

False Claims & True Intentions: Fraud in the Rehab Industrial Complex

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INTRODUCTION

Substance Use Disorder (SUD) is a significant public health concern. In 2021, 46.3 million people aged 12 and older (16.5% of the US population) met the criteria for SUD diagnosis, of which 94% did not receive any treatment.¹ At least 106,699 overdose deaths occurred in the US in 2021, with those involving opioids radically increasing over the last two decades.² This is an avoidable tragedy that we possess the medical knowledge and responsibility to address: the Centers for Disease Control & Prevention (CDC) estimates that 65.5% of overdose deaths across 32 jurisdictions in 2021 had “at least one potential opportunity for intervention.”³ This public health emergency has illuminated the importance of accessible and evidenced-based SUD treatment, particularly Opioid Use Disorder (OUD) treatment.

Thus, the large addiction treatment market is now operated by private and non-governmental entities, including residential and non-residential treatment and sober living programs.⁴ The demand has culminated in the rehab industrial complex (RIC), or the vast network of SUD treatment services often viewed as diversion programs from incarceration.⁵ The

¹ *Highlights for the 2021 Nat'l Survey on Drug Use & Health*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. [SAMHSA], (2021) <https://www.samhsa.gov/data/sites/default/files/2022-12/2021NSDUHFFRHighlights092722.pdf>.

² Merianne R. Spencer et al., *Drug overdose deaths in the U.S., 2001–2021*, NAT'L CTR. FOR HEALTH STAT. (Dec. 2021) <https://dx.doi.org/10.15620/cdc:122556>.

³ *State Unintentional Drug Overdose Reporting System*, CDC (updated Aug. 25, 2023) <https://www.cdc.gov/drugoverdose/fatal/dashboard>.

⁴ See Renuka Rayasam & Blake Farmer, *Some addiction treatment centers turn big profits by scaling back care*, CBS NEWS (Jan. 30, 2023) <https://www.cbsnews.com/news/drug-treatment-rehab-private-equity-profits>.

⁵ The Action Lab at the Center for Health Policy & Law, *Lab Common Terms & Acronyms at 2* (updated Aug. 10, 2023) (unpublished fact sheet) (on file with The Action Lab).

RIC has proliferated as the public responds to rising addiction and overdose rates, with many new players primarily motivated by economic opportunity entering the field.⁶ Profit-seeking coupled with ineffective regulation of SUD treatment produces RIC facilities that often lack safe, evidence-based, and legally compliant practices, and in turn, an absence of affordable options offering standard-of-care treatment, autonomy, and dignity.⁷

The pursuit of financial gain in an industry that ostensibly exists to help people with SUD – a vulnerable and stigmatized group – has given rise to a RIC tainted by exploitation and abuse.⁸ Consequently, a range of rights violations and criminal activity are alarmingly prevalent.⁹ In light of these challenges, addressing the injustices in the RIC and exploring how lawyers can contribute to its reform is vital. This discussion aims to illuminate the subject and how legal professionals can help address the harm.

CONTRIBUTING FACTORS

Regulatory Oversight & Enforcement

SUD treatment has historically lacked guardrails for ensuring quality care, and the RIC continues to lack comprehensive regulatory oversight and enforcement today.¹⁰ State accreditation and licensing requirements vary greatly and often do not align with the known standard of care for SUD and OUD treatment.¹¹ Medications for Opioid Use Disorder (MOUD) are widely considered the gold-standard treatment for OUD; research shows they more effectively reduce opioid use than treatment without medication.¹² In particular, methadone and buprenorphine significantly reduce overdoses and deaths.¹³ However, only 11% of RIC centers

⁶ See Rayasam & Farmer, *supra* note 4.

⁷ See Lab Common Terms & Acronyms, *supra* note 5 at 2.

⁸ See Teri Sforza et al., *How some S. Cal. drug rehab centers exploit addiction*, THE ORANGE COUNTY REGISTER (May 21, 2017) <https://www.ocregister.com/2017/05/21/how-some-southern-california-drug-rehab-centers-exploit-addiction>.

⁹ See *Id.*

¹⁰ Rayasam & Farmer, *supra* note 4.

¹¹ Katrice Bridges Copeland, *Liquid Gold*, 97 Wash. U. L. Rev. 1451, 1453-54 (2020).

¹² *Treatment Improvement Protocol 63: Medications for Opioid Use Disorder* at *ES2, SAMHSA (updated 2021) <https://store.samhsa.gov/sites/default/files/pep21-02-01-002.pdf>.

¹³ *Id.*

nationwide had accredited opioid treatment programs (OTPs) certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) in 2020.¹⁴ With very few treatment programs providing standard-of-care OUD treatment for their patients, the vast RIC is not yet bridging the treatment gap.¹⁵

SUD treatment is healthcare, but operates differently than other healthcare sectors with more comprehensive guidelines.¹⁶ States have various minimum-standard licensing requirements for residential treatment facilities and staff, and RIC programs often still employ unlicensed counselors.¹⁷ For example, California requires no medical or other degree to obtain a rehab license and lax background check laws.¹⁸ As of 2017, there were only 16 inspectors tasked with monitoring the roughly 2000 RIC facilities in the state.¹⁹ Sober living homes face similar issues; house managers do not need credentials, including first aid training.²⁰

Improved Funding & Access to SUD Treatment

The expansion of health insurance coverage in the US has made SUD treatment more affordable and accessible.²¹ The 2008 Mental Health Parity & Addiction Equity Act (MHPAEA) and 2010 Patient Protection & Affordable Care Act (ACA) improved insurance coverage for residential addiction treatment.²² Under the MHPAEA, all insurance issuers offering group health plans with mental health or SUD coverage must provide equivalent treatment limits (*e.g.*, equal co-pays, deductibles, and visit limits) for mental health/SUD and medical/surgical benefits.²³ The

¹⁴ *National Survey of Substance Abuse Treatment Services (N-SSATS): 2020* at 47, SAMHSA <https://www.samhsa.gov/data/report/national-survey-substance-abuse-treatment-services-n-ssats-2020-data-substance-abuse>.

¹⁵ Noa Krawczyk et al., *Has the treatment gap for OUD narrowed in the U.S.? A yearly assessment from 2010 to 2019*, 110 INT. J. DRUG POLICY 1, 1 (Dec. 2022) <https://doi.org/10.1016/j.drugpo.2022.103786>.

¹⁶ See Copeland, *supra* note 11 at 1483, *U.S. ex. rel. Martino-Fleming v. S. Bay Mental Health Ctr., Inc.*, No. CV 15-13065-PBS, 2018 WL 4539684, at *2 (D. Mass. Sept. 21, 2018) (RIC center and parent company liable under the FCA for fraudulent billing for services provided by unlicensed personnel).

¹⁷ See Copeland, *supra* note 11 at 1483.

¹⁸ See Sforza et al., *supra* note 8.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Copeland, *supra* note 11 at 1469.

²² *Id.* at 1470.

²³ *Id.*

ACA extended the MHPAEA to many health insurance plans and required insurers participating in the online health exchange to offer SUD treatment and laboratory drug testing as an essential benefit.²⁴ The ACA also mandates coverage for relapse treatment that cannot be excluded as a pre-existing condition and allows children to stay on their parent's health insurance until age 26, improving access to treatment for millions of young adults with SUD.²⁵

Medicaid also covers SUD treatment services in states that expanded Medicaid through the ACA, and states that did not expand Medicaid cover inpatient, physician, and other limited services.²⁶ Medicare began covering MOUD in 2020, and state agencies also contribute funding for SUD treatment for people without health insurance.²⁷ In 2017, the Trump administration declared the opioid crisis a public health emergency, enabling new federal funding flows and expanding the US Department of Health and Human Services (HHS) powers to address rising opioid overdoses and deaths.²⁸ This legislation significantly altered the financial landscape of the RIC, with most patients now relying on insurance in an industry where many programs only accepted direct payment.²⁹ Thus, some behavioral health services, including addiction treatment, have high insurance reimbursement rates where most claims are approved.³⁰

Adequately funded SUD treatment is an essential public health initiative and a welcome improvement to pre-ACA and MHPAEA health insurance coverage of SUD treatment. But in a profoundly capitalist culture where profit drives healthcare, the rapid growth to a multi-billion-

²⁴ *Id.* at 1470-71.

²⁵ See Dave Aronberg, *Opportunists Are Exploiting the ACA to Prey on Opioid Addicts*, TIME (Sept. 20, 2017) <https://time.com/4950199/affordable-care-act-opioid-relapse>; *Highlights for the 2021 Nat'l Survey on Drug Use & Health*, SAMHSA (2021) <https://www.samhsa.gov/data/sites/default/files/2022-12/2021NSDUHFFRHighlights092722.pdf>.

²⁶ Katrice Bridges Copeland, *Liquid Gold*, 97 Wash. U. L. Rev. 1451, 1472 (2020).

²⁷ *Id.*

²⁸ See Press Release, U.S. DEP'T OF HEALTH & HUMAN SERV., *HHS Acting Sec'y Declares Pub. Health Emergency to Address Nat'l Opioid Crisis* (Oct. 26, 2017) <https://public3.pagefreezer.com/browse/HHS.gov/31-12-2020T08:51/https://www.hhs.gov/about/news/2017/10/26/hhs-acting-secretary-declares-public-health-emergency-address-national-opioid-crisis.html>.

²⁹ Copeland, *supra* note 26 at 1471.

³⁰ See Eileen O'Grady, *Understaffed, Unlicensed & Untrained: Behavioral Health Under PE*, PRIVATE EQUITY STAKEHOLDER PROJECT [PESP] 1, 2 (Sept. 2020) <https://pestakeholder.org/reports/understaffed-unlicensed-and-untrained-behavioral-health-under-private-equity/>.

dollar market has attracted individuals and companies primarily focused on financial gain, including those who see the overdose crisis and SUD treatment as lucrative investment opportunities.³¹

Profit-Driven Business Strategies

Demand for and investment in addiction treatment services has incentivized various financiers to open numerous new RIC programs across the US. The RIC is highly fragmented, with many small “mom and pop[]” programs that are an appealing target for consolidation by large investment firms.³² The lack of regulation and oversight enables revenue-seeking investors to establish a foothold within the “Substance Abuse Treatment Market.”³³ In the finance sphere, increased addiction rates and addiction prevention programs, COVID-19 closures of treatment centers and eased telemedicine prescribing restrictions, and improved access to treatment are considered market drivers, while the stigma around addiction and reluctance to seek treatment are viewed as market restraints.³⁴

Private equity firms in particular have driven significant investment activity described as a “rebound” in the behavioral health sector.³⁵ The RIC is a substantial portion of this sector, which comprises “mental health and addiction services, including outpatient and inpatient therapy, intellectual and developmental disability treatment, psychiatric hospitals, methadone clinics, and detox centers.”³⁶ The private equity strategy is to acquire healthcare companies within the RIC, often assuming controlling ownership positions where they can influence facility operations and growth strategy to achieve high returns for investors.³⁷ Firms pride themselves on bringing

³¹ Aronberg, *supra* note 25.

³² See O’Grady, *Behavioral Health Under PE*, *supra* note 30 at 2; Benjamin Brown et al., *Private equity investment in behavioral health treatment centers*, 77(3) JAMA PSYCHIATRY 229, 229 (Mar. 2020) <https://pubmed.ncbi.nlm.nih.gov/31851300/>.

³³ See *Substance Abuse Treatment Market Research*, RESEARCH & MARKETS, <https://www.researchandmarkets.com/reports/5460294> (last visited July 5, 2023).

³⁴ See *Id.*

³⁵ Renuka Rayasam & Blake Farmer, *Some addiction treatment centers turn big profits by scaling back care*, CBS NEWS (Jan. 30, 2023) <https://www.cbsnews.com/news/drug-treatment-rehab-private-equity-profits>.

³⁶ Eileen O’Grady, *Money for nothing*, PESP 1, 1 (Feb. 2021) <https://pestakeholder.org/wp-content/uploads/2022/07/Private-Equity-False-Claims-Act-PESP-022221-1-1.pdf>.

³⁷ *Id.* at 3.

“business expertise and much-needed capital” to the RIC but employ various questionable tactics to produce high returns at the expense of a vulnerable population.³⁸ Reduction of staff, overreliance on unlicensed employees, and failure to provide adequate training reduce labor costs.³⁹ Eliminating unprofitable services that support long-term recovery while pressuring patients to prolong treatment and physicians to provide unnecessary services increases investment returns.⁴⁰ And while patients insured by Medicaid are described as “less lucrative” by investors, significant federal and state funding for addiction treatment remains attractive for those aiming to capitalize on the RIC.⁴¹

Revenue maximization strategies actively harm patients and do little to address the overdose crisis. The RIC’s existing regulatory framework creates little incentive to provide patients with evidence-based, high-quality, and efficient care.⁴² Recent litigation against corporate- and private-equity-backed RIC facilities suggests many large firms investing in healthcare do not prioritize healthcare compliance and increasingly find themselves liable for record-breaking damage awards.⁴³ Many private equity firms are “frequent healthcare investors,” indicating “significant due diligence and operational failures” even in their own area of expertise as finance managers.⁴⁴ Corporate executives with no meaningful experience in SUD treatment and little knowledge of the applicable regulations are steering the course in a critical public health sector, often unwittingly or knowingly breaking the law to exploit further the patients they claim to serve.⁴⁵

³⁸ Brown et al., *supra* note 32 at 230.

³⁹ *Id.*

⁴⁰ Katrice Bridges Copeland, *Liquid Gold*, 97 Wash. U. L. Rev. 1451, 1454 (2020).

⁴¹ Brown et al., *supra* note 32 at 229.

⁴² See O’Grady, *Money for nothing*, *supra* note 36 at 2-3.

⁴³ See Press Release, U.S. Atty’s Off. S. Dist. of W.V., *U.S. Atty Announces \$17 Million Healthcare Fraud Settlement* (May 6, 2019) <https://www.justice.gov/usao-sdww/pr/united-states-attorney-announces-17-million-healthcare-fraud-settlement>.

⁴⁴ O’Grady, *Money for Nothing*, *supra* note 36 at 5.

⁴⁵ Zoom interview with Max Rodriguez, Counsel, Pollock Cohen LLP (June 30, 2023).

THE FRAUD PROBLEM

The financial exploitation of vulnerable patients in pursuit of higher returns for owners and investors is a central theme underlying the harm and abuse in the RIC. Charging exorbitant patient fees without providing any evidence-based addiction care is a popular business model.⁴⁶ BRC Recovery, a large private-equity-backed RIC company, advises against Suboxone (a partial opioid agonist MOUD) because it is not a form of abstinence despite that it is one of the few “gold standard, first-line treatment[s]” for OUD.⁴⁷ BRC billed one North Carolina patient \$150,000 for a three-month stay that required a five-day initial detox, contradicting American Society of Addiction Medicine (ASAM) treatment guidelines.⁴⁸ The remainder of the program consisted of weekly therapy and 12-step meetings, “available for free around the country.”⁴⁹ BRC staff pushed the patient, who was unhappy with the care he received and felt “suffocate[ed],” to stay a fourth month, even participating in a call with his father to facilitate an additional \$20,000 payment.⁵⁰ The patient began using opioids again upon leaving the program.⁵¹ A BRC location in Texas charged a patient \$30,000 out of pocket for a three-month stay, in which her family described inadequate medical supervision, being “nickel and dimed” for services like physician’s visits they thought were included, and a program that ultimately did not help the patient, who “felt constant guilt and shame.”⁵² As recently as March 2023, BRC Recovery advertised a “99% success rate” on its website.⁵³

⁴⁶ Renuka Rayasam & Blake Farmer, *Some addiction treatment centers turn big profits by scaling back care*, CBS NEWS (Jan. 30, 2023) <https://www.cbsnews.com/news/drug-treatment-rehab-private-equity-profits>.

⁴⁷ *Id.*; Alexander C. Tsai et al., *Stigma as a fundamental hindrance to the U.S. opioid overdose crisis response*, 16(11) PLOS MED. 1, 3 (Nov. 26, 2019) <https://doi.org/10.1371/journal.pmed.1002969>.

⁴⁸ Kyle Kampman & Margaret Jarvis, *ASAM Nat'l Practice Guideline for the Use of Medications in the Treatment of Addiction Involving Opioid Use*, 9(5) J ADDICT. MED. 358, 362 (Sep-Oct 2015) <https://pubmed.ncbi.nlm.nih.gov/26406300/> (MOUD recommended over abrupt opioid cessation for OUD withdrawal management because abrupt cessation may cause strong cravings and continued use).

⁴⁹ Rayasam & Farmer, *supra* note 46.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *BRC Recovery Website Capture*, INTERNET ARCHIVE (Mar. 21, 2023)

<https://web.archive.org/web/20230321050954/https://www.brcrecovery.com/austin-drug-alcohol-rehab/>.

RIC revenue-seeking and its effects often rise to civil and criminal offenses. RIC entities, particularly those owned by large parent companies, are increasingly implicated in fraud against the federal and state governments.⁵⁴ Much-needed government funding for addiction-related medical services accelerated the cash flow from Medicare, Medicaid, and related programs, making the accumulation of these insurance claims an attractive revenue stream to investors entering the RIC.⁵⁵ But without consideration for the applicable laws, the maximization of insurance reimbursement to drive revenue can easily lead to fraud. Recent False Claims Act (FCA) litigation against large investment firms operating in the RIC shed light on the profiteering of a public health emergency, extensive fraud, and substandard patient care.⁵⁶

In 2006, private investment firm Bain Capital acquired CRC Health Corporation (CRC), a behavioral health company specializing in SUD treatment for adults and children.⁵⁷ The death of a patient at CRC-owned New Life Lodge in Tennessee led a former employee to file a whistleblower lawsuit in 2010.⁵⁸ SUD treatment services provided to Medicare and TennCare (the Tennessee state Medicaid program) members must meet specific federal and state standards.⁵⁹ According to the complaint, New Life did not maintain appropriate staff-patient ratios, regularly exceeded its authorized bed capacity, and did not have a licensed psychiatrist onsite as required by state law.⁶⁰ New Life overbilled the federally and state-funded programs for these services provided by unlicensed, unsupervised staff or not provided at all, and double-billed Medicaid for prescriptions given to patients.⁶¹ New Life employees routinely altered internal records to make

⁵⁴ Eileen O'Grady, *Money for nothing*, PESP 1, 4 (Feb. 2021) <https://pestakeholder.org/wp-content/uploads/2022/07/Private-Equity-False-Claims-Act-PESP-022221-1-1.pdf>.

⁵⁵ See *Id.*; Dave Aronberg, *Opportunists Are Exploiting the ACA to Prey on Opioid Addicts*, TIME (Sept. 20, 2017) <https://time.com/4950199/affordable-care-act-opioid-relapse>.

⁵⁶ See *U.S. ex rel. Martino-Fleming vs. S. Bay Mental Health Ctr.*, 540 F.Supp.3d 103, 129-32 (D. Mass. 2021).

⁵⁷ O'Grady, *Money for Nothing*, *supra* note 54 at 12.

⁵⁸ Walter F. Roche Jr., *New Life Lodge whistleblower acted after death of patient*, THE TENNESSEAN (Apr. 22, 2014) <https://www.tennessean.com/story/news/health/2014/04/21/woman-whose-complaints-led-state-federal-investigation-new-life-lodge-says-death-patient-led-act/7982135/>.

⁵⁹ See Press Release, Dep't of Just., Off. of Pub. Affairs, *Tenn. Substance Abuse Treatment Facility Agrees to Resolve FCA Allegations for \$9.25 Million*, (Apr. 16, 2014) <https://www.justice.gov/opa/pr/tennessee-substance-abuse-treatment-facility-agrees-resolve-false-claims-act-allegations-925>.

⁶⁰ *Id.*

⁶¹ *Id.*

it appear that patients had received care on days they had not and billed TennCare for patients who had been discharged.⁶² Thus, the facility knowingly submitted false claims for substandard SUD care provided to Medicaid patients, violating the FCA.⁶³

In an interview with local media, the whistleblower alleged the facility hid cots ordered for patients beyond the licensed capacity limit during state inspections.⁶⁴ She expressed that many New Life employees cared about their patients but were overworked and needed more resources to provide quality SUD treatment.⁶⁵ Before filing suit, the whistleblower repeatedly raised concerns about patients' well-being, which superiors at New Life and CRC ignored.⁶⁶

In April 2014, CRC agreed to pay \$9.25 million to the US and Tennessee, settling the allegations that it knowingly submitted false claims by providing substandard SUD treatment to Medicaid patients at New Life Lodge.⁶⁷ At the time, Bain Capital, CRC's parent company, did not appear to be named in the settlement or any official Department of Justice (DOJ) statements on the case.⁶⁸ Media reports, however, note that Bain's revenue-boosting strategy with CRC was "gobbling up other treatment centers, raising fees, and expanding its client base through slick, aggressive marketing while keeping staffing and other costs relatively low."⁶⁹ Under Bain, CRC's total revenue increased from \$271 million in 2006 to more than \$450 million by 2011.⁷⁰ By 2010, CRC's profit margin was "several multiples higher" than its smaller and "less-earnings-oriented" RIC competitors.⁷¹ After three patients died within a year, Tennessee "effectively" closed New

⁶² Roche Jr., *supra* note 58.

⁶³ Press release, Dep't of Just., Off. of Pub. Affairs, *supra* note 59.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *See Id.*

⁶⁹ See Art Levine, *Dark side of a Bain success*, SALON (July 18, 2012)

https://www.salon.com/2012/07/18/dark_side_of_a_bain_success/.

⁷⁰ Duff McDonald, *Private equity's rehab roll-up*, CNN MONEY (July 19, 2012)

<https://money.cnn.com/2012/04/26/news/companies/bain-crc-rehab.fortune/index.htm>.

⁷¹ *Id.*

Life Lodge in 2011; it reopened in 2012, no longer treating child patients.⁷² In 2015, Acadia Healthcare acquired CRC from Bain in a \$1.175 billion deal, a \$455 million profit for Bain, which acquired CRC for \$720 million.⁷³

Private equity firm Waud Capital Partners established Acadia Healthcare in 2005 “to acquire, develop and operate a network of inpatient psychiatric facilities, substance abuse centers, residential treatment centers, and specialty behavioral programs.”⁷⁴ Since 2011, Acadia has operated as a publicly traded corporation.⁷⁵ According to market analysts, Acadia is a “consolidator” that “comes in, invests, and improves” assets by cutting costs and driving volume growth, *i.e.*, expanding existing RIC facilities.⁷⁶

There is little evidence that Acadia’s resources and experience have improved CRC since the 2015 acquisition. In 2019, Acadia paid the largest healthcare fraud settlement in West Virginia’s history.⁷⁷ Acadia operated seven West Virginia RIC facilities through CRC.⁷⁸ For six years, the facilities sent samples to a San Diego lab for urine and blood testing they were not certified to perform.⁷⁹ CRC paid the lab directly but continued to bill West Virginia Medicaid as if it had conducted the tests onsite, receiving a “substantially higher amount” from Medicaid than it paid the San Diego lab for the testing.⁸⁰ The fraudulent billing scheme resulted in overpayments of \$8.5 million.⁸¹

⁷² Nate Rau, *Acadia to buy CRC Health, owner of New Life Lodge*, THE TENNESSEAN (Oct. 29, 2014) <https://www.tennessean.com/story/money/industries/health-care/2014/10/29/acadia-buy-crc-health-owner-new-life-lodge/18146249/>.

⁷³ *See Id.*

⁷⁴ *Acadia Healthcare*, WAUD CAPITAL PARTNERS, <https://www.waudcapital.com/en/portfolio/acadia-healthcare> (last visited Aug. 16, 2023).

⁷⁵ Laura Cooper, *Early Move Into Behavioral Health Leads to 12-Times Return for Waud*, WSJ (Mar. 27, 2018) <https://www.wsj.com/articles/early-move-into-behavioral-health-leads-to-12-times-return-for-waud-1522151101>.

⁷⁶ *See Rau, supra* note 72.

⁷⁷ Press Release, U.S. Atty’s Off. S. Dist. of W.V., *U.S. Atty Announces \$17 Million Healthcare Fraud Settlement* (May 6, 2019) <https://www.justice.gov/usao-sdvw/pr/united-states-attorney-announces-17-million-healthcare-fraud-settlement>.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

Acadia and CRC settled with the US and West Virginia for \$17 million, double the loss incurred by Medicaid, and entered into a five-year corporate integrity agreement (CIA) with the US Department of Health and Human Services (HHS).⁸² The CIA mandates the implementation of compliance and risk assessment programs and overseeing Medicaid claims by an Independent Review Organization.⁸³ According to the government, the settlement aims to restore the funds intended for legitimate healthcare services programs and serve as a message against exploitative cost-cutting practices, substandard SUD treatment, and healthcare fraud.⁸⁴

In 2012, \$58 billion global alternative investment conglomerate H.I.G. Capital and investor Kevin Sheehan formed Community Intervention Services, Inc. (CIS) to purchase mental health and SUD treatment facilities.⁸⁵ CIS promptly acquired South Bay Mental Health Center (SBMHC) in Massachusetts, allegedly referencing high profits as motivation for the acquisition.⁸⁶ SBMHC was founded in 1986 by Peter Scanlon, who also sat on the SBMHC and CIS Boards of Directors.⁸⁷ Sheehan served as CEO of CIS, President of SBHMC, and a member of both Boards.⁸⁸ HIG management and principals formed the rest of the SBMHC and CIS Boards.⁸⁹

In January 2018, the Massachusetts Attorney General's Office joined a whistleblower lawsuit alleging SBMHC's submission of fraudulent claims to MassHealth for substandard

⁸² See Settlement Agreement Between the U.S. & CRC Health at 4-6, (May 3, 2019) <https://www.justice.gov/media/1002741/dl?inline>.

⁸³ See CIA Between HHS-OIG & CRC Health & Acadia Healthcare, (May 3, 2019) [https://oig.hhs.gov/fraud/cia/agreements/CRC Health LLC and Acadia Healthcare Company Inc 05032019.pdf](https://oig.hhs.gov/fraud/cia/agreements/CRC%20Health%20LLC%20and%20Acadia%20Healthcare%20Company%20Inc%2005032019.pdf).

⁸⁴ See Press Release, U.S. Atty's Off. S. Dist. of W.V., *supra* note 77.

⁸⁵ H.I.G. CAPITAL, <https://higcapital.com/> (last visited Aug. 7, 2023); see Eileen O'Grady, *Money for nothing*, PESP 1, 4 (Feb. 2021) <https://pestakeholder.org/wp-content/uploads/2022/07/Private-Equity-False-Claims-Act-PESP-022221-1-1.pdf>; Amended Consolidated Complaint at 5, *U.S. ex. rel. Martino-Fleming v. S. Bay Mental Health Ctr., Inc.*, No. 1:15-cv-13065-PBS (D. Mass filed Jan. 4. 2019) <https://www.mass.gov/doc/amended-consolidated-complaint-1-4-2019>.

⁸⁶ See Amended Consolidated Complaint, *supra* note 85 at 57; See Eileen O'Grady, *Behavioral Health Under Private Equity*, PESP 1, 8 (Sept. 2020) <https://pestakeholder.org/reports/understaffed-unlicensed-and-untrained-behavioral-health-under-privateequity/>.

⁸⁷ *U.S. ex. rel. Martino-Fleming v. S. Bay Mental Health Ctr., Inc.*, No. CV 15-13065-PBS, 2018 WL 4539684, at *2 (D. Mass. Sept. 21, 2018).

⁸⁸ *Id.*

⁸⁹ *Id.*

services at 17 clinics.⁹⁰ MassHealth administers the Massachusetts state Medicaid and Children's Health Insurance Programs and pays for members' medical and mental health services, including addiction care.⁹¹ By billing MassHealth for services provided by "unlicensed, unqualified, and unsupervised personnel," SBMHC violated the Massachusetts FCA.⁹² The investigation exposed a widespread problem, with "significant gaps in licensing and supervision" at SBMHC, putting patients at risk while billing MassHealth for "millions of dollars."⁹³

SBMHC agreed to a \$4 million settlement in February 2018.⁹⁴ Motions to dismiss by H.I.G., Scanlon, and Sheehan were later denied for evidence of their knowledge of the applicable regulations and SBHMC's licensing and supervision problems.⁹⁵ Moreover, H.I.G. principals held CIS Board positions.⁹⁶ They had the power to fix the compliance issues but rejected recommendations, which was sufficient evidence that H.I.G. caused false claims to be submitted.⁹⁷ This notable holding sets a precedent that private equity funds and principals may be exposed to FCA liability and damages for conduct by a healthcare/RIC portfolio company.⁹⁸ In October 2021, H.I.G., Scanlon, and Sheehan agreed to a \$25 million settlement for their role in the fraudulent claims scheme.⁹⁹ As one of the first and largest healthcare fraud settlements involving private equity-owned addiction services, the success of this case highlights a legal remedy for widespread fraud in the RIC.¹⁰⁰ H.I.G. Capital started winding down CIS in October

⁹⁰ Press Release, Mass. Off. of the Atty General, *PE Firm & Former Mental Health Ctr. Executives Pay \$25 Million* (Oct. 14, 2021) <https://www.mass.gov/news/private-equity-firm-and-former-mental-health-center-executives-pay-25-million-over-alleged-false-claims-submitted-for-unlicensed-and-unsupervised-patient-care>.

⁹¹ *MassHealth*, COMMONWEALTH OF MASS., <https://www.mass.gov/topics/masshealth> (last visited Aug. 13, 2023).

⁹² Press release, Mass. Off. of the Atty General, *supra* note 90.

⁹³ *See Id.*

⁹⁴ *See Id.*

⁹⁵ *See U.S. ex rel. Martino-Fleming vs. S. Bay Mental Health Ctr.*, 540 F.Supp.3d 103, 129-32 (D. Mass. 2021).

⁹⁶ *See Id.*

⁹⁷ *See Id.*

⁹⁸ Jaime L.M. Jones & Paul E. Kalb, *Judge Green Lights FCA Claims Against PE Fund*, SIDLEY LLP FCA BLOG (May 24, 2021) <https://fcablog.sidley.com/2021/05/24/judge-saris-green-lights-fca-claims-against-pe-fund-based-on-regulatory-non-compliance-of-its-portfolio-company-healthcare-provider-for-trial/>.

⁹⁹ *See* Press Release, Mass. Off. of the Atty General, *supra* note 90.

¹⁰⁰ *See* Press Release, Mass. Off. of the Atty General, *supra* note 90.

2020 and filed for bankruptcy in January 2021, but ultimately sold SBMHC and its mental health subsidiaries to other private equity-owned firms.¹⁰¹

In a recently unsealed lawsuit, the US and Rhode Island intervened in a case brought by whistleblowers against RIC provider Journey to Hope, Health & Healing, Inc. and its CEO Kenneth Richardson, Jr.¹⁰² Journey operated four locations in Rhode Island and advertised as a “certified and accredited opioid treatment provider.”¹⁰³ Journey was certified to administer MOUD, including methadone, one of the most effective treatments for opioid cravings and OUD withdrawal symptoms.¹⁰⁴ Although methadone is the gold-standard treatment for OUD, it is highly stigmatized and tightly regulated.¹⁰⁵ Under federal and Rhode Island law, methadone must be administered per a SAMHSA-accredited opioid treatment plan (OTP).¹⁰⁶ The detailed OTP covering the patient’s needs and goals must be updated throughout treatment, and patients must also regularly receive “adequate” counseling, medical, and other services like drug tests alongside the MOUD.¹⁰⁷ Accredited providers may bill Rhode Island Medicaid for patients receiving methadone and all other required services under a valid OTP.¹⁰⁸

From 2015 to 2021, Journey billed Rhode Island Medicaid for “millions of dollars” of SUD treatment services, thus representing that it met the applicable state and federal

¹⁰¹ See Eileen O’Grady, *Behavioral Health Under Private Equity*, PESP 1, 8 (Sept. 2020) <https://pestakeholder.org/reports/understaffed-unlicensed-and-untrained-behavioral-health-under-privateequity/>; Press Release, BUSINESSWIRE, *Pathways Acquires Three Subsidiaries of Community Intervention Services, Inc. (CIS)*, (Oct. 6, 2020)

<https://www.businesswire.com/news/home/20201006005812/en/Pathways-Acquires-Three-Subsidiaries-of-Community-Intervention-Services-Inc.-CIS>.

¹⁰² Press Release, U.S. Atty’s Off. Dist. of R.I., *Civil Complaint Alleges Millions of Dollars in Medicaid Fraud* (Apr. 24, 2023) <https://www.justice.gov/usao-ri/pr/civil-complaint-alleges-millions-dollars-medicaid-fraud>.

¹⁰³ *Id.*; Brian Amaral, *In midst of opioid crisis, two R.I. companies accused of shortchanging patients in recovery*, THE BOSTON GLOBE (updated May 11, 2023)

<https://www.bostonglobe.com/2023/05/11/metro/midst-opioid-crisis-two-ri-companies-are-accused-shortchanging-patients-recovery/>.

¹⁰⁴ Amaral, *supra* note 103.

¹⁰⁵ *Id.*; Alexander C. Tsai et al., *Stigma as a fundamental hindrance to the U.S. opioid overdose crisis response*, 16(11) PLOS MED. 1, 3-4 (Nov. 26, 2019) <https://doi.org/10.1371/journal.pmed.1002969>.

¹⁰⁶ Complaint in Intervention, *U.S. ex rel. Sara Quaresma & Michael Delmonico v. Journey to Hope, Health & Healing, Inc.*, at 8-9 (D. R.I. Apr. 14, 2023) <https://www.justice.gov/media/1289116/dl?inline>.

¹⁰⁷ 42 C.F.R. §§ 8.12(f)(5), 8.12(f)(6)

¹⁰⁸ Complaint in Intervention, *supra* note 106 at 11.

requirements.¹⁰⁹ However, Journey “routinely” failed to provide sufficient OTPs and counseling to patients receiving methadone.¹¹⁰ In numerous instances, Journey administered methadone to Medicaid beneficiaries without any OTP or updating the patient’s OPT for years.¹¹¹ Journey did not offer additional services to patients receiving methadone who tested positive for other drugs while receiving SUD treatment, perhaps because its staff-patient ratio was such that it would have been “physically impossible” for counselors to have provided the required amount of counseling services Journey claimed to Medicaid.¹¹² The governments allege that over half of the \$15 million Journey received from the program between 2015 and 2021 were false claims violating the FCA.¹¹³ Further, Journey management allegedly instructed employees to falsify documents to make it appear that all services had been provided, including editing and backdating records to reflect adequate counseling sessions and compliant OTPs.¹¹⁴ Personnel who refused allegedly faced adverse employment action.¹¹⁵

Former employees emphasize Journey’s prioritization of profit over the well-being of its clients. According to a former counselor, Journey aimed to take on the maximum number of patients while providing few services.¹¹⁶ One counselor stated that Journey “exploited” its clients, prioritizing the appearance of providing services over legitimate care and treatment.¹¹⁷ As a result, patients were often denied the necessary treatment to recover, with a former supervisor stating under oath that she worried “people were going to die.”¹¹⁸

¹⁰⁹ See *Id.* at 1, 11.

¹¹⁰ *Id.* at 2.

¹¹¹ Press Release, U.S. Atty’s Off. Dist. of R.I., *Civil Complaint Alleges Millions of Dollars in Medicaid Fraud* (Apr. 24, 2023) <https://www.justice.gov/usao-ri/pr/civil-complaint-alleges-millions-dollars-medicaid-fraud>.

¹¹² See *Id.*

¹¹³ See *Id.*

¹¹⁴ *Id.*

¹¹⁵ Complaint in Intervention, *supra* note 106 at 16.

¹¹⁶ *Id.* at 14.

¹¹⁷ *Id.* at 19.

¹¹⁸ *Id.*

In addition to directly harming patients with substandard care, fraud by RIC providers promotes existing negative attitudes toward substance use, OUD, and even MOUD itself.¹¹⁹ Many RIC facilities have policies that discriminate against patients taking MOUD, violating the Americans with Disabilities Act (ADA).¹²⁰ There are valid concerns about insufficient current regulations that allow unqualified investors to ignore the rules, but experts also say some OTP rules may not always be beneficial.¹²¹ Nevertheless, Journey and RIC programs with similar business strategies are “not just corner-cutting but [committing] more fundamental wrongdoing.”¹²² This type of conduct is not motivated by a desire to help people in SUD treatment, who are largely exploited and disregarded, and it contributes to the stigma that further marginalizes them.¹²³

The complaint in intervention against Journey and Richardson, Jr. represents a growing trend of enforcing FCA liability against corporate owners of RIC programs.¹²⁴ The prosecution alleges that Richardson Jr. was well-informed, receiving monthly reports on how many patients did and did not receive counseling.¹²⁵ Internal emails allegedly show Richardson Jr. understood that Journey lacked the requisite records and that fraudulent OTPs were being written before an audit.¹²⁶ The government seeks to recover three times the amount paid for the alleged false claims.¹²⁷

¹¹⁹ Alexander C. Tsai et al., *Stigma as a fundamental hindrance to the U.S. opioid overdose crisis response*, 16(11) PLOS MED. 1, 3 (Nov. 26, 2019) <https://doi.org/10.1371/journal.pmed.1002969>.

¹²⁰ See *Resources for MOUD Compliance Under the ADA*, THE ACTION LAB (2022)

https://www.healthinjustice.org/files/ugd/3bbb1a_83a5db7b26fc4952a3813f9aeec7220b.pdf.

¹²¹ Brian Amaral, *In midst of opioid crisis, two R.I. companies accused of shortchanging patients in recovery*, THE BOSTON GLOBE (updated May 11, 2023) <https://www.bostonglobe.com/2023/05/11/metro/midst-opioid-crisis-two-ri-companies-are-accused-shortchanging-patients-recovery/>.

¹²² *Id.*

¹²³ See *Id.*

¹²⁴ See Eileen O’Grady, *Behavioral Health Under Private Equity*, PESP (Sept. 2020)

<https://pestakeholder.org/reports/understaffed-unlicensed-and-untrained-behavioral-health-under-privateequity/>.

¹²⁵ Complaint in Intervention, *U.S. ex rel. Sara Quaresma & Michael Delmonico v. Journey to Hope, Health & Healing, Inc.*, at 8-9 (D. R.I. Apr. 14, 2023) <https://www.justice.gov/media/1289116/dl?inline>.

¹²⁶ *Id.*

¹²⁷ Press Release, U.S. Atty’s Off. Dist. of R.I., *Civil Complaint Alleges Millions of Dollars in Medicaid Fraud* (Apr. 24, 2023) <https://www.justice.gov/usao-ri/pr/civil-complaint-alleges-millions-dollars-medicaid-fraud>.

REMEDIES

Civil Litigation

Civil litigation is common throughout the RIC, with facilities suing each other over trade secrets, former employees for negligence, breach of contract, and fraud, and patients for non-payment of bills.¹²⁸ Former employees, patients, and family members sue rehabs for injuries, wrongful deaths, fraud, harassment, and wrongful termination.¹²⁹ The FCA is likely to have a more intense and broad impact than other civil actions, particularly when the government intervenes.¹³⁰ Congress designed the FCA to address corruption by incentivizing whistleblowers within an industry to report such fraud, establishing liability for fraud against the government.¹³¹ Thus, civil remedies like the FCA are particularly effective in corporate contexts, and healthcare companies that submit false claims to Medicaid and Medicare are often prosecuted under the Act.¹³² The FCA targets conduct that profit-seeking investment firms entering the RIC often employ in pursuit of high revenues.¹³³ Moreover, it imposes primary liability for anyone who submits a false claim or *causes* a false claim to be submitted, *i.e.*, there is no need to pierce the corporate veil, as the law was designed to hold everyone with sufficient knowledge joint and severally liable.¹³⁴

Much of the FCA's success is attributed to its *qui tam* provision empowering a private "relator" to bring a case on the government's behalf, thereby qualifying for a portion of the

¹²⁸ Teri Sforza et al., *How some S. Cal. drug rehab centers exploit addiction*, THE ORANGE COUNTY REGISTER (May 21, 2017) <https://www.ocregister.com/2017/05/21/how-some-southern-california-drug-rehab-centers-exploit-addiction>.

¹²⁹ *Id.*

¹³⁰ Zoom interview with Siri Nelson, Executive Director, Nat'l Whistleblower Ctr. (June 20, 2023).

¹³¹ See Charles Doyler, *Qui Tam: An Abridged Look at the FCA & Related Fed. Statutes*, CONG. RSCH. SERV. 1, 2-3 (updated Apr. 26, 2021) <https://crsreports.congress.gov/product/pdf/R/R40786>.

¹³² Zoom interview with Max Rodriguez, Counsel, Pollock Cohen LLP (June 30, 2023); Eileen O'Grady, *Money for nothing*, PESP 1, 4 (Feb. 2021) <https://pestakeholder.org/wp-content/uploads/2022/07/Private-Equity-False-Claims-Act-PESP-022221-1-1.pdf>.

¹³³ *Id.*

¹³⁴ Zoom interview with Max Rodriguez, Counsel, Pollock Cohen LLP (June 30, 2023); See Jaime L.M. Jones & Paul E. Kalb, *Judge Green Lights FCA Claims Against PE Fund*, SIDLEY LLP FCA BLOG (May 24, 2021) <https://fcablog.sidley.com/2021/05/24/judge-saris-green-lights-fca-claims-against-pe-fund-based-on-regulatory-non-compliance-of-its-portfolio-company-healthcare-provider-for-trial/>.

awarded damages as a reward for initiating a successful suit.¹³⁵ In addition to a statutory penalty ranging from \$5,000 to \$10,000, the government's litigation costs, and the relator's expenses and attorneys' fees, courts may order treble damages.¹³⁶ Many FCA violations involve millions of dollars of theft, and treble damages can provide a more effective deterrent, particularly against large companies with abundant resources and capital that less severe penalties may not deter.¹³⁷

Moreover, the relator can receive up to 30% of the awarded damages.¹³⁸ This serves as a powerful motivator for relators, especially when combined with the magnitude of treble damages.¹³⁹ FCA lawsuits frequently involve sums in the millions, making the relator's share a substantial portion.¹⁴⁰ Many whistleblower lawyers also work under contingency fee agreements, typically receiving a fee of 30-40% of the award, and data shows that whistleblower tips often lead to successful prosecution.¹⁴¹ These tips detect the most fraud in companies with 100 or more employees.¹⁴² A 2007 study analyzing whistleblowing incentives to promote corporate fraud disclosures found the FCA *qui tam* model a better motivator than other methods, particularly the whistleblower regulations in the Sarbanes-Oxley Act of 2002, before the creation of the SEC and CFTC Whistleblower Programs under the Dodd-Frank Wall Street Reform and Consumer Protection Act.¹⁴³ FCA whistleblower disclosures have accounted for 72% of fraud

¹³⁵ See Geoffrey Christopher Rapp, *Beyond Protection: Invigorating Incentives for SOX Corporate & Securities Fraud Whistleblowers*, 87 B.U. L. REV. 91, 127 (2007) <https://www.whistleblowers.org/wp-content/uploads/2018/11/bulawreviewwb incentives.pdf>.

¹³⁶ 31 USC §§ 3729(a)(1)(3) (2009); Doyler, *supra* note 131 at 9.

¹³⁷ Zoom interview with Siri Nelson, Executive Director, NAT'L WHISTLEBLOWER CTR. (June 20, 2023).

¹³⁸ Doyler, *supra* note 131 at 10.

¹³⁹ See Zoom interview with Siri Nelson, Executive Director, Nat'l Whistleblower Ctr. (June 20, 2023).

¹⁴⁰ See, e.g., *U.S. ex rel. Martino-Fleming*, 540 F.Supp.3d 103, 129-32 (D. Mass. 2021).

¹⁴¹ See *The Importance of Rewards*, NAT'L WHISTLEBLOWER CTR. (accessed Aug. 18, 2023) <https://www.whistleblowers.org/the-importance-of-rewards/>; Joseph Orr, *How To Choose The Best Whistleblower Lawyer*, KOHN, KOHN & COLAPINTO LLP (May 19, 2023) <https://kkc.com/frequently-asked-questions/how-to-choose-the-best-whistleblower-lawyer/>.

¹⁴² See Testimony of Stephen M. Kohn at *2-3, Executive Director, Nat'l Whistleblower Ctr., U.S. H. of Rep. Comm. on Oversight & Gov't Reform: Restoring the Power of the Purse: Legislative Options (Dec. 1, 2016) <https://www.whistleblowers.org/wp-content/uploads/2018/10/House-Testimony-final-final-12-1-16.pdf>.

¹⁴³ See Rapp, *supra* note 135 at 114-133; *Protect the Dodd-Frank Whistleblower Programs*, NAT'L WHISTLEBLOWER CTR. (accessed Aug 2, 2023) <https://www.whistleblowers.org/protect-the-dodd-frank-whistleblower-programs/>.

recoveries by the federal government from 1987 to 2019, with prosecutors consistently praising the efficacy of *qui tam* financial incentives.¹⁴⁴ Within the RIC, FCA whistleblower lawsuits are an increasingly effective mechanism for exposing fraud and exploitation.¹⁴⁵ They also can be very lucrative amidst the influx of capital and financial executives with little background in or concern for healthcare compliance.¹⁴⁶

According to whistleblower attorneys, government intervention in FCA litigation helps plaintiffs counteract the influence of large, abusive industries and win cases.¹⁴⁷ The government, the injured party with standing, retains the exclusive right to intervene and is ultimately “in charge” of the proceedings.¹⁴⁸ This approach is highly effective, as the relator possesses information the government does not, while the government has the capacity to fill any gaps and the necessary clout to confront powerful companies.¹⁴⁹

To take full advantage of the government intervention and treble damages provisions to root out corruption in the RIC, whistleblowing attorneys suggest focusing on specific laws regarding SUD and OUD treatment standards and government-funded services.¹⁵⁰ The CARES Act is one possible avenue. In June 2020, former Assistant Attorney General Ethan Davis announced that the DOJ intends to enforce the FCA against private equity firms in “highly regulated space[s] like health care.”¹⁵¹ Notably, “[w]here a private equity firm knowingly engages in fraud related to the CARES Act, we will hold it accountable.”¹⁵² Despite their ineligibility for the Small Business Administration’s Paycheck Protection Program (PPP) loans,

¹⁴⁴ See *The Importance of Rewards*, *supra* note 141; *Fraud Statistics Overview*, U.S. DEP’T OF JUST. (2019) <https://www.justice.gov/opa/press-release/file/1233201/download>.

¹⁴⁵ See Eileen O’Grady, *Money for nothing*, PESP 1, 3-5 (Feb. 2021) <https://pestakeholder.org/wp-content/uploads/2022/07/Private-Equity-False-Claims-Act-PESP-022221-1-1.pdf>.

¹⁴⁶ Zoom interview with Max Rodriguez, Counsel, Pollock Cohen LLP (June 30, 2023); See Press Release, Dep’t of Just., Off. of Pub. Affairs, *Tenn. Substance Abuse Treatment Facility Agrees to Resolve FCA Allegations for \$9.25 Million*, (Apr. 16, 2014) <https://www.justice.gov/opa/pr/tennessee-substance-abuse-treatment-facility-agrees-resolve-false-claims-act-allegations-925>.

¹⁴⁷ Zoom interview with Max Rodriguez, Counsel, Pollock Cohen LLP (June 30, 2023).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Zoom interview with Siri Nelson, Executive Director, Nat’l Whistleblower Ctr. (June 20, 2023).

¹⁵¹ See O’Grady, *Money for Nothing*, *supra* note 145 at 4-5.

¹⁵² *Id.*

many corporate and private-equity-owned companies have collected stimulus funds, including Acadia Healthcare, which received roughly \$38 million in CARES Act funds between 2021-2022.¹⁵³ Given the size of the RIC and many of its financial backers, significantly more fraudulent activity likely remains undetected.

Criminal Litigation

FCA suits can also trigger criminal investigations where the government views the relator's claims for civil liability as possibly rising to the level of criminal liability.¹⁵⁴ This is most likely where there is evidence of criminal intent and the harm inflicted is more substantial.¹⁵⁵ Joint civil and criminal investigations recovered the sizable FCA settlements against the CRC facilities in Tennessee and West Virginia, signaling government interest in combining civil and criminal enforcement efforts in a "comprehensive attack on the opioid epidemic and healthcare fraud."¹⁵⁶ According to the DOJ, "one of the most powerful tools in this effort is the FCA."¹⁵⁷ In 2022, healthcare fraud was a "leading source" of over \$2.2 billion in settlements recovered under the FCA.¹⁵⁸

Bar Associations

The private bar can also facilitate RIC reform. Bar associations should advocate for legislative changes and policy reform to address systemic issues within the RIC. By engaging

¹⁵³ See *Id.*; *COVID Stimulus Watch*, GOOD JOBS FIRST (accessed Aug 20, 2023)

<https://data.covidstimuluswatch.org/individual-record/the-pavilion-at-healthpark-llc>;

<https://data.covidstimuluswatch.org/individual-record/the-pavilion-at-healthpark-llc-0>;

<https://data.covidstimuluswatch.org/individual-record/acadia-healthcare-company-inc-and-subs>.

¹⁵⁴ Zoom interview with Max Rodriguez, Counsel, Pollock Cohen LLP (June 30, 2023).

¹⁵⁵ *Id.*

¹⁵⁶ See Press Release, U.S. Atty's Off. S. Dist. of W.V., *U.S. Atty Announces \$17 Million Healthcare Fraud Settlement* (May 6, 2019) <https://www.justice.gov/usao-sdvv/pr/united-states-attorney-announces-17-million-healthcare-fraud-settlement>;

Press Release, Dep't of Just., Off. of Pub. Affairs, *Tenn. Substance Abuse Treatment Facility Agrees to Resolve FCA Allegations for \$9.25 Million*, (Apr. 16, 2014)

<https://www.justice.gov/opa/pr/tennessee-substance-abuse-treatment-facility-agrees-resolve-false-claims-act-allegations-925>.

¹⁵⁷ Press Release, Dep't of Just., Off. of Pub. Affairs, *supra* note 156.

¹⁵⁸ Press Release, Dep't of Just., Off. of Pub. Affairs, *FCA Settlements & Judgments Exceed \$2 Billion in Fiscal Year 2022* (Feb. 7, 2023) <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-2-billion-fiscal-year-2022>

with lawmakers, government agencies, and other stakeholders, we can strengthen regulatory and enforcement frameworks, improve patient protections, and improve the overall integrity of the industry. The bar should explore and promote clear RIC guidelines, for example, more uniform accreditation and licensing standards that align with the standard of care for SUD treatment.¹⁵⁹ It is essential to ensure that regulations prevent profit-driven interests from taking precedence over patient care.

Bar associations are well-positioned to inform attorneys about the efficacy of the FCA within the RIC.¹⁶⁰ Bar associations and practice area interest groups can develop Continuing Legal Education (CLE) programs on RIC law and healthcare compliance to encourage more lawyers to consider taking whistleblower cases.¹⁶¹ The programs could cover relevant legal frameworks and trends, industry regulations, and ethical considerations to equip attorneys with the knowledge to effectively address the unethical practices, fraud, and crimes in the RIC.

CONCLUSION

Finance capitalism encourages the exploitation of our healthcare system and social safety nets to serve the interests and wallets of the wealthy and powerful.¹⁶² These predatory practices extend well beyond the theft of public funds and cause untold harm to those seeking treatment and support in the RIC and the wider public health.¹⁶³ The FCA is a powerful mechanism proven to identify and eliminate fraudulent activities in large, abusive industries.¹⁶⁴ Strong signals from the government, successful whistleblower suits, and record-breaking

¹⁵⁹ See Katrice Bridges Copeland, *Liquid Gold*, 97 Wash. U. L. Rev. 1451 (2020).

¹⁶⁰ Zoom interview with Siri Nelson, Executive Director, Nat'l Whistleblower Ctr. (June 20, 2023).

¹⁶¹ See *Health Law Interest Groups*, ABA (accessed Aug. 20, 2023)

https://www.americanbar.org/groups/health_law/interest_groups/.

¹⁶² See Sebastien Canderle, *Modern Variants of Capitalism, Part 2: Financial Capitalism*, CFA INSTITUTE (Nov. 18, 2021) <https://blogs.cfainstitute.org/investor/2021/11/18/modern-variants-of-capitalism-part-2-financial-capitalism/>.

¹⁶³ See Renuka Rayasam & Blake Farmer, *Some addiction treatment centers turn big profits by scaling back care*, CBS NEWS (Jan. 30, 2023) <https://www.cbsnews.com/news/drug-treatment-rehab-private-equity-profits>; Teri Sforza et al., *How some S. Cal. drug rehab centers exploit addiction*, THE ORANGE COUNTY REGISTER (May 21, 2017) <https://www.oregister.com/2017/05/21/how-some-southern-california-drug-rehab-centers-exploit-addiction>

¹⁶⁴ Zoom interview with Siri Nelson, Executive Director, Nat'l Whistleblower Ctr. (June 20, 2023).

damages awards across the RIC underline the significance of FCA actions to address and deter widespread corruption.¹⁶⁵

A paradox emerges in advocating against the use of the RIC for capital accumulation (a primary catalyst for its current abusive manifestation) while proposing that lawyers pursue FCA litigation for treble damages within the same capitalist system as a remedy. This is symptomatic of modern capitalism's inherent contradictions, exemplified in the RIC. The capitalist narrative that market competition yields superior products and services does not align with the lack of standard-of-care SUD treatment programs.¹⁶⁶ Despite existing to address SUD and the opioid crisis, RIC enterprises have little incentive to do so because these issues generate billions of dollars.¹⁶⁷ Moreover, the opioid crisis in the US is rooted in the rampant economic and social distress experienced under modern capitalism.¹⁶⁸ This raises the question: is working for/within the same capitalist system a viable solution?

But this is the system in which we are currently forced to operate. Most urgently, substandard and exploitative SUD care continues to extract a needless human toll. Immeasurable life has been lost due to failing healthcare and RIC infrastructure, a debt that can never be repaid.¹⁶⁹ At the very least, many RIC investors and executives are complicit in perpetuating this cycle of harm that causes needless death.¹⁷⁰ Despite their perceived

¹⁶⁵ See, e.g., Press Release, U.S. Atty's Off. S. Dist. of W.V., *supra* note 156; Press Release, Dep't of Just., Off. of Pub. Affairs, *supra* note 156.

¹⁶⁶ See *N-SSATS: 2020* at 47, SAMHSA <https://www.samhsa.gov/data/report/national-survey-substance-abuse-treatment-services-n-ssats-2020-data-substance-abuse> (only 11% of U.S. RIC centers nationwide offered accredited OTPs certified by SAMHSA in 2020).

¹⁶⁷ See Eileen O'Grady, *Money for nothing*, PESP 1, 3 (Feb. 2021) <https://pestakeholder.org/wp-content/uploads/2022/07/Private-Equity-False-Claims-Act-PESP-022221-1-1.pdf>.

¹⁶⁸ See Nabarun Dasgupta, Leo Beletsky & Daniel Ciccarone, *Opioid Crisis: No Easy Fix to Its Social & Economic Determinants*, 108 Am. J. Pub. Health, 182, 182 (Feb. 2018) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5846593/>.

¹⁶⁹ See *State Unintentional Drug Overdose Reporting System*, CDC (updated Aug. 25, 2023) <https://www.cdc.gov/drugoverdose/fatal/dashboard/> (data on 32 U.S. jurisdictions estimates 65.5% of overdose deaths in 2021 had "at least one potential opportunity for intervention").

¹⁷⁰ See *U.S. ex rel. Martino-Fleming vs. S. Bay Mental Health Ctr.*, 540 F.Supp.3d 103 (D. Mass. 2021); Complaint in Intervention, *U.S. ex rel. Sara Quaresma & Michael Delmonico v. Journey to Hope, Health & Healing, Inc.* (D. R.I. Apr. 14, 2023) <https://www.justice.gov/media/1289116/dl?inline>.

detachment, those who hold the power and reap the profits of this system bear responsibility for its damage and for these deaths. Lawyers have significant influence within the current socio-economic framework and are therefore responsible for working toward ending the violence it creates. Considering this, the FCA has proven to be an effective means of detecting fraudulent and abusive financial schemes that can serve as a critical mechanism in addressing deadly systemic exploitation and transforming the RIC.¹⁷¹

To provide effective remedies, it is crucial to counter stigma and reshape the narrative around SUD and SUD treatment.¹⁷² While enforcing stricter anti-fraud measures is important, it is also vital to avoid creating further hostility to legitimate treatment centers, their patients, and people who use drugs (PWUD).¹⁷³ Striking a balance between oversight and support is essential to avoid further stigmatization, which worsens poor SUD treatment and health outcomes.¹⁷⁴ Our immediate goal should be to ensure all individuals, including PWUD, have access to safe, effective, affordable healthcare, including SUD treatment when necessary. A comprehensive approach to RIC reform is essential as the FCA gains momentum against fraud in the industry. This can include litigation, government involvement, and shifting societal perceptions to promote the well-being of patients, hold those responsible accountable, and promote the industry's integrity.

¹⁷¹ See O'Grady, *Money for Nothing*, *supra* note 167 at 2.

¹⁷² See Alexander C. Tsai et al., *Stigma as a fundamental hindrance to the U.S. opioid overdose crisis response*, 16(11) PLOS MED. 1 (Nov. 26, 2019) <https://doi.org/10.1371/journal.pmed.1002969>.

¹⁷³ See *Id.*

¹⁷⁴ See *Id.*