



Do You Need to Fear Whistle-Blowers?

Could someone sue you in the name of the U.S. government? The answer may surprise you.

Q:

We are a small nonprofit health organization. One of our board members says he heard about a law called “qui tam,” which says that someone can sue us for misusing government funds. Is this true? We can find no information anywhere about this law. Can you tell us more about it? Is it something about which we should be concerned?

A:

If your organization receives government funds, you should indeed be aware of this little-known law which lets individuals

sue you if they think you are misusing those funds. If successful, they can receive substantial rewards.

In essence, these “whistle-blowers” are filing a lawsuit in the name of the U.S. government. That’s why the act is known as “qui tam”—Latin for “in the name of the King.” Qui tam is a provision of the Federal Civil False Claims Act (31 USC Sec. 3730). The Act originated during the Civil War, but went highly unused until new amendments were added by Congress in 1986.

What is unique about the qui tam provisions is that the individual need not have personal knowledge of the fraud. It can be information obtained from a relative, friend, or whomever as long as the information is not publicly disclosed and the government has not already sued the defendant for the fraud.

Since 1986, qui tam recoveries have exceeded well over \$1 billion. At the end

of 1995, over 1,100 cases had been filed. Recoveries were obtained in 153 of these cases, for a recovery rate of approximately 14%. The rewards for the whistle-blowers have been in the millions of dollars.

Even though the intent of the whistle-blower may be to right a wrong against the government and in turn receive a hefty reward, the biggest problem with the suspected wrongdoing is

that many times it doesn’t add up to the legal qualifications for fraud. The basic presumption of fraud being “intent” is difficult to prove. In fact, when the Department of Justice refuses to take on qui tam cases, most never proceed any further.

Still, it would be unwise to ignore the implications of this law. Many nonprofit organizations, especially small ones, feel they don’t have to worry about having proper controls in place. Such an attitude can be disastrous. A control system is absolutely essential for any nonprofit.

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Proper “Qui-Tam” Lawsuit Procedure

- Individual is required to file a complaint under seal with a court and submit to the Department of Justice a “written disclosure of all material evidence and information.”
- The Department of Justice then conducts an investigation and has 60 days to determine if it will join the lawsuit.
- If the Department of Justice joins in, it will essentially take the lead role in litigating the case and obtaining a recovery. The individual bringing suit is entitled to 15-25% of the recovery, plus reasonable attorney’s fees.
- If the Department of Justice declines to join the action, the individual may still proceed with the lawsuit and is entitled to 25-30% of any recovery, plus reasonable attorney’s fees.

Adapted from : “Blowing the Whistle on Health Care Fraud.” *The Journal of Practical Nursing*. December, 1995. 10.