

# Who Just Got Paid?

A fictional account representing physicians' common concerns and how to communicate with your industry contacts to ensure reported payments are properly perceived by the public.

**BY STEVEN J. CAGNETTA, ESQ, AND STEVEN K. LADD**

**D**r. Kennedy is a vascular surgeon at Lakeview Memorial Hospital, the largest regional hospital in southern Indiana. As a 25-year veteran, he is a remarkable clinician and often is sought by industry to conduct cutting-edge clinical research for those companies. He relishes the opportunity to research these new technologies with the hope of bringing the clinical trials, and ultimately the new technologies, to his patients.

When research projects and trials arise, Lakeview greatly appreciates both the revenue and the attention that they bring to the hospital. Dr. Kennedy is paid nothing extra for this work to seek and manage these opportunities as part of his job description. The revenue goes to his hospital and helps to maintain a robust vascular center in an otherwise modest regional hospital.

In March 2012, Dr. Kennedy receives a call from his contact at VascPharma, who was seeking an expert to run a series of research projects relating to their new approach to renal denervation. Dr. Kennedy indicates his interest and, based largely on his experience and reputation, wins a project that would result in approximately \$4,000,000 in revenue to Lakeview.

The project is completed in August 2013, and although 6 months late, it is considered a huge success by all accounts. The device is likely to head to clinical trials sometime in early 2014. VascPharma is hugely appreciative of the efforts of Dr. Kennedy and his clinic and, as per the agreement, makes the final \$2,000,000 payment in October 2013.

Fast forward to the afternoon of Friday, October 10, 2014. Dr. Kennedy receives a call from *The Indianapolis Star*, the state's largest newspaper. The reporter says the paper will be running a story regarding a large payment reported in the Open Payments database made by VascPharma to Dr. Kennedy, and he would like to ask some questions of Dr. Kennedy. Knowing that he is under a strict confidentiality agreement with VascPharma regarding the research, Dr. Kennedy replies that he needs to withhold comment until he speaks with VascPharma and his public relations group. He

makes calls to his contacts at the hospital and the company, but is forced to leave messages because his calls are answered by voice mail. It is a beautiful fall holiday weekend, and many people have left early.

On Sunday morning, Dr. Kennedy grabs the newspaper while getting coffee. On page 1, just below the fold, a headline reads, "Top Doc Nets \$2,000,000 Payday From Big Pharma." Unfortunately, because he is running late for church, Dr. Kennedy doesn't see the article. After church, a few friends joke with him about what he planned to do with his lottery winnings. Puzzled, he asks them what they're talking about. Once enlightened, he remains good natured and explains that it was the hospital, not him, who has been paid the money. He then goes home and reads the article in the Sunday paper.

Upon arrival at the hospital Monday morning, he discovers 14 voice mails, including messages from the hospital's president, public relations department, legal department, and two other reporters. He first calls the hospital president and explains the situation. He next calls the public relations department and is advised to speak to legal.

The call to the legal department nets Dr. Kennedy some homework. It turns out that the state's attorney's office has contacted the legal department and started asking questions. Legal advises him not to speak with reporters until a statement can be worked out with VascPharma (the public relations departments are on this one). To avoid any issues, legal asks that he provide a copy of the contract, a list of all parties who worked on the contract, the hours worked, and a payment history.

For Dr. Kennedy and his team, this homework assignment is no easy task. The contract is stored in a file cabinet somewhere in an administration office. It takes several hours to find. There is no firm structure for timekeeping, so his operations head does the rounds on a monthly basis, collects what she can, and prepares invoices. As you can guess, the backup is shoddy, and there is no database connection between invoicing and payment.

After several weeks of data collection, Dr. Kennedy is able to get the information requested by counsel. Except for the problem of working past the contract termination date (a no-no that results in some unpleasant conversations with lawyers), no other major problems emerge. However, it has taken dozens of hours from his already overwhelmed staff, numerous phone calls with legal, and some less-than-satisfying interactions with VascPharma personnel to complete the process. Additionally, although the hospital public relations department eventually succeeds in getting the paper to print a clarifying article, Dr. Kennedy notes that it runs on page 16 next to the obituaries. He still gets the increasingly annoying rich man jokes from his acquaintances.

What could Dr. Kennedy and his hospital have done? In the age of Open Payments, physicians and hospitals need to get used to the fact that once the data become available, newspapers, public interest groups, and the public at large will have access to the data being submitted by companies.

### FICTION IS BECOMING FACT

We have already seen the early stages of disclosures based on submissions of 15 companies' data as part of government-ordered settlement agreements. These data have been assembled and reported by ProPublica as part of their ongoing Dollars for Doctors (How Industry Money Reaches Physicians) investigation.

One ProPublica story, co-published on March 25, 2014 with *The Boston Globe*, is entitled, "Double Dip: Doctors Paid to Advise, Promote Drug Companies That Fund Their Research." Increased transparency leads to increased public scrutiny of physician activities.

### MEDICARE DISCLOSURES POINT THE WAY

As part of "ongoing efforts to increase transparency in health care," the Centers for Medicare & Medicaid Services posted Medicare physician payment data online on April 9, 2014. Here are that day's headlines:

"Sliver of Medicare Doctors Get Big Share of Payouts"  
— *The New York Times*

"Small Slice of Doctors Account for Big Chunk of Medicare Costs"

— *The Wall Street Journal*

"The Top 10 Medicare Billers Explain Why They Charged \$121M in One Year"

— *The Washington Post (Wonkblog)*

The real physicians named in these reports might have felt like our fictional Dr. Kennedy. A Mayo Clinic lab director was named as the billing physician for

23,000,000 tests in a single year. The work of 26 pathologists was billed to the medical ID number of a single medical director. Claims for 200,000 patients were in the name of a medical director of a project supporting 400 clinics. None of them received a fraction of the monies ascribed to them.

### PHYSICIANS SHOULD DISCLOSE CONTEXTUAL INFORMATION

As explained in "What Are You Doing for That Company?" (*Endovascular Today*, February 2014) physicians' reputations may depend on how the payments that they receive are described. Physicians should ask to insert clauses in their industry contracts that specify the contextual information to be reported with each payment. For the first round of Open Payments reports that are to come out later this year, physicians should review proposed industry disclosures and suggest, as part of the dispute process (45 days are allotted to review payment submissions), that appropriate contextual information be included. Primacea recommends that physicians begin developing this messaging with their industry contacts now.

### HOSPITALS CAN ASSIST THEIR PHYSICIANS

Hospitals need to prepare for a new round of headlines that are sure to appear later this year. They must recognize that their physicians are overwhelmed with meeting numerous administrative requirements on top of their patient care responsibilities, and they should provide physicians with tools that make it easy to track all of the information related to their research and consulting activities.

These tools must help gather and sort data on the purpose of these efforts and details of related payments. Additionally, hospitals must prepare to help their physicians develop messages that explain the importance of the work so that their good work is not lost in a sea of payment data.

In short, fiction is now becoming reality. Hospitals and their physicians need to recognize that they are in a data-driven world and be prepared to meet it head on. ■

*Primacea provides tools to physicians and leading hospitals to facilitate transparency in innovation and manage compliance obligations. For more information, please visit [www.primacea.com](http://www.primacea.com).*

*Steven J. Cagnetta, Esq., is Founder and Chief Counsel at Primacea, Inc. in Andover, Massachusetts. He may be reached at (781) 369-2900; [steve.cagnetta@primacea.com](mailto:steve.cagnetta@primacea.com).*

*Steven K. Ladd is Founder and President at Primacea, Inc. in Andover, Massachusetts. He may be reached at (617) 901-3140; [steven.ladd@primacea.com](mailto:steven.ladd@primacea.com).*