

# **Nurse Questions Judge's Decision That She Had The Intent To Defraud Medicare**

written by Nancy Brent | February 1, 2018

## **Avoiding Liability Bulletin - February 1, 2018**

I have not reported many cases of criminal liability of nurses in past Bulletins. The following case<sup>1</sup> involving criminal convictions of a nurse is one that I believed needed to be shared with you due to the astonishing conduct of the nurse.

Janice Troisi, a nurse, worked for At Home VNA (AHVNA) on a part-time basis. AHVA “aggressively” enlisted Medicare-insured individuals for in-home nursing services who were not in need of such services or were not homebound.

Troisi told the nurses at AHVNA to fill out these patients’ OASIS Forms to indicate, inaccurately, that the patients were incapable of caring for themselves. Thereafter, Troisi filled out another required form for Medicare (Form 485) for each patient, placing false information that was required by Medicare coverage for in-home nursing services.

The false documentation was easy to pass on to Medicare because the AHVNA Medical Director signed the forms without reviewing them and, in many cases, never met with the patients.<sup>1</sup>

Nursing staff at AHVNA did home visits to the patients but most were visits by nurses that did not provide skilled services. Troisi directed the nurses to falsify their notes to reflect that they had provided skilled services. These fraudulent records were then used to bill Medicare.

On January 1, 2019, Troisi was appointed AHVNA’s Clinical Director. The government’s theory about this appointment was that the nursing owner of AHVNA, Michael Galatis, believed that Troisi could—and did—take the scheme “to another level”. As a result, she had a direct stake in the fraud even though she did not receive the reimbursement checks from Medicare.

Troisi and Galatis were charged with one count of conspiracy to commit health care fraud and eleven counts of substantive health care fraud.<sup>2</sup> A jury trial resulted. However, a mistrial was declared against Troisi because she was ill and could not participate in the trial. She waived her right to a jury trial on retrial. A bench trial, with the same district judge who presided over the earlier trial, began 10 months after the mistrial occurred.

During the bench trial, 217 documentary exhibits, including all transcripts of the testimony of 27 government witnesses who had testified at the jury trial, were admitted into evidence at the bench trial per the agreement of Troisi and the government.

Four additional witnesses for the government testified at the bench trial. Witnesses included patients who were recruited into the elaborate scheme and AHVANA nursing staff who had provided care to those patients.

Troisi called no witnesses at the bench trial and introduced five exhibits. Her main defense was that the government had not proved that she possessed the required intent to be charged of conspiracy to commit health care fraud and health care fraud.

The facts during the bench trial underscored Troisi's involvement in the scheme that started in January 2006 until 2012. Her role became more emphasized in January 2010, when she was promoted to Clinical Director. As a result of her actions, the government was billed for \$27.6 million in false claims, \$19.9 million of which were paid by the government.<sup>1</sup>

Troisi was convicted of conspiracy to commit healthcare fraud and health care fraud and sentenced to 36 months of imprisonment followed by three years of supervised release.

The nurse appealed the bench trial judgement, alleging again that the government did not prove she had the required intent to be convicted of the charges against her.

The appeals court clearly stated that the government had indeed proved Triosi had the required intent to commit the crimes for which she was convicted. "Several strands of circumstantial evidence support [ed]" her culpable state of mind.<sup>1</sup>

Those strands included that she: (1) could not claim she was ignorant of the regulatory scheme she helped establish; (2) exercised total control over AHVNA's preparation of documents required for Medicare reimbursement; (3) instructed nursing staff to put particular information on required forms whether the information was true or not; and (4) did not dispute her actions that directly and crucially furthered the scheme.

The convictions were affirmed.

This decision is one to remember for many reasons. First and foremost, fraud in any manner is unacceptable, but attempting to defraud Medicare or any other health care program is ringing your own death knell. Not only is it illegal, it is unethical, and you face imprisonment if found guilty.

Second, you face disciplinary action by your state board of nursing for unprofessional conduct and falsification of patient care records or any record required to be kept by you at the very least. With proven conduct such as this case illustrates, it would not be difficult to perceive a board of nursing revoking a license held by a nurse.

Third, it is interesting that nowhere in the case is reported what license Triosi held: RN or LPN. This is not a crucial point. It goes without saying that whatever license you possess, you would be disciplined. And, the same would hold true if you were a CNA or nursing assistant.

Lest you think those involved in a scheme such as this will “stick together”, nothing could be further from the truth. Here, the Medical Director entered into a plea agreement with the government to plead guilty to (only) one count of healthcare fraud in exchange for testifying against Triosi. When a lawsuit occurs, each person is only concerned about non-liability, or lessened liability, for himself or herself.

Fifth, never get involved with developing a scheme to make money fraudulently. You may never be tempted to do so, but if you are, think about this case and its consequences for Triosi.

Don't follow anyone's order or direction to falsify patient care records. Notify your immediate supervisor, or, if necessary, take your concerns outside the agency in order to protect yourself against criminal and other legal charges.

The AHVNA nursing staff raised their concerns about falsifying patient records, but Triosi ignored their worries and often changed records herself when the nurses did not document what she instructed them to do.<sup>3</sup>

Last, keep in mind that professional liability policies exclude criminal charges from their coverage. As a result, any attorney fees and other costs during a trial will be funded by you.

#### FOOTNOTES

1. United States of America v. Janice Troisi, No. 16-1046, United States Court of Appeals, First Circuit, February 24, 2017. Available at: [caselaw.findlaw.com/US-1<sup>st</sup>-circuit/1850173.html](https://caselaw.findlaw.com/US-1st-circuit/1850173.html).
2. Michael Galatis was also separately charged and found guilty of seven counts of money laundering.
3. “Home Health: Court Upholds Nurse's Criminal Conviction For Defrauding Medicaid Program”, Legal Eagle Eye Newsletter for the Nursing Profession, April 2017, 7. Interestingly, all of the nurses were hired right after graduation without prior patient care experience.

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