

## A Chiropractic Cautionary Tale

AN EXCLUSIVE INTERVIEW WITH WILLIAM FILCHECK, DC

Editorial Staff

In this exclusive interview with *Dynamic Chiropractic*, Dr. William Filcheck describes the conditions that led to his arrest and eventual conviction on health care fraud.

From all accounts, Dr. William Filcheck was a typical, hard-working doctor of chiropractic. In December 1993, he graduated from National College of Chiropractic. In June 1994, he signed on to work as an associate in a medical-chiropractic clinic in Morgantown, West Virginia, run by Robert Burns Jr., DC. While working in the clinic, Dr. Filcheck and another associate, Dr. Scott Taylor, became concerned about some of the clinic's billing and exam procedures; however, although Dr. Filcheck considered leaving, he was contractually bound to work for Dr. Burns and the clinic for three years.

In March 1997, Dr. Burns' clinic was temporarily shut down, and Dr. Filcheck and others were questioned by members of the Federal Bureau of Investigation. Dr. Filcheck was again questioned by the FBI and the Internal Revenue Service in April 2000. In September 2001, Drs. Filcheck, Taylor and Burns, along with chiropractic consultant Ron Halstead, DC, were named in a 30-count indictment that alleged health care fraud, mail fraud, money laundering and several other charges. Although Dr. Filcheck maintained his innocence throughout the trial, he was convicted of health care fraud, mail fraud and aiding and abetting, and was sentenced to serve a three-year jail term in a West Virginia prison.\*

In this exclusive interview with *Dynamic Chiropractic*, Dr. Filcheck describes the conditions that led to his arrest and eventual conviction, and explains why he decided to remain in Dr. Burns' clinic even after he had fulfilled his contractual obligations. Dr. Filcheck also discusses the relative fairness of his sentence, and provides a few words of advice for new chiropractors considering working in an MD-DC clinic.

- As we go to press, a U.S. Supreme Court decision may affect the length and terms of Dr. Filcheck's sentence. According to Dr. Filcheck:

"The Supreme Court case on June 24, 2004, *Blakely v. Washington*, will probably change the sentence portion of my case, so instead of three years in jail, I am looking at most at six months in jail in a halfway house, but probably home confinement/probation. The judge held a phone conference the Tuesday before July 2, 2004 (the day before I was supposed to report) and gave this great news. Now, my case is on appeal and I am out, pending this sentencing decision. The trial (guilty/not guilty) has not changed because of this verdict, but I also appealing that, too."

For more information on this case, read "Reprieve for Ron Halstead!" by Richard Jaffe, Esq., starting below this interview.

*DC:* Could you explain the circumstances that led up to your arrest?

*Dr. Bill Filcheck (BF):* There was a medical doctor that Dr. Burns hired. She worked there for about 14 months, but things between Dr. Burns and her got, I guess you could say, disconcerting. She

didn't like some of the things that were going on, and so she left. That was in February 1997, and I guess she went to the FBI. They (the FBI) raided Dr. Burns' clinic in the beginning of March 1997.

*DC:* How long had you been working at the clinic?

*BF:* I signed a three-year contract. My contract would have been up June 1, 1997, so it was about two-and-a-half years. That's one of the reasons I didn't leave early. I'd signed a contract that stated that if I left, I'd have to pay him \$15,000, which I did not have.

Anyway, the FBI came in March 1997 - 15 to 20 agents or so - it's not like they had their guns pulled or anything, but they shut down the clinic and questioned all the staff: billers, doctors, X-ray technicians, the secretary. I never really agreed with the stuff that was going on there. I thought there was too much diagnostic testing going on too quickly. That's not the way I learned it in school, but I thought, being where I was in my career, that it wasn't my clinic [and] it wasn't my call. It was his clinic; he made up his own rules. So, I actually felt kind of relieved with some of the things I brought up that I thought were not right and needed to be changed, and my boss, Dr. Burns, said they didn't - I felt that I was right all along.

I talked to the FBI that day. They said, "We're not after you. We know who made the money." I talked to them for about an hour. They called me two weeks later, and I went down to the police station and talked to them for another hour or two. There were people there from Blue Cross/Blue Shield and West Virginia workers' comp. I talked to them some more, and didn't hear anything for another three or three-and-a-half years - until April 2000.

They came back to the office and asked me a couple of questions. They asked, "Did you voice your opinion against this stuff?" I said, "Yes." So they told me they'd decided that they were after me, making me what they called a "target." There were two police there, and a man from the IRS. I felt kind of shocked, and they explained it as, "Well, before, we thought you were watching the act. Now, we think you planned the act or part of the act." So I asked the guy from the IRS, "Well, what did you find out?" He said, "Well, nothing. You didn't make any money." The funny thing of it is, we were working 55 to 60 hours a week, and I made \$40,000 a year, or \$42,000 a year. So it wasn't a financially lucrative thing for me. I just signed my name on a contract, and worked through it, and moved on.

*DC:* Based on your current understanding of the legal system, what laws did you actually end up violating? What were you actually found guilty of, and was there anything specifically that you did in your practice that might have violated those laws?

*BF:* I thought - and this is me not knowing the legal system - that I was just an employee, like the secretary, the billers, and everyone else. I wasn't management. I didn't own it [the clinic].

I was charged with aiding and abetting. They could have got anyone who worked in that office with that: The secretary, who helped schedule the people, was aiding and abetting my boss in what they thought were illegal activities; and the billers, the people who mailed the 1,500 forms out. From what I understand, they can pick who they prosecute.

The thing that I think he [Dr. Burns] was doing wrong was, everything was drawn up so that if you had low back pain, you got this test, this test, and this test. There wasn't any individuality. He used the tests, not for all of their treatment plans, but just to make money. When I and the other chiropractors would raise doubts about it, we'd get back, "Well, this is my clinic. This is the way it needs to be done. You haven't been in practice before, and this is a business."

*DC:* What happened to the other employees at the office?

*BF:* The office manager was charged. He pled early. I think he just got two years probation. What would happen every morning is that the office manager would call Dr. Burns and go through the patients. On the phone, Dr. Burns would tell him, "OK, on that person, do this test; on this person, do that test." He [the office manager] would call Dr. Burns, Dr. Burns would tell him what to do, and we were to follow what the office manager said, per Dr. Burns' instructions.

I know the medical doctor, who was the president of the company [in West Virginia, a medical doctor has to be president of a medical corporation], I think got a \$100,000 fine and a 12-month home confinement. And that was about it.

But they can pick who they prosecute. They didn't have to prosecute me. They could have just gone after one chiropractor. The FBI's reasoning was that I didn't leave before they came in. And that reasoning, that logic, just doesn't make sense. So I thought, well, I'll cooperate. It'll look good.

I didn't feel responsibility for things I couldn't change. I felt like ... I had a contract and I couldn't leave. If I had gone to Dr. Burns and said, "Do this, do that," he would have said, "It's my office." I didn't figure I was responsible for things that I couldn't affect a change in. What I should have done is just walked away and gone to the police, and affected a change that way.

*DC:* Based upon all of this activity, do you believe the sentencing that you received, and that the other practitioners have received, is fair?

*BF:* No. The other doctor and I each made roughly \$40,000 a year for three years at the clinic. I was charged with helping him steal \$1 million illegally, and the other doctor was charged with [stealing] \$900,000. We didn't make that much, so I thought I would be responsible for \$100,000 or something to that point, or a percentage of \$100,000 that they thought was illegal. It doesn't work that way. So that drives the sentencing up. And I'm expected to pay that money. Until it's paid back, I can't own a house, I can't get an inheritance if my parents pass away, or that type of thing.

If I knew then what I know now, I would have pled, but it was a felony. I would have lost my license automatically, and that's what I was fighting for. If I was a blue-collar worker and did something that didn't have a license, I would have just pled and gone on with my life. Plus, I didn't feel like I did anything wrong. But the court system felt different.

*DC:* Do you believe there are other DCs, either in West Virginia or nationwide, who might be involved in these same types of activities and therefore might also be in violation of these types of laws?

*BF:* I don't know. The government said during the trial that they feel that every MD-DC clinic is just a scheme to circumvent some of the caps that were put on chiropractic reimbursement. That's their opinion.

*DC:* They actually said that in court?

*BF:* Yes. It's in the record. They said that it could be done legally and ethically, but that there's a slim chance of that, and the whole reason for it is to circumvent some of the caps that are put on by insurance companies for reimbursement.

To a layman going into it [an MD-DC clinic], the patient's view is, "I hurt my back. I don't have to go to urgent care and get a prescription for muscle relaxants, then go to a chiropractor, and he has to write a report. The communication is all right in one office." I don't know if this is the only opinion they have of this clinic. That's what they say it is, but I don't know. I would be very careful in an MD-DC practice for that reason, or any type of practice, just from my perspective, and the

situation that I'm in. It got swung so hugely out of proportion.

*DC:* What kind of warning or message would you give to DCs about activities like this, that could cause them to face similar consequences down the road?

*BF:* I think from my point of view, I could see associates working for these DCs in the MD-DC clinic. When they come in and they're fresh out of school, it could seem like it's a very legitimate practice. A lot of chiropractors have little offices. This was a huge office with a rehab clinic and a medical doctor. It was just everything you dream of what an office should be.

You - the associate in the MD-DC practice or any practice - you're responsible. In the trial, I was responsible for everything. Sitting in that trial for three weeks, 80 to 85 percent of the stuff wasn't my trial. It was things my boss did wrong, or that he did wrong in billing, or things that we weren't entitled to look at. It didn't feel like it was my fault, but it was. There was so much "dirt." You just get splashed with the dirt, and everyone in the jury figures that, well, if you worked there, you must be in on the take, or \$40,000 a year must seem like a lot to them. Of course, the government phrased it, when I was on the stand, as, "Isn't it true that you made \$120,000?" I responded, "Over three years." It's the way things are phrased. I would say that if you had an inkling for anything that you didn't think was on the up and up, or any testing getting done or not, which you feel wasn't being done for a reason, just bring it up and if it's not taken care of, get out. Worry about your contract or your consequences later. Go to a lawyer's office and get it taken care of. That's what I wish I would have done.

*DC:* Any final words for the profession?

*BF:* I think what I'm disappointed in is not necessarily the profession. I love the profession. I love working with people. It's like, they've become family. I think what I'm disappointed in is that when I went down, which I think was a year ago yesterday, to the West Virginia Board, knowing the situation, and knowing who my boss was, and knowing that I was an associate there, that they would be so heavy-handed on me. A representative from the West Virginia Attorney General's office recommended that we lose our licenses for only a year, but they took my license away for 10 years. I don't know if there are political reasons where they can't be seen to be soft on this, but I thought they would be. I expected to lose my license, but not for 10 years. It might as well be a lifetime. I'll be 45. If I want to be a chiropractor, I'll have to start all over again.

I just wish - I think it goes with any walk of life - that they would look at the rules, but then go with what they believe in their hearts, and worry less about the political reasons, but that's everything in life. People do things not necessarily for the right reasons, but political reasons. That's the only gripe I have. I love the profession. I just wish they would have been lighter on me.

I know Richard Jaffe wrote about me in October, and I just wanted to have the opportunity. I'm glad you had to hear what I felt and had to say. It's been a rough couple of years, you know?

*DC:* Thank you.

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*Editor's note:* *Dynamic Chiropractic* has reported on the case against Drs. Filcheck, Taylor, Burns and Halstead in previous issues, including:

- Halstead, et al., sentenced for health care fraud. July 15, 2004.  
[www.chiroweb.com/archives/22/15/10.html](http://www.chiroweb.com/archives/22/15/10.html).
- Jaffe R. An associate chiropractor's story. Oct. 20, 2003.

[www.chiroweb.com/archives/21/22/08.html](http://www.chiroweb.com/archives/21/22/08.html).

- Halstead convicted in federal court. March 10, 2003.  
[www.chiroweb.com/archives/21/06/05.html](http://www.chiroweb.com/archives/21/06/05.html).
  - The MD/DC business model: an interview with attorney Richard Jaffe, Esq. July 1, 2002.  
[www.chiroweb.com/archives/20/08/05.html](http://www.chiroweb.com/archives/20/08/05.html).
  - Consultant Ron Halstead, DC, indicted on conspiracy and health care fraud. April 8, 2002.  
[www.chiroweb.com/archives/20/08/05.html](http://www.chiroweb.com/archives/20/08/05.html).
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Reprieve for Ron Halstead!

by Richard Jaffe, Esq.

In late June, the U.S. Supreme Court issued a ruling that is having a dramatic effect on thousands of pending federal criminal cases. One of those cases is *U.S. v. Halstead*.

In February 2003, Ron Halstead, DC, was convicted by a jury of aiding, abetting and conspiring with one of his clients to commit health care fraud. The primary fraudulent conduct was that the clinic's bills were sent out under the MD's name, even though the medical doctor did not oversee and control the care rendered to the patients. One medical doctor admitted that he was just a rubber stamp. The other MD testified that she was there just to clear patients for chiropractic care.

Since the conviction of Ron Halstead, the clinic owner and his two associates, we have been working on sentencing issues. Federal sentences are determined under what is called the "Sentencing Guidelines," which is a complicated, numerical-based system. Under the guidelines, each crime is given a certain point value, or what is called a "base level offense" number. A fraud conviction carries a base level offense of 6, and that translates into a sentence of probation.

However, a defendant receives additional points for certain enhancing factors, the most important of which is the loss attributable to the fraud. Any loss over \$5,000 gets enhancing points. A loss of between \$1.5 and \$2.5 million adds 14 points to the base offense level, which translates into several years of prison. Many defendants convicted of multimillion-dollar fraud schemes receive 10 or more years of prison, in large part because of the amount of loss.

There are other enhancing factors, such as the number of victims, whether a financial institution or insurance company was a victim, the defendant's role in the offense, abusing trust, etc. These enhancements can easily add many years to a sentence.

In the case of Ron Halstead and the other three DCs, the government and probation office determined that the loss was in the millions of dollars, and added many other enhancements. We objected. There was a sentencing hearing. After several days of hearings, in early June, the district judge sustained the government's position, imposed a 10-year sentence on Ron Halstead, and three-year sentences on each of the associates [Dr. Filcheck, Taylor and Burns]. The three were to report to prison on July 2, 2004. The clinic owner is currently awaiting extradition from Ireland.

We then filed a motion for bail pending appeal. The judge denied the motion, in large part because she felt that the lengthy sentence created a risk of flight. Then, on Thursday, June 24, 2004, just eight days before the DCs were to report to prison, the U.S. Supreme Court came down with its decision in *Blakely v. Washington*. The court held that it was unconstitutional for a state judge to make a sentencing enhancement. The court basically said that any factor that increases a sentence has to be decided by a jury under a "beyond a reasonable doubt" standard.

Although the case did not specifically address the federal sentencing guidelines, the four Supreme Court justices in dissent and most commentators believe that the case has to apply to the federal sentencing guidelines. And many believe that it is now unconstitutional for a federal judge to make the kind of enhancement determinations made by the trial court at Ron's sentencing hearing.

The other two defendants in the case had also filed motions for bail pending appeal, but the judge had not ruled on those motions by the time the *Blakely* decision was handed down. The judge called for a telephone conference hearing on Tuesday, June 30, 2004, only two days before the defendants were supposed to report to prison. The judge reconsidered her earlier decision, and let Ron and the other two defendants free on bail until the courts sort the whole sentencing thing out, and until there is a ruling on the other parts of our appeal.

Since the *Blakely* decision, one circuit court and several district courts have already declared that the federal sentencing guidelines are unconstitutional. The word in the street is that prosecutors are now scurrying around trying to amend criminal indictments to include the facts of all possible applicable sentencing enhancements.

On the other hand, another circuit court has ruled that *Blakely* does not apply to the federal sentencing guidelines - a result the circuit court itself admitted might not withstand scrutiny by the Supreme Court.

The federal sentencing system is now in a state of chaos. I have a number of other federal cases and they are all up in the air. Lower courts will continue to issue contradictory decisions until the U.S. Supreme Court clarifies its decision. Some judges are simply delaying all of their sentencing until the fall in the hopes the Supreme Court will clarify things. But it could take many months or over a year, or more, for the Supreme Court to resolve these issues. There is even some talk in Congress of a temporary legislative solution.

What is clear is that for now, the *Blakely* case has dramatic implications for just about every convicted but unsentenced federal defendant, as well as for every sentenced defendant on appeal. However, it also affects defendants awaiting trial. Beyond that, I maintain that the case affects targets of ongoing federal investigations, as it may slow up the indictment process by forcing prosecutors to investigate things that heretofore have been put off until sentencing, the most obvious of which is the actual or intended loss.

Sometimes, all a lawyer can do is to make the best of a bad situation and skillfully play the cards that are dealt. For now and until all this whole mess is resolved, Ron Halstead and the other two defendants are free and continue with their lives.

A final cautionary note: We learned that the state authorities and even the feds had been investigating the clinic for several years prior to the raid on the clinic in late March 1997. However, nothing happened until the medical doctor went to the FBI and complained that bills were being sent out in her name without her knowledge, and that she did not oversee the care billed under her name. And she first approached the feds in late February 1997. So, it took the feds less than six weeks to put the case together and obtain and execute a search warrant. After that, it was all downhill: incriminating statements by employees, guilty pleas, an indictment, and the conviction of everyone who went to trial. Like I said, there are lessons to be learned.

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