

# What Happened After She Helped Nurse at Catholic Healthcare Blow Whistle on her Employer?

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By Adolfo Pesquera **Published:** Nov 5, 2014



Melanie Bell Marcella Auerbach, managing partner at Nolan Auerbach & White in Fort Lauderdale

Details: Kathleen Hawkins, a registered nurse, worked as a director of medical management at Catholic Healthcare West in the San Francisco Bay area. She complained to her superiors about a billing system that violated federal regulations.

Dissatisfied with the response, Hawkins contacted the Nolan Auerbach & White firm, which specializes in prosecuting health care fraud lawsuits for whistleblowers under the qui tam provisions of the federal False Claims Act.

**Case: USA, states of California and Nevada, ex rel. Kathleen Hawkins v. Catholic Healthcare West**

**Case no:** 09-cv-05604

**Description:** False Claims Act

**Filing Date:** Nov. 25, 2009

**Judge:** U.S. Magistrate Judge Laurel Beeler, San Francisco

**Plaintiffs attorneys:** Marcella Auerbach and Jeb White, Nolan Auerbach & White, Fort Lauderdale; Matthew Pavone, Nolan Auerbach & White, Novato, Calif.; Ila Deiss, U.S. attorney's office, San Francisco; Marie Bonkowski, Department of Justice, Washington

**Defense attorneys:** Sara Kay Wheeler and Stephanie Johnson, King & Spalding, Atlanta; Greg Daniels, Daniels Health Law, San Diego; Allison Cova and Raja Sekaran, Dignity Health, San Francisco

**Settlement amount:** \$37 million

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Hawkins' allegations were brought to the attention of the Justice Department after the complaint was filed under seal. The case remained sealed for five years.

Plaintiffs case: The Justice Department interviewed Hawkins on several occasions, conducted its own investigation and decided to intervene, Auerbach said. An amended complaint was filed June 2011 that included Hawkins as the relator and the United States, California and Nevada as plaintiffs.

During the course of litigation, the hospital system changed its name to Dignity Health.

The complaint alleged Dignity Health caused the defendant hospitals—13 hospitals out of 39 in its system—to admit patients for procedures that could be performed on an outpatient basis from 2006 to 2010. Inpatients reimbursements are significantly higher, the Justice Department said.

Hawkins claimed Dignity Health knowingly submitted false claims to Medicare and Tricare. The hospital system exploited the reimbursement system with a scheme to ensure high revenue for hospitals through unnecessary inpatient stays, according to the complaint.

The public plaintiffs alleged Dignity Health had an inconsistent process for refunds or rebilling of overpayments, routinely failed to submit revised claims and lacked a process for notifying its business office not to bill an admission when medical necessity was lacking.

Other violations included admissions for observation that extended beyond 48 hours, claims that lacked evidence of a physician admission order and churning, where multiple specialists are called to consult and "order a host of medically unnecessary diagnostic tests," stated Matthew Pavone, who drafted the complaint.

Defense case: Sara Kay Wheeler represented Dignity Health. She deferred to a Dignity Health spokesperson, who did not respond to a request for comment by deadline.

U.S. Magistrate Judge Laurel Beeler conducted several settlement conferences, Auerbach said.

"These settlement conferences were very instrumental in resolving the case," he said. Details of the conferences and any defenses Dignity Health might have raised are privileged and cannot be publicly discussed.

Dignity Health did not file any affirmative defenses that are not under seal, and the federal records system does not list the defense attorneys.

Jeb White, Auerbach's partner, said Dignity Health did not admit any wrongdoing in the settlement.

Outcome: The Justice Department announced a settlement agreement for \$36.7 million Oct. 30. Of that, the Justice Department agreed to pay Hawkins \$6.25 million, according to the 18-page agreement. In return, Hawkins agreed to dismiss all claims.

Auerbach said Hawkins had a separate employment retaliation claim because she was forced to resign after bringing the problems to the attention of her supervisors. She hired Nolan Auerbach after leaving.

Dignity Health also agreed to pay Hawkins' counsel "in full satisfaction of her retaliation claim ... and her attorneys' fees, expenses and costs ... pursuant to a separate agreement entered into contemporaneous with this agreement," the settlement states.

The Justice Department also agreed to release Dignity Health from any civil or administrative money claims for the "covered conduct." Dignity Health also would avoid exclusion from Medicare, Medicaid and other federal health care programs.

However, the Justice Department did not release Dignity Health from potential tax liabilities, criminal liability or conduct outside the "covered conduct."

Finally, Dignity Health is subject to a monitoring agreement with the U.S. Department of Health and Human Services.

Comments: Hawkins "was in a position to know what was going on in the entire system, and it was very upsetting to her," Auerbach said.

Post-settlement: "They are subject to a five-year corporate integrity agreement with the DOJ, and they have to have an independent review. They have to hire a third-party to review the accuracy of all their claims submitted to federal health care programs, and not just for the 13 hospitals but for their entire system. That's a pretty big undertaking," Auerbach said.

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