

**FOURTEENTH ANNUAL
TAXPAYERS AGAINST FRAUD
EDUCATION FUND
AWARDS DINNER**

**Mayflower Renaissance Washington Hotel
Washington, DC
September 16, 2014**

WELCOME

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**“HONEST ABE” INTEGRITY IN GOVERNMENT AWARDS
VIRGINIA MEDICAID FRAUD CONTROL UNIT**

Award presented to Candice M. Deisher, Assistant Attorney General

Presented by Zach Kitts

LAWYER OF THE YEAR AWARD

MARLAN B. WILBANKS
Wilbanks & Bridges, LLC

Presented by Jim Breen

WHISTLEBLOWER OF THE YEAR AWARD

ELIN BAKLID-KUNZ
Former Director of Physician Services
Halifax Health Systems

Presented by Cheryl Meads

**“HONEST ABE”
INTEGRITY IN GOVERNMENT AWARDS**

VIRGINIA MEDICAID FRAUD CONTROL UNIT

The Virginia General Assembly passed the Commonwealth’s state False Claims Act in 2002. It took a few years before the first cases worked their way through the legal system, but the results in recent years have been impressive.

The first substantial case was a civil prosecution against Purdue Frederick, the maker of Oxycontin, a painkilling drug that remains one of the most addictive ever sold in this country.

Not only was Purdue Frederick forced to pay the federal government and the states over \$634 million to settle off-label marketing charges, but the president, general counsel, and chief medical officer of the company also pled guilty to criminal charges. Those officers were forced to pay millions of dollars out of pocket, and were then excluded from doing business with the U.S. Government.

As part of the Purdue Frederick settlement, the Virginia Medicaid Fraud Control Unit was paid \$5.3 million to fund future health care fraud investigations, and an additional \$20 million to fund a Virginia Prescription Monitoring Program to curtail the misuse, abuse, and diversion of prescription drugs.

With money in hand to fight forward in the war against fraud, Virginia was able to take the lead in the civil prosecution of Abbott Laboratories for the off-label marketing the mood-stabilizing drug Depakote. This whistleblower-initiated case was settled for \$1.5 billion, and included an asset forfeiture of \$198 million – the largest asset forfeiture in the history of Medicaid. The Abbott case is, to date, the largest Medicaid fraud case ever led by a state.

In October of 2013, Virginia’s Attorney General announced a \$37 million settlement with the McKesson Corporation over allegations the company violated the Virginia Fraud Against Taxpayers Act by conspiring to inflate prices for more than 400 brand-named prescription drugs. This settlement was the largest recovery by any state Medicaid

fraud control unit against McKesson for average wholesale price inflation.

Virginia's aggressive Medicaid Fraud Control Unit has been so successful that the state portion of its budget is now funded solely by recoveries made in criminal and civil settlements. *In short, in Virginia, the bad guys are now paying for their own investigations and prosecutions, not Virginia taxpayers.*

Clearly, Virginia's Medicaid Fraud Control Unit is a winning program. But health care is only part of Virginia's budget. The state is also moving to combat fraud in other arenas as well, from state and municipal construction to state pensions.

Virginia's Medicaid Fraud Control Unit does more than investigate violations of the state's False Claims Act, of course. The Virginia MFCU's staff of 96 also investigates complaints of elder abuse and neglect and non-FCA Medicaid fraud cases.

In 2014, the Virginia Medicaid Fraud Control Unit was awarded the Inspector General's Award for Excellence in Fighting Fraud, Waste, and Abuse by the U.S. Department of Health and Human Services. This was the Virginia MFCU's second such award, having previously won in 2008 following the successful prosecution of Purdue Frederick and three of its corporate officers.

It is with great pleasure that the staff, board, and membership of Taxpayers Against Fraud Education Fund gives our 2014 "Honest Abe" Integrity in Government Award to the Medicaid Fraud Control Unit of the Commonwealth of Virginia.

Accepting the TAF Education Fund's Integrity in Government award is Candice M. Deisher, Assistant Attorney General with the Virginia Attorney General's Office. Ms. Deisher is Lead Attorney in the Civil Litigation section of the Medicaid Fraud Control Unit. Ms. Deisher received her B.S. from James Madison University in 2002 and her J.D. from Regent University School of Law in 2007. Prior to her tenure at the Virginia Attorney General's Office, Ms. Deisher was an associate at Linebarger, Goggan, Blair & Sampson in Richmond, Virginia.

LAWYERS OF THE YEAR

MARLAN B. WILBANKS

Marlan Wilbanks graduated from the University of Georgia School of Law in 1986, the same year the federal False Claims Act was signed into law.

The list of companies Marlan and his partners and associates have helped bring to justice under the federal False Claims Act is staggering: Forest Laboratories, Bank of America/Countrywide, Columbia HCA, Suntrust Mortgage, JPMorgan Chase, First Tennessee Bank, PNC, Clark Atlanta University, Northside Hospital, Citimortgage, Olsen Corporation, St. Joseph's Hospital, Piedmont Hospital, Resurgens Surgery Center, Memorial Health, Adventist Hospital, C. R. Bard, Inc., and Proseed, Inc. to name a few.

Add it all up, and Marlan and the law firms for which he has been a partner have helped recover over a billion dollars back to the American people.

Of course, many other big cases are still ahead, including cases against banks, a major renal care company, hospitals, and drug companies.

The case we celebrate tonight is the case against Halifax Hospital Systems, a case the company fought every inch of the way.

The simple story is that Halifax allegedly violated the Stark Law by creating an "incentive compensation pool" for oncology doctors in which the incentive bonuses were, on average, larger than doctor's salaries. Every referral made by an oncologist in the "pool" was tracked by Halifax.

In addition to violating the Stark law, Halifax allegedly engaged in unnecessary surgeries as well as thousands of unnecessary hospital admissions billed to Medicare and Medicaid.

All of these frauds were first reported to Halifax by their former Compliance Officer, who was now their Director of Physician Services.

Halifax's Associate General Counsel investigated the claims and wrote a memo to the general counsel saying she thought Halifax's former compliance officer was right: the hospital had engaged in fraud.

So what did Halifax do next? Why, they hired an outside counsel to tell them it was all “defensible,” of course, and they continued on, business as usual!

It was only then that Halifax’s former Compliance Officer, now Director of Physician Services, filed a False Claims Act case.

The case came out from under seal about a year later. The government had not yet joined.

In April of 2011, two years into the case, the U.S. Department of Justice filed a “statement of interest,” urging the case not be dismissed, and in October, after the case had been greenlighted for trial, DoJ joined.

During discovery, Halifax claimed almost everything on paper was attorney-client privilege. The magistrate judge thought otherwise, and in April of 2013 he issued an order in which every contested document was deemed to be “not privileged,” including an internal report in which the hospital admitted it was paying doctors above-market rates.

At this point, the U.S. Department of Justice estimated treble damages in the case at over \$102 million, not including penalties. A DoJ brief filed in June of 2013 noted that “Halifax’s actions are exactly what the Stark Law was enacted to prevent: physicians basing referral decisions on financial gain rather than a patient’s best interests.”

In October of 2013, Halifax revealed it had destroyed thousands of records covering years of evidence related to unnecessary hospital admissions, despite the fact that such evidence had been under a litigation hold. The judge issued sanctions of \$350,000 in attorney’s fees.

That same month, *The Washington Post* did a story about unnecessary spinal surgeries performed by three of the Halifax surgeons incentivized to maximize billing and in direct violation of the Stark law. It seems that in 2010, after the FCA case was filed, the hospital paid for board-certified neurosurgeons at AllMed to review the work of one of the surgeons. Of the 10 spinal fusions performed, nine were deemed to be not medically necessary. After that report came in, the hospital conducted its own “internal review” that validated the surgeries.

In November of 2013, Judge Gregory Presnell issued a partial Summary Judgment in favor of the Government and the relator for \$27 million in single damages.

In February of 2014, Halifax’s lawyers claimed relator Elin Baklid-Kunz did not have standing under Articles II and III of the constitution. Judge Pernell shot down that legal argument without missing a beat.

By now the case had been bifurcated into a joined and an unjoined case. The intervened Stark claims were set to go to trial in March, and the medical necessity claims in July.

In early March, with Jury selection to begin the next day, Halifax decided to settle with the U.S. Government for \$85 million plus \$5.7 million in statutory attorneys’ fees, an extremely stringent Corporate Integrity Agreement, and an admission of liability with regard to the Stark violations.

Judge Pernell, no doubt thinking he was helping the relator and speeding the second part of the case to trial, said the government would have to detail to the court the difference in value between the services paid for and received. With the government unable to do that, he said he would try the case for penalties alone – a situation that quickly ground the second part of the case onto the shoals of the Eighth Amendment. In the end, the second part of the case was settled for \$1 million, with \$4.5 million in attorney fees.

In testament to the quality of the information brought by whistleblower Elin Baklid-Kunz, and of the masterful lawyering done by her team at Wilbanks & Bridges, DoJ awarded a 24.5 percent relator share.

Marlan Wilbanks did not do this alone, of course. Ty Bridges and Susan Gouinlock were with him every step of the way, as were his litigation partners Lin Wood and Katherine Hernacki at Wood, Hernacki & Evans, and Scott Withrow at Withrow McQuade and Olsen.

It is with great pleasure that the staff, board, and membership of Taxpayers Against Fraud Education Fund gives our 2014 Lawyer of the Year Award to Marlan Wilbanks and his team at Wilbanks & Bridges for forging a successful public-private partnership to recover America’s stolen tax dollars.

WHISTLEBLOWER OF THE YEAR AWARD

ELIN BAKLID-KUNZ

After emigrating to the U.S. from Norway as a young adult, Elin Baklid-Kunz began her career as a Food and Nutrition Services Coordinator at Halifax Health Medical Center while also working towards her Masters of Business Administration at Stetson University.

After completing her MBA in 1998, Mrs. Baklid-Kunz was promoted to a financial analyst position within Halifax and then, in 2005, she was promoted to the Compliance Department. In 2008 she was made Director of Physician Services for Halifax Health Systems.

While at Halifax, Congress passed the Deficit Reduction Act of 2005, a law which mandated that, beginning January 1, 2007, companies doing more than \$5 million worth of business with Medicare or Medicaid must educate their employees about the basic mechanics of the False Claims Act.

As the company's compliance officer in 2007, Ms. Baklid-Kunz not only had to make herself familiar with the False Claims Act, but she was also responsible for teaching other employees about the scope and mechanics of the law.

After being promoted to Director of Physician Services in 2008, Ms. Kunz became concerned that contracts Halifax maintained with some physicians violated the Stark Law. She also encountered an internal audit that showed Halifax neurosurgeons were performing procedures at four times the national average and that other surgeons at the Hospital were performing medically unnecessary surgeries and admitting patients who did not meet admissions criteria.

Ms. Kunz raised her concerns with top management at Halifax, but she was brushed off by her superiors who told her that "loyalty should be with Halifax and not with the government."

What to do?

It was not an easy choice.

Ms. Kunz had invested over 15 years of her life at Halifax. Her family in Norway was worried that she could lose her job and career.

On the other side of the coin, Ms. Kunz knew that the fraud was massive and that the law was clear. Halifax was clearly breaking the law and the internal documents she had seen made clear that they knew it. On top of it all, the charges that Halifax could face might be criminal, and as a former Compliance Officer, and now Director of Physician Services, she might be the person thrown under the bus.

Elin was proud to serve at Halifax for more than 15 years, but now she could see that top management had made integrity subordinate to billing, and that patient health was being put at risk as well. Scores of millions of dollars were in the swing. Something had to give.

But why did it have to be her? So many others knew about this fraud.

"I kept hoping someone else would do it," she told a reporter after it was all over, "but sometimes you have to be that someone."

In the end, she simply put herself in the patient's chair. "What if those unnecessary surgeries had been to my mother or father?" she thought.

In 2009 Ms. Baklid-Kunz filed a False Claims Act lawsuit, under seal, in the Northern District of Georgia.

In 2011, after investigating her allegations, the U.S. Department of Justice joined the part of her case that alleged Halifax had violated the Stark Law.

Prior to trial, Halifax was hit with sanctions for destroying medical records related to the case, despite a three-year old records retention order from the court -- a behavior the judge in the case called "reprehensible"

While all this was going on, Elin discovered what so many whistleblowers before her had learned: as soon as you stand up, speak up, and lawyer up to do the right thing, you are going to be shunned at work. People who Elin used to interact with on a regular basis would no longer even acknowledge her in the hallway.

Though Halifax could not fire here without violating federal law, the hospital took away most of her substantive work. She was no longer to be trusted because she had put the law and public safety ahead of corporate profit. “Not everyone in life gets to know who their true friends are,” she told the Associated Press, “but I have gotten to know who my true friends are.”

In March of 2014, on the eve of trial, Halifax settled the DoJ-joined part of the case for \$85 million.

In appreciation for her extraordinary information and service, and the hard work of her lawyers who had prepped the case right up the eve of trial, the U.S. Department of Justice awarded Ms. Baklid-Kunz a 24.5 percent relator share -- \$20.8 million – to be split between herself and her legal team.

You would think the case would be over at this point, but you would be wrong. You see, the hospital cried poverty. It said it simply did not have the money to pay the settlement all at once. Would it be OK if they paid it out over 5 years?

To say this was more chicanery does not do it justice. Suffice it to say that a quick financial investigation revealed that Halifax had squirreled away vast sums of money it was claiming it could not reach due to a legal fiction. When that legal fiction was exposed, Halifax suddenly discovered it could pay the fine. A miracle!

When the dust finally settled, Halifax paid over \$124 million to settle this case, including legal costs on both sides. At every turn, Halifax had done the wrong thing, from engaging in fraud to ignoring their former compliance officer, from hiding internal audit reports showing fraud to papering over third party findings showing unnecessary surgeries. And of course, one of their most expensive mistakes was hiring a law firm that said their actions were defensible – and who then pocketed over \$25 million losing the case!

And yet, at every turn, Elin Baklid-Kunz stood firm, armed with evidence and a clear sense of right and wrong. And so it is with great pleasure that the staff, board, and membership of Taxpayers Against Fraud Education Fund give our 2014 Whistleblower of the Year Award to Elin Baklid-Kunz for her bravery, integrity and perseverance in working to eradicate fraud from America’s health care system.

Taxpayers Against Fraud Education Fund

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