

## Whistle While You Work

Lured by the prospect of exposing fraud and drawing a generous fee in the process, a growing number of attorneys are pursuing the complex field of healthcare qui tam law.

**T**HEY CALL BY the hundreds each year—nurses, physician assistants, technicians and physical therapists, all the way up to corporate accountants and vice presidents. Some are fearful; many are angry; a few are driven by money. But all have one thing in common: They are potential whistleblowers who've called an attorney to report that their employer is bilking the government.

Emboldened by the government crackdown on healthcare fraud, encouraged by ads and Web sites promising a generous financial reward, the callers come forward in the hopes that an attorney will take their case, sue their employer, and recover the fraudulently billed money—with a

handsome percentage left over for themselves.

Although relatively few attorneys specialize in healthcare whistleblower or *qui tam* lawsuits, more are getting into the field, lured by the prospect of exposing healthcare's bad guys and reaping millions of dollars in contingency fees. "The word is getting out that this is a hot area," says Stephen Meagher, a healthcare partner in the San Francisco offices of Phillips & Cohen, a nine-attorney practice dedicated to *qui tam* cases of all types, with healthcare accounting for perhaps 40 percent of the firm's work. Meagher estimates that no more than 50 attorneys nationwide cur-

rently specialize in healthcare *qui tam* cases, but he expects that number to grow.

For its part, Phillips & Cohen's cases have returned to the federal government some \$180 million in fraudulent healthcare billings since 1990. A former prosecutor with the U.S. Attorney's Office, Meagher is representing the whistleblower in the ongoing fraud case against Columbia/HCA Healthcare Corp. and Quorum Health Group. ▶



CAROL STUBBS

Perhaps more typical of the emerging *qui tam* field, though, is Andrew Zieve. A Milwaukee attorney who once specialized in medical device and pharmaceutical product liability cases, Zieve decided about a year ago to expand into healthcare *qui tam*. "There's so many potential cases out there—it's huge," he says.

The rewards can be substantial. In cases where the government intervenes, whistleblowers can receive 15 to 25 percent of whatever's recovered. The whistleblower's

attorney receives a negotiated percentage of the client's reward; Meagher says that cut ranges from 25 to 45 percent. Given that major healthcare fraud cases can involve tens of millions of dollars, and that the government can recover up to three times the defrauded amount, there would seem to be plenty of money to be made by whistleblowers and their attorneys.

Why, then, don't more lawyers specialize in the field? Because the cases are not only painstaking and slow—Meagher's

case against Columbia and Quorum was kept under seal for six years—but the majority of the cases end up getting dropped. In fact, the U.S. Department of Justice declines to intervene in more than 75 percent of the healthcare *qui tam* cases presented to it. Without the federal government's support, attorneys say the cases are difficult, even doomed.

"These cases are very complex and expensive," says Kenneth J. Nolan, a plaintiffs' attorney in Hollywood, Fla. Even when the government intervenes and recovers fraudulent payments, Nolan explains, the whistleblower—and therefore his attorney—doesn't always get paid. The defendant may be bankrupt, or the government may determine that the whistleblower wasn't the first person to uncover the fraud. "The government," Zieve says, "is always trying to weasel out of paying [whistleblowers]." Nolan's assessment of healthcare *qui tam* cases is simply, "It's not a windfall."

Due to the numerous obstacles and dead-ends of healthcare *qui tam* law, attorneys are quite selective about which cases they take. Attorneys in the field say they get dozens of calls each month and turn away 90 to 95 percent of them due to the dollar amount being too low for an adequate return, or there's insufficient evidence, or simply because the attorney gets a bad "gut feeling" about the caller. Zieve speaks candidly about a few callers who seemed less-than-honest: "Sure I've been lied to by some of these people. It's part of the business."

While the financial rewards of *qui tam* have, indeed, been exploited—Meagher has even heard of "repeat whistleblowers"—attorneys say most whistleblowers are motivated not by money but the sincere desire to right a wrong. They disagree with assertions that the monetary rewards are excessive. "[Whistleblowers] have to be rewarded," Zieve says. "They're thinking of turning in their boss, and they're deathly afraid."

For attorneys wanting to get into healthcare *qui tam* law, there appears to be plenty of opportunities, but caution is advised. "There are lots of law firms that see this as a gold mine," Meagher observes. "They think, 'You file the case, the government does most of the work, then you sit back and wait for your check.' But it's not that easy." Even so, Meagher says, it's tough to match the excitement and fulfillment of prosecuting healthcare fraud cases. "You're chasing bad guys and uncovering fraud. You get to wear a white hat and do the right thing." —SARA SELIS