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Business Issues and Compliance Issues are Inextricably Interrelated

You Can Take Steps to Proactively Defend Against Allegations of Fraud and Abuse

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Do you mind if I ask, what is your *business*? The typical response to this question is something like, "Well, I am a physician." Ah ha, I say. Medicine is your profession, but what is your *business*? What, you might say, is the difference? To demonstrate, please allow me to recall the story of famed McDonalds' founder Ray Kroc who in 1974 asked a group of young Masters of Business Administration (MBA) students after an inspiring talk to identify Kroc's business.

That is simple they said, because everyone knows that Ray Kroc, the founder of McDonalds, is in the hamburger business! Kroc, laughing, simply replied that although his day-to-day focus is to sell hamburgers, the most significant factor in the success of his business was real estate location. You see, Ray Kroc sold hamburgers, but his true business was real estate because the location of each hamburger franchise determined the overall success of his business!¹

So what single factor has the potential to drastically affect the success of your government subsidized health care practice? Compliance. Although your *profession* is medicine, as mine is the practice of law, the success of your *business* in the field of federally subsidized health care is through compliance.

In federally subsidized health care, business issues and compliance issues are inextricably interrelated. If you want to make your *business* more successful, then you need to make compliance an essential part of your business plan. The failure to recognize the role compliance plays in your business plan exposes you to audits, lawsuits, and potentially, the fight for the very survival of your practice if fac-

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ing criminal charges, treble damages, and exclusion from participating in federal health care benefit programs.

The modern business environment is one permeated with a myriad of both federal and state laws and regulations intended to ensure corporate integrity and responsibility, but most importantly the engenderment of public trust in America's economic infrastructure through heightened scrutiny of business activities. Quite simply, the failure to ensure compliance in this environment could lead to a range of criminal, civil, and administrative sanctions including imprisonment, fines, and exclusion from participating in the particular economic sector (e.g., exclusion from participating in the Medicare/Medicaid health benefit programs). In other words, corporate compliance is a prerequisite to economic success in today's business environment because the failure to ensure compliance with governing laws and regulations could lead to the demise of the corporate entity itself.

With this emphasis in mind, consider the federally subsidized health care industry as an example of the heightened regulation and scrutiny of today's corporate environment. Health care is the largest economic industry in the United States, and growing.² The United States spends more on health care services than any other nation including \$64 billion in 1970, \$245 Billion in 1980, and \$1.2 Trillion in 1999 — a 500 percent increase from 1980.³

Of this total, the federal government funds approximately 40 percent of the health care spending in the United States through federally subsidized health care benefit programs like Medicare.⁴ Nonetheless, the United States remains the only industrialized nation in the world without a comprehensive national health care system.⁵

More specifically, Medicare is the second largest federal entitlement program behind Social Security and covers approximately 41 million enrollees costing exorbitant amounts of revenue outlays.⁶ As an example of impact federal subsidization has

on our health care industry, consider that the United States' total Medicare spending included \$7.3 billion in 1970, \$36.4 billion in 1980, \$166 Billion in 1994, and \$281 Billion in 2003.⁷

As you can see, it is easy to project the amount of Medicare spending estimated for 2010, the year the 1945-65 baby-boomer generation comes of age (*i.e.*, eligibility for Medicare and Social Security benefits). It is estimated that Medicare will eventually consume 70 percent of all federal income tax revenues.⁸

In addition, consider that seven out of the top 10 future employment opportunities are in the health care industry's "affiliated personnel" segment.⁹ Not only is every aspect of the health care industry affected by governing laws and regulations, but every individual participating in this field, not just physicians and ethics officers, are required to know and comply with these laws and regulations as well.

So why is compliance such an integral part of your business success? Because, the United States' health benefit programs have a uniquely complex financing and payment system.¹⁰ The tremendous increase in the number and complexity of both federal and state laws and regulations governing the health care industry, the daunting intricacy of these laws and regulations, very few "bright lines" in the interpretation of these laws and regulations resulting in many "gray" areas, and the exorbitant amount of money at stake for both the industry as well as the federal government justifies heightened government scrutiny and necessitates an emphasis on compliance in your practice.

It is generally accepted that the federal health care benefit program claims processing and reimbursement system, which is likened to an "honor code," encourages fraud, abuse, and waste.¹¹ For example, it is estimated that in 1999 the United States lost in excess of \$12 billion in Medicare spending due to fraud, abuse, and waste.¹² This statistic is over five years old and reflects only

