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Attorney recalls how whistleblower clients took on national Medicare fraud

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The last four years have been filled with secret meetings and hours spent analyzing emails and documents, but now, two Massachusetts residents will collect \$24.7 million for their help identifying alleged nationwide Medicare fraud. The reward stems from a \$125 million settlement with RehabCare Group and parent company Kindred Healthcare, along with a \$3.9 million settlement with nursing home company Wingate Healthcare Inc., which is headquartered in Needham. Both residents initially sought out the help of attorney Jeffrey Newman to help file the lawsuit, under the whistleblower provision of the False Claims Act. Since that time, Newman has been involved in one of the biggest cases and settlements of his professional life.

Newman spoke with Boston Business Journal Health Care Reporter Jessica Bartlett on what that process was like, and where his clients go from here.

How did it all start? It was September of 2011. I got a call late Sunday evening from Janet Halpin. She described her circumstance: She was a rehab manager for RehabCare, she worked up at Wingate (Healthcare) in Haverhill, a skilled-nursing facility, and her job, among other things, was to oversee the therapists doing care providing services to a large population of individuals, all of them elderly. Over the years, RehabCare had created a protocol where the therapy services provided had minimum quotas. Certain percentages of individuals in each facility had to meet a quota of being at the highest reimbursement level for Medicare for these services.

Is that all they were accused of? They were doing other stuff, too. Saying they were providing therapy when they weren't, allocating different therapy to different therapists to get



Attorney Jeffrey A. Newman said the \$125 million settlement with Kindred Healthcare and RehabCare Group is the biggest case his firm has ever had.

the highest reimbursement level. Janet called me up, said she needed help, and explained the circumstance. We met several times over the next couple weeks, reviewed emails, memoranda, patient reports, every bit of info we could get. The pattern she described was clearly verified in the documents.

How long did it take you? It took us a few months, 15,000 documents. (We) organized them and wrote them up in the requirements of law and sent it under seal to the US government. Two weeks after that, we filed the case under seal. It landed on the desk of Greg Shapiro in Boston, who is the head of their civil division (and assistant U.S. attorney for the District of Massachusetts). He analyzed the case, met with Janet, and shortly after Janet came to me, another person, (Shawn Fahy), working for the same company called me with similar info working for a different facility. She and Janet agreed to come as a unit. ... Greg and his assistant worked that case heavily over the next four years. Sent out subpoenas to scores of nursing homes, did a statistical sampling of patients and analyzed them, and verified all the info I had shown

them that it was a nationwide scheme.

What have the last four years been like for your clients? Janet worked for the company up until March 2013, at which time she was let go. Shawn left the company earlier for the same reason...she was also let go. Both are parents, Shawn has two children. She's a single mother. Janet is now married but wasn't for a period of time. It was not easy for them. They knew litigation was going on, they knew they were the whistleblowers. There's some level of anxiety. They had to meet in Boston periodically, confer with me. In Janet's case, we had to meet every weekend to review documents...at the same time she's taking care of her mother, who's blind (and) living at home, and three children. It's a testament to their courage and strength. Both of them said when they hired me, regardless of if there is money at the end, their concern was for the patient. They couldn't tolerate the things happening to these older people.

How are your clients doing, now that this is over and they're millionaires? You have to realize that immediately taxes are taken down. It's not like winning the lottery. (But) it is substantial money. When (Janet) came forward, she wasn't sure if it would make any difference. She's relieved. Both are very happy with the outcome; there are mechanisms to make sure this doesn't happen. The primary concern was for these old people, who had no control. That type of character strength doesn't reside in everyone. They can't do it and back out in the middle of it. That wasn't these two individuals.

Have you ever been part of something this lengthy or big? This is my largest case to date, my firm's largest case to date. I've been co-counsel in other cases where other firms have worked with me where I've been involved, but for my firm alone this is the largest. It's been the most labor intensive for our firm, (but) very worthwhile

Any other takeaways? I think more people will come forward, who are willing to bring info that is detailed and particularly, they are no longer viewed as squealers or rats. There is recognition that we need this to strengthen the economics of our nation. That's bringing forward more and better whistleblower cases.