



Compliance

TODAY

December 2016

A PUBLICATION OF THE HEALTH CARE COMPLIANCE ASSOCIATION

WWW.HCCA-INFO.ORG

Safeguarding federal health programs and their beneficiaries

an interview with **Robert K. DeConti**
Assistant Inspector General for Legal Affairs
Office of Inspector General
United States Department of
Health and Human Services

See page 16



26

Medicare overpayment final rule: Guidelines for avoiding FCA liability

Joe Rivet and
Brian Mahany

32

More *qui tam* Stark enforcement of hospital-physician arrangements

Gary W. Herschman

38

Non-discrimination in healthcare: New rules published by OCR

Tricia R. Owsley

45

Drug diversion in healthcare facilities, Part 3: 340B drug diversion and its impact

Erica Lindsay

by Roy Snell, CHC, CCEP-F

Attorney-client privilege

Please don't hesitate to call me about anything any time.

612-709-6012 Cell • 952-933-8009 Direct

roy.snell@corporatecompliance.org

🐦 @RoySnellSCCE 🌐 /in/roysnell

I get to talk to the smartest people in compliance and ethics every day. Below is an exchange with Joe Murphy. I sent Joe an article about a whistleblower's attorney claiming that the Houston Independent School District retaliated against his client and then



Snell

moved the Compliance and Ethics department to the district lawyers to bury the facts of the case in attorney-client privilege. Joe responded, "Of course, you can't hide the facts by using privilege." Then I asked if I could quote him on Twitter.

He said... "Sure, but it is a technical point. If I tell my lawyer

something, what I said to her is confidential. But if I told her about an accident, I can't be asked what I told her, but I can be asked what I saw. If someone received gifts, their discussion with legal counsel (acting as a lawyer providing confidential legal advice) is protected, but the fact that someone gave the person a gift is not. So the gift recipient can't be asked what they told counsel, but they can be asked about the gift. However, if someone asks counsel how to hide illegal gifts and counsel provided advice, that would not be privileged; it would come under the crime-fraud exception and would be fair game. Cheers, Joe."

We need a better understanding of all this, particularly if people are using this argument to change the way compliance is practiced in their organization, because it can negatively impact the effectiveness of compliance programs. 📧

Don't forget to earn CEUs for this issue

Complete the *Compliance Today* CEU quiz for the articles below from this issue:

▶ **Medicare overpayment final rule: Guidelines for avoiding FCA liability**

Joe Rivet and Brian Mahany (page 26)

▶ **More *qui tam* Stark enforcement of hospital-physician arrangements**

Gary W. Herschman (page 32)

▶ **Observation payment creates payment loopholes**

Ronald Hirsch (page 73)

To complete a quiz: Visit www.hcca-info.org/quiz, log in with your username and password, select a quiz, and answer the questions. The online quiz is self-scoring and you will see your results immediately.

You may also email, fax, or mail the completed quiz.

EMAIL: ccb@compliancecertification.org

FAX: 952-988-0146

MAIL: Compliance Certification Board
6500 Barrie Road, Suite 250
Minneapolis, MN 55435
United States

To receive one (1) CEU for successfully completing the quiz: You must answer at least three questions correctly. Only the first attempt at each quiz will be accepted. Each quiz is valid for 12 months, beginning on the first day of the month of issue. Quizzes received after the expiration date indicated on the quiz will not be accepted.

Questions: Call CCB at 888-580-8373.