

CHAPTER 1

Needles in a Paystack

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Susan Shamrock became a doctor because she wanted to provide people with relief from their allergy suffering. Although sticking needles in patients was not her favorite thing to do, Susan knew she was helping them get back to their normal lives. She enjoyed being a physician and helping people.

On the home front, Susan was happily married. She and her husband had two daughters who enjoyed a lifestyle most kids would envy. The girls attended private schools, had the latest electronic gadgets and even received expensive professional golf lessons. The family lived in a big house, and Susan and her spouse drove fancy cars. Dr. Shamrock was highly respected in her community and she gave generously to various local charities.

As the years passed, both Susan and her husband took to gambling at local casinos for entertainment. Eventually, Mr. Shamrock quit his job to pursue professional gambling; by doing so, he could even write off gambling losses on their tax returns. Predictably, Susan's husband lost a lot of their money gambling. But their marriage was good, their kids were happy and Susan's practice was profitable.

A Growing Company

After Susan opened her own allergy clinic, she grew increasingly gratified that she was able to help so many patients; plus the money was good. Business was slow in the beginning, but it didn't take long before patients under her care started coming back for regular treatments. Newer patients followed, and the practice kept growing. Business was so good that she hired employees to schedule appointments, handle accounts payable and receivable and file claim forms with insurance companies and federal and state healthcare programs. She also hired medical assistants and an office manager.

2 Needles in a Paystack

Sometimes Susan became frustrated because a few of her patients didn't respond to treatment regimens. In those instances, her patients not only continued to suffer from their allergies, but they or their insurance companies continued paying for treatment that was not working.

As part of her continuing education, Susan attended various seminars where she learned from other experts in the field. At one training event, the speaker discussed a new allergy treatment that was considered experimental by the Food and Drug Administration (FDA). Susan was intrigued and inspired by the presentation and immediately began offering the treatment as an alternative to her patients who hadn't responded to previous therapy. She even listed the experimental treatment on her website. Several of her patients were willing to try it out of frustration because nothing else worked for them, and they had no financial qualms because their insurance paid for it.

Another New Case on My Desk

I was a federal agent with experience investigating complex fraud schemes (including healthcare provider fraud) when I received a referral in the mail at my office. The note indicated that Dr. Susan Shamrock had possibly miscoded billings for allergy treatments when submitting claims for several of her patients.

The allegation said she provided patients with nonapproved, experimental allergy treatment but listed it on insurance claims as a different, approved treatment. (Allergy treatments not approved by the FDA are not reimbursable by insurance companies or federal healthcare programs.) The referral also mentioned Dr. Shamrock's website description of experimental treatment. Based on her website, there was no denying that Susan was promoting the use of the experimental treatment.

The referral also reported that during a federal audit of a random sampling of billed treatments, Dr. Shamrock was asked to provide supportive documentation for several of the insurance claims she submitted and that the government already had processed and paid. However, Dr. Shamrock ignored or failed to respond to the requests.

Rolling Up Our Sleeves

From experience, I knew that healthcare fraud often affects many insurance carriers and federal healthcare programs — if one program was defrauded by a provider or facility, in all probability other programs and companies were also defrauded. Based on that knowledge, I immediately contacted healthcare fraud investigators I had previously met or worked with and notified them of the referral. Some of those investigators worked for agencies that had their own healthcare programs. I asked the investigators to determine if their agencies received and paid insurance claims from Dr. Susan Shamrock. Only one of the investigators, Agent Andrew Badge, responded positively.

Badge and I had successfully worked together in the past, and, like me, he used to be a street cop before becoming a federal agent. Badge and I met at his office and developed an investigative plan for this case.

Using administrative subpoenas, we separately requested and later obtained copies of numerous patient files and billing records from the doctor's office. Dr. Shamrock took about a month to comply fully with the subpoenas. Waiting this long is not unusual in white-collar investigations, and, in fairness, the doctor had a small office staff and years' worth of records to copy. In addition, they had to do most of the copying after normal business hours when the clinic was closed.

Patient files are often thick and might include: patient contact information (name, address, Social Security number, date of birth, etc.), insurance policy coverage information, claims submitted for payment, records of payment, explanation of benefit forms, dates of treatment, physician notes, lab test results, appointments and so on.

Badge and I worked in different buildings about ten miles from each other so we periodically met for lunch and talked about this case and others. When we finally received the subpoenaed records, we reviewed them at our own offices. We searched for indicators that patients received the experimental treatment, which may have been miscoded and billed as an FDA-approved treatment.

Reviewing the boxes full of patient files was a tedious process. Although I was terrible at dissecting worms and frogs in high-school biology classes, I enjoy dissecting information in fraud cases. The review took several weeks to complete. The first several days were boring because only a couple of files indicated that patients received the experimental treatment. Nevertheless, I carefully reviewed each claim individually.

Although I had never received allergy injections myself, I thought it odd that some of the patients reportedly received shots four or five times a week. I telephoned Agent Badge, told him what I found and added, "I wouldn't go to the doctor's office four or five days a week if they were giving out free lunches — let alone just to get needles stuck in my arm." Badge remarked, "I'd go if they were giving free lunches." We both laughed.

More alarming than what I was finding in the patients' files was what I *wasn't* finding. The files often contained no supportive documentation for any of the billed injections. For example, in one patient's file, the dates on insurance claim forms indicated allergy injections were given to the patient on January 10, 12, 14 and 15. But there was no documentation in the file indicating the patient ever stepped foot inside the doctor's office on any of those dates.

As I continued reviewing patient files, I found repeated instances where there was absolutely no supportive documentation for any of the services billed for.

4 **Needles in a Paystack**

In addition, when there was documentation, the charts indicated that the patients' next visit would not be for several weeks. The next pages in the patient files often indicated they were last seen on the previously documented dates.

For example, a patient's file might read something like this:

January 3: Patient John Smith seen today and given an injection.
His next office visit will be February 5.

Then the next documentation would read:

February 5: Patient John Smith last seen on January 3. Patient given an injection. Next visit will be March 7.

In short, the written notes in the patients' files contradicted the insurance claims. The charts were incriminating evidence that the patient had not visited Dr. Shamrock nearly as frequently as the documents indicated.

I alerted Badge to my findings, and he said he had been seeing the same pattern in his files. At this point, I began to understand why Dr. Shamrock refused to comply with the auditors' previous request for treatment records; she didn't have any to give!

Knowing that documents alone do not prove a case, Badge and I began interviews of patients at their homes. Prior to the interviews, I listed questions to help guide me and gave a copy of the list to Badge. Having most of the questions already written down makes it easier to take notes. I emphasized that the draft list of questions was only to be used as a guide and additional questions would be asked as needed. Badge liked the idea of numbering the questions and said he was going to start doing it for his future interviews.

Our first interview was of a former patient named Steve Hardwick. He said he never received more than two or three injections in any given week. But what Hardwick said next was a complete surprise: "I didn't need to go to the doctor's office anyway; Dr. Shamrock just gave me the filled syringes to inject myself."

I asked Steve to elaborate. He said that about once each month, he would show up at Dr. Shamrock's office and she would inject him with an allergy shot. During the same visit, the doctor or her assistant would hand him a month's supply of filled syringes, and he would later inject himself with the antigens two or three times a week.

Hardwick said, "Come with me; I think I have a couple of the syringes in the fridge." We followed him into his kitchen, where he opened his refrigerator and pulled out two filled syringes. Hardwick said, "These are the syringes Dr. Shamrock gave me."

Understandably, Agent Badge and I asked a bunch of follow-up questions. Steve Hardwick said he liked the arrangement because he could inject himself

and didn't need to travel back and forth to the doctor's office all the time. But the fact is, he injected himself only two or three times each week, not four or five times like the insurance claims indicated. Plus, the insurance claims specifically listed the location of service as Dr. Shamrock's office.

I studied the claim forms a little closer and observed that all of the injections were reportedly given on weekdays; never on the weekend. I asked Hardwick if he ever injected himself on the weekend and he said, "Sure, lots of times." He said he never had to report his dates of injection to the doctor's office.

I speculated that Dr. Shamrock knew that if she listed Saturday and Sunday treatments on her insurance forms, the insurers would reject the claims (because the doctor's business was closed on the weekends). I also figured that since Dr. Shamrock apparently thought she could get away with allowing patients to inject themselves away from the clinic, she would probably have no qualms about listing the incorrect injection dates on some paperwork.

Agent Badge and I photographed, marked and collected the filled syringes as evidence, and Badge later stored them in his office evidence refrigerator. During the next several weeks, Badge and I conducted more patient interviews. On the days we worked together, we alternated buying each other lunch. It seemed like every time it was my turn to pay, Badge picked a more expensive restaurant to eat at.

During our interviews, Badge and I heard similar stories from Dr. Shamrock's patients. A few people also said they received an experimental allergy treatment. Those patients reported that Dr. Shamrock assured them she would take care of the insurance billings. Since the patients didn't have to pay any money out of pocket, they had no concerns about how much the insurers were billed or how the treatments were coded.

After returning to my office, I contacted one of the government healthcare program integrity officials and was informed that each injection should have been given by a qualified and approved healthcare professional inside the physician's office. The official said the patients should have been monitored by a healthcare professional in case they had adverse reactions to the injections. I was also informed that the government would not have paid those claims had they known the patients injected themselves and that the locations of service were falsely recorded. I telephoned Agent Badge and told him what I had learned. He then called the program integrity officials from his agency and received the same information. Some agencies and insurance companies have different rules, so it was important for us to get clarification from the experts at our respective agencies.

In the days that followed, I attempted to quantify the potential dollar loss based on the patient files and claim forms I reviewed. I began adding up all the dollars for the false claims where there was no supportive documentation or false information. I also included the few instances where the experimental

treatments were miscoded. But as I continued reviewing the claim forms, I found something even more alarming.

In addition to billing for injections, Dr. Shamrock billed extremely high prices for “preparing and mixing” the antigens in the syringes. Supposedly, each patient had his or her own unique master serum. Injections were billed at about \$50 each, but mixtures were billed for thousands of dollars each!

The real money Dr. Shamrock made came from the falsification in the number of antigen mixtures made. To avoid detection, she billed for lots of injections — and made an extra \$50 for each fictitious injection.

I also knew that the insurance regulations required patients to pay copayments when they received treatment. Providers are not permitted to waive the copayments. So circumstantial evidence of fraud was established by the lack of patient billings for copayments. Interestingly, Dr. Shamrock had no qualms submitting false claims to insurance companies, but she never sent her patients false bills for the copayments. I suspect she knew darn well that the patients would have been lining up at the door to complain if she tried to defraud them too.

My next question was: How many syringes could be filled with each mixture? Agent Badge and I issued more administrative subpoenas to Dr. Shamrock’s office for the supportive documentation for preparing the mixtures.

Guess what? She didn’t have those either. We also asked for the doctor’s office appointment and sign-in books and found that the patients who were billed as if treated on certain dates did not have appointments and did not sign in on those dates. The evidence was getting stronger. I started to wonder if there was any legitimate business going on inside the doctor’s office.

Badge and I decided we needed to interview some of the doctor’s employees. We started by interviewing former employees. Badge and I alternated who would be the lead interviewer while the other took notes. One of the former administrative employees told us, “A few years ago we got into trouble with an insurance company for not having supportive documentation, and I told Dr. Shamrock to stop billing for services that we hadn’t provided. But she wouldn’t listen to me and we kept on doing it.” Badge and I glanced at each other; the case against Dr. Shamrock was getting even stronger.

Agent Badge and I also interviewed Dr. Shamrock’s current office manager, Katy Lincoln, at her home on a weeknight. She essentially said the same thing as the former employee. Badge and I decided to try to get additional evidence and asked Katy if she would consent to record a telephone conversation with Dr. Shamrock. She was initially hesitant but finally agreed. Before Katy called Dr. Shamrock, we told her what topics to cover.

In the recorded conversation, Dr. Shamrock said she knew miscoding the treatments was not appropriate. She also admitted she knew the doctor's office was sometimes paid for treatments not provided. But Dr. Shamrock never went so far as to admit that she directed the false claims to be generated.

After returning to my office, I made a copy of the recording, secured the original as evidence and later had a transcript made.

A few days later, Badge and I flipped a coin to determine who would get to interview Dr. Shamrock. I won. Interviewing the doctor was interesting to say the least. I didn't tell her we had a recorded conversation of her admitting knowledge about the false claims because that would have immediately implicated Katy Lincoln as an informant.

When I asked Dr. Shamrock about the missing documentation to support the billings, she blamed an office flood. When I asked why she let patients inject themselves away from the office, she said they preferred it that way. When I asked how she determined the dates that injections were given, she initially said she just guessed but later said the office computer automatically entered the dates. When I asked why she didn't collect copayments from her patients when they were treated, she said her patients couldn't afford to make the copayments.

In short, Dr. Shamrock claimed every mixture and allergy injection billed for was accurate to the best of her knowledge. And when asked why she miscoded the use of experimental allergy treatment to give the appearance that she used an FDA-approved method, Dr. Shamrock said, "That treatment works! It's not my fault that the FDA takes too long to approve good medicine."

Presenting the Facts for Justice

Agent Badge and I brought our collective case to the federal prosecutor's office. In total, the losses were approximately \$500,000. The criminal prosecutor declined to accept the case, saying it would have been stronger if Dr. Shamrock said on the recording that she personally directed the false claims to be submitted. Badge and I knew that prosecutors cannot accept every case that comes across their desks, so next we briefed the civil prosecutor, who accepted it without reservation. Using the Federal Civil False Claims Act (Title 31 USC 3729) would potentially allow for treble damages — three times the amount of each false claim.

Dr. Shamrock claimed she did not have the assets to repay. However, she eventually sold a second house and some other property to pay for some of the losses. Rather than debarring or suspending Dr. Shamrock from doing future business with the government, the affected agencies decided to put her on a well-monitored performance and compliance plan, which subjected her to regular audits and other stringent requirements to ensure that this type of activity would not occur in the future.

Lessons Learned

During this case I learned (or relearned) the importance of paying attention to details and of conducting thorough and all-encompassing examinations and investigations. Identifying other affected agencies and working as a team is always important. Each part of every investigation should be well planned and well documented. Conducting thorough interviews and collecting evidence helps make solid cases when wrongdoing does occur.

Fraudsters, as well as most other criminals, usually find ways to rationalize their wrongdoing. In Dr. Shamrock's case, she thought she knew more than the FDA about what was safe for patients. Living beyond one's means is a red flag of possible fraudulent activity — Dr. Shamrock was a prime example of that. Investigators, examiners and auditors should always be on the lookout for billings without supportive documentation when investigating other types of healthcare fraud.

Recommendations to Prevent Future Occurrences

- Thorough and all-encompassing investigations help prove fraud when it occurs and often identify other fraud schemes that were previously unknown.
- In the case of allergy clinics and physicians, examiners should consider analyzing the ratio of antigen mixtures to injections (separately by each patient's name) to determine if the number of mixtures is inflated.
- Analyze the frequency of billed injections (by each patient's name) to determine if the number of injections might be inflated (e.g., billing for five injections a week might be excessive).
- Because Dr. Shamrock's patients liked the freedom of injecting themselves away from the clinic, it is logical to assume that other allergy clinics are also mislabeling the locations of service on their insurance claim forms. Consideration could be given to contacting a random sample of allergy patients who receive injections to determine if any of the injections occur outside the clinic or office.
- The use of experimental treatment (not approved by the FDA) might be a common occurrence, but it becomes a violation of the law when the experimental treatment is miscoded. The most practical way to identify those instances is through periodic audits and reviews of patient treatment records (as the auditors did in my case before submitting the referral).
- Interviewing patients is helpful to learn what types of treatments have been (or are being) provided.

Many patients have only few concerns:

- Regaining their health (or relief from their suffering)
- Minimizing their out-of-pocket expenses
- Obtaining the necessary care and treatment conveniently

Most people trust their doctors. When a doctor tells a patient that the treatment will not cost the patient anything, few argue or ask questions. Others who suspect possible insurance fraud might turn a blind eye to it as long as their quality of care is good and they are not personally losing any money. Investigators, examiners and auditors should be mindful that it might be difficult for patients to tell the complete truth about all they know because it could go against their own financial best interests. Some patients may also fear that they could get charged with wrongdoing for false claims submitted by their doctors.

Identifying and proving healthcare fraud includes the use of several different investigative techniques:

- Data and record analysis
- Well-planned and thoroughly conducted interviews
- Collection of evidence

The physical evidence might include:

- Patient files
- Insurance claims forms
- Proof of payments
- Lack of payments (patients not charged copayments)
- Explanation of Benefits forms
- Appointment books
- Sign-in logs
- Patient interviews
- Recorded audio statements
- Previously signed agreements by providers to follow rules and regulations (and perhaps documented training received)
- Previous notices to stop committing the same type of "wrong" in the past
- Other evidence

Proving fraud beyond a reasonable doubt (in a criminal case) or by the preponderance of the evidence (in a civil case) is not an easy task. When conducting investigations and examinations, all possible evidence that can legally be obtained should be pursued and collected. Interviews should be conducted whenever possible, and all facts should be included in written reports.

About the Author

Charles Piper, CFE, CRT, is the owner of Charles Piper's Professional Services located in West Tennessee. He serves as a Certified Fraud Examiner, licensed private investigator and national consultant. Mr. Piper previously served for more than 30 years in law enforcement, including 20 years as a Federal Special Agent and Criminal Investigator.