



WE CANNOT MAKE THIS STUFF UP:
TALES OF NON-COMPLIANCE &
RISK MANAGEMENT

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PRESENTERS



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ABOUT VANTAGEPOINT HEALTHCARE ADVISORS

- Woman-owned firm founded in 1994, headquarters in Hamden, Connecticut.
- Serves clients across the United States with regional focus on New England and New York.
- NCQA certified Credentials Verification Organization (CVO)
- Independent Review Organization (IRO) serving healthcare clients under HHS OIG Corporate Integrity Agreements
- Compliance & Consulting services include HIPAA Privacy and Security, revenue cycle assessments, coding and clinical documentation audits, physician compensation plan design, compliance effectiveness reviews, and subject-matter expert resources for health law attorneys.



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PRESENTATION OBJECTIVES

- Entertain, educate, commiserate.
- Provide compliance and risk mitigation strategies associated with the cases discussed and lessons learned.
- Share practical tips and compliance plan takeaways attendees can apply to their own tactical responses to compliance and risk management challenges.

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ONCE UPON A TIME.....
COMMON ELEMENTS OF
FAIRY TALES



- Typical beginning & ending
- Magical elements – like fairies, ogres, wands, & seven-league boots
- Events happen in increments of three or seven.
- Protagonists have choices challenging their personal safety/comfort versus that of others.
- Wishes granted but with consequences. Often really bad consequences!
- Often a path to redemption involving years of wandering or punishment.
- Most times a happy ending that reinforces a lesson learned.

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SEVEN LEAGUE BOOTS

- Boots allow wearer to travel 7 leagues in one step.
- A league = roughly 3 miles and was considered representative of the distance walked in an hour by an average person.
- If a person walked 7 hours per day, then he/she could walk 7 leagues, or about 21 miles.
- Tom Thumb, Jack the Giant Killer
- Fairy tale equivalent to time travel, taking shortcuts, or a really LEAN process improvement project.

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THE TALE OF DR. SEVEN LEAGUE BOOTS & THE INCIDENT-TO FAIRY

- Once upon a time there was a physician-owned ENT practice w/ 8 employed providers – 5 audiologists, 2 physician assistants, 1 part-time MD.
- Dr. Seven League Boots was the only provider enrolled with the payers billed by the practice.
- One fateful day, Dr. Seven League Boots received a letter from the State Medicaid.....

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THE LURE OF INCIDENT-TO

- “Incident to” services under §1861(s)(2)(A) of the Social Security Act are generally provided by non-physician, mid-level practitioners in a physician’s office, as a part of the services provided directly by the physician, but billed as if they were in fact performed by the physician.
- Applies to Medicare, but not necessarily Medicaid or Commercial payers.
- Opportunity for increased reimbursement creates magical thinking; magical thinking creates opportunity for exponential overpayment and false claims act liability.

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COMPLIANCE PLAN TAKEAWAYS FROM THE TALE OF DR. SEVEN LEAGUE BOOTS

- ✓ Find out if incident-to is a 'thing' in your organization.
- ✓ Educate yourself on the requirements, spread the word.
- ✓ Check the claims data, practice schedule, credentialing files for clues.
 - Are services billed out under a supervising physician on days they were on vacation?
 - Are new patient E/M visit codes being billed incident-to?
 - Are NPP's credentialed with payers?
 - Do payer contracts/State Medicaid permit incident-to?
- ✓ Probe audits

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ENCHANTED FORESTS

- A place of adventure, magic and danger (Rumpelstiltskin)
- A short cut (Little Red Riding Hood)
- A place of temptation (Hansel & Gretel)
- A place of refuge (Snow White)
- The home of monsters, witches, fairies, dwarfs, ogres (Beauty and the Beast)

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THE TALE OF DR. SIDE-HUSTLE'S HIKE THROUGH THE LINCOLN LAW FOREST

- ❑ Once upon a time there was a gregarious ophthalmic surgeon who was licensed in two states.
- ❑ Dr. Side-Hustle operates a busy solo practice in one state, and to expand his business, he also plies his trade over the river and through the woods at a larger group practice in the other state he is licensed in.
- ❑ Dr. Side-Hustle performed all his surgeries at the hospital in the same state as his busy solo practice.

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THERE ARE MANY TRAILS IN THE LINCOLN LAW FOREST, ALL LEADING TO THE SAME DESTINATION

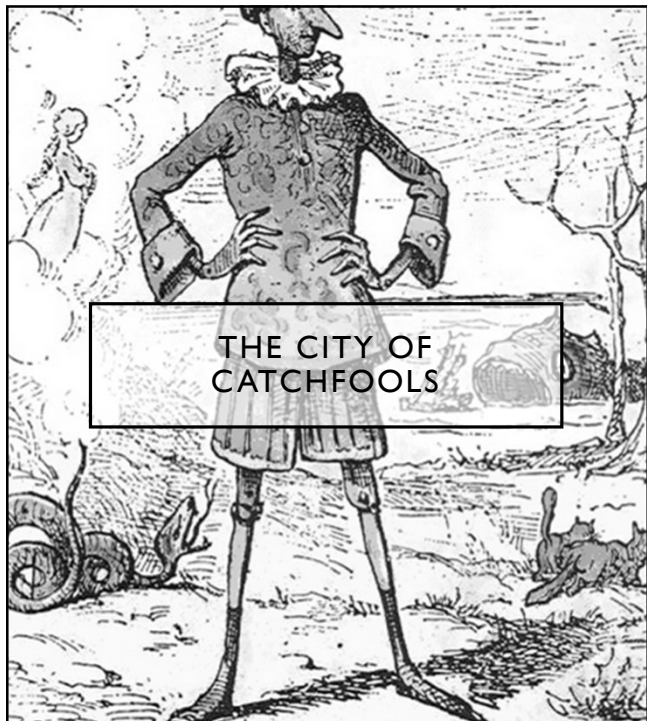
False Claims Act [31 U.S.C. § § 3729-3733] – no intent required for civil liability. Definition of "knowing" includes actual knowledge OR deliberate ignorance OR reckless disregard of the truth or falsity of the information.

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QUESTIONS COMPLIANCE OFFICERS SHOULD ASK BASED ON THE TALE OF DR. SIDE-HUSTLE

- ✓ For Facilities: Revenue Integrity & Privileging – Is the organization asking the right questions when privileging community providers?
- ✓ For Practices: Credentialing & Enrollment – Are all providers rendering services billed to government and third-party payers linked to the roster/TIN of the practice group?
- ✓ For both practices & facilities – Do billing and coding comply with the requirements for global period when applicable?

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- Original 1883 version of Adventures of Pinocchio
- Fox and Cat advise Pinocchio he can increase his wealth by burying his gold coins in the Field of Miracles. Of course, this was a lie.
- The Field of Miracles is located in the City of Catchfools.
- The City of Catchfools is solely populated by animals who have done something foolish and now suffer as a result.

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THE FOX, THE CAT, AND A SCORE OF FUGAZIS
[PART ONE]

Once upon a time, there was a very successful post-acute care organization led by a wily fox. From home health, to hospice, to DME, to temp staffing and billing services, and more, the organization just grew and grew.....until one day, Fox's 'secret' for success was revealed.

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THE FOX, THE CAT AND A SCORE OF FUGAZIS
[PART TWO]

The new owner 'Cat' contracted with an IRO, appointed a compliance officer, and created many new policies and procedures, including implementing an arrangements tracking system to contracts were on the up-and-up and to ensure payments to fugazis never happened again. Business wasn't as big as before, times got a bit lean....and then the HHS OIG Monitor paid a visit.....

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ANTI-KICKBACK. STATUTE. (42 USC § 1320A-7B(B))

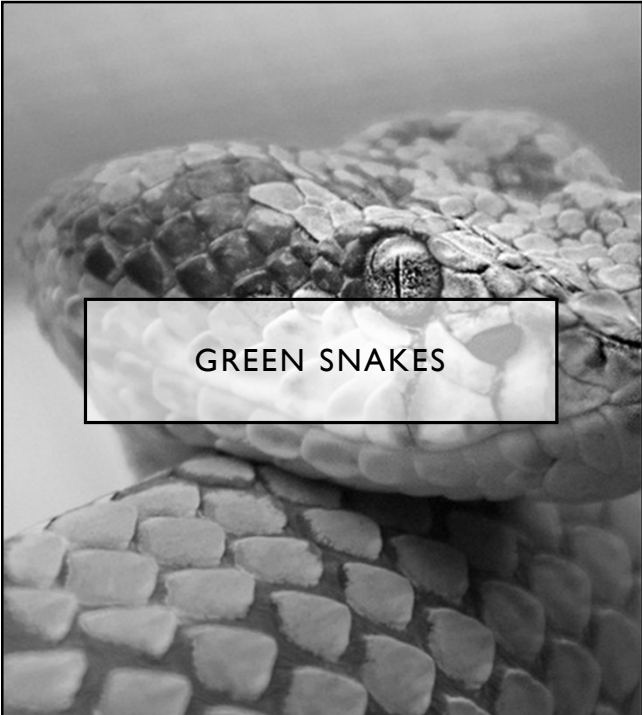
- Criminal law, intent matters
- Prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs
- Remuneration includes anything of value and can take many forms besides cash. HHS OIG specifically cites excessive compensation for medical directorships or consultancies as implicating AKS.
- Domino effect: physicians who accept kickbacks (like fugazi medical directorships) face penalties of up to \$50,000 per kickback + 3x the value of the remuneration.

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UNIVERSAL COMPLIANCE TAKEAWAYS FROM THE TALE OF THE FOX, THE CAT, AND A SCORE OF FUGAZIS

- Does compliance know all the touchpoints the organization has with governmental program integrity contractors and oversight agencies like the OIG, OCR etc.? Have the staff responding to inquiries been trained when to notify compliance or follow a protocol in their responses?
 - If not, could be a good compliance work plan item with the benefit of ensuring compliance isn't left out of the loop.*
- Does your organization contract with community physicians to serve in medical director or other part-time leadership roles? Have those agreements been through a thorough review for reasonableness and FMV?
 - If not, could be a good compliance work plan item to eliminate the 'should have known'*

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GREEN SNAKES

- The Green Snake and the Beautiful Lily (1795), The Green Serpent (1698), The Snake Prince (1907), The Enchanted Snake (1892).
- In the *Green Serpent*, a king serving out a punishment imposed by a fairy convinces his wife to wait until the end of the seven-year period, to see what he looks like, or else his wicked enchantment in the form of a snake will start all over again.
- Spoiler- she doesn't wait and ends up suffering her own trials and tribulations!

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PRINCESS OPEN BOOK & THE PRYING KNOT

- ❑ Once upon a time there was a beautiful, famous celebrity who shared details about a recent health scare and hospitalization on social media. News of where she sought care spread throughout the land.
- ❑ The hospital followed it's usual VIP procedures to protect the celebrity's privacy from prying eyes, yet still, some forgot their training and joined a prying knot of staff accessing Princess Open Book's record to learn more than she shared on social media.

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UNRAVELING THE KNOT

- ❑ Required collaboration between Privacy Officer and Security Officer. Investigation itself was kept confidential to a handful of support staff.
- ❑ Detailed access reports obtained for workforce members determined to access celebrity's record without valid TPO exclusion reason.
- ❑ Investigatory meetings included workforce member, their immediate supervisor, HR, and Privacy.
- ❑ General reaction was to lie, deny, and/or cry. Even when presented with the indisputable evidence.

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RISK MANAGEMENT & COMPLIANCE TAKEAWAYS FROM THE TALE OF PRINCESS OPEN BOOK & THE PRYING KNOT

- ✓ Make HIPAA training meaningful and role-specific. Share relevant stories and be specific about the monitoring technology and how inappropriate access is detected.
- ✓ Consider developing (or revisiting) a policy & procedure for identifying VIPs and proactively applying appropriate levels of restriction to their electronic record.
- ✓ Proactive measures may include assigning pseudonyms, applying 'break the glass' type pop-ups, or simply running a targeted access report concurrently and at regular intervals in the weeks/months after the VIP patient's stay/encounter.
- ✓ Strong sanctions policy with clear definitions of terminable actions and 'personal gain'

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- Obtaining and losing gold figures prominently in many fairy tales.
- Sometimes a magical spell or being is supplying or guarding the gold.
- Sometimes a hero must perform impossible feats to find treasure, which is usually gold.
- Sometimes the protagonist loses the gold through an impulsive action.
- Spinning straw into gold [Rumpelstiltskin], Livestock producing gold [Donkey Skin, Goose & the Golden Egg].

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THE DUCHESS OF SOLITARY DILIGENCE & A MISADVENTURE ON PAPER ISLAND

- ❑ Once upon a time, there was a Duchess of Solitary Diligence who was the only staff member in a community hospital who understood the medical staff credentialing and privileging process. She had worked tirelessly for years and years while CMOs, CEOs, and CFOs came and went.
- ❑ One fateful day, the Duchess disappeared. Many days passed. Since no one really knew exactly what she did or where she kept all the credentialing and privileging records or what to make of all the papers and locked cabinets in her office....

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SPINNING PAPER INTO GOLD

- The hidden treasure on 'paper island' would have not been discovered without the unfortunate event of the untimely absence of the staff member responsible for the process.
- Risks inherent in paper-based and/or hybrid processes only understood by one staff member include: lack of audit trails, untimely recredentialing, overlooked changes to license, malpractice claim or OIG exclusion status, lack of continuity if staff member unexpectedly leaves organization.
- Leadership now has a more fulsome picture of the fragmented processes used to onboard new medical staff members.

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HOW TO KEEP THE TREASURE RISK MANAGEMENT & COMPLIANCE TAKEAWAYS

- Credentialing & Privileging should be on every Risk Manager and Compliance Officer's radar because of the need to adhere to the requirements of State & Federal laws, the policies of various regulatory agencies like HRSA, CMS, and SAMHSA, as well as accreditation bodies like The Joint Commission.
- Get a seat at the table, understand the current process, assess the risks.
- Consider adding random reviews of medical staff credentialing/privileging files to compliance work plan.

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