

# SUITS AND SCRUBS AVOIDING ORANGE JUMPSUITS™ Volume II: The Metamorphosis Crook

by Allan P. DeKaye, MBA, FHFMA and Gregory J. Naclerio, JD

*One day, Gregor Samsa, a travelling salesman, wakes up to find himself transformed into a giant insect. Confused, he looks around his room which appeared normal. He decides to fall asleep again and forget what happened in the hope that everything will revert back to normal. He tries to roll over to his right but discovers that he cannot due to his new body - he is stuck on his hard, convex back.<sup>1</sup>*

*Franz Kafka, Die Verwandlung (or The Transformation or Metamorphosis), 1915.*

Somehow, trying to remember the graphic recollection of the opening paragraph of Kafka's classic story of the transformation of man into bug seemed more foreboding when reading it in a college German foreign language class than the translation shown above. For that matter, the transition of Maslow's "Hierarchy of Need" into a "Hierarchy of Greed" proffered as the basis for healthcare fraud in DeKaye's "Inside Criminal Minds"<sup>2</sup> article may prove that the lessons learned long ago should remind us that bad behavior is more often the result of changes over time, rather than of the moment. Fast forwarding to today, the Office of the Inspector General, Health and Human Services (OIG) is currently chasing more than 170 fugitives charged with stealing over \$400 million dollars in Medicare/Medicaid funds.<sup>3</sup> This manhunt utilizes the resources of Interpol as well as the OIG "Most Wanted List"<sup>4</sup> to bring fugitives who fled the country back to face criminal charges. Unfortunately, there will always be a criminal element in society whose goal will be to violate the Seventh Commandment<sup>5</sup> as many times as possible without being caught. But there also exists another element of society perhaps just as dangerous as the criminal – the **Metamorphosis Crook**.

## The Transformation: From Good to Bad

The Metamorphosis Crook starts out as a legitimate business person and – then for reasons as varied as snowflakes – crosses over to the dark side. One suggestion as to what motivates crooks to steal comes from Professor Jason Thomas who suggests that motivation of fraud perpetrators can be described with the acronym "MICE": Money, Ideology, Coercion and Ego/Entitlement.<sup>6</sup> When it comes to stealing Medicare/Medicaid monies (which are paid by you – the taxpayer) the motivation of Ego/Entitlement coupled with DeKaye's observation of "Misguided Altruism" as a precursor to criminal activity<sup>7</sup> pretty much sets the reasons why the Metamorphosis Crook steals.

Just recall the Houdini illusion of "Metamorphosis" that you have probably seen. In this illusion, the magician's assistant, restrained by a straight jacket and ropes, is placed into a trunk which is locked. The magician then stands atop the trunk and holds up a curtain concealing the standing magician. Within moments, the curtain falls to reveal the assistant, with the magician, now bound in the locked truck. While the illusion is instantaneous, the transformation from a law-abiding citizen to a full blown thief generally occurs over a span of time – several months to years, depending on the perpetrator's success.

One case in point involves Maxim Healthcare Services, Inc. (Maxim). Founded in 1988, Maxim provides home care, companions, medical facility staffing, wellness programs and Applied Behavior Analysis through some 20 separate brands and offices in 43 states. The case against Maxim started when one of their patients, a Mr. West, filed a Qui Tam/False Claims Act<sup>8</sup> case against Maxim.

On September 12, 2011, Maxim agreed to pay \$150 million dollars – the largest payment to date by a home care company – to resolve criminal and civil charges relating to a "nationwide scheme to defraud Medicaid Programs and Veteran Affairs Programs of more than 61 million." Maxim also entered into a Deferred Prosecution Agreement with the Department of Justice as well as a Corporate Integrity Agreement.<sup>9</sup> What happened at Maxim and what lessons can be learned to avoid making the same mistakes?

## Lesson I: A Corporate Culture of Greed

While today's Maxim website ([maximhealthcare.com](http://maximhealthcare.com)) shows the Deferred Prosecution Agreement, has a pull-down section for "Compliance and Ethics" issues, and provides a host of compliance plan documents along with a Code of Conduct, the company's prior program apparently did not resonate with employees, as well as the leadership. The following sets forth some of the activities engaged in by Maxim employees that led to criminal convictions and the Deferred Prosecution Agreement.

- **Bryan Lee Shipman – Sr. Manager – 13 year employee.** *Plead guilty to Healthcare Fraud.* Mr. Shipman was a regional accounts manager and engaged in opening and operating the Maxim Gainesville, GA office without a license from 2008 through 2009. He also directed others to bill Medicare for services rendered out of the unlicensed office. Medicare was billed nearly \$1 million dollars from the unlicensed office.<sup>10</sup>
- **Gregory Munzel, Regional Accounts Manager.** *Plead guilty to making a false healthcare statement.* Mr. Muzel admitted that he was aware that employees he supervised were submitting time cards for work that had not been performed.<sup>11</sup>
- **Andrew Sabbaghzadeh, Account Manager.** *Plead guilty to Healthcare Fraud.* Mr. Sabbaghzadeh admitted creating false time cards to bill Medicare. He acknowledged that in some instances Maxim employees “cut” signatures from legitimate time cards and “pasted” them on to forged time cards.<sup>12</sup>
- **Donna Ocansey, RN, Director of Clinical Services.** *Plead guilty to making false statements.* Specifically, Ms. Ocansey fabricated documents to make it appear that other nurses had conducted Medicaid mandated supervisory visits when they, in truth and in fact, did not.<sup>13</sup>
- **Marion Martion, Home Health Aide.** *Plead guilty to making false statements.* Mr. Martion acknowledged that, as instructed by his Maxim superiors, he fabricated time cards to show he performed work that he did not. On multiple occasions, Maxim submitted bills to Medicaid based on time cards that showed Marion worked more than 24 hours on certain days.<sup>14</sup>

How did this happen to a provider as large and experienced as Maxim? The answer can be found in the Government’s charges against Maxim (which was the subject of the Deferred Prosecution Agreement) and the words of its employees. Specifically, the charges against Maxim stated that from 2003 through 2009, “certain aspects of Maxim’s operation emphasized sales goals at the expense of clinical and compliance responsibilities as reflected in certain aspects of its culture, training, incentive compensation and allocation of personnel resources.” This sentiment was also echoed by Maxim employees during their sentencing hearings:

- **Mr. Shipman:** My supervisor demanded levels of growth based “not on any market analysis, but simply on a belief that dramatic growth was necessary regardless of market conditions.”
- **Mr. Muzel:** Engaged in criminal conduct in response to pressure from Maxim’s superiors to increase revenue.
- **Ms. Ocansey:** Fabricated supervisory visits under pressure from her superiors to make the mandated visits without providing adequate resources.<sup>15</sup>

In short, the problem at Maxim was what DeKaye identifies in his “Hierarchy of Greed.” “Corporate Greed” is listed

third on the hierarchy of greed. In the first two categories: undisciplined and opportunistic, the individual tends to be a staffer and not a department head or executive. In corporate greed, we start the climb that may take us into the “C-suite.”<sup>16</sup> With a goal of increasing revenues regardless of market conditions, and/or tempered by realistic business expectations, Maxim’s management fostered culture of goal attainment at any cost—regardless of the bad behavior it generated by pressuring staff with intimidation and fear for their job. Here, Money, Ideology, Coercion and Ego/Entitlement, drove the transformation from an honest company to one that is now known as “a defendant.”

Today, Maxim is poster child for compliance. With the background of a Corporate Deferred Prosecution, Corporate Integrity Agreements, and a \$150 Million dollar payment, Maxim has made extensive reforms and taken remedial actions including the appointment of a new CEO, the termination of senior executives identified as responsible for the misconduct and the appointment of a Chief Compliance Officer.

### Lesson 2: Just Personal Greed

On the other side of the spectrum sits Dr. Michael P. Stein, a 62 year-old Otolaryngologist from North Caldwell, New Jersey and Dr. Rajasahken Reddy, a radiologist from Atlanta, Georgia. Neither Dr. Stein nor Dr. Reddy graduated medical school with the intent of becoming an inmate at a federal penitentiary, but yet it happened. Dr. Stein plead guilty to submitting bills to Blue Cross Blue Shield for approximately 900 nasal endoscopies (the insertion of an endoscope into the patient’s nose to visualize the interior of the nasal passage and the openings of the sinuses), when, in truth and in fact, he only performed “few” procedures.<sup>17</sup> Dr. Stein also billed Blue Cross for 11 nasal endoscopies and 10 other office visits rendered to one patient, J.F., between September 6, 2010 and September 27, 2010. In fact, patient J.F. stopped seeing Dr. Stein on September 3, 2010, and the doctor’s passport shows he was in Germany from September 11 to September 27th.<sup>18</sup> For the services not rendered but billed, Blue Cross paid Dr. Stein over \$725,000.

Dr. Reddy, 41 years old, started “Reddy Solutions, Inc.” (RSI), which provided radiologist coverage – interpreting x-rays and other diagnostic tests – to various small hospitals in the Southeast U.S. that otherwise typically lacked full-time radiology coverage. Under Dr. Reddy’s business model, the hospital staff would take the x-ray or scan and send the digitized film to Reddy Solutions. Dr. Reddy or his employed radiologist would access the film remotely, by computer, and interpret the test. Upon the completion of the review, a report containing the radiologist’s impression would be transmitted electronically back to the hospital.<sup>19</sup>

This was a true “Win-Win” situation, where thanks to computer technology, rural hospitals would have a “full-time”

radiologist available via the internet, and Dr. Reddy could increase his earning potential. Yet, that was not enough for the good doctor.

The Government charged him with health care, wire and mail fraud. At trial, the Government established that from May 2007 through January 2008, a period of nine months, Dr. Reddy signed and submitted “thousands of reports... without even reviewing the films that were the subject of the reports. Rather, he paid non-physician technicians to review the films and prepare the interpretations. By not hiring a Board certified radiologist, Dr. Reddy could earn an even greater profit for RSI. Out of some 70,000 reports, the evidence showed he only viewed less than 5,900 studies. For his greed, Dr. Reddy will spend the next four years and 6 months (54 months) in prison.<sup>20</sup>

### The Greed Theorem

Both cases tend to illustrate the “Greed Theorem.” The theorem suggests that when a person steals a small amount and gets away with it, he or she is emboldened to steal again; only this time, the theft is larger. Again emboldened by a successful theft, the thief steals a larger and larger amount until he or she is caught or stops. The corollary to the Greed Theorem is that the more a person steals, the sloppier he or she becomes in covering his or her tracks. This is why people bill for more services rendered than can be done in a 24 hour day, bill for more of a specialized service than performed by their peers or bill for services while they are out of the country.

No matter how big or small a thief’s transgressions are, he or she thinks: (1) I am smarter than everyone else; (2) I deserve to get more because I am undercompensated; (3) I will only take “a little”; and (4) I will not get caught. No professional sets out to be a thief but when temptation presents itself, Dr. Thomas’ MICE acronym shows why good people morph into criminals.

### It’s Just a Matter of Time

The Maxim and physician cases noted above reinforce one of the underlying premises of the *Suits and Scrubs* series that much of the bad behavior in healthcare fraud is preventable. These cases illustrate that there is an incubation period where the seeds of greed germinate into full fledged schemes. This prompted a review of some other cases to reaffirm the time lines associated with the start of the scheme until its discovery. A few examples include the following:

The large Glaxo settlement covered civil and criminal liabilities following an eight-year old probe into the company’s marketing of several top-selling drugs.<sup>21</sup> Five former healthcare executives at Wellcare Health Plans, Inc. were indicted with conspiracy to commit Medicaid fraud, false statements and other charges. The indictment showed the conspiracy scheme began in July 2003 and lasted until October 2007.<sup>22</sup>

The abusive issuance of prescription painkillers caused a Philadelphia physician and members of his staff to be charged

in a 23-count indictment for illegally prescribing drugs from 2008 to 2010.<sup>23</sup> And as a result of the Ohio Valley Health Services and Education Corporation agreeing to pay \$3.8 million in fines to settle allegations of Medicare and Medicaid fraud for Stark Law violations from 2005 to 2010, more and more organizations will find themselves faced with investigations seeking out bad actors—whether they are acting individually or in concert.<sup>24</sup>

Some will argue that settlements without individual criminal punishment may be an insufficient deterrent. “Clearly, the continuing increase in violations by pharmaceutical companies despite such large settlements is an indication that the current system of enforcement is not working,” stated David Callahan, editor of *CheatingCulture.com*. Callahan went on to add that “the lack of criminal prosecution that would result in jailing company executives has been cited as a major reason for the continuing large-scale fraud, in addition to the fact that current settlement payouts may not be a sufficient deterrent.”<sup>25</sup> Although, that perception may have changed based on DeKaye’s conversation with prosecutors. They have suggested that after years of being penalized significantly and substantially, pharma boards of directors were more likely to rid their companies of poorly behaving executives by firing them, rather than subjecting the company to more penalties.<sup>26</sup> Not jail—but certainly a fall from the top.

With recoveries of more than \$4.0 billion in fiscal year 2011, the collective healthcare law enforcement community will continue to have the resources that will make every healthcare fraudster worry. You may not wake up as Gregor Samsa did as a bug; but you may very well be wearing the tell-tale orange jumpsuit indicating that your worst nightmares may just be beginning.

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**For more information about the article, or presentations by the authors, please contact:**

**DEKAYE Consulting, Inc.**

**Allan P. DeKaye, MBA, FHFMA, is President and Chief Executive Officer of DEKAYE Consulting, Inc. His firm assists healthcare clients with financial, compliance and operational issues. He is a frequent speaker at national conferences, and is author/editor of *The Patient Accounts Management Handbook (Aspen)*. Mr. DeKaye also is a member of the CCH Health Care Compliance Editorial Advisory Board. For more information: call: (516) 678-2754; write: dkconsult1@aol.com, or visit: www.dekaye.com.**

**Ruskin Moscou Faltischek, P.C.**

**Gregory J. Naclerio, JD, is a Martindale Hubbell AV pre-eminent rated Of Counsel at Ruskin Moscou Faltischek, PC, where he is a member of the Health Law Transactional and Health Law Regulatory Departments and co-chair of the White Collar Crime & Investigations Group. Mr. Naclerio previously served as the Director of the Long Island Regional Office of the Deputy Attorney General for Medicaid Fraud Control. He is also a Certified Fraud Examiner, and has authored many articles on white-collar fraud issues and is a frequent lecturer on this topic. For**

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more information: call: (516) 663-6633; write: [gnaclerio@rmfpc.com](mailto:gnaclerio@rmfpc.com), or visit: [www.rmfpc.com](http://www.rmfpc.com).

- <sup>1</sup> F. Kafka, *Die Verwandlung*, 1915. Adapted from the online reference at: [http://en.wikipedia.org/wiki/The\\_Metamorphosis](http://en.wikipedia.org/wiki/The_Metamorphosis).
- <sup>2</sup> A.P. DeKaye, "Inside Criminal Minds," CCH Health Care Compliance Letter, June 30 and July 14, 2009, p. 4.
- <sup>3</sup> <http://go.usa.gov/lts>.
- <sup>4</sup> <http://oig.hhs.gov/fraud/fugitives/index.asp>.
- <sup>5</sup> Thou Shall Not Steal.
- <sup>6</sup> Fraud Magazine, Association of Certified Fraud Examiners' Beyond the Fraud Triangle, September/October 2011.
- <sup>7</sup> A. DeKaye, Inside Criminal Minds, CCH Health Care Compliance Letter, June 30, 2009, p. 6.
- <sup>8</sup> False Claims Act (FCA) claims can result in civil damages of three times the amount of the overbilling and an additional penalty of \$5500 to \$11,000 per claim. The publicity FCA cases are receiving in the press and a very aggressive FCA plaintiff's bar will continue cases being brought from both the "outside" and "inside" by employees. Also, competitors who are aware of a company's violation of state or federal law may also commence FCA cases as a way to gain market share.
- <sup>9</sup> Department of Justice Press Release, November 12, 2011.
- <sup>10</sup> Shipman was sentenced to 5 months in prison and 5 months home confinement.
- <sup>11</sup> Munzel was sentenced to three months home confinement as part of a two year probation sentence.
- <sup>12</sup> Sabbaghzadeh was sentenced six months home confinement as part of a three year probation sentence.
- <sup>13</sup> Ocansey was sentenced to four months home confinement as part of a three year probation sentence.
- <sup>14</sup> Martin was sentenced to three years probation and a \$5,000 fine.
- <sup>15</sup> See, Maxim Press Release, September 12, 2011.
- <sup>16</sup> DeKaye, *supra*, 7. June 30, 2009, p. 6.
- <sup>17</sup> U.S. Attorney's Office, District of New Jersey, Press Release, December 8, 2011.
- <sup>18</sup> *Id.*
- <sup>19</sup> U.S. Attorney's Office, Northern District of Georgia, December 9, 2011.
- <sup>20</sup> *Id.*
- <sup>21</sup> "More Big Pharma Companies Cough Up Big Dollars in DOJ Settlements," online at: <http://crimeinthesuites.com/tag/health-care-fraud/>.
- <sup>22</sup> "Five Former Executives Indicted on Health Care Fraud Charges," FBI (Tampa Division), Press Release, March 2, 2011, online at: <http://www.fbi.gov/tampa/press-releases/2011/ta030211a.htm>.
- <sup>23</sup> "Eight charged in Philadelphia pill mill case," Compliance Monitor, December 12, 2011, online at: <http://www.hcpro.com/CCP-274501-862/Eight-charged-in-Philadelphia-pill-mill-case.html>.
- <sup>24</sup> K. Cheung, "Hospital group fined \$3.8M for alleged Medicare, Medicaid Fraud," FierceHealthcare, September 13, 2011, online at: <http://www.fiercehealthcare.com/print/node/61902>.
- <sup>25</sup> Callahan, "Study Details Scope of Big Pharma's Crimes," March 18, 2011, online at: <http://www.cheatingculture.com/drug-company-abuses/>.
- <sup>26</sup> A. DeKaye, *supra*, June 30, 2009, p. 6, 70 FR 20226.

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