



Fraud and Abuse Part III - Fraudulent Payments

This article is based on a presentation given by E. Dargan Ervin, Jr., PT, and Deborah Hatherill, PT at the 2013 FSBPT Annual Meeting.

This program is brought to you by Google - physical therapy cases that were 'disturbingly easy' to find on public websites.

Case No.1

The headline: "Physical therapist sentenced, agrees to pay \$328,828 to resolve false claims act liability"

The date: February 25, 2013

Federal consequences: The licensee entered into a civil settlement but did not admit liability. He agreed to pay \$328,828 for conduct that occurred between 2007 and 2010. He entered into a six-year integrity agreement with the U.S. Department of Health and Human Resources to ensure future compliance with Medicare requirements. He waived his right to indictment and pleaded guilty to obstruction of a federal monitor (he had reconstructed his charts after saying they were stored off site.)

The facts: This was a new practice and the physical therapist was not treating the patient for services billed. There was no documentation for the first six months of care and very limited documentation for the next two years. When the monitor came to see the charts, the PT said they were in an off-site area, but he had no off-site area and reconstructed documentation after the audit was initiated. He misled the Medicare auditor.

Question to the audience: Is this case a licensure regulatory issue?

Answer: Yes 89% No 5% Not sure 5%

Audience discussion: The complaint process could be a barrier to action by the board in some jurisdictions. Alabama discussed the option that the board may file a complaint when it sees the article. Other states said its documentation language or ethics would address it.

Outcome in the jurisdiction: The license is active and there are no licensure actions or pending charges. His license was renewed during the case.

Note: The PT did not follow through with the integrity agreement and \$1.3 million in claims has been filed.

Case No. 2

The headline: "Home Health Agency Owner and Physical Therapist Convicted in \$2.3 million Medicare Fraud Scheme"

The date: April 2, 2013

Federal consequences: Found guilty of conspiracy to commit healthcare fraud in April 2013, pending sentencing in July 2013 with potential sentencing of up to 30 years in prison

The facts: The PT created false and fraudulent physical therapy records and charged Medicare for services never rendered. He also made false statements related to healthcare matters.

Question to the audience: Is this case a licensure regulatory issue?

Answer: Yes 99% No 1% Not Sure: 0%

Audience discussion: Jurisdictions need to be alerted of these cases. Perhaps someone should monitor these websites. Jurisdictions might also consider criminal background checks for license renewal.

Outcome in the jurisdiction: The PT license is active and went through renewal. There were no complaints or disciplinary actions.

Case No. 3

The headline: "Owner of Personal Care Assistance Company Sentenced for Paying a Kickback for Medicaid Referrals and Making False Statements"

The date: February 9, 2011

Federal consequences: Pleaded guilty to conspiracy to commit healthcare fraud, aiding and abetting healthcare fraud and illegal remuneration. He was sentenced to pay \$63,000 and 57 months in prison, plus six months for untruthful statements.

The facts: The PT offered to pay kickback cash for referrals and submitted claims for services not rendered. He also delivered false statements in interview sessions (the PT said the \$63,000 check was in the mail, and it wasn't).

Question to the audience: Is this case a licensure regulatory issue?

Answer: Yes - 87% No 7% Not sure: 6%

Audience discussion: None

Outcome in the jurisdiction: The PT license was revoked and he was fined \$10,000 in a civil penalty. If he is successfully rehabilitated and demonstrates a preponderance of evidence that that he can return to competent and ethical practice, he could re-apply for licensure in 10 years. He must complete his prison term and criminal probation and may need to meet other board stipulations.

Additional questions:

Question: Would you want to know if your healthcare practitioner has prior convictions or sanctions for insurance or billing fraud?

Answer: Yes 97% No 2%

Question: Does your jurisdiction obtain information and investigate/take action on licensees involved in Medicare, Medicaid or other third party actions addressing billing violations?

Answer: Yes 51% No 25% Not sure 25%

Question: Does your jurisdiction report information on licensees involved in Medicare, Medicaid or other third-party actions addressing billing violations to third-party payors?

Answer: Yes 40% No 34% Not sure 26%

Question: Would more information on sanctions and precedents be helpful to your board for addressing billing issues?

Answer: Yes 92% No 8%

Renewal language to catch convictions

Several jurisdictions have very good renewal language.

From Connecticut: "Have you ever been censured, disciplined or dismissed by any third party reimbursement program, whether governmental or private?"

From Oklahoma: "Have you ever been denied provider participation, terminated, sanctioned or penalized by any third party payor, to include Tricare, Medicare or Medicaid?"



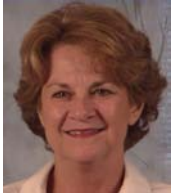
E. Dargan Ervin, Jr., PT

Dargan Ervin, Jr., PT is a 1981 graduate of the Physical Therapy Program at the Medical University of South Carolina (MUSC). He has practiced in a variety of settings with responsibilities ranging from patient care, Medicare and HIPAA compliance and financial management. Dargan has been a member of the South Carolina Board of PT Examiners from 1992 and served as chair from 1995 to 2000.

Dargan has also been active in the APTA and the South Carolina Physical Therapy Association since enrolling in physical therapy school. He served as Treasurer for the South Carolina Chapter of the APTA from 1984 to 1987. He is the 1999 recipient of the Distinguished Alumnus Award from the Medical University of South Carolina College of Allied Health Sciences. In 2001 Dargan received the Emily Cate Award from the South Carolina Physical Therapy Association for his noteworthy contributions to physical therapy on a local and national level.

In September 2008, Dargan was inducted into the first class of the MUSC College of Allied Health Sciences' Hall of Fame.

Dargan served on the FSBPT board of directors as treasurer and president from 2000 – 2010. In addition, he has headed many Federation committees and task forces, such as the Federation’s Prescreening Task Force, NPTE Summit Steering Committee and History Task Force. Dargan received an FSBPT Outstanding Service Award in 1999 and the Federation’s Richard McDougall Long Term Service Award in 2012.



Deborah Hatherill, PT

Deborah Hatherill, PT is a 1976 graduate of the Physical Therapy Program at the University of Kentucky. She sold her private practice of 33 years in 2012 when she relocated to Alexandria, Virginia.

She was a founding member of the Kentucky Independent Physical Therapy Network serving on their board of directors from 1993-2012. Deborah was primarily responsible for contract negotiations with third party payors for the 40 participating clinics. Deborah was a member of the Kentucky State Board of Physical Therapy from 1983-1990 and 1992-1998. She served as Chair in 1986-1987, 1989, 1994-1995 and 1997-1998. Deborah served as Kentucky's Standards of Practice Revision Chair in 1987-1988 and 1997-2004.

Deborah served on the Model Practice Act Task Force for the Federation and continued to assist states with revisions from 2003-2009. She served on the Federation board of directors as secretary and was liaison to both the legislative and education committees from 2000-2003.

Deborah was the first recipient of the University of Kentucky Richard McDougall Distinguished Alumni Award in 1999. She received the Federation's Richard McDougall Long Term Service Award in 2005.