claims alleged against them under the False Claims Act have greatly exceeded the frauds committed by convicted criminals like Dr. Dreyfuss¹⁷⁶ and Matthew Kolodesh.

176. See *supra* note 32.

Accordingly, individuals like Dr. Dreyfuss and Matthew Kolodesh who operate on a smaller scale are apparently more likely to face criminal prosecution than are the national and multi-state hospice chains. In the civil frauds context, however, the False Claims Act does not appear to discriminate, but rather successfully targets both the small-scale operator and the large national chains.¹⁷⁷

Despite its proven track record as a civil fraud fighting tool, defendants accused of False Claims Act violations—particularly Medicare Part A medical services fraud, such as hospice fraud—inevitably attempt to shift the blame for their actions onto physicians or to attack the relators and the government payment system itself for disagreeing with¹⁷⁸ the decision-making authority and judgment of a patient’s medical doctor. While this defense may have a certain popular appeal, in the hospice context, it is fallacious because: (1) it fails to acknowledge the responsibility of the hospice company that ultimately is seeking taxpayer-funded payment, and (2) it ignores the important fact that all of the information upon which a doctor bases a hospice patient’s prognosis lies almost exclusively within the control of the hospice companies that are financially incentivized to manipulate it to their advantage.

III. WHY PHYSICIAN CERTIFICATIONS OF TERMINAL ILLNESS SHOULD NOT BE A SHIELD TO FALSE CLAIMS ACT LIABILITY FOR A HOSPICE PROVIDER

Medicare requires, as a condition of payment, that a qualified physician certify eligible beneficiaries for hospice coverage. Upon initial certification, both the attending physician and the hospice medical director must certify that the patient has a prognosis of less than six months if the disease runs its normal course.¹⁷⁹ This certification is called a “certification of terminal illness” or “COTI.” It is common in False Claims Act cases against corporate health care providers for defendants to argue that a “COTI” protects the provider company from all liability under the False Claims Act.¹⁸⁰ However, allegations against a corporate entity generally center upon the knowledge of the provider entity, specifically that the

177. See *United States ex rel. Smith v. Serenity Hospice Care, LLC*, No. 3:13-CV-001, 2014 WL 4269063, at *1 (S.D. Ga. Aug. 28, 2014) (representing small-scale operators); *United States ex rel. Holt v. Good Samaritan Hospice USA, Inc.*, No. 5:08-cv-01511 (N.D. Ala. July 26, 2013) (same); see also *United States ex rel. Rouse v. Odyssey Healthcare, Inc.*, No. 2:08-cv-0383 (E.D. Wis. Feb. 29, 2012) (representing national chains); *United States ex rel. Romeo v. Southerncare, Inc.*, No. 2:07-cv-02325 (N.D. Ala. Jan. 15, 2009) (same).

178. See *United States ex rel. Geschrey v. Generations Healthcare, LLC*, 922 F. Supp. 2d 695, 703 (N.D. Ill. 2012) (arguing that there was no fraud where there was a disagreement about characterizing a patient as terminally ill); *United States ex rel. Willis v. Angels of Hope Hospice, Inc.*, No. 5:11-CV-041(MTT), 2014 WL 684657, at *8 (M.D. Ga. Feb. 21, 2014) (denying that false claims were actually submitted to the government where the relator “merely allege[d]” a disagreement among hospice staff about the eligibility of some patients).

179. 42 U.S.C. § 1395f(a)(7)(A)(i) (2015); 42 C.F.R. § 418.22(b) (2015).

180. See *United States v. AseraCare, Inc.*, No. 2:12-CV-245-KOB, 2014 WL 6879254, at *9 (N.D. Ala. Dec. 4, 2014); *United States ex rel. Wall v. Vista Hospice Care, Inc.*, 778 F. Supp. 2d 709, 718 (N.D. Tex. 2011); *United States v. VITAS Hospice Servs., LLC*, No. 4:13-cv-00449 (W.D. Mo. Jan. 29, 2015); *United States ex rel. Landis v. Hospice Care of Kansas, LLC*, No. 2:06-cv-02455-CM, 2010 WL 5067614, at *5 (D. Kan. Dec. 7, 2010);

defendant provided false information to physicians in order to have patients certified as eligible for hospice or certified patients without obtaining physician approval at all. Furthermore, there are objective criteria that a physician uses in certifying an individual as eligible for hospice and that CMS uses to evaluate whether coverage is proper.¹⁸¹ For this reason, current regulations require that when a physician certifies a patient as eligible for hospice, the physician must provide “[c]linical information and other documentation that support the medical prognosis.”¹⁸² Because CMS was concerned about hospice providers certifying individuals for hospice who were ineligible, CMS requires clinical evidence supporting eligibility to be included in a patient’s medical record.¹⁸³ A number of False Claims Act cases illustrate that a corporate defendant cannot hide behind the existence of physician certifications to escape liability under the False Claims Act.

For example, on October 19, 2006, Beverly Landis, a nursing professional, filed a False Claims Act suit in the District of Kansas against Hospice Care of Kansas, LLC (“HCK”) and Voyager Hospice Care, Inc. (“Voyager”) alleging that Defendants knowingly billed Medicare for patients who were not terminally ill and engaged in reckless business practices that facilitated the submission of fraudulent claims to Medicare.¹⁸⁴ Defendants instructed staff to document patients’ conditions by omitting indications that patients were stabilizing or improving to make them appear terminally ill.¹⁸⁵ Approximately three and half years later, the United States filed a complaint in intervention.¹⁸⁶ Subsequently, Defendants filed a Motion to Dismiss the complaint pursuant to Rule 12(b)(6) and Rule 9(b), claiming that determinations regarding the need for hospice care are medical judgments that are not susceptible to “falsity.”¹⁸⁷ In essence, the Defendants argued that medical prognostication is not an exact science, but is a subjective medical opinion that cannot be “false” for purposes of the False Claims Act. The United States argued that eligibility must be supported by real evidence, not just a physician’s unbounded judgment.¹⁸⁸ While prognostication is not an exact science,

United States *ex rel.* Willis v. Angels of Hope Hospice, Inc., No. 5:11-CV-041(MTT), 2014 WL 684657, at *8 (M.D. Ga. Feb. 21, 2014).

181. *See, e.g., JM Home Health and Hospice: LCDS and NCDS, supra* note 101.

182. 42 C.F.R. § 418.22(b)(2).

183. *See* United States *ex rel.* Landis v. Hospice Care of Kansas, LLC, No. 2:06-cv-02455-CM, 2010 WL 5067614, at *1 (D. Kan. Dec. 7, 2010) (“Written certification ‘requires: (1) a statement that the individual’s medical prognosis is that their life expectancy is 6 months or less if the terminal illness runs its normal course; (2) specific clinical findings and other documentation supporting a life expectancy of six months or less; and (3) the signature(s) of the physician(s).’” (citations omitted)).

184. *Id.* at *2. (Defendant “instructed staff that a proper recertification note ‘Accentuates the negatives’ but does not use terms such as ‘Stable, chronic, unchanged’ or ‘within normal limits’”).

185. *Id.*

186. United States’ Complaint, *Landis*, No. 2:06-cv-02455-CM (June 30, 2010), ECF No. 30.

187. Defendants’ Joint Motion to Dismiss the Complaint at 1, *Landis*, No. 2:06-cv-02455-CM (Aug. 25, 2010), ECF No. 52.

188. United States’ Opposition to Defendant Voyager HospiceCare, Inc.’s Individual Motion to Dismiss the Complaint as to Voyager at 12–13, *Landis*, No. 2:06-cv-02455-CM (Sept. 15, 2010), ECF No. 59.

a hospice must be certain that the “physician’s clinical judgment can be supported by clinical information and other documentation that provide a basis for the certification.”¹⁸⁹ Under the Medicare Hospice Benefit, a signed certification, absent a medically sound basis, is not sufficient.¹⁹⁰ A rule to the contrary would completely undercut the requirement that a patient have a terminal diagnosis to receive hospice care and render a physician’s clinical judgment incontrovertible.

The court dismissed the defendant’s arguments by holding that “[False Claims Act] liability must be based on an objectively verifiable fact; however, facts that rely upon clinical medical judgments are not automatically excluded from liability under the [False Claims Act].”¹⁹¹ In denying the Motion to Dismiss, the court noted that certifying physicians cannot legitimately exercise medical judgment when they are relying on allegedly false patient information provided by the defendants.¹⁹² It is irrelevant that a physician certified a patient for hospice care if the basis for certification is false.

In a similar False Claims Act case filed by Misty Wall against Vista Hospice Care, Inc., VistaCare, Inc., and Odyssey HealthCare, Inc., in the Northern District of Texas,¹⁹³ the defendants attempted to hide behind the existence of physician-signed COTIs.¹⁹⁴ In her complaint, Ms. Wall, a social worker, alleged that the defendants pursued policies that encouraged the certification of ineligible individuals for hospice care, and that these policies demonstrate, at the very least, a reckless disregard for patient eligibility.¹⁹⁵ In early 2010, the defendants filed a Motion to Dismiss arguing that a decision to certify an individual for hospice is always a subjective one, so that, unless there is evidence of the certifying physician’s specific knowledge (that he did not actually believe that the patient was eligible), a hospice company can never be held liable under the False Claims Act.¹⁹⁶ Ms. Wall countered that her allegations were not that the physicians knowingly submitted false COTIs, but rather that the defendants encouraged social workers and nurses to certify patients as eligible for hospice care without proper doctor authorization and to change patient diagnoses to support continued eligibility for hospice care—in essence Ms. Wall argued that she was not alleging that the COTIs themselves were false, but rather that the claims for payment by the

189. Medicare Program; Hospice Care Amendments, 70 Fed. Reg. 70532, 70534 (to be codified at 42 C.F.R. pt. 418).

190. *Id.*

191. *Landis*, 2010 WL 5067614, at *4 (citing *United States ex rel. Morton v. A Plus Benefits, Inc.*, 139 F. App’x 980, 983 (10th Cir. 2005)).

192. *Id.* at *5.

193. The author of this Article represents Ms. Wall in that pending action.

194. *United States ex rel. Wall v. Vista Hospice Care, Inc.*, 778 F. Supp. 2d 709, 718 (N.D. Tex. 2011).

195. First Amended False Claims Complaint and Demand for Jury Trial at 2–3, *Wall*, 778 F. Supp. 2d 709 (No. 3:07-cv-00604), ECF No. 25.

196. Defendant’s Motion to Dismiss and Memorandum of Law in Support Thereof at 23, *Wall*, 778 F. Supp. 2d 709 (No. 3:07-cv-0604-M), ECF No. 39.

defendants were false because the COTIs were based upon false information.¹⁹⁷ Additionally, Ms. Wall alleged that there are objective criteria that a physician must use in certifying an individual as eligible for hospice and that CMS uses to evaluate whether coverage is proper—and that such objective criteria were at odds with the patients’ medical records kept by Vistacare.¹⁹⁸ Current regulations also require that, when a physician certifies a patient as eligible for hospice, the physician must provide “[c]linical information and other documentation that support the medical prognosis.”¹⁹⁹ According to Ms. Wall, such information was missing from the patient medical records maintained by the Vistacare.²⁰⁰ In denying the defendants’ Motion to Dismiss, the court rejected the defendants’ arguments and pointed out that Ms. Wall sufficiently pleaded a false certification theory for improper enrollment because she alleged that the defendants certified patients as eligible for hospice without a physician or medical director’s approval.²⁰¹

Similarly, the Middle District of Georgia rejected a hospice company’s attempt to avoid liability under the False Claims Act based upon the existence of signed COTIs. On February 7, 2011, Chad Willis, a hospice marketer, filed a False Claims Act suit against Angels of Hope, LLC,²⁰² a Georgia-based hospice provider, alleging that the defendant submitted false claims for ineligible patients, violated the Anti-Kickback Statute by paying physicians for referrals, and elicited and backdated fraudulent revocations for legitimate hospice patients who require hospitalization for palliative care.²⁰³ In its Motion to Dismiss the First Amended Complaint, Angels of Hope argued, among other things, that clinical disagreement is insufficient to establish falsity under the False Claims Act.²⁰⁴ Mr. Willis countered that, in making this argument, Angels of Hope omitted the requirement that the certification must be accompanied by “[c]linical information and other documentation that support the medical prognosis”²⁰⁵ for a life expectancy of six months or less.²⁰⁶ Mr. Willis argued that a hospice company that submits claims for payment to Medicare for patients that it knew or should have known lacked

197. Relator’s Response to Defendants’ Motion to Dismiss in Excess of Page Limit at 27, *Wall*, 778 F. Supp. 2d 709 (No. 3-07-cv-0604-M), ECF No. 46.

198. *Id.* at 29–30.

199. 42 C.F.R. § 418.22(b)(2) (2015).

200. First Amended False Claims Complaint and Demand for Jury Trial at 6–7, *Wall*, 778 F. Supp. 2d 709 (No. 3:07-cv-00604), ECF No. 25.

201. Memorandum Opinion and Order at 7–8, *Wall*, 778 F. Supp. 2d 709 (No. 3-07-cv-0604-M), ECF No. 52.

202. As in *Wall*, the author of this Article represents Mr. Willis in the pending action.

203. Complaint at 2–3, *United States ex rel. Willis v. Angels of Hope, LLC*, No. 5:11-CV-00041 (M.D. Ga. Feb. 7, 2011), ECF No. 1.

204. Defendant’s Memorandum of Law in Support of its Motion to Dismiss Relator’s Amended *Qui Tam* Complaint for Failure to State a Claim and Failure to Plead Fraud with Particularity at 5–6, *Willis*, No. 5:11-CV-00041 (Nov. 15, 2013), ECF No. 33-1.

205. 42 C.F.R. § 418.22(b)(2).

206. Plaintiff’s Response in Opposition to Defendant’s Motion to Dismiss Relator’s Amended *Qui Tam* Complaint for Failure to State a Claim and Failure to Plead Fraud with Particularity at 8, *Willis*, No. 5:11-CV-00041 (Dec. 5, 2013), ECF No. 34.

clinical information and other documentation to support a medical prognosis for a life expectancy of six months or less cannot hide behind the mere existence of physician certifications.²⁰⁷ Accordingly, Mr. Willis argued that when the certifications are void of the required supporting documentation in the medical record, when physicians are relying upon fraudulent information recorded in patient charts, or when medical directors who refer and certify large percentages of Angels of Hope's patients are illegally paid by Angels of Hope, then the COTIs are tainted and cannot be relied upon by a hospice company in submitting claims for payment to Medicare.²⁰⁸ As in *Wall*, the court was not persuaded by Angels of Hope's assertion that a physician's certification of terminal illness can act as a shield to a hospice's potential liability under the False Claims Act.²⁰⁹ The court denied Angels of Hope's motion stating that its patients allegedly did not exhibit the necessary symptoms to be certified as terminally ill.²¹⁰ The court also noted allegations in Mr. Willis' complaint that, when staff members reported information about patients that was at odds with the objective criteria for a medical prognosis of a life expectancy of six months or less to Angels of Hope's management, they were told to fabricate the presentation of symptoms mirroring the necessary objective criteria in the patients' charts so that the patients could be fraudulently admitted.²¹¹

It should be axiomatic that instructing staff members to falsify clinical information would not only render the claims for payment to Medicare false, but also would meet the knowledge requirement of the False Claims Act. Because such a claim is based upon false information, the claim is by its nature false. Similarly, a person would not falsify or provide misleading clinical information if one reasonably believed the patient's true clinical conditions supported a terminal prognosis of six months or less to live. Accordingly, an allegation that staff were instructed to falsify or present misleading clinical information to prognosticating physicians should preclude a defense against the FCA's falsity and knowledge elements—based purely upon the fact that a physician certified the patient as terminally ill. Consequently, a physician certification or COTI based upon false clinical information constructed by a hospice company who ultimately submitted and received a Medicare claim for payment logically triggers civil False Claims Act liability.

Even in the absence of allegations or evidence that patient information in the medical record was falsified or that hospice staff misled certifying physicians, where information in a patient's medical record belies a prognosis of six months or

207. *Id.* 8–9.

208. *Id.*

209. United States *ex rel.* Willis v. Angels of Hope Hospice, Inc., No. 5:11-CV-041 MTT, 2014 WL 684657, at *9 (M.D. Ga. Feb. 21, 2014).

210. *Id.*

211. *Id.*

less based upon objectively verified criteria,²¹² the falsity of the claim to Medicare is established. The operative question for falsity is not whether a COTI was executed by a physician or whether a reasonable physician could have executed a COTI, but rather whether the hospice company submitting the claim for payment maintained clinical information in the patient's record to support a terminal prognosis as defined by Medicare. Accordingly, to date, no court has summarily dismissed a False Claims Act hospice case based upon the existence of a COTI.

CONCLUSION

The vast majority of False Claims Act hospice cases in which the United States has intervened have settled in favor of the United States without consideration by a jury, and every criminal hospice fraud prosecution by the United States to date has resulted in a guilty plea or a conviction by jury.²¹³ Every such case—whether civil or criminal—was initiated by a whistleblower under the public-private partnership of the False Claims Act.²¹⁴

The FCA's whistleblower provisions have been highly effective at detecting fraud and recovering misappropriated Medicare dollars, but deterrence and prevention remain unattained goals.

The calculated business decision to settle False Claims Act allegations has proven over time to have a neutral-to-positive effect on corporate profitability in the hospice sector. For-profit hospice giants such as SouthernCare²¹⁵ and Odyssey,²¹⁶ who have paid eight figure settlements, have rebounded quickly and actually gained position over their competitors.

Notably, Odyssey rebounded twice, paying \$12.9 million in 2006 and another \$25 million in 2012. Shortly after its 2006 False Claims Act settlement, it remained heavily capitalized and positioned to complete a buy-out of rival Vistacare Hospice for \$147 million. In a subsequent *qui tam* action in 2010, while under another investigation by the Department of Justice and the Department of Health and Human Services Office of Inspector General, Odyssey nevertheless remained attractive to investors and ultimately was sold for \$1 billion to Gentiva Health-

212. See 42 C.F.R. § 418.104 (2015).

213. See generally *infra* Appendix (detailing FCA case dispositions).

214. *Id.*

215. In 2009, *United States ex rel. Romeo v. Southerncare, Inc.*, No. 2:07-CV-02325 (N.D. Ala. Jan. 15, 2009), was settled for \$24.7 million. See Settlement Agreement, *Romeo*, No. 2:07-CV-02325 (Jan. 15, 2009), ECF No. 28-1.

216. In 2012, *United States ex rel. Rouse v. Odyssey Healthcare, Inc.*, No. 2:08-cv-00383-LA (E.D. Wis. Feb. 29, 2012), settled for \$25 million. See Press Release, U.S. Dep't of Justice, Hospice Provider Odyssey Healthcare Agrees to Pay \$25 Million to Resolve False Claims Act Allegations (Mar. 1, 2012), <http://www.justice.gov/opa/pr/hospice-provider-odyssey-healthcare-agrees-pay-25-million-resolve-false-claims-act>. In 2006, *United States ex rel. Russell v. Odyssey Health Care, Inc.*, No. 2:03-cv-00865-AEG (E.D. Wis. July 11, 2006), settled for \$12.9 million. See United States' and Relator's Joint Notice of Voluntary Dismissal, *Russell*, No. No. 2:03-cv-00865-AEG (July 11, 2006), ECF No. 41.

care.²¹⁷ In turn, Gentiva—just three years after having to pay an additional \$25 million settlement for alleged hospice fraud—sold its assets, including the Odyssey and Vistacare hospice brands, for \$2 billion.

During that time, more than a dozen other hospice companies have settled False Claims Act *qui tam* allegations for varying sums. Only those company owners, such as Matthew Kolodesh, who have elected to try their cases before a jury in the criminal context, have suffered adverse consequences for themselves and their corporations—including prison terms, forfeiture and expulsion from participation in federally-funded healthcare programs.

Accordingly, settlements will continue to be the primary resolution of civil False Claims Act suits under the Medicare Hospice Benefit and will remain the most profitable business strategy. Likewise—absent some genuine reform by legislators for (1) how hospice patients are certified; (2) how and to whom hospice services are reimbursed by Medicare; or (3) the addition of provisions for stiffer penalties, such as mandatory bans from Medicare for individual executives and repeat offender corporations—fraudulent admission and recertification of non-terminal patients is likely to continue. Under the current framework, hospice fraud is simply too profitable and the deterrent is not great enough.

There is no turning back the clock to the days and visions of Dame Cicely Saunders and Elisabeth Kübler-Ross. The corporate takeover of hospice as a discipline and as a business is complete. Over the next decade, non-profit hospices will become fewer and fewer, and where they continue to exist, they will primarily service the most expensive terminally ill patients who are eschewed by the for-profit corporations. Non-profits that strive to compete against the for-profit corporations will be forced to adopt the same spurious business practices as many of the for-profits that have been held accountable under the False Claims Act. Moreover, many of the remaining non-profit hospices will likely fall under scrutiny for allegations of fraud involving admission and recertification of patients who are allegedly not terminally ill.

Likewise, the pattern of acquisitions of smaller hospices, including non-profits, by larger ones and the influx of investment capital into the hospice sector will continue, ultimately eroding the small community-based culture that originally fueled the hospice movement. Because there is little, if any, economy of scale in the provision of home-based hospice care, the demand for increases in value and dividends expected by investors will force the larger hospice companies to continue to seek additional revenue where they can find it—by increasing patient census regardless of the prognosis of the patient, by manipulating the aggregate cap, and by seeking those patients who require little, if any, care.

217. See Complaint for Damages and Injunctive Relief Under False Claims Act—Qui Tam Action Under Seal, United States *ex rel.* Rouse v. Odyssey Health Care, Inc., No. 2:08-cv-00383 (E.D. Wis. May 2, 2008), ECF No. 1; Brin, *supra* note 57.

The whistleblower provisions of the False Claims Act will continue to be the most effective way for enforcement agencies to detect hospice fraud. Physicians, nurses, and hospice executives inside hospice companies are the only people privy to a hospice's business practices that can lead to fraud, and are the only people in a position to know whether a patient's hospice diagnosis and prognosis are at odds with the patient's conditions. As more hospice whistleblowers come forward and succeed in recovering Medicare dollars for the taxpayers and rewards for themselves, others will be emboldened to do the same. Sophisticated plaintiff-oriented law firms will also take notice and become more and more interested in representing hospice whistleblowers and filing hospice False Claims Act suits.

Concurrently, the body of case law supporting False Claims Act hospice litigation and the unanimous rejection by courts of the physician's certification defense will eventually prompt some hospice companies to risk the odds at the last line of defense: testing their themes and theories before a jury. However, given that juries have universally convicted criminal defendants, such as Matthew Kolodesh, under a much higher burden of proof and on essentially the same statutory elements of knowledge and falsity, a jury trial remains a daunting proposition for civil False Claims Act hospice fraud defendants.

Nevertheless, while the whistleblower provisions of the False Claims Act have proven extremely effective at discovering hospice fraud and at recovering at least some of the lost Medicare funds, alone the statute has demonstrated very little deterrent effect. Outside of a legislative overhaul of the Medicare Hospice Benefit, the only effective deterrent scheme will be for enforcement officials to supplement their use of the civil False Claims Act with traditional criminal fraud statutes. For this to work, however, criminal penalties must be imposed not only on the relatively small-scale players, like Matthew Kolodesh and Home Care Hospice, but also on the mega hospice companies and their executives and owners.

APPENDIX

*Complete List of All Unsealed Hospice Cases with Dates of Filing, Brief Description, and Status of Litigation*²¹⁸

2014

United States *ex rel.* Holt v. Gentiva Health Servs., Inc., No. 3:14-cv-00306 (N.D. Ala. Nov. 20, 2014).

218. This list and summary information was compiled by the author and his research assistant, Ben Bucy, by cross-referencing and reviewing multiple sources of data, including information available on the Public Access to Electronic Records (PACER) website available at <http://www.pacer.gov>, the Department of Justice online archives available at <http://www.doj.gov>, and information provided by the Fraud Section of the Commercial Litigation Branch of the Civil Division of the United States Department of Justice at the author's request.

- 02/20/2014: Complaint filed.²¹⁹
- 07/15/2014: United States declined to intervene.²²⁰
- 11/19/2014: Relators file a voluntary motion to dismiss their claims with prejudice.²²¹
- 11/20/2014: Order of voluntary dismissal entered. The Court dismissed the action with prejudice as to Donna Holt and Tonya Whitehead, and without prejudice as to the United States. Voluntary dismissal entered prior to defendant filing an answer or motion for summary judgment.²²²

2013

United States *ex rel.* Rice v. Evercare Hospice, Inc., No. 1:14-cv-01647 (D. Colo. June 24, 2014).

- 06/05/2013: Original complaint filed in District Court for the Northern District of Illinois.²²³
- 06/11/2014: Case transferred to U.S. District Court for the District of Colorado.²²⁴
- 06/24/2014: Order granting motion to consolidate case with *United States ex rel. Fowler v. Evercare Inc.*, No. 1:11-cv-00642 (D. Colo.).²²⁵
- 08/25/2014: United States elected to partially intervene.²²⁶
- 02/26/2015: Scheduling Order issued, preliminary discovery to be completed by August 24, 2015.²²⁷

United States *ex rel.* Houston v. UHS-Pruitt Holdings Inc., No. 1:13-cv-00976 (N.D. Ga. Aug. 29, 2013).

- 03/26/2013: *Qui tam* complaint filed.²²⁸
- 08/27/2013: Motion for dismissal by Beth Houston.²²⁹
- 08/29/2013: Order of dismissal without prejudice entered.²³⁰

219. Complaint, United States *ex rel.* Holt v. Gentiva Health Servs., Inc., No. 3:14-cv-00306 (N.D. Ala. Feb. 20, 2014), ECF No. 1.

220. United States of America's Notice of Election to Decline Intervention, *Holt*, No. 3:14-cv-00306 (July 15, 2014), ECF No. 7.

221. Government's Notice of Consent to Dismissal, *Holt*, No. 3:14-cv-00306 (Nov. 19, 2014), ECF No. 14.

222. Order of Voluntary Dismissal, *Holt*, No. 3:14-cv-00306 (Nov. 20, 2014), ECF No. 15.

223. *Qui Tam* Complaint, United States *ex rel.* Rice v. Evercare Hospice, Inc., No. 1:13-cv-4191 (N.D. Ill. June 5, 2014), ECF No. 1.

224. Transfer Order, *Rice*, No. 1:14-cv-01647 (June 11, 2014), ECF No. 2.

225. Order at 1, *Rice*, No. 1:14-cv-01647 (June 24, 2014), ECF No. 8.

226. United States' Notice of Election to Partially Intervene and Partially Decline to Intervene, United States *ex rel.* Fowler v. Evercare Hospice, Inc., No. 1:11-cv-00642 (D. Colo. Aug. 25, 2014), ECF No. 34.

227. Scheduling Order at 19–20, *Fowler*, No. 1:11-cv-00642 (Feb. 26, 2015), ECF No. 88.

228. *Qui Tam* Complaint, United States *ex rel.* Houston v. UHS-Pruitt Holdings, Inc., No. 1:13-cv-00976 (N.D. Ga. Mar. 26, 2013), ECF No. 1.

229. Motion for Dismissal and Filing of Proposed Order, *Houston*, No. 1:11-cv-00642 (Aug. 27, 2013), ECF No. 6.

230. Order, *Houston*, No. 1:11-cv-00642 (Aug. 29, 2013), ECF No. 7.

United States *ex rel.* Rush v. Agape Senior, LLC, No. 3:13-cv-00666 (D.S.C. Aug. 18, 2014).

- 03/12/2013: *Qui tam* complaint filed.²³¹
- 04/28/2014: United States filed motion that it is not intervening at this time.²³²
- 06/10/2014: Motion for failure to state a claim by defendants.²³³
- 08/18/2014: Order dismissing case without prejudice during the pending of *United States ex rel. Michaels v. Agape*, No. 0:12-cv-03466 (D.S.C.) on first to file grounds.²³⁴

United States *ex rel.* Smith v. Serenity Hospice Care, LLC, No. 3:13-cv-00001 (S.D. Ga. Nov. 12, 2014).

- 01/8/2013: Relator Christie Smith filed *qui tam* complaint under seal.²³⁵
- 02/10/2014: United States elected to intervene in part and declined to intervene in part.²³⁶
- 04/17/2014: Amended complaint in intervention filed.²³⁷
- 11/12/2014: Order dismissing case.²³⁸ \$581,504.46 settlement announced, relator will receive a total of \$110,485.85, and Relator's attorneys will receive \$45,000 plus interest over the payment plan period established by the settlement agreement.²³⁹ The settlement resolved allegations that Serenity Hospice Care submitted or caused the submission of false claims to the Medicare program for patients who were not eligible for the hospice benefit.²⁴⁰

2012

United States *ex rel.* Michaels v. Agape Senior Cmty., Inc., No. 0:12-cv-03466 (D.S.C. May 8, 2015).

231. *Qui Tam* Complaint, United States *ex rel.* Rush v. Agape Senior, LLC, No. 3:13-cv-00666 (D.S.C. Mar. 12, 2013), ECF No. 1.

232. Notice of the United States That it is Not Intervening at This Time, *Rush*, No. 3:13-cv-00666 (Apr. 28, 2014), ECF No. 38.

233. Defendants' Motion to Dismiss Pursuant to Rules 9(b), 12(b)(1), and 12(b)(6) of the Federal Rules of Civil Procedure, *Rush*, No. 3:13-cv-00666 (June 10, 2014), ECF No. 55.

234. Order at 16, *Rush*, No. 3:13-cv-00666 (Aug. 18, 2014), ECF No. 75.

235. *Qui Tam* Complaint, United States *ex rel.* Smith v. Serenity Hospice Care, LLC, No. 3:13-cv-00001 (S.D. Ga. Jan. 8, 2013), ECF No. 1.

236. United States' Notice of Election to Intervene in Part and to Decline to Intervene in Part, *Smith*, No. 3:13-cv-00001 (Feb. 10, 2014), ECF No. 21.

237. United States' Complaint in Intervention, *Smith*, No. 3:13-cv-00001 (Apr. 17, 2014), ECF No. 24.

238. Order, *Smith*, No. 3:13-cv-00001 (Nov. 11, 2014), ECF No. 65.

239. Press Release, U.S. Dep't of Justice, Serenity Hospice To Pay Over \$581,000 To Resolve False Claims Act Litigation (Dec. 2, 2014), <http://www.justice.gov/usao-sdga/pr/serenity-hospice-pay-over-581000-resolve-false-claims-act-litigation>.

240. *Id.*

- 12/07/2012: Complaint for damages and other relief under the False Claims Act, Anti-Kickback Statute and Health Care Fraud Statute filed by Brianna Michaels and Amy Whitesides.²⁴¹
- 03/07/2013: United States declined to intervene.²⁴²
- 12/16/2014: Currently in discovery. Amended and final scheduling order entered (discovery due by 3/10/15, jury selection deadline for bellwether trial on 05/05/2015, and jury selection deadline for subsequent trial 9/1/2015).²⁴³
- 05/08/2015: Notice of Hearing on All Pending and Fully Briefed Motions.²⁴⁴

United States *ex rel.* Rachac v. San Diego Hospice & Palliative Care Corp., No. 3:12-cv-02866 (S.D. Cal. Sept. 3, 2014).

- 12/05/2012: Complaint filed.²⁴⁵
- 02/04/2013: San Diego Hospice files voluntary petition for Chapter 11 Bankruptcy.²⁴⁶
- 06/17/2013: United States filed proof of claim as a general unsecured claim in the amount of \$112,839,934 for alleged damages and civil penalties arising under the False Claims Act.²⁴⁷
- 08/11/2014: United States elected to intervene.²⁴⁸
- 08/11/2014: Bankruptcy Court for the Southern District of California approves settlement as part of San Diego Hospice and Palliative Care Corp bankruptcy plan. Settlement agreement calls for \$1,000,000 payment to the United States on the Settlement Agreement Effective Date, then payment of 65% of available cash as of the Settlement Agreement Effective Date.²⁴⁹
- 09/03/2014: Order Granting Joint Motion to Dismiss.²⁵⁰

United States *ex rel.* Curtis-Hicks v. Evercare Hospice Inc., No. 1:12-cv-00887 (S.D. Ohio Apr. 7, 2015).

241. Complaint for Damages and Other Relief Under The False Claims Act, Anti-Kickback Statute, and Healthcare Fraud Statute, United States *ex rel.* Michaels v. Agape Senior Cmty. Inc., No. 0:12-cv-03466 (D.S.C. Dec. 7, 2012), ECF No. 1.

242. Order, *Michaels*, No. 0:12-cv-03466 (Mar. 7, 2013), ECF No. 13.

243. Amended and Final Scheduling Order, *Michaels*, No. 0:12-cv-03466 (Dec. 16, 2014), ECF No. 216.

244. Notice of Hearing on All Pending and Fully Briefed Motions, *Michaels*, No. 0:12-cv-03466 (May 8, 2015), ECF No. 271.

245. Complaint, United States *ex rel.* Rachac v. San Diego Hospice & Palliative Care Corp., No. 3:12-cv-02866 (S.D. Cal. Dec. 5, 2012), ECF No. 11.

246. *In re* San Diego Hospice & Palliative Care Corp., No. 13-01179-MM11, 2014 WL 3401219, at *1 (Bankr. S.D. Cal. May 1, 2014).

247. *Id.* at *1.

248. Order as to the United States' Election to Intervene for the Purpose of Settlement, *Rachac*, No. 3:12-cv-02866 (Aug. 11, 2014), ECF No. 22.

249. *In re* San Diego Hospice & Palliative Care Corp., Debtor, No. 13-01189-MM11, 2014 WL 3401219, at *1 (Bankr. S.D. Cal. May 1, 2014).

250. Order Granting Joint Motion to Dismiss, *Rachac*, No. 3:12-cv-02866 (Sept. 3, 2014), ECF No. 25.

- 11/16/2012: Complaint with filed by Sara Curtis-Hicks, Debbie Turner, and Leah Broderick.²⁵¹
- 09/09/2014: United States elected to intervene.²⁵²
- 02/03/2015: Court grants the United States' motion to dismiss Relators' "eligibility" allegations under the FCA's first-to-file rule. The "eligibility" allegations against Defendant Evercare overlap temporally and substantively with a previously filed *qui tam* case against Evercare filed in Denver, Colorado on 03/15/2011: *United States ex rel. Fowler v. Evercare Hospital, Inc.*, No. 11-cv-00642 and *United States ex rel. Rice v. Evercare Hospice, Inc.*, No. 14-cv-01647 ("Fowler").²⁵³
- 04/07/2015: Stipulated Extension of Time to Answer or Otherwise Plead until 5/1/15.²⁵⁴

United States *ex rel.* Moore v. Groves Cmty. Hospice, LLC, No. 4:12-cv-01200 (W.D. Mo. Aug. 5, 2014).

- 09/25/2012: Complaint filed.²⁵⁵
- 07/29/2013: United States declined to intervene.²⁵⁶
- 04/30/2014: Motion to dismiss for failure to state a claim filed by defendants.²⁵⁷
- 08/5/2014: Order granting Plaintiff's motion for voluntary dismissal of claims without prejudice.²⁵⁸

United States *ex rel.* Crawford v. United Hospice, Inc., No. 1:12-cv-03320 (N.D. Ga. July 29, 2013).

- 09/24/2012: Complaint filed alleging ineligible patient certification.²⁵⁹
- 07/29/2013: Complaint dismissed without prejudice by relator with consent of United States.²⁶⁰

251. *Qui Tam* Complaint, United States *ex rel.* Curtis-Hicks v. Evercare Hospice, Inc., No. 1:12-cv-00887 (S.D. Ohio Nov. 16, 2012), ECF No. 1.

252. Notice of Election to Intervene in Part and to Decline to Intervene in Part, *Curtis-Hicks*, No. 3:12-cv-02866 (Sept. 9, 2014), ECF No. 18.

253. Order Granting the United States' Motion To Dismiss The Relators' Eligibility Allegations, *Curtis-Hicks*, No. 3:12-cv-02866 (Feb. 3, 2015), ECF No. 27.

254. Stipulated Extension of Time to Answer or Otherwise Plead, *Curtis-Hicks*, No. 3:12-cv-02866 (Apr. 7, 2015), ECF No. 42.

255. *Qui Tam* Complaint, United States *ex rel.* Moore v. Groves Community Hospice, LLC, No. 4:12-cv-01200 (W.D. Mo. Sept. 25, 2012), ECF No. 1.

256. United States' Notice of Election to Decline Intervention, *Moore*, No. 4:12-cv-01200 (July 29, 2013), ECF No. 4.

257. Defendant Scott Bowlin's Motion to Dismiss Plaintiff's *Qui Tam* Complaint, *Moore*, No. 4:12-cv-01200 (Apr. 30, 2014), ECF No. 35.

258. Order, *Moore*, No. 4:12-cv-01200 (Aug. 5, 2014), ECF No. 58.

259. *Qui Tam* Complaint, United States *ex rel.* Crawford v. United Hospice, Inc., No. 1:12-cv-03320 (N.D. Ga. Sept. 24, 2012), ECF No. 1.

260. Order, *Crawford*, No. 1:12-cv-03320 (Sept. 29, 2013), ECF No. 10.

United States *ex rel.* Lewis v. South Jersey Health System, Inc., No. 1:12-cv-03962 (D.N.J. Mar. 27, 2013).

- 06/28/2012: Complaint filed by Patricia Lewis.²⁶¹
- 02/14/2013: United States declined to intervene.²⁶²
- 03/27/2013: Motion to dismiss without prejudice filed by Patricia Lewis.²⁶³

United States *ex rel.* Roe v. Sutter Health, No. 2:12-cv-01145 (E.D. Cal. Oct. 28, 2013).

- 04/30/2012: Complaint against all defendants filed by Jane Roe.²⁶⁴
- 12/20/2012: United States declined to intervene.²⁶⁵
- 10/07/2013: Motion to dismiss filed by Relator.²⁶⁶
- 10/28/2013: Order signed granting motion to dismiss without prejudice.²⁶⁷

Cretney-Tsosie v. Creekside Hospice II, LLC, No. 2:13-cv-00167 (D. Nev. Apr. 29, 2015).

- 04/09/2012: Complaint filed by Joanne Cretney-Tsosie.²⁶⁸
- 08/06/2014: United States' and State of Nevada elected to intervene.²⁶⁹
- 11/25/2014: Voluntary dismissal of plaintiff Joanne Cretney-Tsosie.²⁷⁰ Amended complaint with jury demand filed by the United States.²⁷¹
- 04/29/2015: Order denying motion to stay discovery and alternative discovery plan.²⁷²
- 09/04/2015: Order granting Plaintiffs' Emergency Motion to Stay Discovery.²⁷³

261. Complaint, United States *ex rel.* Lewis v. South Jersey Health Sys., Inc., No. 1:12-cv-03962 (D.N.J. June 28, 2012), ECF No. 1.

262. Unsealing Order, *Lewis*, No. 1:12-cv-03962 (Feb. 14, 2013), ECF No. 8.

263. Motion to Dismiss without Prejudice by Patricia Lewis, *Lewis*, No. 1:12-cv-03962 (Mar. 27, 2013), ECF No. 9.

264. Complaint; Demand for Jury Trial, United States *ex rel.* Roe v. Sutter Health, No. 2:12-cv-01145 (E.D. Cal. Apr. 30, 2012), ECF No. 1.

265. United States' Notice of Election to Decline Intervention, *Roe*, No. 2:12-cv-01145 (Dec. 20, 2012), ECF No. 11.

266. Notice of Motion and Motion to Dismiss; Memorandum of Points and Authorities in Support of Motion, *Roe*, No. 2:12-cv-01145 (Oct. 7, 2013), ECF No. 18.

267. Order Dismissing Case, *Roe*, No. 2:12-cv-01145 (Oct. 28, 2013), ECF No. 21.

268. Complaint, *Cretney-Tsosie v. Creekside Hospice II, LLC*, No. 2:13-cv-00167 (D. Nev. Apr. 9, 2012), ECF No. 1.

269. United States' and State of Nevada's Notice of Election to Intervene in Part and to Decline to Intervene in Part, *Cretney-Tsosie*, No. 2:13-cv-00167 (Aug. 6, 2014), ECF No. 34.

270. Plaintiff/Relator Joann Cretney-Tsosie's Notice of *Pro Tanto* Voluntary Dismissal, *Cretney-Tsosie*, No. 2:13-cv-00167 (Nov. 25, 2014), ECF No. 53.

271. United States' and State of Nevada's Complaint in Intervention, *Cretney-Tsosie*, No. 2:13-cv-00167 (Nov. 25, 2014). ECF No. 52.

272. Order, *Cretney-Tsosie*, No. 2:13-cv-0016 (Apr. 29, 2015), ECF No. 81.

273. Order, *Cretney-Tsosie*, No. 2:13-cv-0016 (Sept. 4, 2015), ECF No. 114.

United States *ex rel.* Gonzales v. Vitas Healthcare Corp., No. 4:13-cv-00344 (W.D. Mo. Sep. 25, 2013).

- 01/27/2012: Complaint filed in Central District of California as Case No. cv-12 0761-R.²⁷⁴
- 04/04/2013: Case transferred from Central District of California.²⁷⁵
- 05/02/2013: United States elected to intervene.²⁷⁶
- 09/25/2013: Order granting motion to consolidate cases.²⁷⁷
- Consolidated to *United States v. VITAS Hospice Servs., LLC*, No. 4:13-cv-00449-BCW (W.D. Mo. Jan. 29, 2015).
- 06/19/2014: John Bickerman named as mediator.²⁷⁸
- 01/29/2015: Currently in discovery. United States filed six amended notices to take the deposition of six different individuals.²⁷⁹

2011

United States *ex rel.* Pompilius v. Hospice Advantage, Inc., No 2:11-cv-01055 (M.D. Ala. Feb. 19, 2014).

- 12/12/2011: *Qui tam* complaint filed.²⁸⁰
- 02/06/2014: United States declined to intervene.²⁸¹
- 02/18/2014: Order of dismissal without prejudice entered.²⁸²

United States *ex rel.* Cordingly v. Good Shepherd Hospice of Mid America, Inc. No. 4:11-cv-1087 (W.D. Mo. Feb. 18, 2015).

- 10/25/2011: Complaint filed.²⁸³
- 03/28/2014: United States elected to intervene.²⁸⁴

274. See Complaint for Money Damages and Civil Penalties for Violations of the False Claims Act, United States *ex rel.* Gonzales v. Vitas Healthcare Corp., No. 4:13-cv-00344 (W.D. Mo. Apr. 4, 2013), ECF No. 19.

275. Order, *Gonzales*, No. 4:13-cv-00344 (Apr. 4, 2013), ECF No. 19.

276. United States of America's Notice of Election to Intervene, *Gonzales*, No. 4:13-cv-00344 (May 2, 2013), ECF No. 20.

277. Order, *Gonzales*, No. 4:13-cv-00344 (Sept. 25, 2013), ECF No. 44.

278. Designation of Mediator, United States v. Vitas Hospice Servs., LLC, No. 4:13-cv-00449-BCW (W.D. Mo. June 19, 2014), ECF No. 100.

279. See Notice to Take Deposition, *Vitas Hospice Servs.*, No. 4:13-cv-00449-BCW (Jan. 29, 2015), ECF Nos. 148–153.

280. *Qui Tam* Complaint, United States *ex rel.* Pompilius v. Hospice Advantage, Inc., No 2:11-cv-01055 (M.D. Ala. Dec. 12, 2011), ECF No. 1.

281. Notice of Election to Decline Intervention by United States of America, *Pompilius*, No 2:11-cv-01055 (Feb. 6, 2014), ECF No. 18.

282. Notice of Voluntary Dismissal by United States of America, *Pompilius*, No 2:11-cv-01055 (Feb. 18, 2014), ECF No. 20.

283. False Claims Act Complaint, United States *ex rel.* Cordingly v. Good Shepherd Hospice of Mid America, Inc., No. 4:11-cv-1087 (W.D. Mo. Oct. 25, 2011), ECF No. 1.

284. Government's Notice of Election to Intervene in Part and to Decline to Intervene in Part, *Cordingly*, No. 4:11-cv-1087 (Mar. 28, 2014), ECF No. 19.

- 02/06/2015: \$4,000,000 settlement announced, the relators will receive approximately \$680,000.²⁸⁵ Allegations included that Good Shepherd engaged in certain business practices that contributed to claims being submitted for patients who were not terminally ill.²⁸⁶ Specifically alleged was Good Shepherd pressured staff to meet admissions and census targets, paid bonuses to staff based on the number of patients enrolled.²⁸⁷ Further allegations were that Good Shepherd hired medical directors based on their ability to refer patients, particularly focusing on medical directors with ties to nursing homes and that Good Shepherd failed to properly train staff on hospice eligibility criteria.²⁸⁸ The claims asserted are allegations only and there has been no determination of liability. Multiple Good Shepherd entities agreed to enter a Corporate Integrity Agreement with HHS-OIG as part of the settlement.²⁸⁹

United States *ex rel.* Purnell v. Compassionate Care Hospice, Inc., No. 1:11-cv-07071 (S.D.N.Y. Feb. 18, 2015).

- 10/06/2011: Order, Case Sealed.²⁹⁰
- 02/03/2015: United States and State of New York elected to intervene.²⁹¹
- 02/19/2015: \$6,672,000 joint settlement announced.²⁹² In the settlement agreement, CCH-New York accepted responsibility for not adequately providing hospice nursing services at its Bronx location, including: failing to treat patients according to an individualized plan of care, failing to meet the needs of certain patients, failing to make nursing services available 24 hours a day and seven days a week as required, and failing to maintain adequate clinical records. CCH Group accepted responsibility for failing to provide sufficient oversight of CCH-New York through compliance audits.²⁹³ CCH has also entered into a Corporate Integrity Agreement with HHS-OIG, requiring CCH to implement institutional compliance measures and submit to monitoring by HHS-OIG for five years.²⁹⁴

United States *ex rel.* Stone v. Hospice of the Comforter, Inc., No. 6:11-cv-1498 (M.D. Fla. Nov. 12, 2013).

285. Press Release, U.S. Dep't of Justice, United States Settles False Claims Act Suit Against Good Shepherd Hospice, Inc. (Feb. 6, 2015), <http://www.justice.gov/opa/pr/united-states-settles-false-claims-act-suit-against-good-shepherd-hospice-inc-and-related>.

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. Order, United States *ex rel.* Purnell v. Compassionate Care Hospice, Inc., No. 1:11-cv-07071 (S.D.N.Y. Oct. 6, 2011), ECF No. 1.

291. Order, *Purnell*, No. 1:11-cv-07071 (Feb. 18, 2015), ECF No. 23.

292. Press Release, U.S. Dep't of Justice, U.S. Attorney's Office, Southern District of N.Y., CCH Admits to Misconduct and Agree to Pay \$4.9 Million to the U.S. and \$1.6 Million to the State of New York (Feb. 18, 2015), <http://www.justice.gov/usao/nys/pressreleases/February15/CompassionateCarePR.php?print=1>.

293. *Id.*

294. *Id.*

- 09/12/2011: Complaint filed by former Hospice of the Comforter employee, Douglas Stone.²⁹⁵
- 08/27/2012: United States elected to intervene.²⁹⁶
- 03/12/2013: Case referred to mediation, Jay M. Cohen selected as mediator by the United States.²⁹⁷
- 09/09/2013: After three joint motions to stay deadlines, a notice of settlement was filed on September 9, 2013.²⁹⁸
- 10/28/2013: Order entered overruling Plaintiff/Relator Stone's objections to the settlement reached by the United States and Defendant.²⁹⁹
- 11/12/2013: Stipulation of Dismissal filed.³⁰⁰
- 11/05/2013: \$3,000,000 settlement announced.³⁰¹ The government's allegations were that between December 2005 and December 2010, Hospice of the Comforter engaged in practices that resulted in billing Medicare for patients that were not terminally ill. Specifically, the government alleged the Hospice directed its staff to admit all referred patients without regard to whether they were eligible for the Medicare hospice benefit, falsified medical records to make it appear that ineligible patients were eligible for hospice, employed field nurses without hospice training, established procedures to limit physician's roles in assessing patient's terminal status, and delayed discharging patients when they became ineligible for the Medicare hospice benefit.³⁰² As part of the settlement, Hospice of the Comforter agreed to enter into a Corporate Integrity Agreement with the Department of Health and Human Services Office of the Inspector General ("HHS-OIG"). Also, Hospice of the Comforter's former CEO Robert Wilson has agreed to a three-year voluntary exclusion from Medicare, Medicaid, and other federal health care programs.³⁰³

United States *ex rel.* Staton v. Southern Patient Care, No. 4:11-cv-02439 (N.D. Ala. Jan. 28, 2013).

- 07/05/2011: Complaint against Kristy Gullet, Toni Miller, and Southern Patient Care filed.³⁰⁴

295. *Qui Tam* Complaint, United States *ex rel.* Stone v. Hospice of the Comforter, Inc., No. 6:11-cv-1498 (M.D. Fla. Sept. 12, 2011), ECF No. 1.

296. United States' Notice of Election to Intervene, *Stone*, No. 6:11-cv-1498 (Apr. 11, 2013), ECF No. 2.

297. Order, *Stone*, No. 6:11-cv-1498 (Mar. 12, 2013), ECF No. 25.

298. United States' Notice of Settlement and Notice of Need for Hearing Pursuant to 31 U.S.C. § 3730(c)(2)(B), *Stone*, No. 6:11-cv-1498 (Aug. 27, 2012), ECF No. 33.

299. Order, *Stone*, No. 6:11-cv-1498 (Oct. 28, 2013), ECF No. 41.

300. Stipulation of Dismissal, *Stone*, No. 6:11-cv-1498 (Oct. 28, 2013), ECF No. 42.

301. Press Release, U.S. Dep't of Justice, Orlando Hospice to Pay \$3 Million to Resolve Allegations that it billed Medicare for Patients Not Terminally Ill (Nov. 3, 2015), <http://www.justice.gov/opa/pr/orlando-fla-area-hospice-pay-3-million-resolve-allegations-it-billed-medicare-patients-not>.

302. *Id.*

303. *Id.*

304. Complaint, United States *ex rel.* Staton v. Southern Patient Care, No. 4:11-cv-02439 (N.D. Ala. July 5, 2011), ECF No. 1.

- 09/05/2012: United States declined to intervene.³⁰⁵
- 01/28/2013: Dismissal without prejudice order entered.³⁰⁶

United States *ex rel.* Ice v. Embrace Hospice, LLC, No. 1:11-cv-00658 (S.D. Ind. June 22, 2012).

- 05/16/2011: Unsealed complaint filed.³⁰⁷
- 04/10/2012: Relator United States declined to intervene.³⁰⁸
- 06/22/2012: Voluntary dismissal without prejudice entered.³⁰⁹

United States *ex rel.* Germanos v. Southeast Hospice Network, Inc., No. 2:11-cv-01550 (N.D. Ala. Mar. 7, 2012).

- 05/10/2011: *Qui tam* complaint filed.³¹⁰
- 02/27/2012: United States declined to intervene.³¹¹
- 03/07/2012: Voluntary dismissal without prejudice by plaintiffs.³¹²

United States *ex rel.* Walls v. United Hospice, Inc., No. 6:11-cv-00917 (D.S.C. Apr. 10, 2012).

- 04/18/2011: Complaint filed.³¹³
- 06/24/2011: United States filed motion for extension of time to decide whether to intervene.³¹⁴
- 04/10/2012: Order approving relator's voluntary motion to dismiss the case without prejudice entered.³¹⁵

United States *ex rel.* Fowler v. Evercare, Inc., No 11-cv-00642 (D. Colo. Apr. 15, 2015).

305. Notice, *Staton*, No. 4:11-cv-02439 (Sept. 5, 2012), ECF No. 18.

306. Order, *Staton*, No. 4:11-cv-02439 (Jan 28, 2013), ECF No. 22.

307. False Claims Complaint and Demand for Jury Trial, United States *ex rel.* Ice v. Embrace Hospice, LLC, No. 1:11-cv-00658 (S.D. Ind. May 16, 2011), ECF No. 1.

308. Government's Notice of Election to Decline Intervention, *Ice*, No. 1:11-cv-00658 (Apr. 10, 2012), ECF No. 23.

309. Notice of Dismissal Without Prejudice, *Ice*, No. 1:11-cv-00658 (June 22, 2012), ECF No. 30.

310. *Qui Tam* Complaint, United States *ex rel.* Germanos v. Southeast Hospice Network, Inc., No. 2:11-cv-01550 (N.D. Ala. May 10, 2011), ECF No. 1.

311. United States of America's Notice of Election to Decline Intervention, *Germanos*, No. 2:11-cv-01550 (Feb. 27, 2012), ECF No. 7.

312. Final Order, *Germanos*, No. 2:11-cv-01550 (Mar. 7, 2012), ECF No. 10.

313. *Qui Tam* Complaint, United States *ex rel.* Walls v. United Hospice, Inc., No. 6:11-cv-00917 (D.S.C. Apr. 18, 2011), ECF No. 1.

314. Ex Parte Order, *Walls*, No. 6:11-cv-00917 (June 24, 2011), ECF No. 9.

315. Order, *Walls*, No. 6:11-cv-00917 (Apr. 10, 2012), ECF No. 16.

- 03/15/2011: *Qui tam* complaint filed.³¹⁶
- 06/24/2014: Order granting motion to consolidate case with *United States ex rel. Rice v. Evercare Hospice, Inc.*, No. 14-cv-01647 (D. Colo.).³¹⁷
- 08/25/2014: United States elected to partially intervene.³¹⁸
- 02/26/2015: Scheduling Order issued, preliminary discovery to be completed by August 24, 2015.³¹⁹

United States *ex rel.* Christensen v. SouthernCare, Inc., No. 3:11-cv-00137 (W.D. Wis. Jan. 23, 2013).

- 02/23/2011: Complaint filed, alleging that SouthernCare routinely admitted patients that did not qualify for hospice care due to lack of terminal illness.³²⁰
- 09/08/2011: United States declined to intervene.³²¹
- 01/23/2013: Order granting stipulation of dismissal with prejudice as to Relator Karina Christensen, without prejudice as the United States.³²²

United States *ex rel.* Willis v. Angels of Hope Hospice, Inc., No 5:11-cv-00041 (M.D. Ga. Aug. 20, 2014).

- 02/07/2011: Complaint filed.³²³
- 04/26/2013: United States filed notice that it is not intervening at this time.³²⁴
- 08/20/2014: Case stayed due to notice of suggestion of bankruptcy by defendant Angels of Hope Hospice, Inc.³²⁵

2010

United States *ex rel.* Turner v. Hospice Complete, Inc., No. 2:10-cv-03456 (N.D. Ala. Aug. 9, 2013).

316. *Qui Tam* Complaint and Jury Demand, United States *ex rel.* Fowler v. Evercare, Inc., No. 11-cv-00642 (D. Colo. Mar. 15, 2011), ECF No. 1.

317. Order Granting Motion to Consolidate Cases, *Fowler*, No. 11-cv-00642 (June 24, 2014), ECF No. 28.

318. United States' Notice of Election to Partially Intervene and Partially Decline to Intervene, *Fowler*, No. 11-cv-00642 (Aug. 25, 2014), ECF No. 34.

319. Scheduling Order, *Fowler*, No. 11-cv-00642 (Feb. 26, 2015), ECF No. 88.

320. Complaint for Damages and Injunctive Relief Under False Claims Act, United States *ex rel.* Christensen v. SouthernCare, Inc., No. 3:11-cv-00137 (W.D. Wis. Feb. 23, 2011), ECF No. 1.

321. Government's Notice of Election to Decline Intervention, *Christensen*, No. 3:11-cv-00137 (Sept. 8, 2011), ECF No. 8.

322. Order, *Christensen*, No. 3:11-cv-00137 (Jan. 23, 2013), ECF No. 42.

323. *Qui Tam* Complaint, United States *ex rel.* Willis v. Angels of Hope Hospice, Inc., No. 5:11-cv-00041 (M.D. Ga. Feb. 7, 2011), ECF No. 1.

324. United States' Notice That it is Not Intervening at This Time, *Willis*, No. 5:11-cv-00041 (Apr. 26, 2013), ECF No. 16.

325. Notice of Suggestion of Bankruptcy, *Willis*, No. 5:11-cv-00041 (Aug. 20, 2014), ECF No. 51.

- 12/14/2010: False Claims Act complaint filed by Candace Turner.³²⁶ Allegations included admissions of ineligible patients to hospice care, falsification of patient records and self-referral violations.³²⁷
- 12/01/2011: United States declined to intervene.³²⁸
- 12/17/2012: Order for mediation entered.³²⁹
- 01/03/2013: William Ratliff selected as mediator.³³⁰
- 08/09/2013: Order granting joint stipulation of dismissal entered. Dismissed with prejudice as to relator and without prejudice as to the United States.³³¹

United States *ex rel.* Richardson v. Hometown Hospice, Inc., No. 1:10-cv-00670 (S.D. Ala. Oct. 14, 2014).

- 12/03/2010: Complaint filed under seal.³³²
- 10/14/2014: Order granting Relator's motion for dismissal without prejudice.³³³

United States *ex rel.* Lattanzi v. Vistacare, Inc., No. 3:11-cv-02277 (N.D. Tex. Aug. 30, 2013).

- 10/29/2010: Complaint with jury demand against Gentiva Health Services, Odyssey HealthCare, Inc., Vistacare, Inc., filed by Elizabeth Lattanzi and Barbara Huffstetler.³³⁴ Allegations included: billing Medicare for ineligible hospice patients, fraudulently altering patient diagnosis, withholding care to avoid costs and fraudulently revoking the Medicare Hospice Benefit for legitimate patients.³³⁵
- 10/21/2011: United States files notice that it is not intervening at this time.³³⁶
- 09/09/2013: Joint stipulation of dismissal with prejudice as to Relator's claims granted.³³⁷

326. False Claims Act Complaint, United States *ex rel.* Turner v. Hospice Complete, Inc., No. 2:10-cv-03456 (N.D. Ala. Dec. 14, 2010), ECF No. 1.

327. *Id.*

328. Government's Notice of Election to Decline Intervention, *Turner*, No. 2:10-cv-03456 (Dec. 1, 2011), ECF No. 12.

329. Order for Mediation, *Turner*, No. 2:10-cv-03456 (Dec. 17, 2012), ECF No. 29.

330. Order, *Turner*, No. 2:10-cv-03456 (Jan. 3, 2013), ECF No. 30.

331. Order Dismissing Case, *Turner*, No. 2:10-cv-03456 (Aug. 9, 2013), ECF No. 35.

332. *Qui Tam* Complaint, United States *ex rel.* Richardson v. Hometown Hospice, Inc., No. 1:10-cv-00670 (S.D. Ala. Oct. 14, 2014), ECF No. 1.

333. Order, *Hometown Hospice*, No. 1:10-cv-00670 (Oct. 14, 2014), ECF No. 38.

334. *Qui Tam* Complaint, United States *ex rel.* Lattanzi v. Vistacare, Inc., No. 3:11-cv-02277 (N.D. Tex. Oct. 29, 2010), ECF No. 1.

335. *Id.*

336. United States of America's Notice That it is Not Intervening at This Time, *Lattanzi*, No. 3:11-cv-02277 (Oct. 21, 2011), ECF No. 14.

337. Stipulated Notice of Dismissal, *Lattanzi*, No. 3:11-cv-02277 (Aug. 30, 2013), ECF No. 47.

United States *ex rel.* Reeves v. Heart to Heart Hospice Mgt., LLC, No. 3:10-cv-02181 (N.D. Tex. Jan. 8, 2013).

- 10/29/2010: Complaint with jury demand filed against all defendants by Relator Lisa Reeves.³³⁸
- 01/08/2013: Order to dismiss without prejudice due to Relator's attorney withdrawing from the case and lack of new counsel being appointed.³³⁹

United States *ex rel.* Childress v. SouthernCare, Inc., No. 3:10-cv-00662 (S.D. Miss. Feb. 21, 2013).

- 08/26/2010: *Qui tam* complaint filed under seal by Cody M. Childress.³⁴⁰ Allegations included admissions of ineligible hospice patients, providing kickbacks for patient referrals, billing for services not performed in accordance with hospice guidelines, retaliatory discharge in violation of the False Claims Act Whistleblower Protection Provisions, and violation of SouthernCare's Corporate Integrity Agreement.³⁴¹
- 01/06/2012: United States filed notice that it will not be intervening at this time.³⁴²
- 02/21/2013: Order of stipulation of voluntary dismissal with prejudice as to Relator and without prejudice as to the United States and without costs to either party.³⁴³

United States *ex rel.* Pompilius v. Oasis Healthcare, Inc., No. 4:10-cv-01390 (N.D. Ala. Mar. 12, 2013).

- 06/03/2010: Complaint filed.³⁴⁴
- 08/08/2012: The United States declined to intervene.³⁴⁵
- 03/12/2013: Order: Action is dismissed without prejudice.³⁴⁶

United States *ex rel.* Singletary v. Harmony Care Hospice, Inc., No. 2:10-cv-01404 (D.S.C. Dec. 13, 2012).

338. Complaint, United States *ex rel.* Reeves v. Heart to Heart Hospice Mgt., LLC, No. 3:10-cv-02181 (N.D. Tex. Oct. 29, 2010), ECF No. 1.

339. Order Dismissing Case, *Reeves*, No. 3:10-cv-02181 (Jan. 8, 2013), ECF No. 30.

340. Complaint, United States *ex rel.* Childress v. SouthernCare, Inc., No. 3:10-cv-00662 (S.D. Miss. Aug. 26, 2010), ECF No. 1.

341. *Id.*

342. Order, *Childress*, No. 3:10-cv-00662 (Jan. 6, 2012), ECF No. 26.

343. Order of Dismissal, *Childress*, No. 3:10-cv-00662 (Feb. 21, 2013), ECF No. 54.

344. *Qui Tam* Complaint, United States *ex rel.* Pompilius v. Oasis Healthcare, Inc., No. 4:10-cv-01390 (N.D. Ala. June 3, 2010), ECF No. 1.

345. United States of America's Notice of Election to Decline Intervention, *Pompilius*, No. 4:10-cv-01390 (Aug. 8, 2012), ECF No. 16.

346. Dismissal Order, *Pompilius*, No. 4:10-cv-01390 (Mar. 12, 2013), ECF No. 20.

- 05/28/2010: Complaint filed.³⁴⁷
- 11/16/2012: Notice of intervention and stipulation of dismissal filed by the United States.³⁴⁸
- 11/20/2012: \$1,286,999.32 settlement to be paid by Harmony Care Hospice and CEO Daniel J. Burton announced, the relators received \$244,529.87.³⁴⁹
- Defendant Daniel J. Burton is individually liable for \$200,000 of the settlement amount.³⁵⁰ The United States alleged that Harmony Care and Burton knowingly submitted or caused to be submitted false claims for patients who did not have a terminal prognosis of six months or less to live and thus were not eligible for hospice care.³⁵¹

United States *ex rel.* Willis v. SouthernCare, Inc., No 4:10-cv-00124 (S.D. Ga. Apr. 16, 2015).

- 05/18/2010: Complaint filed by Relator Chad Willis.³⁵²
- 02/4/2013: United States declined to intervene.³⁵³
- 12/22/2014: Scheduling order issued: Amended pleadings due by 01/21/2015: Discovery due by 09/15/2015. Motions due by 10/19/2015: Status report due by 08/04/2015.³⁵⁴

United States *ex rel.* Boal v. Altus Healthcare & Hospice, Inc., No. 1:10-cv-1380 (N.D. Ga. Aug. 6, 2012).

- 05/07/2010: Relator David C. Boal filed the complaint.³⁵⁵
- 07/17/2012: The Government's notice of election to intervene entered and notice of settlement announced.³⁵⁶ The \$555,572 settlement resolved allegations that Altus submitted false claims to Medicare and Medicaid for a higher level of care and thus reimbursement than patients were qualified to receive.³⁵⁷

347. Complaint, United States *ex rel.* Singletary v. Harmony Care Hospice, Inc., No. 2:10-cv-01404 (D.S.C. May 28, 2010), ECF No. 1.

348. United States' Notice of Intervention, *Singletary*, No. 2:10-cv-01404 (Nov. 16, 2012), ECF No. 28.

349. Press Release, U.S. Dep't of Justice, Harmony Care Hospice to Pay U.S. \$1.286 Million to Resolve False Claims Act Allegations (Nov. 20, 2012), <http://www.justice.gov/opa/pr/south-carolina-based-harmony-care-hospice-inc-and-ceoowner-daniel-j-burton-pay-us-1286>.

350. *Id.*

351. *Id.*

352. *Qui Tam* Complaint, United States *ex rel.* Willis v. SouthernCare, Inc., No. 4:10-cv-00124 (S.D. Ga. May 18, 2010), ECF No. 1.

353. United States' Notice of Election to Decline Intervention, *Willis*, No. 4:10-cv-00124 (Feb. 4, 2013), ECF No. 31.

354. Scheduling Order, *Willis*, No. 4:10-cv-00124 (Dec. 22, 2014), ECF No. 102.

355. Complaint, United States *ex rel.* Boal, v. Altus Healthcare & Hospice, Inc., No. 1:10-cv-1380 (N.D. Ga. May 7, 2010), ECF No. 1.

356. Notice of Settlement, *Boal*, No. 1:10-cv-1380 (July 17, 2012), ECF No. 30.

357. Press Release, Federal Bureau of Investigation, U.S. Attorney's Office, Northern District of Ga., Altus Healthcare & Hospice Settles Allegations of Inappropriate Use of Inpatient Hospice (July 17, 2012), <http://www.fbi.gov/atlanta/press-releases/2012/altus-healthcare-hospice-settles-allegations-of-inappropriate-use-of-inpatient-hospice>.

United States *ex rel.* Numbers v. Hernando-Pasco Hospice, Inc., No. 10-cv-912 (M.D. Fla. Aug. 13, 2013).

- 04/19/2010: Relators Heather Jo Numbers and Gregory Scott Davis filed an unsealed complaint.³⁵⁸
- 11/28/2011: The United States filed notice of voluntary dismissal.³⁵⁹
- 11/29/2011: State of Florida filed notice of voluntary dismissal.³⁶⁰
- 07/22/2013: \$1,000,000 settlement announced, relators received \$250,000.³⁶¹ Settlement resolved allegations that Hernando-Pasco Hospice (HPH Hospice) submitted false Medicare and Medicaid claims for patients who did not qualify for the Medicare hospice benefit. Specifically alleged was that HPH Hospice caused staff to admit ineligible patients in order to meet targets imposed by management, adopted procedures to delay and discourage staff from discharging patients who were not appropriate for hospice services, instructed staff to make false or misleading statements in patients' medical records to make them appear eligible when they were not, and failed to implement an adequate compliance program that might have corrected these problems.
- Also resolved by the settlement were allegations that HPH Hospice billed the government at higher reimbursement rates than it was entitled to receive, and provided illegal kickbacks to skilled nursing facilities in exchange for patient referrals.
- As part of the settlement, HPH Hospice agreed to enter into a Corporate Integrity Agreement with HHS-OIG.

United States *ex rel.* Geschrey v. Generations Healthcare, LLC, No. 1:10-cv-02413 (N.D. Ill. Mar. 31, 2014).

- 04/19/2010: Complaint filed by Laurie Geschrey, the State of Illinois, the United States, and Laure Janus.³⁶² Allegations included routinely certifying ineligible patients for hospice, submitting false documentation to support Medicare audits, billing for services not provided, and retaliatory discharge.³⁶³
- 12/01/2011: United States and the State of Illinois declined to intervene.³⁶⁴

358. *Qui Tam* Complaint, United States *ex rel.* Numbers v. Hernando-Pasco Hospice, Inc., No. 10-cv-912 (M.D. Fla. Apr. 19, 2010), ECF No. 1.

359. United States' Notice of Consent to Relators' Voluntary Dismissal Without Prejudice to the United States of Certain Defendants, *Numbers*, No. 10-cv-912 (Nov. 28, 2011), ECF No. 9.

360. Notice of Voluntary Dismissal, *Numbers*, No. 10-cv-912 (Nov. 28, 2011), ECF No. 10.

361. Press Release, U.S. Dep't of Justice, U.S. Attorney's Office, Middle District of Fla., HPH Hospice To Pay \$1 Million To Resolve False Claims Act Allegations (July 22, 2013), <http://www.justice.gov/usao-mdfl/pr/hph-hospice-pay-1-million-resolve-false-claims-act-allegations>.

362. Complaint, United States *ex rel.* Geschrey v. Generations Healthcare, LLC., No. 1:10-cv-02413 (N.D. Ill. Apr. 19, 2010), ECF No. 1.

363. *Id.*

364. United States' and the State of Illinois' Notice of Election to Decline Intervention, *Geschrey*, No. 1:10-cv-02413 (Dec. 1, 2011), ECF No. 12.

- 02/11/2014: Assumed confidential settlement entered.³⁶⁵
- 03/31/2014: Order of dismissal with prejudice as to the Relator and without prejudice as to the State of Illinois and the United States entered.³⁶⁶

United States *ex rel.* Micca v. GGNHC Holdings, LLC, No. 1:10-cv-01055 (N.D. Ga. Jan. 9, 2013).

- 04/09/2010: Complaint filed by Dr. Joseph L. Micca.³⁶⁷ Allegations included grossly deficient medical care provided to hospice patients at Golden Living Center as well as certification and re-certification for hospice care patients who did not meet Medicare criteria for hospice at AseraCare Hospice Atlanta.
- 06/14/2011: Notice by State of Georgia and United States that they are not intervening at this time.³⁶⁸
- 01/05/2012: Order Granting Motion to Sever Claims and Transfer Claims.³⁶⁹
- 06/22/2012: Order granting motion to transfer Hospice Claims Northern District of Alabama.³⁷⁰
- 07/3/2012: Order granting motion to United States to partially intervene entered.³⁷¹
- 08/28/2012: Order entered consolidating case into *United States v. AseraCare, Inc.*, No. 2:12-cv-00245 (N.D. Ala.).³⁷²
- 01/09/2013: Stipulation of Dismissal regarding Quality of Care claims in Northern District of Georgia.³⁷³
- 12/19/2014: Court grants Government's motion for partial summary judgment, only as to AseraCare's statute of limitations and laches defenses and denies all other motions.³⁷⁴
- 04/27/2015: Second amended pretrial order. Case set for jury trial in Birmingham, Alabama to begin on August 3, 2015. Counsel reasonably anticipate the case should take at least 50 trial days.³⁷⁵

United States *ex rel.* Stevenson v. Good Heart Hospice, Inc., No. 1:10-cv-01816 (N.D. Ill Mar. 4, 2014).

365. Sealed Exhibit, *Geschrey*, No. 1:10-cv-02413 (Feb. 11, 2014), ECF Nos. 117, 119.

366. Order of Dismissal, *Geschrey*, No. 1:10-cv-02413 (Mar. 31, 2014), ECF No. 123.

367. Complaint, *United States ex rel. Micca v. GGNHC Holdings, LLC*, No. 1:10-cv-01055 (N.D. Ga. Apr. 9, 2010), ECF No. 1.

368. Notice of the United States That it is Not Intervening at This Time, *Micca*, No. 1:10-cv-01055 (June 14, 2011), ECF No. 10.

369. Order, *Micca*, No. 1:10-cv-01055 (Jan. 5, 2012), ECF No. 18.

370. Order, *Micca*, No. 1:10-cv-01055 (June 22, 2012), ECF No. 35.

371. Order, *United States ex rel. Paradies v. AseraCare, Inc.*, No. 2:12-cv-00245 (N.D. Ala. July 3, 2012), ECF No. 115.

372. Consolidation Order, *AseraCare*, No. 2:12-cv-00245 (Aug. 28, 2012), ECF No. 131.

373. Order of Stipulation of Dismissal, *Micca*, No. 1:10-cv-01055 (Jan. 9, 2013), ECF No. 62.

374. Amended Order, *AseraCare*, No. 2:12-cv-00245 (Dec. 19, 2014), ECF No. 278.

375. Second Amended Pretrial Order, *AseraCare*, No. 2:12-cv-00245 (Apr. 27, 2015), ECF No. 293.

- 03/23/2010: Complaint filed by Judy Stevenson.³⁷⁶
- 01/31/2014: United States declined to intervene.³⁷⁷
- 03/04/2014: Order granting Plaintiff's motion to dismiss voluntarily without prejudice.³⁷⁸

United States *ex rel.* Momeyer v. Hospice of Arizona, LLC, No. 1:10-cv-280 (D. Md. Mar. 29, 2013).

- 02/03/2010: Complaint and motion to seal case were filed by relator Ellen Momeyer.³⁷⁹
- 03/19/2013: United States filed a notice of intervention for purposes of settlement.³⁸⁰
- 03/20/2013: \$12,000,000 settlement announced. Relator received \$1,800,000.³⁸¹
- Settlement resolved allegations that Hospice of Arizona, LLC, a related entity, American Hospice Management, LLC, and their parent corporation, American Hospice Management Holdings, LLC, submitted or caused to be submitted false claims to Medicare for ineligible hospice services between September 1, 2002 and December 31, 2012.³⁸²
- Specifically, the government alleged that Hospice of Arizona and related entities engaged in certain practices that resulted in the admission of ineligible patients or inflated bills, including: pressuring staff to find more patients eligible for Medicare, adopting procedures that delayed and discouraged staff from discharging patients when the patients were no longer appropriate for hospice services and not implementing an adequate compliance program.³⁸³
- As part of the settlement, American Hospice Management Holdings agreed to enter into a Corporate Integrity Agreement with HHS-OIG.³⁸⁴
- The claims settled by the settlement agreement were allegations only and no determination of liability was made.³⁸⁵

2009

In re Sealed Matter, No. 2:14-cv-00227 (N.D. Ala. Feb. 7, 2014).

376. False Claims Complaint, United States *ex rel.* Stevenson v. Good Heart Hospice, Inc., No. 1:10-cv-01816 (N.D. Ill Mar. 23, 2010), ECF No. 1.

377. Order, *Stevenson*, No. 1:10-cv-01816 (Jan. 31, 2014), ECF No. 18.

378. Order, *Stevenson*, No. 1:10-cv-01816 (Jan. 31, 2014), ECF No. 40.

379. Complaint for Damages and Other Relief Under the False Claims Act, United States *ex rel.* Momeyer v. Hospice of Arizona, LLC, No. 1:10-cv-280 (D. Md. Feb. 3, 2010), ECF No. 1.

380. United States' Notice of Intervention for Purposes of Settlement, *Momeyer*, No. 1:10-cv-280 (Mar. 19, 2013), ECF No. 17.

381. Press Release, U.S. Dep't of Justice, Hospice of Arizona Pay \$12 Million to Resolve False Act Allegations (Mar. 20, 2013), <http://www.justice.gov/opa/pr/hospice-arizona-and-related-entities-pay-12-million-resolve-false-claims-act-allegations>.

382. *Id.*

383. *Id.*

384. *Id.*

385. *Id.*

- 10/19/2009: *Qui tam* complaint filed by Haven Smallwood in the Eastern District of Michigan.³⁸⁶
- 02/07/2014: Smallwood case transferred to the Northern District of Alabama.
- 02/27/2014: Order that the United States elected to intervene and the United States, Relator and defendants have entered into a settlement agreement.³⁸⁷
- 03/13/2014: \$3,920,000 settlement announced. Relators Haven Smallwood and Kathi Holloway received approximately \$712,000.³⁸⁸

Holloway v. Hospice Compassus, No. 5:09-cv-01942 (N.D. Ala. Mar. 13, 2014).

- 09/30/2009: Relator Kathi Holloway filed a non-sealed complaint in the Northern District of Alabama.³⁸⁹ Alleged was that Hospice Compassus submitted false claims for hospice care for patients who were not eligible for the hospice benefit.³⁹⁰
- 03/13/2014: \$3,920,000 settlement announced. Relators received approximately \$712,000.³⁹¹

United States *ex rel.* Brown v. Reliant Hospice, No. 3:09-cv-02294 (D.S.C. July 23, 2010).

- 08/28/2009: *Qui Tam* complaint filed by Lisa Brown.³⁹²
- 07/23/2010: Action dismissed without prejudice pursuant to 31 U.S.C. section 3730(b)(5) (first-to-file rule).³⁹³

United States *ex rel.* Woods v. SouthernCare, Inc., No. 3:09-cv-00313 (S.D. Miss. Jan. 27, 2105).

- 5/28/2009: Complaint against SouthernCare filed by the United States, Deborah Woods, Theresa Ghoolsby, and Teresa Rieder.³⁹⁴ Allegations included that SouthernCare systematically enrolled ineligible patients into hospice care.³⁹⁵

386. Complaint for Violation of False Claims Act (*Qui Tam*), Anti-Kickback Statute, Civil Monetary Penalties and the Medicaid False Claims Act and Demand for Jury Trial, *In re Sealed Matter*, No. 2:14-cv-00227 (N.D. Ala. Oct. 19, 2009), ECF No. 1.

387. Dismissal Order, *In re Sealed Matter*, No. 2:14-cv-00227 (Feb. 27, 2014), ECF No. 22.

388. Press Release, U.S. Dep't of Justice, U.S. Attorney's Office, Northern District of Ala., Hospice Operator to Pay \$3.92 Million To Settle False Claims Lawsuit (Mar. 1, 2014), <http://www.justice.gov/usao/aln/News/March%202014/13%20Mar,%202014%20Hospice.html>.

389. Complaint, *Holloway v. Hospice Compassus*, No. 5:09-CV-01942 (N.D. Ala. Sept. 30, 2009), ECF No. 1.

390. *Id.*

391. Press Release, U.S. Dep't of Justice, U.S. Attorney's Office, Northern District of Ala., Hospice Operator to Pay \$3.92 Million To Settle False Claims Lawsuit (Mar. 1, 2014), <http://www.justice.gov/usao/aln/News/March%202014/13%20Mar,%202014%20Hospice.html>.

392. Complaint, *United States ex rel. v. Reliant Hospice*, No. 3:09-cv-02294 (D.S.C. Aug. 28, 2009), ECF No. 1.

393. Judgment in a Civil Action, *Brown*, No. 3:09-cv-02294 (July 23, 2010), ECF No. 36.

394. *Qui Tam* Complaint, *Woods v. SouthernCare, Inc.*, No. 3:09-cv-00313 (S.D. Miss. May 28, 2009).

395. *Id.*

- 08/04/2011: United States declined to intervene and complaint is unsealed.³⁹⁶
- 05/13/2014: Case management order entered.³⁹⁷
- 01/27/2015: Stipulation of dismissal of all causes of action asserted by Relators with prejudice as to Relators and without prejudice as to the United States.³⁹⁸

United States *ex rel.* Kappenman v. Compassionate Care Hospice of the Midwest, LLC, No. 4:09-cv-04039 (D.S.D. July 25, 2012).

- 04/02/2009: Complaint filed.³⁹⁹
- 09/25/2009: United States declined intervention.⁴⁰⁰
- 07/25/2012: All claims except False Claims Act claims “dismissed on the merits, with prejudice, and the parties bearing their own costs and attorney’s fees.” Plaintiff’s False Claims Act claims dismissed, without prejudice.⁴⁰¹

Richardson *ex rel.* United States v. Golden Gate Nat’l Senior Care, LLC, No. 2:09-cv-00627 (N.D. Ala. Oct. 17, 2012).

- 03/27/2009: Complaint filed. Allegations include: fraudulently marketing to and admitting non-qualifying Hospice Patients, “Dumping” non-qualifying patients to avoid detection and fraudulently decrease repayments for exceeding the aggregate cap, aggressively recruiting “last breath” patients to artificially increase the aggregate cap, and shrinking average length of stay.⁴⁰²
- 12/05/2011: United States elects to intervene.⁴⁰³
- 10/17/2012: Case consolidated with Complaint in intervention in *United States v. Aseracare, Inc.*, No. 2:12-cv-0245-KOB (N.D. Ala.).⁴⁰⁴
- 12/19/2014: Court grants Government’s motion for partial summary judgment, only as to AseraCare’s statute of limitations and laches defenses and denies all other motions.⁴⁰⁵
- 04/27/2015: Second amended pretrial order. Case set for jury trial in Birmingham, Alabama, to begin on August 3, 2015. Counsel reasonably anticipate the case should take at least fifty trial days.⁴⁰⁶

396. Order, *Woods*, No. 3:09-cv-00313 (Aug. 4, 2011), ECF No. 19.

397. Case Management Order, *Woods*, No. 3:09-cv-00313 (May 13, 2014), ECF No. 101.

398. Joint Stipulation of Dismissal, *Woods*, No. 3:09-cv-00313 (Jan. 27, 2015), ECF No. 156.

399. Complaint, *United States ex rel. Kappenman v. Compassionate Care Hospice of the Midwest, LLC*, No. 4:09-cv-04039 (D.S.D. Apr. 2, 2009), ECF No. 1.

400. Order, *Kappenman*, No. 4:09-cv-04039 (Sept. 25, 2009), ECF No. 9.

401. Judgment, *Kappenman*, No. 4:09-cv-04039 (July 25, 2012), ECF No. 55.

402. *Qui Tam* Complaint, *Richardson ex rel. United States v. Golden Gate Nat’l Senior Care, LLC*, No. 2:09-cv-00627 (N.D. Ala. Mar. 27, 2009), ECF No. 1.

403. United States’ Notice of Election to Intervene in Part and Decline to Intervene in Part and Request to Maintain Seal for Limited Time, *Richardson*, No. 2:09-cv-00627 (Dec. 5, 2011), ECF No. 30.

404. Order, *Richardson*, No. 2:09-cv-00627 (Oct. 17, 2012), ECF No. 63.

405. Amended Order, *United States v. AseraCare, Inc.*, No. 2:12-cv-00245 (N.D. Ala. Dec. 19, 2014), ECF No. 278.

406. Second Amended Pretrial Order, *AseraCare*, No. 2:12-cv-00245 (Apr. 27, 2015), ECF No. 293.

United States *ex rel.* Dingus v. Odyssey Healthcare, Inc., No. 09-cv-00254 (E.D. Wis. Mar. 1, 2012).

- 03/05/2009: Complaint filed.⁴⁰⁷
- 09/09/2011: United States elected to intervene.⁴⁰⁸
- 03/01/2012: \$25,000,000 consolidated settlement announced. The relators received over \$4,600,000.⁴⁰⁹

Rehfeldt *ex rel.* United States v. Vitas Healthcare Corp., No. 3:09-cv-00203 (N.D. Tex. May 1, 2013).

- 01/30/2009: *Qui tam* complaint filed.⁴¹⁰
- 10/03/2011: United States filed notice that it is not intervening at this time.⁴¹¹
- 11/07/2011: State of Texas filed notice that it is not intervening at this time.⁴¹²
- 05/01/2013: Relator dismissed case without prejudice. Dismissed without prejudice as to U.S.⁴¹³

2008

United States *ex rel.* Knight v. Reliant Hospice, Inc., No. 3:08-cv-03724 (D.S.C. Mar. 6, 2012).

- 11/07/2008: Complaint filed.⁴¹⁴ Allegations included: improperly admitting patients into hospice care, providing unnecessary services, forging physician signatures on patients' Initial Plans of Care, deleting and altering patient medical records, providing kickbacks for patient referrals, providing bonuses to employees for recruiting new patients into the hospice program, punishing employees who discharged patients that no longer needed or qualified for hospice services, hiring medical directors as independent

407. Complaint and Demand for Jury Trial, United States *ex rel.* Dingus v. Odyssey Healthcare, Inc., No. 09-cv-00254 (E.D. Wis. Mar. 5, 2009), ECF No. 1.

408. United States' Notice of Election to Intervene in Part and Decline to Intervene in Part, United States v. Odyssey Health Care, Inc., No. 2:08-cv-00383 (Sept. 9, 2011), ECF No. 41.

409. Press Release, U.S. Dep't of Justice, Hospice Provider Odyssey Healthcare Agrees to Pay \$25 Million to Resolve False Claims Act Allegations (Mar. 1, 2012), <http://www.justice.gov/opa/pr/hospice-provider-odyssey-healthcare-agrees-pay-25-million-resolve-false-claims-act>.

410. *Qui Tam* Complaint, Rehfeldt *ex rel.* United States v. Vitas Healthcare Corp., No. 3:09-cv-00203 (N.D. Tex. Jan. 30, 2009), ECF No. 1.

411. United States' Notice That it is Not Intervening at This Time, *Rehfeldt*, No. 3:09-cv-00203 (Oct. 3, 2011), ECF No. 35.

412. Texas' Notice That it is Not Intervening at This Time, *Rehfeldt*, No. 3:09-cv-00203 (Nov. 7, 2011), ECF No. 38.

413. Order of Dismissal, *Rehfeldt*, No. 3:09-cv-00203 (May 1, 2013).

414. Complaint, United States *ex rel.* Knight v. Reliant Hospice, Inc., No. 3:08-cv-03724 (D.S.C. Nov. 7, 2008), ECF No. 1.

contractors, and failing to employ a licensed physician as a medical director.⁴¹⁵

- 10/15/2010: United States declined intervention.⁴¹⁶
- 03/06/2012: \$1,500,000 judgment against Reliant and \$25,000 judgment against the owner of Reliant Hospice, Tammy McDonald, entered.⁴¹⁷

United States *ex rel.* Holt v. Good Samaritan Hospice USA, Inc., No. 5:08-cv-01511 (N.D. Ala. July 26, 2013).

- 08/21/2008: Complaint filed against Good Samaritan Hospice, Randy Gist and Rajesh “Raj” Boorgu.⁴¹⁸
- 07/29/2011: United States elected to partially intervene.⁴¹⁹
- 07/26/2013: Order of stipulation of dismissal and settlement of all claims. As stated in the settlement agreement, Defendant agreed to pay \$310,599 to the United States, \$62,119.80 of which the United States will then pay to the Relators. The settlement also provided that \$25,000 would be paid to the Relators’ attorneys. As a result of the settlement, claims asserted by United States and Plaintiffs/Relators are dismissed with prejudice and costs are taxed as paid.⁴²⁰

United States *ex rel.* Urick v. Vitas HME Solutions, Inc., No. 5:08-cv-00663-OLG (W.D. Tex. Sept. 25, 2013).

- 08/08/2008: Complaint filed.⁴²¹
- 05/31/2012: United States filed notice that it is not intervening at this time.⁴²²
- 05/09/2013: Motion to change venue and partially intervene by United States entered.⁴²³
- 09/25/2013: Order granting motion to consolidate cases. Consolidated to

415. *Id.*

416. United States’ Notice of Election to Decline Intervention, *Knight*, No. 3:08-cv-03724 (Oct. 15, 2010), ECF No. 37.

417. Judgment in a Civil Action, *Knight*, No. 3:08-cv-03724 (Mar. 6, 2012), ECF No. 207.

418. False Claim Act Complaint, United States *ex rel.* Holt v. Good Samaritan Hospice USA, Inc., No. 5:08-cv-01511 (N.D. Ala. Aug. 21, 2008), ECF No. 1.

419. Government’s Notice of Election to Partially Intervene, *Holt*, No. 5:08-cv-01511 (July 29, 2011), ECF No. 26.

420. Supplemental Response to Court’s Show Cause Order Entered on July 9, 2013, and Renewed Joint Notice of Voluntary Dismissal, *Holt*, No. 5:08-cv-01511 (July 24, 2013), ECF No. 33.

421. Complaint, United States *ex rel.* Urick v. Vitas HME Solutions, Inc., No. 5:08-cv-00663-OLG (W.D. Tex. Aug. 8, 2008), ECF No. 1.

422. United States’ Notice That it is Not Intervening at This Time, *Urick*, No. 5:08-cv-00663-OLG (May 31, 2012), ECF No. 31.

423. Unopposed Motion to Partially Intervene for Good Cause and Transfer Case to the District Court for the Western District of Missouri, *Urick*, No. 5:08-cv-00663-OLG (May 9, 2013), ECF No. 65.

United States v. VITAS Hospice Servs., LLC, No. 4:13-cv-00449-BCW (W.D. Mo.).⁴²⁴

- 05/08/2015: Currently in discovery. Joint Proposed Scheduling Order: Fact Discovery to be completed by January 29, 2016, and trial set for March 27, 2017.⁴²⁵

United States ex rel. Brummel v. Valir Health Mgt. Solutions, Inc., No. 5:08-cv-00768-M (W.D. Okla. June 10, 2009).

- 07/24/2008: Complaint filed.⁴²⁶
- 09/24/2008: United States declined to intervene.⁴²⁷
- 06/10/2009: Motion to dismiss without prejudice by Relators.⁴²⁸

United States ex rel. Paradies v. AseraCare, Inc., No. 2:08-cv-00384 (E.D. Wis. Jan. 23, 2012).

- 05/02/2008: Complaint for damages and injunctive relief filed.⁴²⁹
- 01/23/2012: Matter transferred to Northern District of Alabama.⁴³⁰
- 02/20/2012: Motion to intervene by the United States.⁴³¹
- 07/13/2012: Consolidated to *United States v. AseraCare, Inc.*, No. 2:12-cv-00245 (N.D. Ala.).⁴³²
- 12/19/2014: Court grants Government's motion for partial summary judgment, only as to AseraCare's statute of limitations and laches defenses and denies all other motions.⁴³³
- 04/27/2015: Second amended pretrial order. Case set for jury trial in Birmingham, Alabama to begin on August 3, 2015. Counsel reasonably anticipate the case should take at least fifty trial days.⁴³⁴

United States ex rel. Rouse v. Odyssey Healthcare, Inc., No. 2:08-cv-0383 (E.D. Wis. Feb. 29, 2012).

424. Order, *United States v. VITAS Hospice Servs., LLC*, No. 4:13-cv-00449 (W.D. Mo. Sept. 25, 2013), ECF No. 64.

425. Joint Motion in Support of Revised Scheduling Order, *Vitas Hospice Servs.*, No. 4:13-cv-00449 (May 7, 2015), ECF No. 181.

426. Complaint, *United States ex rel. Brummel v. Valir Health Mgt. Solutions, Inc.*, No. 5:08-cv-00768-M (W.D. Okla. July 24, 2008), ECF No. 1.

427. Government's Notice of Election to *Decline* Intervention in This *Qui Tam* Action, *Brummel*, No. 5:08-cv-00768-M (Sept. 24, 2008), ECF No. 8.

428. Dismissal Without Prejudice, *Brummel*, No. 5:08-cv-00768-M (June 10, 2009), ECF No. 15.

429. Complaint for Damages and Injunctive Relief Under False Claims Act, *United States ex rel. Paradies v. AseraCare, Inc.*, No. 2:08-cv-00384 (E.D. Wis. May 2, 2008), ECF No. 1.

430. Order Transferring Action, *Paradies*, No. 2:08-cv-00384 (Jan. 23, 2012), ECF No. 99.

431. Motion to Intervene, *AseraCare*, No. 2:12-cv-00245 (Feb. 20, 2012), ECF No. 108.

432. Motion to Procedurally Consolidate, *AseraCare*, No. 2:12-cv-00245 (July 13, 2012), ECF No. 117.

433. Amended Order, *AseraCare*, No. 2:12-cv-00245 (Dec. 19, 2014), ECF No. 278.

434. Second Amended Pretrial Order, *AseraCare*, No. 2:12-cv-00245 (Apr. 27, 2015), ECF No. 293.

- 05/02/2008: Complaint filed, allegations included: billing Medicare for “continuous care” level of care when only “routine care” was required, admitting ineligible patients to hospice care, and retaliation.⁴³⁵
- 09/09/2011: United States elected to intervene.⁴³⁶
- 03/01/2012: \$25,000,000 consolidated settlement announced, relators received over \$4,600,000.⁴³⁷

United States *ex rel.* Ebeid v. Lungwitz, No. 2:08-cv-00544 (D. Ariz. May 22, 2009).

- 03/19/2008: Complaint filed alleging implied false certification theory of False Claims Act stemming from referring physician’s improper financial relationships with Home Health and Hospice agencies.⁴³⁸
- 04/21/2009: United States declined intervention.⁴³⁹
- 05/22/2009: Case dismissed under FRCP 9(b) for failure to plead fraud with specificity.⁴⁴⁰
- 05/26/2009: Notice of appeal to 9th Circuit Court of Appeals.⁴⁴¹
- 08/09/2010: Dismissal affirmed by 9th Circuit.⁴⁴²

2007

United States *ex rel.* Romeo v. Southerncare, Inc., No. 2:07-CV-02325 (N.D. Ala. Jan. 15, 2009).

- 12/26/2007: Relator Nancy Romeo filed a complaint.⁴⁴³
- 01/15/2009: United States elected to intervene.⁴⁴⁴ \$24,700,000 settlement announced.⁴⁴⁵ Ms. Romeo and fellow relator Tanya Rice (United States *ex rel.* Rice v. SouthernCare, Inc., No. 2:05-cv-00873 (N.D. Ala. Jan. 15, 2009)) received \$4,900,000.⁴⁴⁶

435. Complaint for Damages and Injunctive Relief Under False Claims Act—Qui Tam Action Under Seal, United States *ex rel.* Rouse v. Odyssey Health Care, Inc., No. 2:08-cv-00383 (E.D. Wis. May 2, 2008), ECF No. 1.

436. United States’ Notice of Election to Intervene in Part and Decline to Intervene in Part, *Odyssey Health Care*, No. 2:08-cv-00383 (Sept. 9, 2011), ECF No. 41.

437. Press Release, U.S. Dep’t of Justice, Hospice Provider Odyssey Healthcare Agrees to Pay \$25 Million to Resolve False Claims Act Allegations, (Mar. 1, 2012), <http://www.justice.gov/opa/pr/hospice-provider-odyssey-healthcare-agrees-pay-25-million-resolve-false-claims-act>.

438. First Amended Complaint, United States *ex rel.* Ebeid v. Lungwitz, No. 2:08-cv-00544 (D. Ariz. Mar. 19, 2008), ECF No. 7.

439. Notice re The United States to Decline Intervention, *Ebeid*, No. 2:08-cv-00544 (Apr. 21, 2009), ECF No. 65.

440. Order, *Ebeid*, No. 2:08-cv-0054 (May 22, 2009), ECF No. 78.

441. Plaintiff’s/Appellant’s Notice of Appeal, *Ebeid*, No. 2:08-cv-0054 (May 26, 2009), ECF No. 80.

442. *Ebeid ex rel.* United States. v. Lungwitz, 616 F.3d 993, 996 (9th Cir. 2010).

443. *Qui Tam* Complaint, Romeo v. SouthernCare, Inc., No. 2:07-cv-02325 (N.D. Ala. Dec. 26, 2007), ECF No. 1.

444. Notice of Election to Intervene, *Romeo*, No. 2:07-cv-02325 (Jan. 15, 2009), ECF No. 26.

445. Press Release, U.S. Dep’t of Justice, Alabama-Based Hospice Company Pays \$24.7 Million to Settle Health Care Fraud Claims (Jan. 15, 2009), <http://www.justice.gov/archive/opa/pr/2009/January/09-civ-043.html>.

446. *Id.*

United States *ex rel.* Barnett v. Hospice O/T Bluegrass, No. 5:07-cv-00375 (E.D. Ky. Mar. 22, 2012).

- 11/02/2007: Complaint filed by Donna Hatton, Arzella Howard, Cathy Barnett, Pamela Bates, and Lesley Gross. Allegations were that the Defendant had a practice of enrolling and/or maintaining ineligible hospice patients.⁴⁴⁷
- 03/22/2012: Notice of intervention for purposes of settlement filed by the United States.⁴⁴⁸ \$685,000 settlement announced, relators received \$137,000.⁴⁴⁹

Spottiswood *ex rel.* United States v. Chemed Corp., No. 1:07-cv-04566 (N.D. Ill. Sept. 25, 2013).

- 08/14/2007: Complaint filed.⁴⁵⁰
- 05/10/2013: The United States elected to intervene.⁴⁵¹
- 05/20/2013: Transferred to the Western District of Missouri.⁴⁵²
- 09/25/2013: Consolidated into *United States v. VITAS Hospice Servs., LLC*, No. 4:13-cv-00449-BCW (W.D. Mo.).⁴⁵³
- 06/19/2014: John Bickerman named as mediator.⁴⁵⁴
- 01/29/2015: Currently in discovery. United States filed six amended notices to take the deposition of six different individuals.⁴⁵⁵

United States *ex rel.* Wall v. Vista Hospice Care, Inc., No. 3:07-cv-00604 (N.D. Tex. Feb. 3, 2015).

- 09/29/2009: Amended complaint filed. Allegations include: fraudulently enrolling patients in hospice care and using fraudulent mean to maintain patient enrollment, failing to provide required services to patients, providing

447. Complaint, United States *ex rel.* Barnett v. Hospice of the Bluegrass, Inc., No. 5:07-cv-00375-JBC (E.D. Ky. Nov. 2, 2007).

448. United States' Notice of Intervention for Purposes of Settlement, *Barnett*, No. 5:07-cv-00375-JBC (Mar. 22, 2012), ECF No. 56.

449. *Hospice of the Bluegrass Agrees to Pay Federal Government \$685,000*, KENTUCKY.COM (Mar. 27, 2012), http://www.kentucky.com/2012/03/27/2128086_hospice-of-the-bluegrass-agrees.html?rh=1.

450. Complaint, Spottiswood *ex rel.* United States v. Chemed Corp., No. 1:07-cv-04566 (N.D. Ill. Aug. 14, 2007), ECF No. 1.

451. Unopposed Motion to Partially Intervene for Good Cause and to Transfer Case to the District Court for the Western District of Missouri, *Spottiswood*, No. 1:07-cv-04566 (May 10, 2013), ECF No. 52.

452. Case Transfer Notice, *Spottiswood*, No. 1:07-cv-04566 (May 20, 2013), ECF No. 57.

453. Order, *Spottiswood v. Chemed Corp.*, No. 4:13-cv-00505 (W.D. Mo. Sept. 25, 2013), ECF No. 88.

454. Designation of Mediator, United States v. Vitas Hospice Servs., LLC, No. 4:13-cv-00449-BCW (W.D. Mo. June 19, 2014), ECF No. 100.

455. Notice to Take Deposition, *Vitas Hospice Servs.*, No. 4:13-cv-00449-BCW (May 2, 2013), ECF Nos. 148–53.

patients with unnecessary durable medical equipment, violation of anti-kickback statutes, and retaliation.⁴⁵⁶

- 09/30/2009: Notice that the United States is not intervening at this time.⁴⁵⁷
- 02/11/2010: Notice of non-intervention filed by the State of Texas.⁴⁵⁸
- 02/03/2015: Trial date reset to the Court's three-week docket beginning April 4, 2016.⁴⁵⁹

United States *ex rel.* Olson v. HCR Manor Care, Inc., No. 2:07-cv-00680 (D.S.C. Nov. 12, 2008).

- 03/07/2007: Complaint filed.⁴⁶⁰
- 07/06/2007: United States declined intervention.⁴⁶¹
- 05/12/2008: Amended complaint filed, alleging that defendants billed Medicare for services provided to patients who were not eligible for hospice, as well as retaliatory discharge in violation of the False Claims Act.⁴⁶²
- 11/12/2008: Order of stipulation of dismissal with prejudice for relator and without prejudice for United States entered.⁴⁶³

2006

United States *ex rel.* Honaker v. Hospice of Louisville, No. 3:06-cv-00554 (W.D. Ky. Oct. 4, 2010).

- 10/27/2006: Complaint filed. (This complaint is not listed on the docket, but is listed as the date of filing).
- 09/11/2007: Amended complaint filed.⁴⁶⁴
- 05/25/2010: United States declined to intervene.⁴⁶⁵
- 09/17/2010: Proposed agreed order/stipulation filed by Hospice of Louisville.⁴⁶⁶
- 09/24/2010: Notice of voluntary dismissal filed by Alan D. Honaker.⁴⁶⁷

456. First Amended False Claims Complaint and Demand for Jury Trial, *Wall*, No. 3:07-cv-00604 (Sep. 29, 2009), ECF No. 25.

457. United States of America's Notice That it is Not Intervening at This Time, *Wall*, No. 3:07-cv-00604 (Sep. 30, 2009), ECF No. 26.

458. State of Texas's Notice of Non-Intervention, *Wall*, No. 3:07-cv-00604 (Feb. 11, 2010), ECF No. 34.

459. Second Amended Scheduling Order, *Wall*, No. 3:07-cv-00604 (Feb. 3, 2015), ECF No. 178.

460. Complaint False Claims Act, Wrongful Termination Demand for Jury Trial, United States *ex rel.* Olson v. HCR Manor Care, Inc., No. 2:07-cv-00680 (D.S.C. Mar. 7, 2007), ECF No. 1.

461. Government's Notice of Election to Decline Intervention, *Olson*, No. 2:07-cv-00680 (July 6, 2007), ECF No. 9.

462. Amended Complaint False Claims Act, Wrongful Termination Demand for Jury Trial, *Olson*, No. 2:07-cv-00680 (May 12, 2008), ECF No. 33.

463. Joint Stipulation of Dismissal, *Olson*, No. 2:07-cv-00680 (Nov. 12, 2008), ECF No. 48.

464. Amended Complaint, United States *ex rel.* Honaker v. Hospice of Louisville, No. 3:06-cv-00554 (W.D. Ky. Sept. 11, 2007), ECF No. 16.

465. United States of America's Notice of Election to Decline Intervention, *Honaker*, No. 3:06-cv-00554 (May 25, 2010), ECF No. 16.

466. Agreed Order for Extension of Time, *Honaker*, No. 3:06-cv-00554 (Sept. 17, 2010), ECF No. 24.

467. Notice of Voluntary Dismissal Pursuant to FRCP 41(a) and Motion to Enter Order Dismissing Action Without Prejudice to the United States, *Honaker*, No. 3:06-cv-00554 (Sept. 24, 2010), ECF No. 26.

- 10/04/2010: Order dismissing action without prejudice entered. All documents filed prior to May 25, 2010 (date of denial of intervention), shall remain under seal.⁴⁶⁸

United States *ex rel.* Fox v. Homecare Hospices, Inc., No. 2:06-cv-04679 (E.D. Pa. Mar. 12, 2015).

- 10/19/2006: Complaint filed.⁴⁶⁹
- 08/17/2011: Defendant Matthew Kolodesh is criminally indicted with conspiracy to defraud Medicare of more than \$14 million. Kolodesh was also charged with twenty-one counts of health care fraud, eleven counts of money laundering, and two counts of mail fraud.⁴⁷⁰
- 04/27/2012: United States elected to intervene in part in civil False Claims Act case.⁴⁷¹
- 10/17/2013: Defendant is convicted on all thirty-five counts charged in the indictment.⁴⁷²
- 02/23/2015: Motions to dismiss Relator's Second Amended Complaint and Government's Intervening Complaint by filed by Matthew Kolodesh and Malvina Yakobashvili.⁴⁷³
- 03/09/2015: Relators file Response in Opposition to Motion to Dismiss.⁴⁷⁴
- 03/12/2015: The United States files Response in Opposition to Motion to Dismiss.⁴⁷⁵
- 04/07/2015: Stipulation and order entered that Defendants do not and will not contest the United States' authority in this action to subpoena financial records.⁴⁷⁶

United States *ex rel.* Landis v. Hospice Care of Kansas, LLC, No. 2:06-cv-02455, 2010 WL 5067614 (D. Kan. June 15, 2012).

468. Order, *Honaker*, No. 3:06-cv-00554 (Oct. 4, 2010), ECF No. 28.

469. Complaint—Civil Action, United States *ex rel.* Fox v. Home Care Hospice, Inc., No. 2:06-cv-04679 (E.D. Pa. Oct. 19, 2006), ECF No. 1.

470. United States v. Kolodesh, No. 11-464, 2014 WL 1876214, at *1 (E.D. Pa. May 12, 2014).

471. Order, *Fox*, No. 2:06-cv-04679 (Apr. 27, 2012), ECF No. 33.

472. *Kolodesh*, 2014 WL 1876214, at *1.

473. Motion to Dismiss 2nd Amended Relators Complaint by Defendant Matthew Kolodesh, *Fox*, No. 2:06-cv-04679 (Feb. 23, 2015), ECF No. 80; Motion to Dismiss Government's Intervening Complaint by Defendants Malvina Yakobashvili and Matthew Kolodesh, *Fox*, No. 2:06-cv-04679 (Feb. 23, 2015), ECF No. 81; Motion to Dismiss Government's Intervening Complaint by Defendants Malvina Yakobashvili and Matthew Kolodesh, *Fox*, No. 2:06-cv-04679 (Feb. 23, 2015), ECF No. 82.

474. Relator-Plaintiff's Response in Opposition to Defendant Matthew Kolodesh's Motion to Dismiss the Relator-Plaintiff's Second Amended Complaint Pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, *Fox*, No. 2:06-cv-04679 (Mar. 9, 2015), ECF No. 83.

475. United States' Brief Opposing Defendants Kolodesh and Yakobashvili's Motion to Dismiss United States' Complaint, *Fox*, No. 2:06-cv-04679 (Mar. 12, 2015), ECF No. 84.

476. Stipulation & Order, *Fox*, No. 2:06-cv-04679 (Apr. 7, 2015), ECF No. 85.

- 10/19/2006: Complaint filed by Relator Beverly Landis.⁴⁷⁷
- 02/26/2010: The United States elected to intervene.⁴⁷⁸
- 12/07/2010: The U.S. District Court for the District of Kansas denied the Defendant's motions to dismiss in a thorough and well-reasoned opinion that cites specific communications concerning the fraudulent schemes alleged in the Complaint.⁴⁷⁹
- 06/21/2012: \$6,100,000 settlement by Hospice Care of Kansas, LLC, and its parent company Voyager HospiceCare, Inc., was announced, Ms. Landis received \$1,342,000.⁴⁸⁰ The settlement resolved allegations that Hospice Care of Kansas and parent company Voyager HospiceCare, Inc., submitted or caused to be submitted false claims to Medicare between January 2004 and December 2008 for patients who were not eligible for the Medicare hospice benefit.⁴⁸¹
- Specifically alleged was that Hospice Care of Kansas and Voyager HospiceCare, Inc., engaged in certain practices that resulted in the submission of false claims, including: the provision of compensation to clinical employees based on patient census and admissions, delaying discharges of patients determined not to be eligible for hospice care, providing instructions to staff to document patient conditions in a misleading manner and implementation of an inadequate compliance program.⁴⁸²
- This case is an example of the extensive litigation that can be involved in *qui tam* False Claims Act cases. The case lasted almost six years and the United States filed twenty-three separate notices of taking depositions (not including extensions) and the Defendants filed seven separate notices of taking depositions.⁴⁸³

2005

United States *ex rel.* Rice v. SouthernCare, Inc., No. 2:05-cv-00873 (N.D. Ala. Jan. 15, 2009).

- 04/27/2005: Relator Tanja Rice filed a complaint.⁴⁸⁴
- 01/15/2009: United States elected to intervene.⁴⁸⁵ \$24,700,000 settlement

477. Complaint for Damages and Injunctive Relief Under False Claims Act, United States *ex rel.* Landis v. Hospice Care of Kansas, No. 2:06-cv-02455 (D. Kan. Oct. 19, 2006), ECF No. 1.

478. Government's Notice of Election to Intervene, *Landis*, No. 2:06-cv-02455 (Feb. 26, 2010), ECF No. 27.

479. United States *ex rel.* Landis, No. 2:06-cv-02455, 2010 WL 5067614, at *2 (D. Kan. June 15, 2012).

480. Press Release, U.S. Dep't of Justice, Hospice Care of Kansas and Texas-Based Parent Company to Pay \$6.1 Million to Resolve Allegations of False Claims (June 21, 2012), <http://www.fbi.gov/kansascity/press-releases/2012/hospice-care-of-kansas-and-texas-based-parent-company-to-pay-6.1-million-to-resolve-allegations-of-false-claims>.

481. *Id.*

482. *Id.*

483. See Defendant's Joint Memorandum of Law in Support of the Motion to Dismiss the Complaint, *Landis*, No. 2:06-cv-02455 (June 15, 2012), ECF No. 53.

484. Complaint for Damages and Other Relief Under the False Claims Act, United States *ex rel.* Rice v. Southerncare, Inc., No. 2:05-cv-00873 (N.D. Ala. Apr. 27, 2005), ECF No. 1.

485. Notice of Election to Intervene, *Rice*, No. 2:05-cv-00873 (Jan. 15, 2009), ECF No. 42.

announced. Ms. Rice and fellow relator Nancy Romeo (United States *ex rel. Romeo v. Southerncare, Inc.*, No. 2:07-CV-02325 (N.D. Ala. Jan. 15, 2009)) received \$4,900,000.⁴⁸⁶ Settlement resolved allegations that SouthernCare showed a pattern and practice of falsely admitting patients to hospice care that did not qualify for the hospice benefit.⁴⁸⁷ As part of the settlement, SouthernCare entered a Corporate Integrity Agreement with the Department of Health and Human Services Office of Inspector General.⁴⁸⁸

United States *ex rel. Roberts v. KRG Capital*, No. 2:05-cv-03758, 2009 WL 499764 (D. Ariz. Nov. 12, 2009).

- 01/21/2005: Complaint filed by Shirley Nyetrae, James Buie, Joyce Roberts, and Barbara Jo Landau.⁴⁸⁹
- 10/21/2008: United States elected to intervene.⁴⁹⁰
- 02/26/2009: United States motion to intervene approved.⁴⁹¹
- 06/02/2009: \$750,000 settlement agreement filed. Settlement provides \$150,000 payable to Relators' counsel's legal fees and "\$600,000 payable to the United States in accordance with the existing statutory framework allowing Relators to receive between 25-30% of the proceeds."⁴⁹² Settlement resolved allegations that Sunrise Senior Living had falsely certified patients for hospice care when patients did not qualify for hospice, fraudulently certified compliance with Medicare regulations, provided incentives to induce hospice referrals and allowed unlicensed hospice personnel to provide and bill for hospice care.⁴⁹³
- 11/12/2009: Order dismissing Plaintiff/Relators' action with prejudice, and dismissing any claims or rights of the United States without prejudice.⁴⁹⁴

Barys *ex rel. United States v. Vitas Healthcare Corp.*, No. 1:04-cv-21431 (S.D. Fla. Dec. 8, 2008).

- 06/15/2004: Complaint filed.⁴⁹⁵
- 06/07/2006: United States and State of Florida declined to intervene.⁴⁹⁶

486. Press Release, U.S. Dep't of Justice, Alabama-Based Hospice Company Pays \$24.7 Million to Settle Health Care Fraud Claims (Jan. 15, 2009), <http://www.justice.gov/archive/opa/pr/2009/January/09-civ-043.html>.

487. *Id.*

488. *Id.*

489. Complaint for Violation of Federal False Claims Act, 31 U.S.C. § 3729 *et seq.*, United States *ex rel. Roberts v. KRG Capital*, No. 2:05-cv-03758 (D. Ariz. Nov. 21, 2005), ECF No. 1.

490. United States' Motion to Intervene, *Roberts*, No. 2:05-cv-03758 (Oct. 21, 2008), ECF No. 118.

491. Order, *Roberts*, No. 2:05-cv-03758 (Feb. 26, 2009), ECF No. 123.

492. Joint Motion to Approve Settlement, *Roberts*, No. 2:05-cv-03758 (June 26, 2009), ECF No. 130.

493. *Roberts*, No. 2:05-cv-03758, 2009 WL 499764, at *1 (D. Ariz. Feb. 26, 2009).

494. Order of Dismissal, *Roberts*, No. 2:05-cv-03758 (Nov. 12, 2009), ECF No. 135.

495. *Qui Tam* Complaint and Demand for Jury Trial, *Barys ex rel. United States v. Vitas Healthcare Corp.*, No. 1:04-cv-21431 (S.D. Fla. June 15, 2004), ECF No. 1.

496. Order, *Barys*, No. 1:04-cv-21431 (June 7, 2006), ECF No. 22.

- 07/25/2007: Dismissed for failure to state a claim on which relief may be granted.⁴⁹⁷
- 11/03/2008: Dismissal affirmed by 11th Circuit Court of Appeals.⁴⁹⁸

United States *ex rel.* Arkansas Hospice, Inc. v. Hospice Home Care, Inc., No. 4:04-cv-00419 (E.D. Ark. Dec. 16, 2011).

- 04/26/2004: Relator Arkansas Hospice, Inc., filed complaint.⁴⁹⁹
- 05/20/2009: United States elected to intervene.⁵⁰⁰
- 07/17/2009: The United States' complaint in intervention filed, which alleged Hospice Home Care billed Medicare for the "general inpatient" level of care in situations where only the "routine care" level of care was provided or required.⁵⁰¹ During the relevant time period, January 2002 through December 2004, general inpatient care was reimbursed by Medicare at approximately \$500 per day, while routine care was reimbursed at only \$115 per day.⁵⁰² This resulted in an overpayment of approximately \$385 per patient, per day.
- 12/09/2011: \$2,700,000 settlement announced.⁵⁰³

United States *ex rel.* Russell v. Odyssey Health Care, Inc., No. 2:03-cv-00865 (E.D. Wis. July 12, 2006).

- 09/09/2003: Complaint filed.⁵⁰⁴
- 07/11/2006: United States elected to intervene.⁵⁰⁵
- 07/13/2006: \$12,900,000 settlement announced. Relator Russell received \$2,326,500. Odyssey Health Care was alleged to have billed Medicare for services provided to hospice patients who were not terminally ill and therefore ineligible for the Medicare hospice benefit. As part of the settlement, Odyssey Health Care entered a Corporate Integrity Agreement with the HHS-OIG.⁵⁰⁶

497. Order Granting Motion to Amend, Dismissing Amended Complaint, and Closing Case, *Barys*, No. 1:04-cv-21431 (July 25, 2007), ECF No. 76.

498. *Barys ex rel. United States v. Vitas Healthcare Corp.*, 298 F. App'x 893 (11th Cir. 2008).

499. Complaint, *United States ex rel. Arkansas Hospice, Inc. v. Hospice Home Care, Inc.*, No. 4:04-cv-00419 (E.D. Ark. Apr. 26, 2004), ECF No. 1.

500. Notice of Election to Intervene, *Arkansas Hospice Inc.*, No. 4:04-cv-00419 (May 20, 2009), ECF No. 68.

501. Press Release, United States Attorney's Office, Eastern District of Ark., Hospice Home Care to Pay \$2,700,000 Settlement in Medicare Fraud Case (Dec. 9, 2011), <http://www.fbi.gov/littlerock/press-releases/2011/hospice-home-care-to-pay-2-700-000-settlement-in-medicare-fraud-case>.

502. *Id.*

503. *Id.*

504. Complaint for Damages and Injunctive Relief Under False Claims Act, *United States ex rel. Russell v. Odyssey Health Care, Inc.*, No. 2:03-cv-00865 (E.D. Wis. Sept. 9, 2003), ECF No. 1.

505. United States' Notice of Election to Intervene Against Defendant, *Russell*, No. 2:03-cv-00865 (July. 11, 2006), ECF No. 40.

506. Press Release, U.S. Dep't of Justice, Odyssey Healthcare to Pay U.S. \$12.9 Million to Resolve Hospice Fraud Case (July 13, 2006), http://www.justice.gov/archive/opa/pr/2006/July/06_civ_430.html.

United States *ex rel.* Mitchell v. Vencor, Inc., No. 2:00-cv-00015, 2001 WL 605071 (S.D. Ohio May 22, 2001).

- 05/22/2001: Claims against Vencor and Vencare Hospice dismissed with prejudice as to relators; claims against defendants dismissed with prejudice as to United States for covered conduct as defined in bankruptcy plan; all remaining claims against defendants are dismissed without prejudice as to the United States.⁵⁰⁷
- 05/22/2001: As part of a \$104,500,000 settlement for a variety of health care fraud allegations scheduled in Vencor's bankruptcy proceedings, \$153,615.44 was scheduled for settlement of the *Mitchell v. Vencor* ineligible hospice patient claims.⁵⁰⁸

United States v. Kirschenbaum, No. 1:97-cv-07143 (N.D. Ill. Mar. 14, 2000).

- 10/14/1997: False Claims Act complaint filed by the United States.⁵⁰⁹ Both the False Claims Act case and criminal indictment alleged various types of healthcare fraud from Kirschenbaum's operation of a "not-for-profit" hospice, Samaritan Care, Inc., including: enrolling ineligible patients for hospice care, providing kickbacks for patient referrals, falsifying documentation, and grossly inflating the number of hospice patients on Medicare Cap Reports.⁵¹⁰
- 03/15/2000: Order dismissing this case conditional upon entry of consent decree. The United States was seeking forfeiture of \$28,250,000 and previously seized approximately \$20,000,000 of Kirschenbaum's assets.⁵¹¹

United States v. Dreyfuss, No. 2:96-mj-80974 (E.D. Mich. Dec. 3, 1996).

- 12/02/1996: Criminal complaint filed and warrant for arrest issued.⁵¹²
- 12/27/2000: \$2,000,000 False Claims Act settlement announced.⁵¹³ The civil settlement resulted from a dual civil and criminal investigation and prosecution. The settlement resolves False Claims Act allegations against Dr. Donald S. Dreyfuss stemming from various health care fraud schemes that occurred from 1992 to 1996 in the Detroit area.⁵¹⁴ Specifically, the United States alleged that Dr. Dreyfuss certified patients for hospice care

507. United States *ex rel.* Mitchell v. Vencor, Inc., No. 2:00-cv-00015, 2001 WL 605071, at *1 (S.D. Ohio May 22, 2001).

508. *Id.* at *3.

509. Complaint, United States v. Kirschenbaum, No. 1:97-cv-07143 (N.D. Ill. Oct. 14, 1997), ECF No. 1.

510. See 12 FALSE CL. ACT AND QUI TAM Q. REV. 11 (January 1998); Matt O'Connor, *Hospice Tied to Swindle of Medicare*, CHICAGO TRIBUNE (Oct. 15, 1997), http://articles.chicagotribune.com/1997-10-15/news/9710150453_1_fraud-hospice-health.

511. Minute Order, *Kirschenbaum*, No. 1:97-cr-00702 (Mar. 14, 2000), ECF No. 13.

512. Complaint, United States v. Dreyfuss, No. 2:96-mj-80974 (E.D. Mich. Dec. 3, 1996), ECF No. 1.

513. Press Release, U.S. Dep't of Justice, Michigan Physician To Pay U.S. \$2 Million (Dec. 27, 2000), <http://www.justice.gov/archive/opa/pr/2000/December/712civ.htm>.

514. *Id.*

when they were not eligible.⁵¹⁵ Also included in the settlement were allegations that Dr. Dreyfuss knowingly billed Medicare and Medicaid for physician services to nursing home patients when, in fact, he never actually provided such services, the services were not medically necessary or the complexity of the services were exaggerated.⁵¹⁶ Prior to the False Claims Act settlement, Dr. Dreyfuss pled guilty in a criminal proceeding to three counts of mail fraud and one count of receiving an illegal kickback in connection with his fraudulent practices.⁵¹⁷ As a result of his plea agreement, Dr. Dreyfuss paid \$200,000 in fines plus \$533,000 in restitution to Medicare, Medicaid and Blue Cross and Blue Shield of Michigan.⁵¹⁸ Dreyfuss was sentenced to five years of probation, including two years of home confinement. The False Claims Act settlement was in addition to the fines and restitution paid in connection with the criminal proceeding.⁵¹⁹

515. *Id.*

516. *Id.*

517. *Id.*

518. *Id.*

519. *Id.*