

## An Associate Chiropractor's Story

Let me tell you a story about a young chiropractor I know. Randy\* grew up in a small town in the Midwest. He had a good (but not extravagant) upbringing, participated in church activities throughout his youth, and was a Boy Scout.

Randy decided to become a chiropractor and went to a highly regarded straight chiropractic school. After graduation, he found a job as an associate in a chiropractic clinic in a small city. After working at the clinic for a year or so, the clinic owner decided to convert to an MD/DC practice. They did all the necessary paperwork and hired a medical doctor; then they all began practicing under the MD/DC model.

They also purchased diagnostic equipment. Unfortunately, the clinic owner basically felt the equipment was a license to print money. For the next few years, all patients received a variety of expensive diagnostic testing, and every patient was treated and billed under the medical doctor's provider number, even though the medical doctor was not full-time and was often not at the clinic when treatments were rendered. Patient bills averaged many thousands of dollars; however, to keep the patients happy, the clinic did not collect copayments.

A number of complaints were made to the state chiropractic board about the bills. Eventually, several insurance companies commenced an investigation, sending in undercover agents to pose as patients.

All this time, Randy provided quality chiropractic care to his patients. He groused to other employees about what he thought was unnecessary testing. Other employees felt the same way; some even left because of these problems. Unbeknownst to him at the time, one of the former employees went to the FBI.

Randy didn't leave the clinic because he had agreed to a multiyear contract that not only contained a stiff financial penalty if he left, but also had a restricted covenant that prohibited him from practicing in the area. Because of these contractual obligations, Randy felt compelled to continue working at the clinic. Besides, he was providing good care to his patients. Randy was also a little fuzzy about the details of the operation of the MD/DC clinic, and he wasn't involved in insurance billing. Indeed, he was strongly discouraged, if not barred, from entering the insurance office - but it didn't matter to him, since he didn't sign any insurance claims forms and rarely had any communications with insurance companies.

Eventually, the FBI and other "alphabet" agencies raided the clinic. On several occasions, without counsel, Randy spoke to seemingly sympathetic agents about what he perceived to be the problems at the clinic, including the medically unnecessary testing (which, by the way, is now a federal crime). He even told the agents that he complained to the clinic owner, and that his complaints went unheeded.

The investigation dragged on for several years, and Randy eventually found a better job at another clinic. When the indictments came, Randy was named as a defendant on multiple counts of insurance

fraud. He was astonished. He felt he didn't do anything wrong; after all, he had even tried to change the errant practices at the clinic. Randy decided to fight.

The indictment charged Randy with committing insurance fraud, but he had not signed any claims forms and did not personally provide medically unnecessary services. If that had been it, the case would have been easy - but he was also charged with "conspiracy" to commit insurance fraud and "aiding and abetting" in the commission of insurance fraud.

The really nasty thing about conspiracy and aiding and abetting is that they do not require a person to actually commit the crime; they only require proof that the person somehow assisted in the commission of the crime. Under federal conspiracy law, the government need only prove that a defendant entered into an agreement with someone to commit an illegal act, and some act in furtherance of the plan was performed by any member of the conspiracy. The act performed doesn't even have to be illegal. Under conspiracy law, a co-conspirator is responsible for all the injury the conspiracy causes or attempts to cause.

Federal aiding and abetting law is similar, in that it allows an attenuated and farfetched theory of guilt. Essentially, a person can be convicted of aiding and abetting if he or she knows someone is engaging in illegal activity and assists with a "purposeful intent" to further the aims of the crime. (An oft-cited example is that a cab driver can be indicted for conspiracy to commit murder if a passenger tells him he's going to kill someone at the destination.)

In this case, the clinic's owner clearly engaged in insurance fraud, because he was ordering medically unnecessary testing and billing under the medical doctor's name in questionable circumstances. But Randy didn't know anything about the billing when he worked at the clinic. He also didn't know that to bill under the medical doctor's name, the patient had to see the MD first (or at least not bill under the MD number until the patient was seen by the MD). Basically, Randy was just a young kid with a few years of experience, and just didn't have the knowledge, interest or opportunity to learn about insurance billing at the clinic.

Although Randy was well-represented at trial by a highly regarded, local general criminal attorney, he was convicted on all counts. Randy has since lost his chiropractic license and will spend the next couple of years in federal prison.

Here are a few lessons from Randy's case:

First, never, ever talk to a federal or state agent without counsel. These guys are not your friends; their job is to extract information from people, and feigning sympathy or understanding is just one of their tricks of the trade. Randy is going to jail in large part because of what he said to the agents.

Second, what you don't know can hurt you. Randy wasn't really (or at least, directly) involved in the clinic's insurance fraud, but he knew and did enough to land him in jail.

Third, if you are an associate in an MD/DC practice, or any clinic, it pays to find out whether the clinic is operating on the up-and-up. If you find out it is not, don't walk - run out the door and worry about financial or possible civil problems later. The ultimate lesson here is that even if you only receive a modest salary and don't directly participate in any wrongdoing, you are still at risk and may be held criminally responsible for your clinic's wrongdoing.

- Name and some details of the actual case have been changed.

*Richard Jaffe, Esq.*  
*Houston, Texas*  
rickjaffeesq@aol.com

OCTOBER 2003