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Welcome to Speaking of Health Law

Hi, I'm Norm Tabler, host of *The Lighter Side of Health Law* AHLA podcast sponsored by Coker Group. I hope you enjoy this month's edition.

Overplaying Your Hand

A medical malpractice case in Arizona reminds lawyers of the perils of overplaying your hand. Helen Scharf hired lawyer Jeff Cogan to file a med mal suit against the surgeon who, she alleged, was responsible for her husband Gerald's death. Jeff filed the med mal suit. So far, so good.

It's what Jeff did *next* that got him in hot water. He amended the suit to allege that the surgeon was not merely *negligent* in causing Gerald's death, but that he caused it, quote, *intentionally and maliciously*.

The surgeon fired back, suing for malicious prosecution and abuse of process, noting that Jeff's suit effectively accused him of committing homicide. The judge rule in favor of the surgeon, finding Jeff and Helen liable for malicious prosecution and abuse of process.

When the question of damages went to the jury, they ruled that Jeff owed the surgeon about *$8 million* in compensatory and punitive damages, while his client, Helen, owed nothing.

The case is *Trabucco v. Cogan*, Mohave Super. Ct., Ariz.

You Can't Blame a Guy for Trying

When Dr. Phil Fisher applied to Admiral Insurance for medical malpractice coverage, he responded *No* to the question whether he was aware of anything that might result in a malpractice claim.

You might say his answer was less than candid since just six months earlier the DEA had conducted a raid, investigating him for the overdose death of 14 people and for illegally obtaining, distributing, and using drugs, and since *five* months earlier the state licensing board had investigated him for unlawful possession of drugs and engaging in sex with multiple patients—an investigation that would result in the loss of his medical license.

Admiral issued the policy, and before the ink was dry, Dr. Phil was sued for malpractice and the wrongful death of two patients.

Admiral counterclaimed to rescind the policy based on fraudulent misrepresentations in Dr. Phil's application.

The trial court sided with Dr. Phil. That's why the title of this piece is *You Can't Blame a Guy for Trying*. It almost worked.

I say *almost worked* because, unfortunately for Dr. Phil and maybe the plaintiffs, too, West Virginia's highest court sided with Admiral and reversed and remanded.

The case is *Admiral Insurance v. Fisher*, W. Va.

Who Says Crime Doesn't Pay?

From earliest childhood we've been told crime doesn't pay. But here's a case that makes you wonder.

Michael Drobot owned a hospital, in Long Beach, California. When he was charged with running a 15-year-long Medicare kick-back scheme, it took him only a matter of weeks to plead guilty.

So what was the scheme? Well, Michael bribed doctors to refer patients to his hospital for spine surgery. His going kick-back rate was $15,000 for a lumbar fusion and $10,000 for a *cervical* fusion.

How successful was the scheme? Well, his hospital's fraudulent billings came to—are you sitting down?-- *$580 million*, in return for the $40 million Michael paid in illegal kickbacks.

So, let's see: $580 million in billings less $40 million in kickbacks is a net of $540 million.

Now let's test our crime-doesn't-pay theory. What was the cost of getting caught? Well, Michael's sentence was 63 months in jail, half-million-dollar fine, and ten-million-dollar forfeiture.

The forfeiture and fine bring the income from the scheme down to $529.5 million, in return for 63 months in jail. That's about $8.4 million in income for each month. *And* he gets free room and board. Not a bad deal for Michael.

The case is *U.S. v. Drobot*, C.D. Calif.

Making a Bad Situation Worse

At least since the Watergate scandal, it's been axiomatic that a cover-up can be more damaging than the original crime. Here's a case demonstrating a variation of the axiom, namely, that fleeing after you've been caught can be more damaging that the crime itself.

Former Kentucky attorney Eric Conn engineered a decades-long Social Security disability scam that defrauded the government of a whopping $550 million.

When he was indicted on 18 counts, the government agreed to dismiss all 18 in return for a guilty plea to two charges of providing false medical information to Social Security. He was even given home detention while awaiting sentencing. Not a bad deal for a guy who scammed the government for $550 million.

Was he satisfied with it? Well, no. While awaiting sentencing, he disabled his ankle monitor, fled across the Mexican border into Central America, where he was apprehended six months later in a Honduran Pizza Hut eating a personal pan pepperoni.

While Conn was in Central America, he was sentenced to 12 years on the two charges. Twelve years *is* a long time, but not as long as the *15 additional years* he got for fleeing the country. That's right. His six-month Central American visit cost him 15 years in the slammer—more than he got for the $550 million scam.

It will the year 2045 when his prison sentence ends and Michael Conn the con becomes Michael Conn the *ex*-con.

The case is *U.S. v. Conn*, E.D. Ky.

Practice Tip of the Month

This month's practice tip concerns psychiatric records. The tip is, if your client sues you for malpractice, do not file a motion asking the court to declare her unfit to testify due to her psychiatric history, and above all, do *not* attach her mental health records to the filing.

Connecticut attorney Jason Pearl failed to follow this practice tip when former client Veronica Perakos sued him, with the result that Jason was suspended from the practice of law for two years.

The case is *Office of Chief Disciplinary Counsel v. Pearl*, Jud. Dist. of New Britain.

Well, that's it for this month's edition of *The Lighter Side of Health Law.* I hope you enjoyed it. Check your *AHLA Weekly* and *Connections* magazine for the next edition.