Fact and Fiction in Organ Transplant Waiting List Fraud

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It sounds like fodder for a television show or a movie, but organ transplant waiting list fraud is a reality. Organ transplant list fraud, also known as waiting list “line jumping,” has gained widespread media attention over the past few years. The public has been bombarded with news reports of alleged and actual occurrences of this type of fraud as well as television shows depicting fictitious examples of such fraud. Given the power of the mass media and its impact on public perception, it is important for one to distinguish fact from fiction in this area of health care fraud.

Although organ transplant list line jumping appears to be quite rare in real life, the media has latched onto the sensational nature of the fraud. The Season 2 finale of “Grey’s Anatomy” is the most recent and high profile example of a fictitious plot line dealing with organ transplant list fraud. In this episode, a surgical intern, desperate to save her dying fiancé, intentionally cuts his Left Ventricular Assistance Device (“LVAD”) wire in order to move him up the transplant list and increase his odds of receiving a heart transplant.

Although real life occurrences of transplant list fraud are just as compelling as their fictional counterparts and the details are sometimes even more startling, they differ in many respects from their portrayal on “Grey’s Anatomy.” First, the motivation for fraudulently moving a patient up a waiting list in real life differs from its depiction on television. “Grey’s Anatomy” portrays the fraud as a valiant attempt to save a loved one’s life. The reality of transplant list fraud is usually much grimmer. Cases alleging transplant list fraud generally indicate that such fraud is purely motivated by the desire for money or prestige, not love. Organ transplantation is big business. Despite the relatively small number of people benefiting from organ transplantation each year (with 28,108 transplants performed in 2005), the U.S. organ transplantation market is projected to reach an estimated $5.4 billion in 2007.

Organ transplantation is one of “the most expensive and complex services for hospitals to provide from operational, reimbursement and regulatory perspectives.” The expenses in this area not only involve the surgery itself, but also care preceding and following the

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1 Grey’s Anatomy: Deterioration of Fight or Flight Response (ABC television broadcast May 15, 2006).
2 Id.
5 Jeff Sinaiko et al., Emerging Compliance Issues in Organ Transplant Reimbursement: Seven Questions Every Transplant Center Should Ask, 7 BNA HEALTH CARE FRAUD REP., 489-491 (2003).
surgery, which is essential to a successful transplant procedure. Given the expensive nature of organ transplantation surgeries, it is not surprising that it would be in the interest of a physician or a transplant center to maximize its income by increasing the volume of procedures performed.

In an infamous 1999 case of transplant waiting list fraud, three Chicago area hospitals were accused of maximizing profits by altering the severity of the diagnoses of allegedly dozens of patients to give them priority on the transplant list. The three hospitals implicated by one doctor’s whistleblowing included the University of Illinois Medical Center at Chicago (UIC), Northwestern Memorial Hospital and the University of Chicago Hospital. Dr. Raymond Pollack, former head of UIC’s transplantation division, filed a whistleblower lawsuit alleging that the impetus for UIC’s commission of this fraud was a need to increase the number of liver transplants performed in order to meet Medicare’s volume requirements, thereby qualifying its transplant procedures for Medicare reimbursements. Furthermore, Dr. Pollack argued that “volume drives this business,” and that increasing the number of transplants performed at a particular hospital increases the number of referrals the hospital will receive for future transplant surgeries. This overarching concern with money is in stark contrast to the more benevolent gesture portrayed in “Grey’s Anatomy.”

Another distinction that may be made between real life and fictional representations of transplant list fraud relates to the aftermath of such fraud. The “Grey’s Anatomy” portrayal of transplant list fraud, at least up to this point, has left the viewing audience with the distinct impression that perpetrating this type of fraud has virtually no consequences for the hospital or the physicians involved. Real-life incidents of transplant list fraud, however, do not typically escape the attention of the public and the government.

In the few known real-life cases of transplant list fraud, the fraud typically comes to light after a “whistleblower,” generally an employee at a transplant center, brings a lawsuit under the False Claims Act, as happened in the Chicago case above. These lawsuits are followed by investigations by the Department of Health and Human Services Office of the Inspector General (OIG) and may result in monetary settlements. In the Chicago case, for example, the UIC ended up paying over $2 million to settle its claims with the

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6 Id.
7 Steve Warmbir, UIC Hospital Sued for Medicare Fraud, CHI. SUN-TIMES, July 29, 2003.
8 Id.
9 Id.; see also U.S. Department of Justice, United States and State of Illinois Allege Fraud in Liver Transplant Program at University of Illinois (July 28, 2003)(on file with author)(citing United States of America and State of Illinois ex rel. Raymond Pollak, M.D. v. Board of Trustees of the University of Illinois and the University of Chicago, 99 C 710 (N.D. Il.)).
10 Warmbir, supra note 7.
11 False Claims Act (31 U.S.C. §3729 et seq); See also Riley v. St. Lukes Episcopal Hosp., 252 F.3d 749, 753 (5th Cir.)(providing another example of the use of the False Claims Act in a lawsuit alleging organ donation fraud).
United States and the State of Illinois. This settlement was for twice the amount of actual damages, which the prosecutor said should “[send] a clear message to health care providers that they will be held accountable for defrauding government payment programs.”

Critics of the organ transplant industry might view this monetary settlement as the equivalent of a slap on the hand. Arguably, one of the most severe types of civil penalties that may be imposed for Medicare fraud is “death penalty” sanctions, whereby a hospital is excluded from the Medicare program. UIC’s settlement with the government specifically stated that no action would be taken to exclude UIC from Medicare. Nevertheless, it is clear that the government does not intend to allow perpetrators of this type of fraud to go completely unpunished.

The final way in which “Grey’s Anatomy” fails to comport with real-life instances of fraud is its failure to recognize the most immediate and dire consequence of transplant list fraud, namely the potential for loss of human life. If one person is unfairly moved up a transplant list, another person who legitimately had a claim to a particular organ may fail to receive a needed transplant in time. The UIC case did not contain allegations of loss of life. However, a death related to transplant list “line jumping” was claimed in reports of alleged fraud committed in the liver transplant program at St. Vincent Medical Center in Los Angeles. In 2003, an individual who was 52nd on the transplant list was moved to the top of the list. The person who was first on the transplant list failed to receive an organ transplant in time and died as a result. This consequence of transplant list fraud, although not a frequent occurrence, should not be minimized in real life or in television portrayals of the fraud. As Illinois Attorney General Lisa Madigan stated in reference to the UIC fraud case, “there is no room for fraud when it comes to deciding which patient receives an organ. No one should play leapfrog with peoples’ lives.”

In conclusion, the egregious nature of organ transplant list fraud lends itself to sensational and fictional representations on television or in the movies. These portrayals, such as seen on “Grey’s Anatomy,” often capture the heightened emotional nature of fraud perpetrated in this area; however, they do not always comport with reality. It is important for the public to be properly apprised of the facts regarding this type of fraud (and the rare nature of the fraud) in order to strengthen its faith in the equity of the organ donation

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13 U.S. Department of Justice, supra note 9.
14 Id.
16 U.S. Department of Justice, supra note 9.
19 Consequences of LA Transplant Scandal Coming to Light, supra note 17.
distribution process and thereby continue its vital support of these frequently life-saving treatments.

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