

Compliance Enforcement from the Defense Perspective

HCCA - May 1, 2020

FLANNERY
GEORGALIS
LLC

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Introductions

- Paul Flannery, Partner & Co-Founder,
Flannery | Georgalis
- Colin Callahan, Partner,
Flannery | Georgalis

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PAUL FLANNERY

Partner, Co-Founder

Before forming Flannery | Georgalis, LLC, Paul served as an Assistant U.S. Attorney in the Northern District of Ohio. As a federal prosecutor, Paul handled the investigation and prosecution of cases involving wire, mail, and bank fraud, health care fraud, securities fraud, public corruption, tax offenses, and identity theft. Paul handled the trial of a businessman charged with bribing the former director of the Cleveland Veteran's Administration, and a \$54 million securities fraud case—the largest in the District's history.

Before becoming a federal prosecutor, Paul spent seven years in private practice at a prestigious mid-size law firm in Baltimore, Maryland, focusing on white collar criminal defense and complex business litigation.

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EDUCATION

Cleveland-Marshall College of Law
(J.D., 2007)

John Carroll University
(B.A. Economics, 2001)

ADMISSIONS

Ohio
Maryland
Northern District of Ohio
6th Circuit Court of Appeals

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COLIN CALLAHAN

Partner

Colin is a Partner at Flannery Georgalis LLC and a former federal prosecutor from the Western District of Pennsylvania. During his time as an Assistant U.S. Attorney, Colin's practice focused on investigating and prosecuting criminal and civil fraud cases. He also handled cases involving kickbacks/bribery, money laundering, national security, cybercrime, and health care fraud.

Before joining the United States Attorney's Office, Colin was an attorney at two prominent law firms in Washington D.C., where his practice focused on complex civil and criminal litigation. He also clerked for the Honorable James S. Gwin of the U.S. District Court for the Northern District of Ohio and the Honorable D. Brooks Smith of the U.S. Court of Appeals for the Third Circuit.

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EDUCATION

Georgetown University Law Center,
magna cum laude and Order of the Coif
(J.D., 2005)

University of Dayton, cum laude
(B.A. Political Science, 2001)

ADMISSIONS

New York
Pennsylvania
Washington, D.C.
Eastern District of New York
Western District of Pennsylvania
3rd Circuit Court of Appeals

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Overview

- Strategies in Internal Investigations
- Defending Parallel Proceedings
- Recent Healthcare Enforcement Trends

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Effective Strategies in Corporate Internal Investigations

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Be Proactive—Move Quickly

- Public risk—stopping ongoing harm;
- Avoiding inference of complicity or condoning;
- Demonstrating adequacy of compliance;
- Timely disclosure of wrongdoing
 - Race to the Courthouse
- Secure credit from prompt remedial actions

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Assemble the A-Team

- Internal v. Outside Counsel
 - Always worth a call to experienced counsel
- How to Engage Outside Counsel?
 - Board, Special Committee, General Counsel
- Use of experts
 - Accountants, billing/coding specialists

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Structuring the Investigation

- Concerns on creating work product
- Reporting lines
- Balancing **Transparency** and “**Need to Know**”
- Have a Plan!
 - Work in Phases
 - Identify witnesses
 - Locate and Review Documents

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Separate Counsel for People

- When to make the call?
- Joint Defense Agreements
 - Keep your friends close . . .
- Sixth Amendment Concerns
 - *Upjohn* warnings
 - Avoid becoming extension of Government
- Advancement/Indemnification Issues

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Collateral Considerations

- Public Relations—Get a Pro
- SEC Disclosure Issues
- Debarment/Exclusion from Gov. Programs
- Credentialing Issues
- Grant Applications
- Bonding

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Defending Parallel Criminal and Civil Proceedings

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Are We There Yet?

- Assume Criminal Investigators Monitoring
- Presence of Agents or Criminal Prosecutors
- Grand Jury Subpoenas

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Challenges in Parallel Proceedings

- Fifth Amendment—Self Incrimination Concerns
 - Applies in Civil Proceedings
 - Right to Silence and Production Immunity
 - Question by Question
 - Waiver v. Adverse Inferences
- Estoppel Arguments
- Motions to Stay Proceedings

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What's Good for the Goose

- Parallel Proceedings Present Alternatives
- Significant Case Examples
- Washington Involvement—Good and Bad
- Civil Discovery—Provides Tools of Discovery



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We Seek Global Peace

- Multi-Agency – Multi/Jurisdictional Concerns
 - State and Federal
 - Professional Boards of Licensure
 - HHS and DEA Specific Issues
- Whistleblower Issues
 - Sealed Proceedings—Civil Claims
 - Relator Fees
- Compliance Programs
 - Avoid a CIA; Avoid a Monitor



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Recent Trends In Healthcare Enforcement

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Department of Justice Office of Public Affairs

FOR IMMEDIATE RELEASE
Friday, March 20, 2020

Attorney General William P. Barr Urges American Public to Report COVID-19 Fraud

Attorney General William P. Barr is urging the public to report suspected fraud schemes related to COVID-19 (the Coronavirus) by calling the National Center for Disaster Fraud (NCDF) hotline (1-866-720-5721) or by e-mailing the NCDF at disaster@leo.gov.

This week, Attorney General Barr directed all U.S. Attorneys to prioritize the investigation and prosecution of Coronavirus-related fraud schemes. In a follow-up memorandum issued March 19, Deputy Attorney General Jeffrey Rosen further directed each U.S. Attorney to appoint a Coronavirus Fraud Coordinator to serve as the legal counsel for the federal judicial district on matters relating to the Coronavirus, direct the prosecution of Coronavirus-related crimes, and to conduct outreach and awareness.

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COVID19 Fraud Enforcement

- **AG Barr has directed U.S. Attorneys to prioritize prosecution of Coronavirus-related fraud schemes**
- **Coronavirus Fraud Coordinators in every U.S. Attorney's Office**

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COVID19 Fraud Enforcement

- **DOJ Focused on Schemes Including:**
 - **Selling fake cures for COVID-19**
 - **Medical providers obtaining patient information for COVID-19 testing and then using that information to fraudulently bill for other tests and procedures**
 - **Phishing emails from entities posing as the World Health Organization or the Centers for Disease Control and Prevention.**

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COVID19 Fraud Enforcement

Pandemic Stimulus Bill



Increased Fraud Enforcement

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U.S. Attorneys » District of New Jersey » News

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Department of Justice
U.S. Attorney's Office
District of New Jersey

FOR IMMEDIATE RELEASE

Monday, March 30, 2020

Georgia Man Arrested for Orchestrating Scheme to Defraud Health Care Benefit Programs Related to COVID-19 and Genetic Cancer Testing

NEWARK, N.J. – A Georgia man will appear in court today for his alleged role in a conspiracy to defraud federally funded and private health care benefit programs by submitting fraudulent testing claims for COVID-19 and genetic cancer screenings, U.S. Attorney Craig Carpenito announced.

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Department of Justice
Office of Public Affairs

FOR IMMEDIATE RELEASE
Tuesday, March 3, 2020

Department of Justice Launches a National Nursing Home Initiative

Attorney General William P. Barr announced today the launch of the Department of Justice's National Nursing Home Initiative, which will coordinate and enhance civil and criminal efforts to pursue nursing homes that provide grossly substandard care to their residents.

This initiative is focusing on some of the worst nursing homes around the country and the Department already has initiated investigations into approximately thirty individual nursing facilities in nine states as part of this effort.

"Millions of seniors count on nursing homes to provide them with quality care, and to treat them with dignity and respect when they are most vulnerable," said Attorney General William P. Barr. "Yet, all too often, we have found nursing home owners or operators who put profits over patients, leading to instances of gross abuse and neglect. This national initiative will bring to justice those owners and operators who have profited at the expense of their residents, and help to ensure residents receive the care to which they are entitled."

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DOJ National Nursing Home Initiative

- **Coordinated effort to pursue civil and criminal cases**
- **Investigations open concerning thirty nursing homes in nine states**

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DOJ National Nursing Home Initiative

- Targeting Grossly Substandard Care
- Signs of Substandard Care Include
 - Consistently Inadequate Staffing
 - Lack of controls for hygiene/infection control
 - Improper/Insufficient Nutrition
 - Improper Use of Physical/Chemical Restraints

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DOJ National Nursing Home Initiative

- Criminal Enforcement
- False Claims Act
 - Worthless Services
 - Medically Necessity

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Telemedicine Kickback Schemes

• **“Operation Brace Yourself”**

- DME companies paid kickbacks to physicians at telemedicine companies to obtain orthotic braces
- Prescribed braces without seeing patients/regardless of medical necessity
- Telemarketing companies targeted and lured elderly and disabled patients into the scheme

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Telemedicine Kickback Schemes

• **“Operation Brace Yourself”**

- \$1.2 Billion loss
- 24 Defendants charged
- Administrative action against 130 additional DME companies

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Telemedicine Kickback Schemes

• Genetic Testing Scheme

- Genetic Testing Labs paid kickbacks to physicians to send them genetic cancer tests
- Physicians falsely claimed to have treated patients via telemedicine
- Tests not medically necessary. Often not even provided to treating physicians

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Telemedicine Kickback Schemes

• Genetic Testing Scheme

- 35 defendants charged across five districts
- \$2.1 billion in fraudulent billing
- Administrative action involving additional \$1.7 billion in claims to the Medicare

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Home Healthcare Fraud Enforcement

- Home health agencies provide skilled nursing and other therapeutic services to patients in their homes
- Demand/funding for Home Health services has exploded as US Population Ages
- Home Health Enforcement Remains a Priority

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Home Healthcare Fraud Enforcement

- **Billing for Services Not Rendered or Medically Unnecessary**
- **Falsification of Medical Records and/or Physician Authorizations**
- **Kickbacks Paid to Patients, Patient Recruiters, Physicians and Other Home Health Providers**

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Department of Justice
U.S. Attorney's Office
Western District of Pennsylvania

FOR IMMEDIATE RELEASE
Tuesday, November 27, 2018

TWELVE INDIVIDUALS CHARGED IN EXTENSIVE HEALTH CARE FRAUD CONSPIRACY TO DEFRAUD MEDICAID HOME CARE PROGRAM

Sixteen Defendants Have Been Charged to Date in Connection with the Conspiracy

PITTSBURGH, Pa. – Ten residents of Western Pennsylvania, a resident of Georgia, and a resident of South Carolina were charged by a federal grand jury in a 22-count indictment related to a years-long conspiracy to defraud the Pennsylvania Medicaid program, United States Attorney Scott W. Brady announced today.

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Prescription Opioid Enforcement

Remains Key Enforcement Priority

Scope of Enforcement Efforts
Continue to Expand

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