

A Doctors' Wives' Survival Guide, or What To Do When the FBI Knocks at the Door

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Raids on doctors' offices are not new, but they probably have become more frequent in the past two to three years, in the fight against Medicare and Medicaid "waste, fraud, and abuse."

They may become still more common in the future as the government attempts to help fund "healthcare reform" with fines and penalties.

The family of a convicted felon can suffer as much from his imprisonment as he does, as they are deprived of their good name and their breadwinner. As Richard Dana wrote in *Two Years Before the Mast*, a plea that seldom failed to win leniency was that "if he is imprisoned, the confinement, to be sure, he will have to bear, but the distress consequent upon the cutting him off from his labor and means of earning his wages, will fall upon a poor wife and helpless children, or upon an infirm parent." In the 1800s that worked for tyrannical sea captains, but not for common sailors.

Today, courts do not concern themselves with family hardships. And for physicians and their spouses, the punishment may begin long before incarceration, or even before the indictment. A doctor's wife who has experienced this devastation wishes to help others by conveying the lessons that she learned. She still fears retaliation upon herself and her children. Therefore, I am presenting her thoughts in the form of an interview, and keeping the name of the informant confidential.

This doctor's wife worked in her husband's office for decades part-time in a capacity not related to medical billing. She describes her husband as being extremely hardworking and dedicated to his patients. In all of her time in the office, she was not aware of any irregularities in the billing. Every effort was made to comply with the law.

Q: When did your husband's problems start?

A: My husband's office was hit by the FBI in 2008. However, if a doctor accepts any government-funded insurance, it would be safe to assume that he is on a government radar screen somewhere.

Q: Can you point to any indications that trouble may be brewing, and is there anything you can do about it?

A: The first sign will probably be the FBI showing up at your door. In fact, they have been investigating you for years without your knowledge. That was certainly the situation with us. When you become aware that something is not passing muster, it's already too late.

Q: Do you think some of the voluntary compliance audit programs are of value in an attempt to protect the doctor from being targeted?

A: No. The government targets successful older doctors with assets that can be liquidated to pay penalties. It is all a case of getting back the money that Medicare paid out. If the government doesn't process the claims properly or pay them correctly, it still blames the doctor. It wants to "recover" the money, and more, so it alleges that you defrauded the program. The prosecutor knows that the doctor will run out of money before the government does. It's all about money. It's the United States of America v. You.

Q: Did your husband make mistakes in billing Medicare?

A: There are no "mistakes." Anything you might consider a mistake could be called "fraud."

Q: When a physician is targeted, what will happen to his staff?

A: The doctor is going down, and his staff had better look for new jobs. That's the reality plain and simple. The government indeed will be giving your staff this advice during the raid. Agents may also follow your staff when they are not working and appear out of nowhere handing over their business card "in case" an employee has anything she would like to add. They will accuse employees of lying and covering up. The agent may be yelling this at your employees while ordering them to do this or that, and threatening them with loss of their license. Agents may tell a mother that she will never see her children again. Believe it. Within one year, your life as you knew it will be turned to ash. Your husband's career is history, and so are you, especially if you do his medical billing. Expect that you will be indicted too.

Q: What do you think is the most common trigger for an investigation?

A: Most likely you will find out that things started with a disgruntled employee.

Q: Do you have any advice on employees? What are things to consider when you are interviewing a potential employee?

A: You do not know whether any employees or future hires are really moles for the government.

Q: Any suggestions for dealing with investigators?

A: Do not be fooled if an agent is cordial to you. He is not your friend. The investigators will most likely be playing out a "good cop-bad cop" scenario to get information from the employees that they will take out of context. They are really trying to get someone to "confess" to crimes. You will have no way of knowing if the agent is wearing a wire. They take all sorts of pictures of the office and what is in it. They are obsessed with shredded items and any notes and mail they find around. The office is portrayed in the most damaging way. Two agents may show up under an innocent pretense and then leave to "get something." When they return in a few minutes there are dozens of agents and they take over the entire office. I do not feel that it was a coincidence that my husband was out of town when this happened.

After the raid my husband was advised by his attorney not to provide any attorneys for the employees. One of his attorneys visited the office and talked to each employee privately. Some employees were required to go to the FBI office and to testify at the grand jury hearings. My husband was again advised not to provide any legal counsel. Some of the employees retained their own attorney at their own expense.

Q: What rights does a physician have when he is under investigation or on trial?

A: You will be considered guilty until you are proven guilty. The government plays to win these cases at any cost, and they do a very good job of getting their convictions. It's a blood sport. Violations of your constitutional rights are fair game. Simply put, you do not have any rights. Employees will be intimidated to testify under threat of prosecution. Their testimony will be coached. They will even be flown in from the farthest corners of the earth and put up in luxury hotels so that the jury can hear their two sentences of coached testimony against your husband. Something entirely innocent will be skillfully twisted out of context. The government will instruct the jury that they can bank on the truth of what is being said by the prosecution. They will repeatedly tell the jury that the entire defense is just to throw the jury off course.

Q: Do you have any advice or warnings about the press?

A: These cases are huge for the prosecution and the press. This is a doctor and not a bank robber. The press published stories about our home and what we owned. They made a 12-year-old car into a luxury vehicle. They put my husband's picture on the front page. The story went out on all the wire services. It ran in a major newspaper. It is still all over the internet. Strange people who read where we lived in the paper sat in front of our home and tried to intimidate us when we went out. The news media allowed the public to post comments,

and everyone who had something to say said it. I had to threaten the newspaper to get them to stop and to delete comments about things that were not related to the case. I finally got them to shut the blog down and remove the home pictures and our address with their comments about where your tax dollars are going.

Q: Do you have any comments about the help that you might or might not get from organized medicine?

A: We had no help from organized medicine except from AAPS. Most physicians in the community distanced themselves. A few helped with the case. Some had the fear that there for the grace of God go I. One physician wrote to the paper and to the judge defending my husband and laying blame on the corrupt legal system. He received a visit from U.S. marshals telling him that his letters were not appropriate. The doctor was asked how he made his living and paid his bills. He was also asked whether he had any guns in his home.

Q: Do you have any suggestions about expert witnesses?

A: The government found that their expert advertised on the internet. The expert charged thousands of dollars per hour for his time. No mention was made that his hospital privileges had been suspended. Ultimately all the charges he was to testify to were dropped.

Q: Would it be a good idea for you to testify in your husband's defense?

A: The defense attorneys felt that my testimony could win the case for my husband. They felt that I came across as a likeable and believable person. I always had hope that the case would settle. My hope allowed me to hold up quite well. My husband became deeply depressed and developed suicidal ideation. In the end the lawyers decided on an all-or-nothing approach. Either we both would testify, or neither would. The gamble was that if my husband testified and was then found guilty he would receive a longer sentence than he otherwise would. The judge closely questioned my husband to make sure that he understood that he was entitled to testify. In the courtroom my husband looked like a shell of himself. It was pathetic to see someone who was always confident and who comported himself so well look like he had been detained by some secret police. He looked like a beaten man. Neither one of us testified. I feel that this was the best decision given my husband's condition. While I may have been a good witness I doubt that I could have saved the day.

Q: What are the chances of conviction?

A: In more than 90 percent of these cases, your husband will be found guilty. He may even start his sentence handcuffed in solitary confinement for several weeks, left to sit on the floor

and not even allowed to have his glasses. He may be taken directly from the courtroom to prison in handcuffs.

Q: Given the 90 percent “kill rate,” with or without an attorney, do you have second thoughts about hiring high-priced attorneys as opposed to going pro se (serving as your own advocate)?

A: I would never recommend going pro se. You need an attorney to talk to the government, but know in advance that in the end the only ones who make money in these cases are the lawyers. My husband might have salvaged something had he done a plea, and I say *might*. He lost everything. In his case the prosecution said from the beginning that they wanted to make an example out of my husband and that they wanted money and jail time. Your only hope is that the government will make some sort of mistake, and your defense attorney will be smart enough to jump on it, and the judge will side with the defense. My husband’s case is on appeal, but he is in prison in the meantime. Appeals take so long that the sentence may be up before the appeal is heard.

Q: How does the conviction affect the doctor’s wife?

A: You will lose all your jointly held assets like your home and your cars, your business, your family, and your friends, who will fear that their telephones are being bugged while they are talking to you. Your credit rating will plummet.

Q: What advice do you have for physicians’ wives before an investigation begins?

A: As much as we love our husbands, my advice to you is not to work in his office. Find another job immediately if you are working there now—at least if he is accepting any money from government insurance programs. In fact, it is not safe to accept money from Medicare, Medicaid, or other government insurance programs.

Q: If the physician is opted out of government programs, isn’t it better to have family working rather than employees whose loyalties may lie elsewhere? Embezzlement is not uncommon.

A: If you do not participate in any government programs it would be safer in theory.

Q: What if you have worked in your husband’s office? You may not want to quit, or it may already be too late.

A: Make sure that you have a nest egg in your own name and plenty of cash in your mattress because you are going to need it to get by on even if you are not indicted with him. If you own property, make sure that you own it in your name only and

that you can show that you paid for it with your own money. This is where an inheritance can save the day. Do the same with your car. Take care of any home improvements yourself, and make sure that you have furnishings that are modest.

Q: What sort of legal bills do you anticipate?

A: If your husband takes his case to trial, the lawyers’ bills will be more than \$1 million, and you will need multiple lawyers working for you. I counted 19 who were involved in my husband’s case, either on his side or against him. I had five on my payroll even though I was not indicted. My legal bills mounted to more than \$250,000.

Q: How will the indictment affect the practice?

A: When your husband’s indictment gets into the newspaper, his hospital privileges will be suspended. He will be audited and suspended from all major insurers. His business may limp by, for a while, but it will die a slow death. It is foolish to think that you can hold on and continue to throw good money after bad for more than a year. Your assets will be frozen. Your husband will have to turn in his passport. Your checking account will be frozen, and checks that you paid bills with in the days before the indictment will bounce all over town. Your husband will be confined geographically. He will have to check in with a probation officer weekly. He will have to urinate in a cup with a court officer watching him.

Q: Was your husband doing harm through his allegedly fraudulent activities?

A: My husband was never sued in his entire career, nor was any patient ever hurt by the activities that were considered to be fraud. The alleged crimes were “paperwork” crimes. No patient ever complained about the bills. Government agents visit your patients and tell them what crimes have been committed and try to get them to testify for the prosecution. Several patients refused and said that they did not care what the government believed. They believed that my husband had saved their lives. Former staff were questioned by agents and asked whether they had ever witnessed or suspected fraud. They answered “No,” and said that they would not have worked there if they had suspected wrongdoing. Then the agent would follow up this question with “Well, do you think that he could have been capable of defrauding the government?” Every question is designed to create a seed of doubt in your mind.

Q: How might this process affect the family? What actions might you take to attempt to mitigate the damage?

A: I would liken it to surviving a tsunami. There is no way to predict how the shock will damage the immediate and

extended family. I tried to keep my immediate family behind their dad. We did not tell the extended family what was going on. You are in such a state of shock yourself that it's hard to get past that. We all tried to do the right thing, but it was the most painful thing any of us had ever experienced. I hoped that the case would settle, but in reality I had Plan B and C ready to go. There is nothing you can do except hold your head high as the government hammers your husband. You even start wondering whether you knew the real man and his real life.

Q: What happens after your husband is convicted and sentenced?

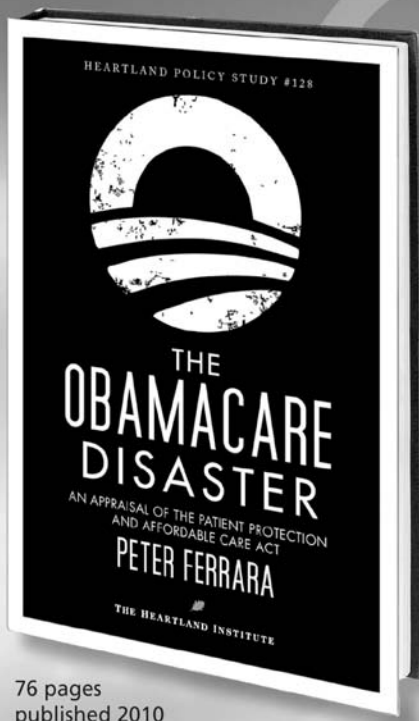
A: It is never over. You will be advised to retain an attorney to represent you in getting back your half of the marital assets. This will be a fight to the finish. You will be advised to file for divorce to distance yourself. You have to stand strong. This will be the fight of your life. You will never be the same again. You will need to be very cautious in what you say and hope that all of your activities will fly under the government's radar.

Q: Any final words of advice?

A: You need to be realistic and recognize the dangers and take action now to avoid them if possible, by not working in your husband's office and preferably by encouraging him to opt out of any government programs. The rules are such that the only way to be sure that you are not taking the money in a way that can be construed as waste or fraud is not to accept it at all. When an indictment is threatened, be coldly realistic. Realize from the outset what you are up against. Do not imagine that you will be treated fairly or that you have any constitutional rights that will be respected.

In closing I do not think that anyone can appreciate how devastating this is not only to the doctor and his family but also to his staff. They all lost their jobs and had to testify before a grand jury and in the court. Some employees had nightmares for months as a result. This is not a CSI show on cable; it's real people that you know. Any employee that brings the FBI into a personal grievance has no idea of the consequences. Small things are going to snowball and develop into something that spins out of control, leaving a path of devastation in its wake.

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