

Press Release:  
The Law Office of Jeffrey J. Downey  
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*The Department of Justice files their Summary Judgment Opposition  
in United States, ex rel. Ribik v. ManorCare*

On November 2, 2017, the Department of Justice responded to ManorCare's Motion for Summary Judgment in a False Claims Act case that has been pending in Federal Court since January 7, 2009. The opposition memorandum, which was publicly filed, can be **accessed here**.

"This case is set for trial starting on January 22, 2018," explains Relator's attorney, Jeffrey J. Downey, who represents whistleblower Christine Ribik, the first person to file fraud claims against ManorCare. "After the Department of Justice intervened in the case, much of the information which supported the fraud allegations was not disseminated to the public. Now that summary judgment is ripe for a decision, the corroborating facts have come to light in public filings that show the full extent of ManorCare's fraudulent corporate conduct," explains Downey.

For example, the Government's brief begins with the comments from ManorCare own staff, submitted with their resignations:

"I honestly felt that my license would be in jeopardy because the manager was pressuring me to treat inappropriate patients; it just felt wrong." (Dkt. 677, at 1). "I was asked to perform unethical procedures and bullied into add'l units. My job was threatened when I didn't want to sacrifice my integrity." *Id.*

The Government's brief points out that "ManorCare has no answer for this evidence. Instead ManorCare relies on a series of technical arguments, which are equal parts unpersuasive and self-contradictory." *Id.* at 2. "Their technical arguments center upon the notion that one can't have a false claim for therapy treatments because what constitute reasonable and necessary is subjective," explains Downey. "This argument was already rejected by the Judge during Defendants' Motion to Dismiss, which they lost. ManorCare's counsel is adept at asserting technical arguments" explains Downey. "They even objected to my motion based on the margins in my brief, which was a new experience for me. But at some point, they are going to have to try this case on the actual facts and not legal technicalities."

Throughout the case ManorCare has argued that they did not commit a single act of Medicare fraud, despite over a 100% increase in billing at the Ultra High therapy level (the most expensive level of therapy that can be billed to Medicare) during the relevant time period. But in separate filings seeking to challenge Relator Ribik's status as a qualified Relator, ManorCare is now arguing that their fraud was so widespread that it was public knowledge. "The public disclosure bar is often raised by Defendants to try and dismiss Relator's claims where such information was publicly known. But here, Defendants only point to internal audits which showed questionable billing practices. There was nothing that had been publicly disclosed involving ManorCare's Medicare fraud until after Ribik filed her complaint on January 7, 2009," explains Downey.

Under the law of this Circuit, the Government's knowledge of potential fraud does not create a bar to an FCA claim unless there is a disclosure to the public at large. Moreover, how could fraud that never occurred be publicly disclosed, asks Downey? Let ManorCare explain that one to the jury.

The Government's complaint alleged that ManorCare embarked on a corporate wide scheme to pressure their therapists to up-code therapy, even for dying patients who were medically compromised. The Government's summary judgment brief explains how they used special training called "Medicare entitlement training" to pressure therapists "to provide the maximum amount of therapy that the patient can tolerate." *Id.* at 28. One therapist commented how "your Medicare entitlement philosophy is nothing more than institutional gauging." *Id.* at 15. ManorCare produced documents that showed how their administrators, who were not typically clinicians, attempted to improperly influence therapists' judgment. One person stated, "**If they have a pulse, they can get an RU**" (Ultra High level). *Id.* at 16. One Regional Manager commented that "[e]veryone should be an RU when they come in." *Id.* at 17. Another manager complained that "**those therapists are playing the ethics card again.**"

"I am glad to see that the practices of ManorCare are finally being exposed," explains Christine Ribik, the former Occupational Therapist who originally filed this case. "I tried to report this back in 2004 and 2005 to the OIG and HHS. I even went to Senator Grassley, who was supportive of my concerns and wrote a letter to OIG about ManorCare. When the OIG didn't take action, I filed this case and am gratified to see that the Department of Justice has uncovered such strong evidence supporting the fraud claims in this case. Therapists are supposed to follow ethical standards for their profession and it's unfortunate that so many therapists had to change jobs or their careers before this company was prosecuted.

While ManorCare was busy up-coding charges for Medicare patients, patients who had private insurance or Medicaid were often neglected," explains Ribik. "Its no coincidence that ManorCare did not have Medicaid entitlement training" explains Downey, "because Medicaid did not pay enough. ManorCare targeted Medicare because it was an easy target for fraud." Initial government estimates revealed that the fraud costs taxpayers anywhere from 582 to 678 million dollars during the damage period. (Dkt 456 at 8). "While we can expect ManorCare to push back on the amount of damages" explains Downey, "given the trebling of damages and penalties under the False Claims Act, ManorCare has potential exposure of over 2 billion dollars in this matter." ManorCare's Landlord, QCP recently filed a receivership claim seeking to take over the financially troubled nursing home chain. "It's important to understand that even if ManorCare filed for bankruptcy, judgments arising from intentional acts of fraud are non-dischargeable. It would be hard for ManorCare to argue that this fraud was an accident, when they are instructing therapists that if the patient has a pulse, he goes into the ultra high category," explains Downey. The onslaught of former therapists expected to testify about ManorCare's fraud at trial will not paint a pretty picture for this Defendant.

"I would encourage any therapists who treats Medicare patients to review this case and take note that the Department of Justice is not rolling over on these cases," explains Downey. In the last 19 months Justice Department settled three significant cases against large nursing home chains including Genesis, Rehab Care and Life Care Centers of America for similar fraud. "With some

60 billion in estimated healthcare fraud every year, I am glad to see that our Government is going after these fraudsters,” exclaims Ribik. It’s about time!

For more information about the ManorCare case, contact the Law Office of Jeffrey J. Downey, 202-712-9120, or email at [jdowney@jeffdowney.com](mailto:jdowney@jeffdowney.com). On the web at [Jeffdowney.com](http://Jeffdowney.com)