

Confab 2009 Session

TU5 - The Thorniest Consulting Problems You Will Ever Encounter

Moderator – Brooks Hilliard CMC

Panel Members – Jim Soudriette CMC, Mark Hass FIMC CMC, Allen Peterson CMC, Jennifer Leake, Bob Phillips, Larry Mandleberg

Session Outline

1. Several situations will be presented two consultants as mini cases. The moderator has selected several members of IMC USA and has asked each of them to take a different position regarding how to respond to situations that have been ethical challenges for other consultants in the organization as described by these min cases.
2. Once the two selected consultants take a position and explained their position on a mini case, the audience will be invited to support one of these positions or take a completely different position.
3. These discussions will be limited in time by the moderator to allow at least three mini cases to be discussed.
4. All attendees may be surprised at the views expressed and will learn from the differing points brought forward by the panel members and attendees.

The Medicare Practice

A CPA I knew well referred me to a potential consulting client, a large multi-specialty medical practice based in a retirement community in a suburb of Phoenix. When I went out to meet the key medical and administrative staff members, including the practice manager, among the things they told me was the following:

- In addition to physician services, for the convenience of the aged patients, the practice operated a number of medical labs (X-ray, blood, etc.) right there in the same facility.
- Medicare pays unquestioningly for the lab services when ordered by the members of the practice. Incidentally, these lab services were very profitable.
- One of the primary reasons the practice was looking for a new computer system (in addition to scheduling, billing and collections) was to do a better job of tracking revenue and profitability by physician, including not only the for physician services, but also for the lab procedures the doctors ordered.

After the initial meeting, the practice manager took me for a tour around the facility. During the course of the tour, I was shown the practice's medical and x-ray labs and told that having the in-house labs allowed the medical staff to order tests as they saw fit.

The practice director impressed on me that tracking the profitability of the lab service by physician was very important to the doctors. The reason for this was because their end-of-year bonuses were based significantly on the profitability of the in-house services they performed or ordered and they needed to know how they were doing as the year progressed. I asked the practice director if this meant that sometimes the doctors could get a little too aggressive in ordering tests toward the end of the year. He said he didn't think that was the case, but the lab work did pick up at the end of each year when the part-time residents began to arrive in Phoenix.

Questions:

- Even though I saw no actual evidence of Medicare fraud, did I have a responsibility to report my suspicions?
- If so, who should I have reported it to?
- Had the potential client offered to hire me (I did not hear from them again after the initial meeting), should I have agreed to take the assignment?
- If I took the assignment, what responsibility would I have had to investigate my concerns further?
- If, during the course of a consulting assignment like this one, I had uncovered actual evidence of fraud, what should I have done?

The Missing Hard Drive

I was traveling on business last week, and when I arrived at my destination, I found that the portable external hard drive for my notebook computer was missing from my brief case. The external hard drive is where I keep client-sensitive files, so that they won't be lost if the computer fails. I have recent backups of most of my work on my office computer, so I haven't lost anything that I can't replace.

But I do have one concern: I think the missing hard drive had some sensitive files from a previous client engagement about a year ago; confidential marketing plans for a new product that was being prepared for launch at the time I was working with the company. These plans were fairly detailed and did contain some brief references to the company's short and longer term strategies for marketing. This didn't worry too much, since the product actually launched successfully about 60 days ago and, to the best of my recollection, all of the information contained in the files should now be out of date.

After realizing that these files might have been on the missing hard drive, I went back to my backup and found that the backups were password-protected and encrypted, but I remembered that I had removed this protection for the working versions saved on the notebook computer so that I could have more convenient access to the information. I'm quite sure I put the protection back on the files again as the consulting engagement was coming to a close, but can't say that for certain.

Upon looking at the specifications for the portable hard drive, I found that one of its standard features was some form of data protection that the manufacturer advertises as being very secure. However, knowing a bit about computer security, I know that it's always possible for computer hackers to break any security system, no matter how well designed.

I have reported the loss to the airline and both airports I traveled through, but no one has turned in the missing hard drive and they told me that lost items sometimes turn up after "two or three weeks, or so".

Questions:

- What obligation, if any, do I have to call the client and notify them of this potential data loss?
- If I decide to notify my potential client, can I wait another few weeks to see if it turns up at the airline or one of the airports?
- If I decide to tell the client, what should I say?
- If I believe that I should always disclose potentially compromised information, how sure would I have to be that the data could not have been compromised before I would decide not to disclose the loss of the hard drive to my client?

The Long Term Client

I had been working with a long term client and had developed a very close personal, as well as business, relationship with the company's CEO. Because I had done several consulting assignments with the company over the past decade or so, I had considerable knowledge of the company, its employers, officers, and board.

About a week ago, I was having lunch with an attorney I know, who had also done some work with the client firm several years ago. The attorney hadn't represented the client firm for at least the past three years and wasn't aware that I was still working with the client.

Over lunch, the attorney asked me if I would have any conflict working with a new start-up in the same industry as the client firm. Because of the nature of my practice, I often work with companies in the same industry and all my clients are aware of this, so I told the attorney that I didn't expect that I would have any conflict. It was at that point that he mentioned that the individual who was heading the group was one of the client's most important division heads and that he had lined up several other employees of the company to join him in the new venture.

As soon as I could speak, I told the attorney that I was still working with the client company and that I knew the key individual from my work there. At this point the attorney told me that our discussion was confidential and that he did not want me to tell anyone about it.

Some relevant facts I knew included:

- There is an ESOP at the company, and those planning to leave are probably significantly vested.
- The industry the client serves is large and there is room for another firm.
- In general, the client's employees have been quite loyal to the firm, but the key individual in the start-up didn't seem to me to fit that pattern.

Questions:

- What more, if anything, should I have told the attorney?
- What, if anything, am I obligated to tell the CEO of the client firm?
- What other actions, if any, should I take?

Business Development in and Underdeveloped Country

As a marketing consultant, I currently support a promising new biomedical company that has developed a new low-cost treatment for late-stage AIDS patients. The treatment successfully passed three clinical trial phases and has recently received FDA approval.

Based on overall number of cases of the disease, as well as size and emerging strength of the country's economy, several market studies have identified this country as one of the most promising target markets for the drug. An established local pharmaceutical distribution company, with its broad network of representatives and excellent connections with local officials and health providers, seems an attractive partner who could create significant market momentum and secure support from government authorities. This potential distributor has indicated strong interest in representing my client in the country.

During my second meeting with the distributor company's representatives, I learned that the necessary approval from the country's Ministry of Health usually takes several years to obtain and requires additional clinical trials, even though some experts argue that such trials are unnecessary for FDA-approved products. The potential distributor's sales manager says that they have found that the only way to accelerate the process is by paying commissions to senior Ministry officials for their willingness to issue waivers, which means that the approval process will take only a few months. He says that his company would take care of this and my client would have no involvement in any payments to the Ministry officials.

The potential distributor's representatives then said that, in order to represent my client, it would need a sizable up-front payment (more than what I was told the head of the Ministry would be paid) to hire a product manager, train the sales force, establish the infrastructure needed to support sales and begin selling the product on an expedited basis. They also said they would like to bring the head of the Ministry (and his son, who might be hired as the new product manager) to the United States to meet my client's top management.

Questions:

- Is there an ethical issue here?
- If the behavior is unethical in the US, but culturally acceptable in the foreign culture, is this still an ethical issue for me?
- When faced with this issue, what are my options?
- How should I communicate my advice and counsel to the client?
- If the advice is not accepted, what are my options?