

FRAUD ALERT

Ruskin Moscou Faltischek's Health Law Capabilities

- Defense of Medicare/Medicaid Investigations
- Professional Licensing and Disciplinary Proceedings
- Corporate Reorganizations, Mergers and Joint Ventures
- Federal and State Regulation Compliance, including HIPAA
- Purchases/Sales of Practices
- Creation of Compliance Plans and Fraud Detection Systems
- Anti-Referral Law Counseling
- Formation of PCs and LLCs, and Shareholder Agreements
- Certificates of Need
- Equipment Acquisitions
- Contracts – Managed Care, Insurance, Management and Employment
- Intellectual Property Issues
- Strategic Planning
- Hospital and Physician Privilege Disputes

Gregory J. Naclerio is a partner at Ruskin Moscou Faltischek, one of New York's leading healthcare and business law firms, and is chair of the Health Law Transactional and Health Law Regulatory Departments and co-chair of the White Collar Crime & Investigations Group. He is also a member of the Corporate Governance Practice Group. Mr. Naclerio is a Certified Fraud Examiner and has authored many articles on white-collar fraud issues and is a frequent lecturer on this topic.



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OPMC Invitation for Interview

Once the Officer of Professional Medical Conduct (OPMC) decides it has a sufficient case to request formal charges be brought against a physician, the physician is given the opportunity for an "interview" with an OPMC Investigator and Medical Consultant. The purpose of this meeting is for the doctor to "tell his/her side of the story." Physicians are cautioned not to take such invitations lightly. A presentation which is well thought out and delivered could convince OPMC not to proceed. Doctor should not go to such "interviews" alone or without being prepared by counsel.

Beware of 3rd Party Follow Ups

If you are audited by Medicare, Medicaid or private carriers, the odds are significant there will be a demand for repayment. Yesterday, that repayment would have ended your involvement in the matter. Today, all three payors have systems in place to "follow up" months or even years later to ensure the detected "problem" does not occur again. There is nothing worse than for a Provider to "not have learned" from the first audit, according to Regulations. Thus, after an audit in which a repayment is made, the Provider should:

- Perform a mini "Root Cause Analysis" to determine where and how the improper billing occurred;
- Establish a Plan of Correction which is documented and communicated to appropriate staff;
- Conduct a self-assessment to ensure compliance, which should likewise be documented.

Additional Precautions

- Billing for a "Consultation" without recording who referred you the patient.
- Billing for a "Consultation" and not providing a consult report to the referring physician.
- Not every visit to a specialist (cardiologist, G.I, neuro) is a consult.
- If you see a patient in the ER and a follow up occurs at your office, the patient is an "Established" Patient.

Coding Consultants Reports: DANGER

If you decide to use a coding company recommended by your specialty society or an independent coder to review your charts, you **MUST BE CAREFUL**. In the event you are subsequently audited by the Office of Inspector General or the Medicaid Fraud Center Unit, that report is subject to subpoena and you must turn it over. To protect the report, retain counsel to oversee the audit so as to bring the coders results under the Attorney-Client privilege.

For more information, please contact Gregory J. Naclerio at (516) 663-6633 at RMF or visit our website at www.rmfp.com.

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