

Berton Forman: The Long Island anesthesiologist quit his job to focus full-time on his case against a California hospital system.

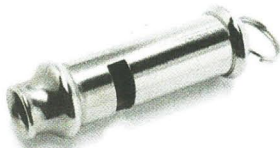
CODE BREAKER

By CLAUDE SOLNIK

Berton Forman, an anesthesiologist, is an unlikely antagonist for one of the nation's largest health care systems. He spent 31 years practicing anesthesia, including 21 at Mercy Medical Center in Rockville Centre. He lives in a small, rented house he calls a shack on the water in Point Lookout.

But Forman last week became potentially one of the nation's biggest health care whistle-blowers when the state of California signed onto a lawsuit he brought, charging 25-hospital Sutter Health, the largest hospital system in northern California, abused anes-

Berton Forman quietly practiced anesthesia for 30 years. Now he's a whistle-blower



thesia billing codes to boost profits.

The suit also names New York City-based Multiplan, which hooks up networks of hospitals with insurance plans, shining a spotlight on the world of health care billing with national implications.

"We believe the amount of the fraudulent charges is in the hundreds of millions of dollars, if not more," California Insurance Commissioner Dave Jones said after signing on to Forman's suit, brought there in part because of California law, which allows qui tam suits against private insurers. New York only allows

Whistle-blower: Overbilling discovered

From 8A

them when government has been defrauded.

Sutter said it believes the "case is without merit and that our anesthesia charges are appropriately billed." The Sacramento, Calif.-based system said its charges are "transparent and available to the public."

But with California's involvement, Forman's qui tam case — one in which someone with special knowledge blows the whistle — went from David versus Goliath to a battle between Goliaths.

"That's a big deal. That means the government's going to go forward and they think there's actual fraud, which means they're dedicating significant resources to the case," said Joseph Trautwein, an attorney in Bluebell, Penn., specializing in qui tam suits. "The government has to vet these suits carefully."

California says Forman provided the state with data showing Sutter routinely overbilled, by as much as \$10,000, for anesthesia services provided by others, who also submitted bills.

THESE CLAIMS, AS LONG AS A PATIENT EXISTED AND IT'S CONSIDERED REGULAR BILLING BY A HOSPITAL, ARE NOT CONSIDERED FRAUD

"In some instances, the billing code is charged even though no anesthesiologist was present in the operating room and no general anesthesia was provided," Jones said.

Forman says he uncovered problems when Guardian Life Insurance hired him in 2002 to audit anesthesia claims with software he developed. Forman agreed to work for 25 percent of what he recovered. Guardian handed over thousands of claims.

That's when he discovered that hospitals, from California to Texas and New York, used anesthesia codes to inflate costs.

"If two doctors overbill, the industry can find it," Forman said. "If a doctor and hospital billed for the same fee, nobody found that."

Forman found an apparent treasure trove of overbilling at systems, including Sutter.

He says discrepancies weren't detected because anesthesiologists use Current Procedural Terminology codes to bill for services, while hospitals use revenue codes for supplies and equipment, which they justified as a catch-all for everything from electrical bills to earthquake insurance.

"Other people said it's for the nurse anesthetist," Forman said. "Other people said it's for the equipment in the operating room. Anesthesia supplies. We received over 200 reasons."

Forman said after he identified \$50 million in inappropriate billing, attorneys working on contingency ran into trouble. Since they would only be paid if money was recovered, the attorneys backed out when they found problems not in finding fraud, but collecting on it.

Manhattan's Multiplan, Forman and California argue, had created contracts offering Guardian discounts in return for surrendering rights to audit fraud.

"The attorneys found these contracts, prohibiting them from collecting," Forman said of lawyers working on contingency. "These claims, as long as a patient existed and it's considered regular billing by a hospital, are not considered fraud."

A spokeswoman for Multiplan, named in the California suit for aiding and abetting, argues they "have an appeals process."

But facing contracts that seemed to make challenges impossible, Guardian gave up on many claims, paying Forman about \$3,500 after recovering \$10,000. Forman sued Guardian, arguing he deserved to be compensated for the fraud he detected. The courts declined Guardian's effort to dismiss that suit.

Then Forman used data from his audits to pursue fraud through another avenue, filing the qui tam case against Sutter, which he says used hourly rates to inflate charges.

"They're taking a revenue code meant for anesthesia supplies and equipment and taking a time multiple, about \$500 for every 15 minutes," Forman said.

If Forman wins, he would be entitled to 30 percent of what the government recovers (an incentive to file suits), which could easily be many millions of dollars.

"A lot of people think I'm going after windmills," Forman said. "Even when the findings are validated, it goes up in smoke. We've had thousands of starts and stops."

Forman says Sutter is trying to portray

him as a troublemaker, although their practices are at fault.

"It's interesting how the defense paints me as the causation of the problem," he said. "If I would just go away, the problem would go away."

Forman's attorneys argue he obtained proof of improper billing from records obtained as an auditor. Qui tam suits allow whistle-blowers to bring that information forward, even if it's obtained through private audits.

Although California is on his side, Forman says he realizes there's no guarantee of victory. "Of course I could lose," Forman said. "I've built up savings and I live a Spartan lifestyle."

He stopped practicing anesthesia and auditing and has been busy making his case, which has turned into a kind of career and cause.

"It's really a full-time job, handling the qui tam case in California. Disseminating the information about how anesthesiologists who are doing the work are having hospitals bill on their backs," Forman said. "It's almost like I'm in the middle of the ocean and can't stop."

He says the suit puts "stress on my life, but not more than giving anesthesia in an operating room."

"Sutter's just a test case," Forman said. "Once Sutter capitulates, there will be hundreds of other hospitals in California. It's being done in New York, too."

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New York next?

If Berton Forman loses his qui tam case in California, his charges could simply melt away into irrelevance. But if he wins, he believes New York will not be far behind.

New York regulators said insurers are required to have special investigation units that pursue fraud. Contracts in this state, such as those Forman says Multiplan created, would be illegal if they prevent recovery of fraud.

"We want all licensed insurers to aggressively attack fraud, to take anti-fraud efforts seriously," said Steven Nachman, deputy superintendent for frauds and consumer services for the New York State Insurance Department. "To contractually bargain away requirements under the insurance law is not permissible, if that were the case."

Hospital systems said contracts typically limit the questioning of claims, although fraud should be an exception.

"I would rather not have the limit," said Howard Gold, CFO of the North Shore-Long Island Jewish Health System. "They usually want the limit. They want to pay and be done."

Forman said even though double billing happens in hospitals in New York, the state's lack of a qui tam provision for private insurers makes it tougher to file suit.

"It's happening in New York hospitals," he said. "But I can't sue on behalf of the state in New York, because there the qui tam law applies only to Medicaid cases."

—CLAUDE SOLNIK