

# WEISS



**February 28, 2023**

## **Dollars Down. Number of Settlements Remains High. Same False Claims Act Concerns For Physicians**

According to a February announcement from the United States Department of Justice, the total dollars collected in the government's fiscal year ending in September 2022 from False Claims Act, a.k.a. "whistleblower", actions exceeded \$2.2 billion.

If that seems like a lot, consider that in the fiscal year ending September 2021, the total approximated \$5.7 billion – but \$3 billion of that was from a giant opioid settlement.

But just because the dollars are down doesn't mean that crooked healthcare industry players can breathe a sigh of relief and declare that it's once again open season on bilking the government.

That's due to the fact that the same DOJ announcement revealed that the government and whistleblowers were party to 351 settlements and judgments in FY 2022, the second-highest number of settlements and judgments in a single year. Additionally, the DOJ reports that whistleblowers filed 652 new False Claims Act lawsuits last fiscal year.

Just because the total haul was down, doesn't mean that there's a reduced chance that a whistleblower isn't sniffing around your business, or, more troubling yet almost always true in the case of whistleblower actions, *employed* by your business. Yes, most whistleblowers are, one way or another, being paid by businesses to turn them in.

Of course, that's not to say that every whistleblower case is valid any more than it would be to say that everyone charged with a crime is guilty or that everyone sued in any sort of civil action is liable.

But it is true to say that the transaction costs of dealing with a False Claims Act investigation and defending a False Claims Act suit are staggering, often large enough to break the back of a business, thus leading to settlement (and puffing up the government's numbers).

At the heart of any False Claims Act case pertaining to healthcare entities (the law itself is as broad as the universe of government payment programs) is a claim of falling out of compliance with any of the plethora of requirements imposed on presenting reimbursement claims to the government. Think, for example, of violations of the federal Anti-Kickback Statute or of billing for medically unnecessary "treatment".

Although nothing reduces the odds of becoming wrapped up in a False Claims Act action to zero, having, and implementing, not only a plan of compliance, but a culture of compliance, goes a long way to managing the risk.

That fact bears repeating and we can even broaden the perspective, so let me restate it this way: Compliance is not just a punch card list. It's not just a plan. It's not just a program. It's a target, the one that's painted on your back.

There's hotlines and strike forces and postal inspectors and Assistant U.S. Attorneys looking to make their stripes. And there are whistleblowers looking to make millions. You have to assume that they're all looking at you.

There are also baseline self-inspections, there are red teams to privately ferret out your weaknesses, there's an active culture of compliance versus passive time wasting.

If you need help, get in touch, fast.



## **Wisdom. Applied. 171: What Are the Standard Hospital Complaints?**

When things begin to go awry between hospitals and contracted medical groups, these are the sort of complaints that hospitals levy.

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### **All Things Personal**

I had a potential referral to give him, so I called his office and left a message.

After a day, and some tremendous pressure from the potential client, I tried his cell phone. No answer. Mailbox full.

I tried one more time the next day -- same process, same result.

Whether or not Albert Einstein actually said that insanity is doing the same thing over and over and expecting different results, I'm not insane, and referred the matter, worth in the range of \$200,000 in fees, to someone else.

What about you? I certainly understand letting a cell phone call go to voicemail if you don't know who's calling, but if you know the person who left the message, call them back. But that assumes that you empty your mailbox so that it's possible for someone to leave a message.

If calls are going to your office, are messages monitored and are they actually getting to you?

Sure, lots of calls are from those selling "secret" investment opportunities and solar panels. But what about those from referral sources, from potential deal partners, or from a hospital administrator alerting you to an opportunity or even to a problem which you probably want to correct?

50-plus years ago my father told me that if it's important, they'll call back. As much as I love my father, that wisdom had an expiration date, and it's long passed.

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### Books and Publications



We all hear, and most of us say, that the pace of change in healthcare is quickening. That means that the pace of required decision-making is increasing, too. Unless, that is, you want to take the “default” route. That’s the one in which you let someone else make the decisions that impact you; you’re just along for the ride. Of course, playing a bit part in scripting your own future isn’t the smart route to stardom. But despite your own best intentions, perhaps it’s your medical group’s governance structure that’s holding you back. In fact, it’s very likely that the problem is systemic. The Medical Group Governance Matrix introduces a simple four-quadrant diagnostic tool to help you find out. It then shows you how to use that tool to build your better, more profitable future. Get your free copy [here](#).

**Whenever you're ready, here are 4 ways I can help you and your business:**

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**3. Book me to speak to your group or organization.** I’ve spoken at dozens of medical group, healthcare organization, university-sponsored, and private events on many topics such as The Impending Death of Hospitals, the strategic use of OIG Advisory Opinions, medical group governance, and succeeding at negotiations. For more information about a custom presentation for you, [drop us a line](#).

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