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Compliance Professional's Allegations of Software Tampering Survive in Kaiser Case

By Nina Youngstrom

When Jeffrey Mazik, then senior practice leader for Kaiser's national compliance office, was asked to compare two brands of auditing software, it set in motion his downfall and later his whistleblower lawsuit. Mazik discovered an alleged problem in the way Kaiser used one software, ClaimsXten, which was made by McKesson. Kaiser allegedly turned off 25 of 54 rules used to detect billing fraud, and when the other software was used to double check the data, Mazik and his colleagues found \$5.3 million in overpayments, according to his False Claims Act (FCA) complaint.^[1]

The findings were presented to several Kaiser executives, but "nothing was ever done," the complaint alleged, and Mazik eventually wasn't allowed to use software tools at all. It was not the only way he allegedly was prevented from doing the compliance job he was hired to do. For example, Mazik also alleged he was shushed on a call with the HHS Office of Inspector General (OIG) by an executive who was afraid he'd spill the beans about overpayments.

Mazik's FCA lawsuit partially survived a motion to dismiss on Feb. 13, when the U.S. District Court for the Eastern District of California gave the go-ahead to his software deactivation and retaliation allegations.^[2] But the court dismissed other allegations in his FCA lawsuit, partly because other FCA lawsuits against Kaiser beat him to the punch. In a nutshell, the FCA complaints allege Kaiser Foundation Health Plan and other members of the Kaiser "consortium," including medical groups, submitted inaccurate diagnosis codes to increase Medicare Advantage (MA) reimbursement. For example, whistleblower James Taylor, M.D., a former employee of Colorado Permanente Medical Group, alleged in his whistleblower complaint that Kaiser's national, regional and diagnosis-specific audits of risk adjustment claims identified categories of claims with "high rates of falsity," but "Kaiser rarely took even minimal steps to filter its claims to prevent submission of these claims, or to audit prior submissions to find the previously submitted" false claims.

The U.S. Department of Justice (DOJ) in 2021 intervened in six FCA lawsuits and consolidated them. "Kaiser then moved to dismiss under the FCA's first-to-file rule, which left three whistleblower cases standing," said attorney Max Voldman, who represents Taylor. Those three cases have survived motions to dismiss and are now in discovery, Voldman said. Some of the whistleblowers are also separately pursuing cases against Kaiser based on allegations that DOJ left behind. Mazik is essentially a seventh whistleblower and not part of DOJ's case. He's also barred from pursuing the risk-adjustment allegations because of the first-to-file rule under the FCA, according to the court decision.

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