

From: [Sunset Advisory Commission](#)
To: [Cecelia Hartley](#)
Subject: FW: Feedback on OIG Dental Audits
Date: Friday, October 17, 2014 8:07:38 AM

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From:
Sent: Thursday, October 16, 2014 7:12 PM
To: Sunset Advisory Commission
Subject: Feedback on OIG Dental Audits

My first experience with the OIG occurred while I was on vacation in 2006. My cell phone lit up a like a Christmas tree a few minutes after 8 am. As the owner of a dental practice with seven locations, I was getting simultaneous calls from five of them. The OIG had stormed all five offices like a SWAT team upon arrival of the staff. Clearly their intent was to intimidate and scare anyone in the office, as they flashed badges and made demands.

As I spoke with and tried to calm my staff, I asked to speak with the investigators. That proved to be a complete waste of time, as every question of mine was answered with a rehearsed, "I can't give you any information." Knowing we are an outstanding dental group providing our patients with exceptional care for many years, I advised my staff to be completely cooperative and as helpful as possible. You can imagine what the remainder of my vacation was like.

After less than ninety minutes of pulling charts, the OIG took approximately 150 charts from each of the five locations, totaling around 750 charts. We were blamed for five "missing" charts that were located later that afternoon. Seems the OIG did not have correct updated names, and we did.

Upon my return, I called the OIG. I didn't know what we were supposed to do. Were we doing something wrong? My overriding concern is that our practice is doing everything correctly, both clinically and administratively. The person who was heading our "investigation" would only tell me that their preliminary review showed that "there was no fraud." Well, I already knew that. But was there a reason for this raid? Should we be changing anything about the way we practice? Again, he wouldn't answer any questions, but did say to me, "continue to do business as usual."

About two and a half years later, I ran into a former dental school instructor, a person who knew me better than just as a former student. He told me did part time work for the OIG, and he had been assigned our "audit" but declined to complete it. He said he had looked over everything, and his cursory look told him we were doing everything right. And he asked what had been the outcome. I told him I hadn't heard anything. Well, that all changed about two months later.

A certified letter arrives accusing me of nearly \$500,000 of fraud, waste, and abuse. There is a demand for payment and notice of a payment hold for all future medicaid care until this was resolved. Again, imagine how that feels after all these years of doing your best to provide quality care for Medicaid patients. Fraud? I was told there was no fraud. Waste and abuse? I was told to continue business as usual.

Being naive, I hoped to resolve this by reviewing my charts with the investigators to show them that there must be a mistake. I knew there was no fraud, waste, or abuse. What I didn't know was this was a shakedown.

After reviewing the accusations, I quickly realized the case was not reviewed by a dentist and was rife with major errors. I went through the phone arbitration procedure with the OIG and explained all of the errors of the non-dentist reviewer. Shortly thereafter, I received a new demand letter for about \$350,000. So they were willing to admit to \$150,000 of mistakes after a 45 minute phone conference?

I knew they were wrong, so I continued in my quest to prove it. I was assigned an OIG caseworker (a former nurse, as I recall). The first time I spoke to her on the phone is when reality hit. This was a shakedown, nothing short of extortion. She told me that most everyone who is audited just pays the requested amount, "because you just have to consider this the cost of doing business." I will never forget that quote. She also told me that the demand was but a small percentage of what Medicaid had paid me over the years. She said that after a property search in my name (and then she proceeded to name all of the properties I own), she knew that I had plenty of money to pay the demand. After getting very upset with what she was saying, she responded by telling me, "if you just pay it, you can get your life back." She even said that I needed to understand that she got audited, too (implying I should show compassion for her and not be so vigorous in my own defense, lest it hurt her job performance review).

After that conversation, I understood what was happening. This was legalized extortion. The OIG operated exactly like the mafia, except I couldn't call law enforcement for help. I immediately hired an attorney. We made an appointment to go to Austin and review every chart, in person, with the OIG caseworker.

So what about the payment hold? Well, at this point we were about six months into the payment hold. The amount they were withholding from me was about twice the amount they were demanding. So I called and asked them why they were withholding double the demand. Shouldn't the payment hold cease when it equals the demand? Logically, yes. But the phone call made it very clear why the payment hold continued. They use it as another level of extortion. Fortunately, I had a very understanding bank; otherwise, I would have closed my practice and laid off our 20 employees.

My attorney and I spent a few hours arguing with the caseworker at her office as we reviewed charts, and it quickly became clear that their "case" was contrived. And just to prove how overt the extortion was, she repeated all of the things she had said to me, but this time in front of my attorney. Aghast, I asked him if that was extortion. He told me to calm down, and that is just how they operate. Basically, the entire case came down to one word, "reasonable." She claimed the audit discovered things that a "reasonable" dentist would have done differently. At that point, I was completely indignant, stood up, and walked out, telling her I would see her in court.

The very next day, my attorney called and said they were willing to settle for about 5% of the original demand, and even though I demanded to take them to court, he reminded me that it would cost much more to litigate. I took his advice, and to this day, am still very angry about the extortion demand that I gave in to. As part of the settlement, I asked the OIG to return my charts, as they are very important for continuity of care. They assured me that would be returned shortly. I'm still waiting for them eight years later. Imagine what they would do to me if I "misplaced" 750 charts.

It is important that this type of government action sees the light of day. I am so thankful to TDMR for publicly exposing these behaviors. I have kept my experience quiet because I fear retaliation, and I sincerely hope that by speaking out, I do not once again become a target. My limited experience has shown the OIG to be very petty and vindictive. And in any other circumstance, these shakedowns would be prosecutable offenses.

Of course, we all recognize the need for audits and enforcement. We all want fraud to be halted, but the very loose usage of the terms "fraud, waste, and abuse" to further an agenda is wrong. Audits are welcome if they are performed in an environment of mutual benefit and cooperation. Constructive criticism is welcome, but this adversarial environment between providers and the OIG really needs to stop. The OIG view that any clerical error constitutes a crime and represents fraud is patently absurd. And the lack of due process with regards to payment holds, and the use of payment holds as extortion, has no place in our healthcare system. Ultimately, we all striving for the same result: providing the highest level of care for our patients, yet being mindful of costs and efficiency. Thank you for seeking input and thank you for your time.

Jay Glenn, DDS