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Teaching Fraud and Abuse Law: Seeing Both the Forest and the Trees

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TEACHING FRAUD AND ABUSE LAW: SEEING BOTH THE FOREST AND THE TREES

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For someone who has spent almost twenty years teaching health care fraud and abuse, I had a remarkably rocky introduction to the topic in practice. My first health care fraud assignment involved the Medicare and Medicaid Anti-Kickback Statute,[1] which the supervising Senior Associate quickly summarized before handing me the client's proposal. I dutifully read the statute and safe harbor regulations,[2] found the safe harbor that best fit the facts, and produced a brief memo laying out what the client would need to do to comply. The Senior Associate returned the memo to me covered in red marker, angrily explaining that my analysis was entirely wrong: it was unnecessary and all but impossible to satisfy the full regulatory criteria, and it would be foolish and incorrect to suggest that to a client. Sufficiently chastised, and this time armed with more background on the law (and a sample of a prior client memo on the topic), I redrafted my analysis—thankfully, to my supervisor's satisfaction.

I learned a great deal from that experience, unpleasant as it may have been. For one thing, it convinced me that whatever "fraud and abuse" was, I wanted nothing more to do with it.[3] As so often happens, though, I didn't have much of a choice: the practice needed another Associate who could do fraud and abuse work, and I was it. Fortunately, my subsequent assignments came from partners who provided far more context and explanation, shaping both my practical knowledge of and deep appreciation for the subject area.[4] After many

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1. 42 U.S.C. § 1320a-7b (2012).

2. 42 C.F.R. § 1001.952 (2015).

3. For another, it reinforced the importance of always requesting a good sample of whatever document I was asked to produce—advice I pass along to my students and that I follow to this day (as my committee Chairs can attest).

4. Not to say that I didn't put up a fight. I vividly recall doing my best to avoid my first Civil False Claims Act case—even being desperate enough to ask a partner in the Labor

hours spent in deep, non-billable discussions, they were not surprised (although likely relieved) when I decided to transition into a full-time teaching position.

The experience also led me to contemplate, for the first time, how to actually *teach* fraud and abuse law. I'd thought about teaching even before I graduated from law school, but those thoughts had rarely ventured beyond the core first-year subjects, or perhaps a general Health Law course more akin to the bioethics-heavy offerings I took as a student. But as a young practitioner, I would have been far better off had I been given an introduction to fraud and abuse concepts in law school—and offered the chance to screw up in a classroom setting rather than on my first assignment.

Since that time, I've had the pleasure of teaching health care fraud and abuse in a variety of settings. When I began teaching, I covered health care fraud as one subject in a jam-packed three-credit survey course that ran the gamut from informed consent to tax exemption, all in a three-hour evening time block once a week. At a different school, I was able to split the introductory course in half, moving medical malpractice, informed consent, privacy, and quality-of-care concerns into a separate survey course. Thanks to developments such as the Affordable Care Act, however, the organizational/regulatory survey course that encompasses fraud and abuse remains overloaded. I've also had the opportunity to teach upper-level health care fraud and abuse electives, both as seminars and as exercise-based offerings. While those courses have allowed me to make up for the relatively short time I am able to devote to fraud and abuse topics in a typical survey course, I am well aware that upper-level offerings may not be feasible for faculty members at schools without a robust Health Law curriculum.

What have I learned, nearly twenty years into law teaching? I've learned that if practicing health care fraud and abuse is difficult, teaching it is even more so. Why? Health care fraud is actionable under a wide variety of federal and state laws. Some of these laws, such as the Medicare and Medicaid Anti-Kickback Statute, the "Stark Law" prohibition on physician self-referrals, the Civil Monetary Penalties Law, and the crime of Health Care Fraud, directly target improper health care activities.[5] Other laws, such as the Civil False Claims Act ("FCA"),[6] apply more broadly to government contracts and transactions. Health care fraud also may be prosecuted under traditional criminal laws such as Mail and Wire Fraud, Money Laundering, False

Department, for whom I had been doing some health care-related ERISA assignments, whether his work could fully occupy my time. (I truly mean no disrespect to ERISA lawyers.)

5. 18 U.S.C. § 1347 (2012) (Health Care Fraud); 42 U.S.C. § 1320a-7a (2012) (Civil Monetary Penalties); § 1320a-7b (Anti-Kickback Statute); § 1395nn (Ethics in Patient Referrals).

6. 31 U.S.C. §§ 3729–3733 (2012).

Statements, or even RICO,[7] as well as state fraud and consumer protection statutes.[8] Attorneys also must be mindful of the collateral consequences that may follow from (and sometimes in lieu of) civil or criminal prosecution, especially the potential for exclusion from the federal health care programs.[9] Introducing students to all these statutes, even at a cursory level, is impossible in a three-credit survey course.

Moreover, many of these statutes are not freestanding prohibitions, but rather operate in the context of the detailed reimbursement rules of Medicare, Medicaid, and other federal health care programs. An allegation that someone violated the FCA by submitting a false bill to Medicare, for example, can be understood only in the context of the rules governing when and how Medicare pays for those services in the first place. The sheer number of program rules and regulations is staggering: the Tenth Circuit recently estimated that the relevant sections of the Code of Federal Regulations are over 175,000 pages long, and the Centers for Medicare and Medicaid Services ("CMS") website contains more than 37,000 guidance documents.[10] These rules are constantly changing, raising the question of whether anyone—attorney, health care provider, or even the government itself—realistically can be expected to keep up.[11] Yet most students will have had only the barest of introductions to the federal health care programs before encountering the fraud and abuse laws, often just a few days later.

Furthermore, the fraud and abuse laws themselves have changed rapidly, particularly since the 1990's.[12] The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") reinvigorated health care fraud enforcement, defining new crimes, updating civil penalties, creating procedures for developing new Anti-Kickback safe harbors and Special Fraud Alerts, providing for Advisory Opinions, and coordinating enforcement through a new Fraud and Abuse Control Program.[13] HIPAA also ushered in a new era of fraud revisions, with significant amendments to the fraud and abuse

7. 18 U.S.C. § 1001 (False Statements); §§ 1341, 1343 (Mail and Wire Fraud); §§ 1956–1957 (Money Laundering); §§ 1961–1968 (RICO).

8. *See, e.g.*, CAL. HEALTH & SAFETY CODE §§ 109875–111915 (Sherman Food, Drug, and Cosmetic Law).

9. 42 U.S.C. § 1320a-7.

10. Caring Hearts Pers. Home Servs., Inc. v. Burwell, 824 F.3d 968, 969–70 (10th Cir. 2016).

11. As the Tenth Circuit noted, "This case has taken us to a strange world where [CMS] itself . . . seems unable to keep pace with its own frenetic lawmaking. . . . [A]n agency decision that loses track of its own controlling regulations and applies the wrong rules in order to penalize private citizens can never stand." *Id.* at 976–77.

12. For a discussion of these trends, see Joan H. Krause, *A Conceptual Model of Health Care Fraud Enforcement*, 12 J.L. & POL'Y 55 (2003).

13. *See* Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936.

laws appearing in nearly every subsequent budget bill.[14] Stark I begat Stark II, followed by more than a decade spent developing multi-phase regulations that are still being revised.[15] The FCA has been amended three times since 1986, more rapidly and significantly than in its entire first century.[16] If it is difficult for practicing attorneys to keep up with these changes, it is well-nigh impossible for law students to do so.

So how can you effectively teach health care fraud and abuse, in light of the highly complex and ever-changing requirements? How can you ensure that students, especially those at schools without an in-depth Health Law curriculum, do more than simply skim the surface—without overwhelming them with details they won't be able to appreciate, and which are likely to undergo significant changes by the time they enter practice? To do so requires a combination of factors: an honest awareness of both the school's and the professor's own limitations; a focus on familiarizing students with the underlying structure of the anti-fraud legal framework rather than inundating them with details; a teaching methodology that encourages students, when possible, to apply what they learn to real-life examples; and, above all, a commitment to teaching students an overall *approach* to fraud and abuse issues.[17]

I. KNOW YOUR LIMITATIONS

Health law professors face two primary types of limitations on teaching fraud and abuse: external limitations imposed by the school's academic program, and internal limitations imposed by the professor's own practice experience (or lack thereof). Resource constraints often force law schools to prioritize first-year and core upper-level courses over faculty members' preferences for specialized electives. At many schools, a one-semester survey course may constitute the entirety of the Health Law curriculum, either because faculty members are needed to teach other courses or because student

14. Joan H. Krause, *Following the Money in Health Care Fraud: Reflections on a Modern-Day Yellow Brick Road*, 36 AM. J.L. & MED. 343, 363 (2010) (explaining typical legislative response to fraud).

15. *See* 42 U.S.C. § 1395nn (2012); 42 C.F.R §§ 411.1–411.408 (2015); Krause, *supra* note 12, at 86–90.

16. *See* False Claims Amendments Act of 1986, Pub. L. No. 99-562, §§ 3–4, 100 Stat. 3153, 3154–3158; Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, § 4, 123 Stat. 1617, 1621–1625; Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §§ 1313(a)(6), 6402(a), 124 Stat. 119, 185, 753 (2010); Joan H. Krause, *Health Care Providers and the Public Fisc: Paradigms of Government Harm Under the Civil False Claims Act*, 36 GA. L. REV. 121, 129–39 (2001) (relating history of FCA).

17. One caveat: these comments are focused primarily on full-time law school faculty members rather than practicing attorneys who teach a course or two on an adjunct basis, although I hope they may be helpful to the latter group as well.

interest does not justify additional offerings. The American Health Lawyers Association ("AHLA"), the country's largest organization of health law practitioners, recently developed curricular guidance to help faculty members design courses to expose students to the full range of topics they will need to know in practice.[18] Yet covering the landscape of health care law and bioethics in a single semester is no longer feasible, if it ever was. It is difficult even to touch on all the topics on the AHLA list, let alone to devote substantial time to a complex issue such as fraud and abuse.

Even faculty members teaching at schools with a robust Health Law curriculum may face constraints on what courses can be offered. My first upper-level health care fraud elective, for example, was actually configured as a seminar on White Collar Crime in Health Care. The issue wasn't whether the J.D., LL.M., and Master's students could sustain another Health Law offering; it was the fact that the law school's curriculum contained few advanced Criminal Law electives, which made it attractive to create a new course that might reach both populations. While initially I was disappointed, in retrospect the school's curricular needs forced me to expand my knowledge of the federal False Statements, Money Laundering, and RICO statutes. In a world of parallel prosecutions, being able to incorporate these topics into my basic fraud and abuse coverage has proven invaluable, as has the opportunity to make connections with federal prosecutors who handle these cases on a daily basis.

External constraints are not just a function of the law school but also of the student body. Schools with a robust Health Law curriculum, particularly those with a Center or Institute, tend to draw more students with extensive backgrounds in health care, including physicians and nurses. Those students' familiarity with the health care system and their ability to relate their experiences to fellow classmates provide real-life context that is difficult to replicate through readings or lecture alone. In schools with fewer health law professionals as students, faculty members either must try to provide that context themselves or focus instead on fraud issues that arise under more easily comprehensible, less clinically complex fact patterns. Moreover, students who have worked in the health care field often have encountered fraud and abuse issues in some guise, whereas students with little real-life exposure may at times find the topic remote. I like to remind students that a general understanding of fraud and abuse law is part of being a well-rounded health lawyer, even if it won't be their primary area of focus. In my own practice, for example, while I did very little tax exemption work and virtually no antitrust work, I needed to have at least a passing familiarity with those subjects, if only to identify when I needed to consult colleagues in those areas.

18. AMERICAN HEALTH LAWYERS ASS'N, THE AHLA HEALTH LAW CURRICULUM MANUAL (2014), https://www.healthlawyers.org/hlresources/PI/Documents/HLC_Toolkit/HLC_Full.pdf [https://perma.cc/K6RN-KBMD].

Internal practice-related constraints may also take different forms. Many law professors who teach Health Law did not practice health care fraud. Those who did certainly have an advantage in teaching the subject, but may be prone to an even more insidious problem: with every passing year they become further removed from practice, and their knowledge becomes further out of date.[19] This can be not only disconcerting, but also counterintuitive. Soon after I started teaching, I had a conversation with one of my former supervising partners in which he expressed some envy that I finally had the time to sit back and contemplate cutting-edge health care fraud issues; he was surprised when I admitted that, in reality, it was surprisingly difficult to do so without the immediacy of clients raising those issues for me. As but one example, take the Stark Law (please).[20] In practice, I devoted a fair amount of time to tracking and analyzing the statute and Stark I regulations (complete with flowcharts!). But the Stark II regulations weren't even proposed until after I had left my firm and entered the academy. I did my best to keep up with the Federal Register notices at first, but without the need to respond to clients—and with more immediate responsibilities to my students and colleagues, as well as the pressure to produce my own scholarship—inevitably I fell behind. I still know more about Stark than my students, of course, but I would be foolhardy not to recognize that not having practiced under the Stark II regulations puts me at a disadvantage. Some full-time faculty members solve this problem by continuing to engage in limited practice or consulting work on the side. But for many, the constraints of pre-tenure requirements or administrative responsibilities, not to mention institutional limits on outside employment, make that difficult.

For all these reasons, it can be extremely helpful to draw on the expertise of others. If you are fortunate enough to work in a school with a robust Health Law program, or in a locale with other law schools, you may have local faculty colleagues with deeper fraud and abuse backgrounds. In many cities you should be able to identify local health care practitioners, who often appreciate the chance to share their expertise and interests with students. When I began teaching I was hesitant to ask local attorneys to guest lecture, fearing it might make me appear less than fully qualified to be teaching these courses. But over the years I began to realize that I was doing my students a disservice. While I certainly have enough of a background to cover the topics in the general survey

19. As Benjamin Franklin said, "Fish and visitors smell after three days." *Wit and Wisdom: Franklin Funnies*, PBS, http://www.pbs.org/benfranklin/l3_wit_franklin.html [https://perma.cc/LQP8-RT3J]. Law professors may not grow stale quite as quickly, but nevertheless they do grow stale.

20. My apologies to Henny Youngman. *See Comedy Classics: Henny Youngman*, JEWISH HUMOR CENTRAL, http://www.jewishhumorcentral.com/2012/06/comedy-classics-henny-youngman-take-my.html [https://perma.cc/G75M-7WHR].

class, I have come to rely more heavily on local attorneys in my upper-level health care fraud electives. I've been fortunate to find wonderful attorneys who focus on the implementation of the Stark II regulations, who represent FCA *qui tam* relators, and who investigate and prosecute health care fraud, as but a few examples. They have brought a level of complexity to our classroom discussions beyond what I can provide, along with networking opportunities for my students.[21]

II. FRAMING THE DISCUSSION

Perhaps the biggest challenge in teaching health care fraud and abuse is how to frame the discussion. There is a tendency for professors to go to one of two extremes: drilling down so deeply into the practical details that students lose perspective regarding the overall goals and system structure, or addressing the topics at such a theoretical level that students learn little about how the laws actually apply. Finding the sweet spot—where students understand the basic structure and goals of the enforcement system but also appreciate how the laws function in practice—is a constant challenge.

The dangers of drilling too deeply are particularly acute for faculty members coming directly out of practice. In practice, many of us became experts in very discrete areas of the law: the development and application of a particular Stark or Anti-Kickback exception or safe harbor, for example, or how the anti-fraud laws apply to a particular sector of the health care industry, such as the manufacturers of a specific type of medical device. For many of us, our academic interests were sparked by the desire to delve more deeply into legal issues raised initially by our clients. It can be a real challenge, however, to translate those experiences into a broader introduction to fraud and abuse *for students*.[22] Law students are not Junior Associates; as a faculty member, you cannot expect them to have the background to be able to comprehend a very detailed reimbursement issue, even if it is one that occupied an inordinate amount of your time in practice. Truly *teaching* health care fraud requires more than simply burying students under a pile of background information and expecting them to be able to dig themselves out.

21. If you work in a location without a robust Health Law bar, you may be able to take advantage of exercises and other materials from faculty colleagues through teaching banks and similar informational exchanges, as well as resources from state and national bar organizations (including AHLA).

22. I would add two additional observations about the transition from practice to teaching. First, although it should be self-evident, it is extremely important to guard against inadvertent bias for either the prosecution or the defense. Students need to be able to analyze both sides' arguments fully and fairly—and, realistically, need to be open to future employment on either side of the table. Second, making the transition from the detailed, client-specific forms of writing one does in practice to articles of broader academic interest can also be a challenge, but one that must be left for another day.

On the other hand, the longer you teach, the more the opposite danger arises: the tendency to approach fraud and abuse from a purely theoretical perspective. I've learned the hard way that the types of problems that pique my own research interests—such as how FCA jurisprudence has addressed the concept of materiality, or whether the fraud enforcement regime gives sufficient weight to the harm done to patients[23]—are not necessarily good topics to cover in a lecture class. If you are fortunate enough to teach an advanced fraud and abuse elective, particularly a seminar, it is far easier to integrate your research agenda into classroom discussions. But realistically (faculty egos aside), in a basic survey course students need a general overview of these laws more than they need to discuss your latest law review article.

Similarly, it is important to choose your readings carefully. Perhaps because of the extensive statutory framework, there is a relatively small canon of fraud and abuse case law that *must* be covered. Instead, cases often are chosen for what they illustrate, either in terms of their fact patterns or the court's analysis of the relevant statute and regulations. The cases cited most often by practitioners, however, are not necessarily those that lend themselves to good classroom discussion. As but one example, for several years I tried to teach a version of the *Inspector General v. Hanlester Network* litigation.[24] The dispute—involving a complicated laboratory referral network—offered an opportunity for students to appreciate how complex real-life Anti-Kickback cases may be, as well as an effective method of illustrating why weaknesses in the statute led many to conclude that a separate law (*i.e.*, Stark) was necessary to address the issue of "self-referral." The problem was, the facts were so complicated that students had difficulty understanding exactly what the parties had done. After spending what seemed like inordinate amounts of time every year trying to map out the scheme in a diagram that barely fit on the board, I gave up and assigned other Anti-Kickback cases: the value of the case as a discussion tool simply did not outweigh the confusion caused by the overly convoluted facts. As fascinating as I found the litigation, and as significant as it had been in practice, it simply wasn't a very good *teaching* case. If the facts of a case are so complex that students cannot follow what happened, or the fraud turns on the failure to comply with an obscure regulation the students lack the training to understand, you may spend more time providing background than actually discussing the relevant legal issues.

23. *See, e.g.*, Joan H. Krause, *Reflections on Certification, Interpretation, and the Quest for Fraud That "Counts" Under the False Claims Act*, 2017 U. ILL. L. REV. (forthcoming 2017); Joan H. Krause, *Can Health Law Truly Become Patient-Centered?*, 45 WAKE FOREST L. REV. 1489 (2010).

24. *See* The Inspector Gen., DAB 1347 (1992) (H.H.S.), 1992 WL 685464 (Dep't of Health and Human Serv. Departmental Appeals Bd., July 24, 1992); *see* Hanlester Network v. Shalala, 51 F.3d 1390 (9th Cir. 1995).

I find that the most effective cases, from a teaching perspective, are those to which students are able to relate. This dovetails nicely with another observation: in teaching fraud and abuse, it is important not to lose sight of the human element. It is all too easy to think of health care fraud as involving purely the falsification of bills (paper or electronic), schemes often hatched in executive boardrooms and perpetrated on large health insurers or the (even larger) federal health care programs. But fraud involves *people*—as perpetrators, victims, investigators, and prosecutors. One of my favorite teaching cases is *United States v. Krizek*,[25] a False Claims Act case from the mid-1990's involving a European-trained psychiatrist who was alleged to have falsified (or at least to have been extremely reckless regarding) his Medicaid bills. As Tim Greaney and I chronicled, the Krizeks' story reads like a movie plot, involving the KGB, a young family's escape from Communist Czechoslovakia and eventual resettlement in the United States, allegations of subterfuge by federal investigators, a revolving cast of prosecutors, an eleventh-hour pretrial change in defense attorneys, and a colorful federal district court judge—resulting in litigation that went on for nearly a decade.[26] *Krizek* provides a wonderful opportunity not only to discuss the intricacies of the FCA, but also to examine how and why fraud litigation can go incomprehensibly wrong. Given the complex and somewhat dry nature of the topic, it is helpful to take advantage of any opportunity to remind students of the widespread human toll these cases may take.[27]

III. LESS TALKING, MORE DOING

Topic coverage is one of the most difficult decisions in teaching fraud and abuse. Most classes cover the Big Three statutes—the Anti-Kickback Statute, Stark Law, and FCA—as well as the core administrative remedies (civil monetary penalties and exclusion) and at least some mention of Health Care Fraud and other health-specific crimes. Beyond that, there is a great deal of variation. How much do you want to cover state law, or traditional federal criminal laws such as Mail and Wire Fraud? How much time will you devote to enforcement initiatives, or the changing government enforcement priorities

25. 859 F. Supp. 5 (D.D.C. 1994), *supplemented*, 909 F. Supp. 32 (D.D.C. 1995), *aff'd in part and remanded*, 111 F.3d 934 (D.C. Cir. 1997).

26. *See* Thomas L. Greaney & Joan H. Krause, United States v. Krizek*: Rough Justice Under the Civil False Claims Act*, *in* HEALTH LAW AND BIOETHICS: CASES IN CONTEXT 187 (Sandra H. Johnson et al. eds., 2009).

27. In a similar vein, *United States v. Starks* is useful for illustrating the harm that some fraud schemes inflict on their victims. 157 F.3d 833 (11th Cir. 1998). In that case, indigent pregnant women were threatened with the loss of their children if they did not receive drug treatment from a particular company. *Id.* at 837.

expressed most recently in the Yates Memorandum?[28] Will you cover issues such as corporate liability, the waiver of privilege, the settlement process, or *qui tam* procedure? How much time will you devote to the guidance documents made available by the Office of Inspector General, such as Compliance Guidances, Advisory Opinions, or Corporate Integrity Agreements? All of these questions must be considered in the context of the course time limitations, particularly in a one-semester survey.

The trade-off between breadth and depth is inevitable but must be made thoughtfully (rather than in a panic as the end of the semester approaches). Over the years I have tried to strike a balance. I always begin with a brief historical overview of fraud enforcement, so students can appreciate the trajectory that brought us to the current situation. I also provide an overview of the basic enforcement scheme, including not only the actors but also the types of laws (civil, criminal, and administrative) they are most likely to utilize. When I turn to the individual fraud laws, however, I often choose depth over breadth. For example, I have found that focusing on one or two Anti-Kickback safe harbors is a better use of class time and leads to better comprehension than asking students to read them all. It is particularly helpful to ask students to work through the multiple levels of law and guidance that flesh out a specific legal prohibition, applying those materials to a relatively straightforward fact situation: not simply the statute and relevant safe harbor, but also applicable Special Fraud Alerts, Special Advisory Bulletins, and an Advisory Opinion or two relating to that safe harbor. Allowing students to drill down into one or two provisions rather than providing a cursory introduction to all of them may sacrifice breadth of coverage, but provides far better preparation for the types of analysis the students will be expected to do in practice.

Which brings me to perhaps my crucial piece of advice, borne from experience: when it comes to learning about health care fraud and abuse, *doing is better than listening*. I can (and do) talk about health care fraud for hours. At an academic or CLE conference, that may be appropriate. But in the classroom, there is no substitute for having students *apply* the laws by working through problems. Ideally, students can be asked to prepare written response memoranda, mirroring the type of written analysis they would give to a supervisor. If that is not feasible in a survey course, using class time to work through fraud hypotheticals is also well worth the effort, and oftentimes more productive than lecturing through these materials.

28. *See* Memorandum from Sally Quillian Yates, Deputy Att'y Gen., U.S. Dep't of Just. to Assistant Att'y Gen., Antitrust Div., et al. (Sept. 9, 2015), https://www.justice.gov/dag/file/769036/download [https://perma.cc/PFG9-DKVJ]; *see also* HEALTH CARE FRAUD PREVENTION & ENFORCEMENT ACTION TEAM TASK FORCE, https://www.stopmedicarefraud.gov/aboutfraud/heattaskforce/index.html [https://perma.cc/YVS2-VVQG].

There are several options for devising fraud hypotheticals. You may be able to adapt a fact situation you encountered in practice, provided you can streamline the facts to omit extraneous information that is likely to prove too much of a distraction (or identify your former client). Similarly, you may want to use exercises from one of the available health law textbooks—although again, you should carefully think through the exercises to make sure they are narrowly focused on an issue of practical (rather than academic) interest. By far my favorite source, however, is the cases themselves, with a bit of judicious editing.

One of my favorite cases to adapt for classroom use is *United States v. Jain*, in which a psychologist was convicted both of Mail Fraud and violating the Anti-Kickback Statute for accepting payments from a local psychiatric hospital to which he referred patients.[29] The government, however, acknowledged that the patients required hospitalization and that the hospital in question was as good or better than any of the alternatives. With minimal adaptation, the facts provide an opportunity not only to analyze the application of the elements of the Anti-Kickback Statute, but also to discuss the more complex issue of whether health care fraud causes "harm" even if there is no allegation of unnecessary or substandard medical treatment. Drawing facts from an actual case provides a ready response to students who are prone to argue that hypotheticals are so preposterous as to be unrealistic; as an added benefit, after the discussion the students can be given an opportunity to critique the court's actual analysis. Regardless of whether students agree with the outcome, there is no substitute for an opportunity to practice applying these laws to a set of facts. You just might help students avoid an experience similar to my own when they receive their first real fraud assignments.

IV. CONCLUSION: TEACHING FRAUD AND ABUSE FOR THE LONG TERM

After teaching health care fraud and abuse in a variety of settings, some successful and others less so, I have a far better sense of what I am trying to accomplish. At the start of my teaching career, I naively thought that I could teach students The Law as I had come to understand it in practice. I now know that is not feasible: given the pace of change and the proliferation of materials, it is not even remotely possible to cover the fraud and abuse landscape in any meaningful way in the classroom. But I can teach students the fraud and abuse *framework*: the basic structure and application of the laws, the enforcement process, and the primary players they are likely to encounter. Most importantly, I can teach students where to go to *find* the law and guidance they will need to apply, even if the details change. If I can do that for even one student, on a good day I know I have accomplished something.

29. United States v. Jain, 93 F.3d 436, 438 (8th Cir. 1996).