

## Compliance Today – April 2024



**James G. Sheehan**  
([james.sheehan@ag.ny.gov](mailto:james.sheehan@ag.ny.gov),  
[linkedin.com/in/james-sheehan-90264115/](https://www.linkedin.com/in/james-sheehan-90264115/)) is the Chief of the New York Attorney General's Charities Bureau, which oversees compliance and regulation of the nation's largest Charities sector, including the largest nonprofit hospital sector.



**Gabriel L. Imperato**  
([gabriel.imperato@nelsonmullins.com](mailto:gabriel.imperato@nelsonmullins.com),  
[linkedin.com/in/gimperato/](https://www.linkedin.com/in/gimperato/)) is the managing partner of the Fort Lauderdale, FL, office of Nelson Mullins and the Team Leader of the Firm's Health Care Criminal and Civil Enforcement, Litigation and Compliance Practice.

### Meet James G. Sheehan: A lifetime in public service

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by James G. Sheehan and Gabriel L. Imperato, Esq.

**GI: Tell us about your career at the U.S. Department of Justice (DOJ) and when and where it started.**

**JS:** I started in the Philadelphia U.S. Attorney's office after three years with a private firm. I stayed with that office until 2007 as an Assistant U.S. Attorney (AUSA) and in various supervisory roles. I was fortunate to be in the office when the first Medicare kickback case—*United States v. Greber* 760 F. 2d 68 (3d Cir. 1985)—was decided, and Philadelphia became a national center for healthcare fraud enforcement. The next year, Congress amended the False Claims Act (FCA) to increase the incentives to and protection of whistleblowers, and Philadelphia became a national center for healthcare whistleblower cases. For the remainder of my career there, I worked on major whistleblower cases against teaching hospitals, major national laboratory firms, and pharmaceutical and device manufacturers.

**GI: What did you learn about enforcement and compliance at DOJ?**

**JS:** I learned how important it was to encourage and protect whistleblowers to enable people to come forward both within an organization and the government to disclose and address wrongdoing. I also began to see how encouraging effective compliance programs could reduce fraud and abuse and give employees, vendors, and customers confidence that the organization was committed to doing the right thing and supportive of those who came forward.

**GI: What about your time as the chief integrity officer of the Department of Social Services in the City of New York; what did you learn on that job and its connection to compliance in the healthcare industry?**

**JS:** It was my first job as a compliance officer responsible for overseeing compliance for over 10,000 employees and three million beneficiaries. The day I started, the city signed an FCA settlement of Medicaid claims for \$70 million. The individual who brought the action remained a New York City employee, and I saw for the first time the challenge of dealing with the emotions of other employees about a whistleblower. As a compliance officer, I also learned how critical it is that leadership not only supports my work but that the support be visible to employees and vendors. I met weekly with the commissioner in one-on-one meetings and was also included in all major senior manager group meetings. The relationship with general counsel was important; whatever my

credentials or advice, I was often asked, “Yes, but what does the general counsel think?” Fortunately, the relationship was cooperative and collegial.

One challenge I had not anticipated was the difficulty of getting answers on policy or billing issues from oversight agencies (common since the Department of Social Services administers and bills for state and federal programs and combined state–federal programs). When I was an AUSA, people would answer my calls and research my questions. At the city, it often seemed that the knowledgeable person in the state agency had just retired, and their IT materials were deleted.

**GI: How about your experience as the first inspector general of the New York Medicaid program?**

**JS:** It was fun to be first. I was brought in because New York had a significant Medicaid fraud and abuse problem, and the legislature had just passed a comprehensive new law. We had strong support from two governors and a mandate to create the first mandatory compliance program for Medicaid providers, and Medicaid repayments and recoveries in New York increased exponentially. We were able to hire a strong group of auditors, investigators, and data analytics teams and developed an extensive compliance outreach and training effort. However, after four years, the new governor, Andrew Cuomo, decided that he preferred a less aggressive approach, and I moved to New York City.

**GI: Tell us about your work today for the Charities Bureau of the attorney general’s office of the State of New York.**

**JS:** In 2014, New York City Mayor Bloomberg left office, and the New York attorney general hired me as the bureau chief. We oversee the nation’s largest nonprofit sector, with over 100,000 organizations. New York is an international center for the nonprofit sector and graduates of New York schools and organizations manage nonprofits around the world. The Charities Bureau has 26 lawyers, six accountants, and a team responsible for registration and reporting. We bring significant enforcement actions like our case against St. Clare’s Hospital for ignoring their obligation to fund their pension plan (leaving 1,100 retirees without some or all of their promised pensions), our case against the Catholic Diocese of Buffalo for failing to protect victims of sexual abuse, our work shutting down the National Vietnam Veteran Foundation for fundraising fraud and embezzlement, and the National Rifle Association case for diversion of charitable assets. Our most significant work is developing guidance and compliance training for nonprofits and their employees, board members, volunteers, and advisers. Our written guidance is available at [ag.ny.gov](http://ag.ny.gov) and provides information about governance, use of charitable assets, audit committee responsibilities, fundraising, and required reporting; we hold frequent in-person training sessions around New York.

**GI: What is the connection between your work overseeing charitable organizations and effective compliance?**

**JS:** The nonprofit sector in New York includes not only all hospitals and most higher education institutions but also social service agencies, museums, and arts and advocacy organizations. Each sector has its own challenges, many of which were exacerbated by COVID-19. For the most part, board members are volunteers who take their duties and the organization’s purpose seriously. Resources for most nonprofits are always in short supply, and we work with the sector and its advisers to identify ways to communicate and support compliance efforts and provide a dedicated customer service unit and an attorney and accountant of the day program to provide information. We also advocate for administrative and legislative reforms with state and local agencies to make compliance easier and public funding more accessible for them.

**GI: You have had a long career in state and federal government positions; what would you say were the most important highlights of your career so far?**

**JS:** I have worked on many major cases, which have allowed us to develop legal theories and facts to support compliance efforts. In particular, our work in the *United States v. Medco* case in 2005 established the principle that an effective compliance program is a necessary part of good corporate governance, and the failure to have one could be a basis for false claims liability. The most significant work for me has been developing public agency support and industry collaboration for compliance and building knowledgeable and engaged government understanding of why compliance matters and how we can support good people and good organizations in this work.

**GI:** You have been a steady participant and contributor to HCCA. What are some things that you've done with the organization, and why do you do it?

**JS:** HCCA, from its beginnings, has been a great place to learn from the pioneers and thought leaders in compliance. I also appreciate the many opportunities after my presentations were over to meet compliance officers and advisers, and learn about their challenges, successes, and ideas for what we can do better. I come back from every conference energized, with ideas and materials to share with my government colleagues and use in compliance training. HCCA has always been supportive of government-industry engagement, and its credibility and commitment make it the perfect place to test ideas and understand issues. And I have many friends from meetings and work at HCCA over the years whom I stay in contact with and who give us the benefit of quiet consultation on how best to support compliance.

**GI:** When we talk about compliance in healthcare, where did we start, where do you think we are now, where do you think we are headed?

**JS:** We started (or I started) with Australian scholar John Braithewaite and HCCA's own Joe Murphy in the 1980s who suggested that internal compliance was an important part of corporate governance and that the government should consider ways to engage and support internal compliance. Delaware courts provided strong support with its Caremark line of decisions, making clear that the board's duties went beyond profit to ensure reasonable efforts to comply with the law. HCCA and SCCE have nurtured and supported the development of professional standards, ethics, and certifications to develop the body of knowledge and practice. The future of compliance is bright and can play an integral part in developing human organizations in ways that respond to public and consumer expectations about ethical behavior and commitment.

**GI:** What do you believe are the most significant qualifications and skills for a chief compliance officer?

**JS:** Paying attention to people's needs for nonjudgmental information, communication, and listening; understanding how to integrate effective and supportive compliance with the goals and culture of their organization.

**GI:** Is a legal background necessary for a compliance professional?

**JS:** It can be useful or (sometimes) a hindrance. It is essential to understand the industry or organization, its challenges, regulators, and its people. Some lawyers have these skills, but so do many others.

**GI:** What would you advise individuals contemplating a compliance career?

**JS:** It is vital to learn from people already active in the field and develop a knowledge base in the industries/organizations you plan to enter. Pharmaceutical compliance is very different from hospital compliance; museum compliance is very different from higher education compliance. You need to learn the industry's language, business, and the habits in addition to the formal training (U.S. Sentencing Guidelines, model compliance guidance). Participation in HCCA and other training/networking activities is very helpful; people in compliance, when asked, are generous with their ideas and advice (and often job connections).

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**GI: Is it practically possible to meet the compliance standards that have been enunciated by the state and federal governments (i.e., DOJ, U.S. Department of Health and Human Services Office of Inspector General, the Office of Inspector General of the New York Medicaid program) for effective compliance in the real world of healthcare corporate governance and enterprise risk?**

**JS:** No organization is perfect, and no compliance program can address all risks. The work of a compliance program is to identify and address risks, respond timely and appropriately to issues that arise, and provide employees, board members, and customers with confidence that the organization is committed to compliance and people who identify and are concerned about compliance issues.

**GI: What have you observed and experienced with respect to the connection between compliance and the quality of care?**

**JS:** Strong, committed leadership and boards positively affect both quality of care and effective compliance. In my experience, an organization that does not commit itself to healthcare quality usually has a weak or deficient compliance program. Both quality and compliance are significant to achieving the corporate mission and purpose in healthcare.

**GI: Why have you always opted to continue your public service during your legal career?**

**JS:** I have been fortunate that each time I reach an appropriate turning point in my career, another public sector opportunity with different challenges, good people, and solid executive support has been open for me. I have also been blessed with a spouse who has been supportive of my career path, including our move from Philadelphia to Albany and my work in New York City three days each week for the past 12 years. She is general counsel and deputy commissioner for one of the largest and most challenging state agencies in New York; she commits the time, ideas, and emotional support to allow me to evaluate and continue this work.

**GI: What does the future hold for Jim Sheehan? Is retirement on the horizon? If so, what will you do after completing your government career?**

**JS:** I have been working since I was 11. Although I have many retired friends who and enjoy the experience, I am not sure that it is for me. I am inspired by my deputy here at the Charities Bureau, who is still working hard and is a wonderful resource and source of wisdom, experience, and support for our employees after 40 years in the bureau.

**GI: Thank you, Jim!**

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