

LET'S PUT THE FEAR IN THE FERA! SUGGESTIONS TO MAKE THE FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009 A STRONG FRAUD DETERRENT

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Fraud has become a hot topic in the wake of the current economic crisis. In Fiscal Year 2007, an estimated \$2.6 trillion was spent on healthcare in this country.¹ In 2009 alone, the United States Department of Justice filed 800 indictments, obtained over 600 convictions, and recouped over \$3 billion in healthcare fraud cases prosecuted through the False Claims Act.² The Federal Bureau of Investigations claimed it investigated over 2,400 cases of healthcare fraud in one year.³

From 2007 through 2010, the number of federal mortgage fraud cases increased from 1,200 to over 3,000.⁴ Almost 70 percent of those fraud cases involved losses exceeding \$1 million.⁵ In June 2010, the Department of Justice announced the results of Operation Stolen Dreams, the largest mortgage fraud sweep in history.⁶ The sweep lasted three and a half

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1. Beth Fitzgerald, *Insurer Sniffs Out Fraud Amid Soaring Healthcare Costs*, NJBIZ, Sept. 6, 2010, at 5.

2. Eric Holder, Att'y Gen., Dep't of Justice, Speech at the 2010 Bench/Bar Conference in Skytop, Pa. (Sept. 17, 2010), *available at* <http://www.justice.gov/ag/speeches/2010/ag-speech-100917.html>.

In addition, through a new partnership with the Department of Health and Human Services, we've brought the full resources of the federal government to bear against those who illegally divert taxpayer resources from government-funded healthcare programs. Last year, the Department filed more than 800 indictments, and obtained nearly 600 convictions, for healthcare fraud-related charges. And, over the past 20 months, the Department has recouped close to \$3 billion in healthcare fraud cases through use of the False Claims Act.

Id.

3. *Id.*

4. *Fraud Enforcement and Recovery Act Before the S. Comm. on the Judiciary*, 111th Cong. 1 (2010) (statement of Kevin Perkins, Ass't Dir. of the Fed. Bureau of Investigations).

5. *Id.*

6. *Id.* "The sweep was organized by President Obama's interagency Financial Fraud Enforcement Task Force, which was established to lead an aggressive, coordinated and proactive effort to investigate and prosecute financial crimes." *Id.*

months, involved 1,517 defendants, 863 indictments, 525 arrests, and involved over \$3.05 billion in losses.⁷ Finally, the sweep resulted in over 191 civil enforcement actions and \$196 million in recoveries.⁸

In July 2010, the Department of Justice announced arguably the largest healthcare fraud sting in history when it brought charges against 94 people located in five different states.⁹ The government charged that the case involved \$251 million in Medicare payments for services that were either medically unnecessary or never performed.¹⁰ One piece of the case, worth an alleged \$70 million, took place in New York and alleged over “1,000 cash kickbacks were paid to Medicare beneficiaries.”¹¹ The case implicated doctors, healthcare company owners and executives.¹²

Congress passed the Fraud Enforcement Recovery Act of 2009 to combat, among other things, financial and healthcare-related fraudulent behavior. In legislation offered by United States Senator Kirsten Gillibrand of New York, it was opined that Medicare and Medicaid fraud cost the U.S. economy more than \$80 billion and the taxpayers of New York alone more than \$5 billion.¹³ Spending measures passed by Congress for fiscal year 2011 authorized \$1.7 billion to combat fraud, waste and abuse in healthcare.¹⁴ An additional \$561 million was added late in the budget season to further bolster these activities.¹⁵

This Article questions whether the legislative changes encompassed in the Fraud Enforcement and Recovery Act of 2009 is strong enough to effectively combat fraud. Part I discusses the False Claims Act, the longstanding federal law governing fraudulent activity. Part II deals with the Fraud Enforcement and Recovery Act of 2009. Part III provides examples of major fraud cases over the last two years. Part IV suggests modifications to FERA, which could bolster the law and provide a stiff warning to would-be fraudsters. Ultimately, this Article concludes that

7. *Id.*

8. *Id.*

9. Jerry Markon, *94 Caught in Major Health-Care Fraud Sting*, July 17, 2010, SEATTLE TIMES, at A6.

10. *Id.*

11. *Id.*

12. *Id.*

13. Press Release, Sen. Kirsten Gillibrand, *Gillibrand Announces New Legislation to Reduce Fraud and Abuse in Medicare, Protect Healthcare for Seniors, Save Taxpayers Billions* (July 13, 2010), available at <http://gillibrand.senate.gov/newsroom/press/release/?id=2630ea12-2529-47d4-a74b-5e5c4dbdcfd2>.

14. *Off-Label Marketing Continues as Priority for Federal Fraud Enforcement*, HEALTH POLICY NEWS STAND (Aug. 20, 2010), <http://healthpolicynewsstand.com/FDA-Week/FDA-Week-08/20/2010/menu-id-315.html>.

15. *Id.* The Centers for Medicare/Medicaid Services program integrity activities would receive \$376 million, \$95 million would go to the Office of the Inspector General for Health and Human Services and \$90 million would go to the Department of Justice. *Id.*

FERA was an erstwhile attempt by Congress to stop fraudulent behavior, but modifications to the law could send an even stronger deterrent message.

I. THE FALSE CLAIMS ACT

The False Claims Act is the popular title for a series of statutes restricting fraudulent activity against the federal government. First, the most commonly known provision of the law make it illegal to present, or cause to be presented, fraudulent claims for payment or approval to federal government employees or members of the military.¹⁶ The law makes it illegal to make, use, or cause to be used false records or statements material to a fraudulent claim,¹⁷ have control or possession of government money or property and deliver less than the full amount to the government,¹⁸ defraud the government by acknowledging receipt of government property when the property was not received,¹⁹ buy or accept a promise to buy government property from an improper source,²⁰ or commit conspiracy to violate any of the aforementioned provisions.²¹ Any person or entity violating the law was liable for a civil penalty of no less than \$5,000 or no more than \$10,000, plus three times the damages incurred by the government.²² Interestingly, a provision in the law allowed the ruling court to reduce the treble damage to two times if the person or entity who violated the law notified the government within 30 days of obtaining the information, the person or entity fully cooperated with the government investigation, and no pending legal action had already been filed.²³

16. 31 U.S.C. § 3729 (2006). The law makes it illegal for any person who “knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval” § 3729(a)(1)(A).

17. § 3729(a)(1)(B). The law states it is illegal for any person who “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.” *Id.*

18. § 3729(a)(1)(D). It is unlawful for any person who “has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property.” *Id.*

19. § 3729(a)(1)(E). The law is violated when a person “is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true” *Id.*

20. § 3729(a)(1)(F). The law creates a prohibition for anyone who “knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property” *Id.*

21. § 3729(a)(1)(C).

22. § 3729(a)(1).

23. § 3729(a)(2). The law allows this exceptions when:

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information

II. FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009

In 2009, Congress passed the Fraud Enforcement and Recovery Act of 2009 (“FERA”). The law, which passed on May 20, 2009, made changes to several existing laws. First, FERA amended the criminal code to expand the definition of financial institution to include mortgage-lending businesses that finance or refinance federal mortgages.²⁴ Second, the law prohibits making false statements in a mortgage application to employees and agents of a mortgage company,²⁵ defrauding the federal government involving federal contracts, economic stimulus, recovery or rescue plans,²⁶ and expands securities fraud to cover options and futures commodities.²⁷ Third, the law amends the False Claims Act to expand liability for making fraudulent claims to the federal government,²⁸ applies liability for presenting a false or fraudulent claims for payment or approval,²⁹ requires

known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

Id.

24. Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-2, sec. 2, § 27, 123 Stat. 1617, 1617 (2009). The section states “[i]n this title, the term ‘mortgage lending business’ means an organization which finances or refinances any debt secured by an interest in real estate, including private mortgage companies and any subsidiaries of such organizations, and whose activities affect interstate or foreign commerce.” *Id.*
25. Sec. 2, § 1014, 123 Stat. 1617, 1617–18.
26. Sec. 2, § 1031, 123 Stat. 1617, 1618. FERA prohibits defrauding the government over “any grant, contract, subcontract, subsidy, loan, guarantee, insurance, or other form of Federal assistance, including through the Troubled Asset Relief Program, an economic stimulus, recovery or rescue plan provided by the Government, or the Government’s purchase of any troubled asset as defined in the Emergency Economic Stabilization Act of 2008, or in.” *Id.*
27. Sec. 2, § 1348, 123 Stat. 1617, 1618.
28. Sec. 4, § 3729, 123 Stat. 1617, 1621–22.
29. *See id.* The revised language subjects an individual to liability if that individual:
 - (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
 - (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
 - (C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);
 - (D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;
 - (E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

those who violate the law to reimburse the federal government for civil litigation,³⁰ and modifies the law to expand the government's role and obligations in *qui tam* cases.³¹

III. GREED, GREED AND MORE GREED: MAJOR FRAUD CASES OVER THE LAST TWO YEARS

Unfortunately, daily examples of fraudulent activity exist in the media. The cases seem to get larger and in some cases, more outlandish.

A. The Mark Midei Case

Maryland was rocked by one of the more gruesome tales of healthcare fraud. Dr. Mark Midei, considered one of the top cardiologists in Maryland, served as the Cardiology Department chairman for the St. John Medical Center in Towson.³² Dr. Midei joined the hospital in January 2008 and conducted a number of heart stent procedures on patients.³³ In fact, between January 2008 and June 2010, when he was relieved of his duties with the hospital, Dr. Midei performed at least 2,000 separate procedures.³⁴

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government”

Id.

30. *See id.* The law states “A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.” *Id.*

31. Sec. 4, § 3729, 123 Stat. 1617, 1623. The law reads:

If the Government elects to intervene and proceed with an action brought under 3730(b), the Government may file its own complaint or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

Id.

32. Robert Little, *Doctor Evaded Peer Review; Cardiologist Accused of Placing Unneeded Stents Also Picked Cases to be Checked*, BALT. SUN, May 29, 2010, at A1.

33. *Id.* A stent is a flexible mesh tube placed in an artery to ensure the artery remains open. *See generally* Emily Mullin, *More Baltimore-Area Docs May Have Implanted Unnecessary Stents, Lawyer Says*, BALT. BUS. J. (Oct. 5, 2010), <http://www.bizjournals.com/baltimore/stories/2010/10/04/daily26.html>.

34. *Id.*

In late 2009, the hospital received a complaint from one of Dr. Midei's patients, who also was a hospital employee.³⁵ The complaint forced the hospital to review a sample of Dr. Midei's cases, and what they discovered was astounding.³⁶ After reviewing just under 2,000 of the doctor's cases, the hospital determined that questionable stent placement procedures were conducted on just under 600 patients.³⁷ Further, Dr. Midei had evaded notice during various internal reviews because he was allowed to submit cases of his choosing for review.³⁸ In December 2009, the hospital contacted 369 of the impacted patients and informed them that the stent procedure performed on them may have been unnecessary.³⁹ In January 2010, the first impacted patient lawsuit was filed against Dr. Midei and the hospital.⁴⁰ An investigation was launched by Maryland state authorities, leading to newly-proposed laws and procedures to combat healthcare fraud.⁴¹ As of October 2010, 101 individual lawsuits and a single class action lawsuit had been filed in this matter.⁴² Finally, the Maryland Board of Physicians charged Dr. Midei with performing unnecessary medical procedures.⁴³

B. The \$100 Million Detroit, Michigan Mortgage Fraud Ring

In June 2010, the Federal Bureau of Investigations, with the assistance of the United States for the Eastern District of Michigan, announced that it had successfully investigated a mortgage fraud case based in Detroit, Michigan.⁴⁴ Specifically, federal investigators accused seven individuals of

35. *Id.*

36. *Id.*

37. *Id.* "After reviewing 'nearly 2,000' of Midei's cases—a number that hospital officials had not disclosed—reviewers found questionable stents in 585 patients, or about every third or fourth case." *Id.*

38. *Id.*

39. *See id.*

40. Gary Haber, *St. Joseph Medical Center Sued Over Stent Implant*, BALT. BUS. J. (Jan. 22, 2010), <http://www.bizjournals.com/baltimore/stories/2010/01/18/daily49.html>.

41. *See* Scott Graham, MD, *Healthcare Chief Calls for Law, Policy Changes in Response to Stents Query*, BALT. BUS. J. (Sept. 22, 2010), <http://www.bizjournals.com/baltimore/stories/2010/09/20/daily24.html>.

John M. Colmers, the secretary of the state's Department of Health and Mental Hygiene, calls for new laws that would allow Maryland's healthcare agencies to share more information with each other, give Maryland's physicians board greater leeway to investigate complaints against providers and slow the flow of some information being investigated from being shared with the public.

Id.

42. Mullin, *supra* note 33.

43. *Id.*

44. *Mortgage Fraud Ring Hit \$100M, FBI says*, DETROIT NEWS, June 17, 2010, at A1.

engaging in a fraudulent mortgage scam valued at over \$100 million.⁴⁵ The scheme spanned four years, involved over 500 home loans and over 180 homes in the Detroit metropolitan area.⁴⁶ From 2004 through 2007, the members of the fraud ring would arrange financing for “straw buyers” to purchase properties.⁴⁷ In over 300 of the fraudulent loans cases, the ring arranged the financing for home sales in which property never changed hands.⁴⁸ In all of the cases combined, over \$100 million in mortgage loans was secured. The loans were never repaid and no intention of repayment ever existed.⁴⁹ The perpetrators used the fraudulent proceeds to purchase a helicopter, expensive cars, a motorsport racing business, boats, two nightclubs, and travel.⁵⁰ To make matters worse, the leader of the scam was banned by the State of Michigan regulators in 2006 from arranging mortgage loans and/or participating in the financial services industries for engaging in “fraudulent or unscrupulous activities”.⁵¹ Regardless, the ringleader allegedly continued to engage in the mortgage industry.⁵²

C. Improper Pharmaceutical Labeling with AstraZeneca

Another noteworthy case involved AstraZeneca. The pharmaceutical giant allegedly illegally marketed an anti-psychosis medication for uses not deemed safe and effective, also known as “off-labeling.”⁵³ The settlement

45. *Id.*

46. *Id.*

47. *Id.* A “straw buyer” is an individual engaged by another to serve as the front person on a property purchase under fraudulent intentions. *Id.* “Sometimes, the straw buyer would get paid for his or her efforts and the initial monthly payments would be made. However, those payments would stop, and in 80 percent of the cases involving homes, the residence would be allowed to go into foreclosure.” *Id.*

48. *Id.*

49. *Id.*

50. *Id.* “Last October, federal officials sought the forfeiture of a Flint bar, Choppers Lounge, claiming Duke used money from mortgage fraud to buy it.” *Id.*

51. *Id.*

52. *Id.*

53. *Pharmaceutical Giant AstraZeneca to Pay \$520 Million for Off-Label Drug Marketing for Regulatory Agencies*, BIOTECH WK., May 12, 2010, at 2506, available at Westlaw 2010 WLNR9382973. Specifically, AstraZeneca allegedly marketed Seroquel for unapproved uses. *Id.*

Under the Food, Drug and Cosmetic Act, a company must specify the intended uses of a product in its new drug application to the FDA. Before approving a drug, the FDA must determine that the drug is safe and effective for the use proposed by the company. Once approved, the drug may not be marketed or promoted for off-label uses.

Id. The allegations also included “specifically, between January 2001 through December 2006, AstraZeneca promoted Seroquel to psychiatrists and other physicians for certain uses that were not approved by the FDA as safe and effective (including aggression, Alzheimer’s disease, anger

agreement signed by the company alleged that marketing the drug for unapproved purposes caused payment for false claims to Medicare, Medicaid, TRICARE programs, the Department of Veterans Affairs, the Federal Employee Health Benefits program, and the Bureau of Prisons.⁵⁴ For its perceived transgression, AstraZeneca paid a civil fine of \$520 million and agreed to a second, five-year Corporate Integrity Agreement with the Department of Health and Human Services.⁵⁵ Finally, there were lesser allegations that AstraZeneca violated anti-kickback statutes by making illegal payments to doctors to serve as authors for studies already completed by AstraZeneca, paying for doctors to lecture on the unapproved uses of the drug, and paying doctors to travel to resorts to “advise” AstraZeneca managers on unapproved uses of the drug.⁵⁶

D. The Sacramento Mortgage Fraud that Skewed an Entire Market

In May 2010, federal authorities announced charges against two men who engaged in a complicated, widespread mortgage scam. Specifically, one of the perpetrators was a well-established Sacramento, California, area developer.⁵⁷ In 2006, the developer had 62 new homes that he was unable to sell due to an unstable real estate market.⁵⁸ The developer engaged an unlicensed mortgage broker to assist him in a scam to sell all of the homes.⁵⁹ The unlicensed mortgage broker agreed to arrange buyers for the homes if the developer increased the purchase price by up to \$60,000

management, anxiety, attention deficit hyperactivity disorder, bipolar maintenance, dementia, depression, mood disorder, post-traumatic stress disorder, and sleeplessness).” *Id.*

54. *Id.*

55. *Id.* As part of the \$520 million settlement, the federal government received \$301,907,007 from the civil settlement; state Medicaid programs and the District of Columbia will share up to \$218,092,993 of the civil settlement. *Id.* Additionally, AstraZeneca was already under a Corporate Integrity Agreement with the Department of Health and Human Services. *Id.*

56. *Id.*

The United States also contends that AstraZeneca violated the federal Anti-Kickback Statute by offering and paying illegal remuneration to doctors it recruited to serve as authors of articles written by AstraZeneca and its agents about the unapproved uses of Seroquel. AstraZeneca also offered and paid illegal remuneration to doctors to travel to resort locations to “advise” AstraZeneca about marketing messages for unapproved uses of Seroquel, and paid doctors to give promotional lectures to other healthcare professionals about unapproved and unaccepted uses of Seroquel. The United States contends that these payments were intended to induce the doctors to prescribe Seroquel for unapproved uses in violation of the federal Anti-Kickback Statute.

Id.

57. Denny Walsh and Sam Stanton, *Chico Home Builder in Mortgage Fraud Cooperates with Prosecutor*, SACRAMENTO BEE, May 22, 2010, available at <http://www.sacbee.com/2010/05/22/2768894/chico-home-builder-in-mortgage.html?storylink=lingospot>.

58. *Id.*

59. *Id.*

each.⁶⁰ The unlicensed mortgage broker then found straw buyers for the properties.⁶¹ The straw buyers were given fraudulent appraisals and income documents so that the home could be 100 percent financed by a mortgage lender.⁶² The day after settlement, the developer would pay the unlicensed mortgage broker the amount over and above the true value of the home.⁶³ The mortgage broker would then in turn pay a portion of the overage to the straw buyer. Payments were never made on the new mortgages and the homes were allowed to go into foreclosure.⁶⁴ The scam lasted until 2008, by which time all of the homes had sold for just over \$21 million.⁶⁵ As of May 2010, 38 of the homes were in foreclosure and the developer was assisting authorities in its investigation.⁶⁶ Authorities believed that due to the number of homes involved and the fraudulent pricing, the housing market in Sacramento was skewed by the activity.⁶⁷

IV. HOW CAN FERA BE STRENGTHENED?

FERA does not go far enough to eradicate fraudulent claims submitted to the government and its programs. Clearly, the law attempts to tie up loose ends from the financial crisis, but it could go further to send a message to those violating the law. Below are four suggestions to bolster the law.

A. Permanently Restrict Individuals from Federal Programs or Payments

Currently, depending on the type of fraud committed, a company or individual may be debarred or suspended from receiving government

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* "Everybody went home happy except the lending institutions, who were left holding the bag when the properties went into foreclosure. Symmes got rid of the homes, Gililand got his cut, the straw buyers either got paid for fronting the deals or nice new homes to live in, for a while." *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

Greedy, crooked developers, appraisers, mortgage brokers and others contributed significantly to the great mortgage meltdown of the past two years, Butte County District Attorney Mike Ramsay said Friday. Greed led this formerly well-respected Chico developer down a path to his downfall and the destruction of a number of neighborhoods populated by good folks who have found their homes devalued by the empty foreclosures on their block.

Id.

contracts or participating in federal healthcare programs for a specified period of time. In many cases, implicated companies undertake name changes to avoid their dubious past. Implicated executives merely move on to other companies and individuals change their names to outrun their misdeeds. The law could be bolstered by permanently prohibiting any individual or entity found violating the law from receiving any federal contract, program, or subsidy. For example, imagine a healthcare provider that was found to have submitted fraudulent claims to Medicare. The company and anyone within the company who was aware of the fraud would be permanently banned from working or participating in Medicare or Medicaid. A permanent ban ensures these companies and individuals are not free to commit fraud against the government by merely sidestepping their past indiscretions. The ability to provide service, or administer programs, on behalf of the federal government is a privilege, not a right, and this proposed amendment to the law would provide clear evidence of such.

A practical, real-life example is the mortgage fraud cases discussed earlier. It was noted that individuals served as “straw buyers” for homes as part of mortgage scams. Not only should the individuals who created the scam be permanently banned from administering any government-backed financial services product, but those straw buyers who knowingly benefitted should be banned from receiving the benefit of any government-backed financial services.

B. Increase Financial Liability for Violators

Currently, violators are liable for treble damages and must reimburse the federal government for the cost of civil litigation in this type of matter. A stronger message would be to increase the financial liability for violators in a singular way. Violators should not be assessed treble damages or separately assessed the cost of litigation. Instead, violators should be held financially liable for the full impact of their violations. As an example, consider a mortgage company which committed \$50 million in fraud in refinancing federal home loans. Instead of assessing damages of \$150 million and litigation costs, the violator should be assessed the cost of the actual fraud, investigation, litigation and any other costs associated with the fraud. Other indirect costs likely exist, such as foreclosure costs, parallel litigation expenses, and unpaid local and state tax debts. Undoubtedly, the cost would be at least double the \$150 million and direct litigation costs.

A practical, real life example is the Mark Midei case referenced earlier. As previously noted, at least 369 patients underwent heart stent procedures that were found to be medically unnecessary. The estimated costs of those procedures were \$10,000 each. Other possible costs as a

consequence of the doctor's fraudulent actions are the cost of the investigation, litigation, and corrective medical services that Medicare or Medicaid would pay on behalf of its impacted beneficiaries. Clearly, the financial impact of the case goes far beyond the costs contemplated in the current law and the defendants should be held liable for that total impact.

C. Remove Cost Mitigation Language

Currently, violators are entitled to liability costs mitigation if the violators reported the fraudulent acts within a stated time period. The law should be amended to require violators to bear all financial liability regardless of their participation in the uncovering of the fraud. Some may say that this change dissuades companies and individuals from self-reporting fraudulent activity. However, these entities should be held accountable for defrauding the government and not receive a discount for their cooperation.

Consider the Mark Midei case as an example. After a patient complaint, the hospital in question conducted an investigation and ascertained the cardiologist engaged in fraudulent and unscrupulous behavior. While the hospital may self-report what it learned in its investigation and cooperate with state and federal authorities, it only marginally lessens the impact of the fraudulent acts. Further, as was established, the hospital's failure to adequately monitor the cardiologist allowed the fraud to continue. For that failure and the danger associated with the cardiologist's actions, the hospital should be rewarded? It should not be, as the damage was done at the time it intervened.

D. Unified Database for Fraud

Currently, at least two federal databases exist which publicly report fraud violators. One database is maintained by the Office of Inspector General for the United States Department of Health and Human Services, while the other database is maintained by the General Services Administration. FERA should be amended to require that a single fraud database be developed and implemented. The fraud database would list the permanently banned company or individual, a description of the fraudulent activity, the date the permanent ban took effect, and the referring federal agency.

V. CONCLUSION

FERA was a valiant attempt by the federal government to address the surge in fraudulent behavior. However, the law did not go far enough to dissuade such behavior. By permanently banning companies and individuals from federal contract and program consideration, increasing the financial liability of those violating the law, removing the cost mitigation language, and creating a unified fraud database, the federal government can place immense pressure on, and create a real sense of accountability for, any company or individual contemplating fraudulent activity.