

Association of Certified Fraud  
Examiners

International Healthcare Fraud



**DLG**

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Darryl Neier has twenty years of experience with a New Jersey Prosecutor's Office and seventeen years as the principal in charge of forensic accounting/litigation services group at a top 200 accounting firm having experience nationally and internationally.

In January 2019, Darryl joined Debra Neier, CPA, CFE to expand her accounting practice DLG with advisory services offerings.



# *Globalization*

Globalization can be defined as the free movement of goods, services and capital.

Globalization also should be a process which integrates world economies, culture, technology and governance. This is because globalization also involves the transfer of information, skilled employee mobility, the exchange of technology, financial funds flow and geographic arbitrage between developed countries and developing countries. Moreover globalization has religious, environmental and social dimensions.\*

# *Scope of Healthcare and Fraud*

The World Health Organization's latest estimate of global healthcare expenditure was \$4.7 trillion (3.3 trillion euros). The fraud report's 260 billion loss figure is based on an average of 5.59 percent of spending being lost to fraud.

This amount is equivalent to the GDP of a country like Finland or Malaysia being stolen on an annual basis.

Medical fraud differs from other kinds of white-collar crime in that it can cause irreparable physical harm to the victim, as opposed to mere financial losses.

# *Healthcare Fraud*

Along with individuals, the “profit” from such fraud schemes has proven so substantial that they have attracted the interest of criminal enterprises. These organized groups have defrauded insurance companies through elaborate schemes against government-sponsored programs, private health insurers and the property and casualty insurers.



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# *Common Healthcare Fraud*

- Telemarketing
- Durable equipment
- Pharmaceuticals
- Kickback, Bribery, Extortion, Money laundering
- False Credentials
- Theft of medical identification
- COVID-19

# COVID-19

- Telemarketing and Internet
  - Test kits
  - Misbranded products, claiming they can treat or prevent the Coronavirus
  - COVID-19 cures being sold online
  - Phishing emails under guise of communications from the World Health Organization
  - Fake charities raising money
  - Pharmaceuticals, grants, government injection of cash



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# Why Healthcare Fraud

- The ease in filing fraudulent claims
- Billing for higher medical codes and incorrect diagnoses
- Lucrative kickbacks
- Unnecessary or additional treatments
- The ease of forging and selling prescription drugs
- Globalization / Telemarketing/ Internet
- Difficulty with cross boarder /international investigations

# Preventing Healthcare Fraud

- European Healthcare Fraud and Corruption Network
  - 23 members in 15 countries
  - EHFCN has also signed a formal **Memorandum of Understanding** with the Canadian Health Care Anti-Fraud Association (CHCAA), National Health Care Anti-Fraud Association (NHCAA – USA), Healthcare Forensic Management Unit (HMFU – South Africa) and the Health Insurers Counter Fraud Group (HICFG – United Kingdom).



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# Preventing Healthcare Fraud

- UK Counter Fraud Centre of Expertise, part of the Cabinet Office
  - June 2020 published Government Functional Standard GovS 013: Counter fraud
- United States – Corporate Cooperation and Compliance
- Strengthening individual country laws and regulations
- ISO Standards



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# *What is ISO*

- ISO is an independent, non-governmental international organization with a membership of 164 national standards bodies.
- The ISO story began in 1946, when delegates from 25 countries met at the Institute of Civil Engineers in London and decided to create a new international organization 'to facilitate the international coordination and unification of industrial standards'.
- On 23 February 1947 the new organization, ISO, officially began operations.

# *The Word Working Together*

- Today ISO has members from from 164 countries and 779 technical committees and subcommittees charged with standard development.
- More than 160 people work full time for ISO's Central Secretariat in Geneva, Switzerland.
- ISO have published over 22840 International Standards covering almost all aspects of technology and manufacturing.



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# *ISO/TC 309 Governance of Organizations*

- Proposed by The British Standards Institution (BSI) in September 2016
- First meeting in Mid-November 2016 with 38 countries represented
  - “It exists to make sure that organizations fulfil their purpose successfully on behalf of the people to whom they are accountable. For example, this could mean that an organization is clear about their purpose and values to stakeholders, or is transparent about the way they run the business.”
- United States joined TC 309 in mid 2018



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# *ISO/TC 309*

- Guidance for the governance of organizations - ISO 37000 (WG 1)
- Anti-bribery management systems - ISO 37001 (WG 2)
- Whistleblowing - ISO 37002 (WG 3)
- Compliance management systems - ISO 37301 (WG 4)



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## *Participating Members (52)*

Angola, Argentina, Australia, Austria, Brazil, Canada, China, Columbia, Costa Rica, Cote d'Ivoire, Croatia, Croatia, Cuba, Denmark, Egypt, France, Germany, Guatemala, India, Indonesia, Ireland, Italy, Jamaica, Japan, Jordan, Kenya, Korea, Lithuania, Malaysia, Mexico, Morocco, Netherlands, Nigeria, Norway, Panama, Peru, Portugal, Romania, Russian Federation, Saudi Arabia, Serbia, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Kingdom and United States.

# *Support of ISO/TC 309*

- 20 Observing Members
- 23 Organizations in Liaison
- 15 Liaison Committees
  - Support 19 Committees



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# *ISO/TC 309 - Standards Under Development*

- Guidance for the governance of organizations
- Whistleblowing management systems — Guidelines
- Compliance management systems — requirements with guidance for use



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# *International Investigations*

Conducting an overseas investigations can trigger possible legal challenge. Four key issues must be considered when conducting a cross-border investigation:

- Attorney-Client Privilege
- Data Privacy Restrictions
- Blocking Statutes
- Employment and Labor Laws

# *The Investigation*

- Know your jurisdiction.
- Are you a suspect, target or witness?
- May be necessary for multiple attorneys/investigators.
- Important that it is done once and correctly!



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# *Hague Evidence Convention*

The Office of International Judicial Assistance (OIJA) serves as the Central Authority for the United States under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, T.I.A.S. No. 7444, 23 U.S.T. 2555 ("Hague Evidence Convention"), as well as for evidence requests concerning civil or commercial matters from non-Convention States received through diplomatic channels.



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# *International Investigations Attorney-Client Privilege*

- Laws designed to severely limit the exchange of data outside a proscribed country.
- Severe penalties imposed for a violation.
- Asia-Pacific countries in particular.



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# *Attorney-Client Privilege – Internationally*

- Nearly all countries recognize some form of attorney-client privilege – though not always by name.
- In common law countries like England (U.K.), the “privilege” is normally based on case law.
- In civil law countries like France, the “privilege” is typically embodied in statutes.
- Even former communist countries are increasingly recognizing confidentiality between attorneys and clients.



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# *Attorney-Client Privilege – Internationally*

## Lack of Privilege for In-House Counsel in Foreign Jurisdictions

- In-house lawyers are not independent, they are employees;
- Not always members of the Bar, so not subject to same legal and professional ethics;
- Attorneys' interests are tied to client's commercial interests;
- Civil law countries don't recognize attorney-client privilege at all, only "professional secrecy."



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# *Attorney-Client Privilege – Product Doctrine*

- Recognize the issue and familiarize yourself and your client with privilege laws in all relevant jurisdictions;
- Limit written communications and be mindful regarding what communications are sent overseas;
- Communicate critical communications through local external counsel or when developing internal compliance programs;
- Establish protocols and procedures to maximize privilege;
- Avoid creating unnecessary documents, and never write what you can speak; and
- Avoid litigation in unfavorable forums.

# *International Investigations Blocking Statutes*

- Blocking statutes – foreign laws that limit or restrict cross-border discovery to the United States of information for purposes of litigation.
- EU- GDPR – General Data Protection Regulation
- California Consumer Protection Act (January 2020)
- Circumvent the Hague Evidence Convention.



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## *Foreign Laws on Privacy and Transfer of Data and Information*

- More than 100 countries have enacted some form of data protection/privacy laws.
- Vary widely across the globe, making access to and securing documents in multiple jurisdictions complex.
- Different levels of notice and consent when collecting or transferring documents.
- Some jurisdictions require data protection authorities to be notified of any collection or transfer, which can affect the confidentiality of the investigation.



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## *Foreign Laws on Privacy and Transfer of Data and Information*

- Must inform individual in advance of:
  - the types of personal information that a company will obtain;
  - the ways in which a company will use that information; and
  - to whom the company will disclose the information.
- The Choice:
  - Must provide a choice about whether or not personal information is collected, used and shared (unless another valid legal basis exists).
  - Individuals may agree to the collection, use, and disclosure based on sufficient information and voluntary consent.



## *Foreign Laws on Privacy and Transfer of Data and Information*

- Limitations on sharing with third parties (including governments):
  - May only share the information with the recipients and purposes of which the individual has been informed.
  - May need to execute a contract with the recipients to limit their use and further disclosure of the information.
- Limitations on cross-border transfers:
  - May need to take special measures (e.g., individual's consent or an appropriate contract with the recipient) to transfer personal information to recipients located in other jurisdictions with weaker privacy protections.



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# *Foreign Laws on Privacy and Transfer of Data and Information*

## Document Collection – Potential Issues –

- How are documents stored or retained?
- Are there specific legal provisions that apply to electronic document collection?
- Costs to be mindful of:
  - Document translation;
  - Local language reviewers;
  - Data privacy laws may require you to spend substantial amounts of time in foreign jurisdictions to collect and review documents.



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## *United States – Healthcare Fraud*

**April 2019** - The U.S. Department of Justice announced that it had issued criminal indictments against two dozen individuals in one of the largest health care fraud schemes in U.S. history. The indictments target an alleged scheme involving the payment of illegal kickbacks and bribes by durable medical equipment companies in exchange for the referral of Medicare beneficiaries by doctors working with fraudulent telemedicine companies for back, shoulder, wrist, and knee braces that were medically unnecessary. The defendants – located in multiple locations within the United States foreign countries.



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# *United States Department of Health and Human Services Office of Inspector General*

- *Premier Investigative Agency for Healthcare Fraud*
- *A Look At HHS OIG – Ten Most Wanted List*
  - **Cuba (2), Armenia, Cameroon, Nigeria, Spain (2)**
  - With others from - Pakistan, South Korea, Ethiopia, Canada, India, Sudan, Dominican Republic, Philippines, Central or South America, Iraq, Belize
- Introduction of Eric Rubenstein, Special Agent HHS-OIG (Ret.)



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**Darryl S. Neier, MS, CFE, CECFE**

**Managing Director**

[darryl.neier@dlgcpa.com](mailto:darryl.neier@dlgcpa.com)

[www.dlgcpa.com](http://www.dlgcpa.com)



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