

FILED \_\_\_\_\_ ENTERED \_\_\_\_\_  
LODGED \_\_\_\_\_ RECEIVED

NOV 04 2002

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

02-CV-02257-INDI

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA, ex  
rel. by JEFFREY GORUMBA  
Plaintiff,

vs.

CANCER TREATMENT CENTERS OF  
AMERICA PROFESSIONAL  
CORPORATION OF WASHINGTON,  
P.C., A Washington Corporation, doing  
business as SEATTLE CANCER  
TREATMENT AND WELLNESS  
CENTER; and CANCER TREATMENT  
CENTERS OF AMERICA, a  
Corporation; and DR. BEN CHUE; and  
DR. W. WELBY COX,  
Defendants.

NO. C02-2257 L

COMPLAINT AND JURY DEMAND

Filed Under Seal  
pursuant to  
31 U.S.C. §3730(b)(2)

SS/JS  
#308285

COMES NOW the United States of America, by and through Jeffrey Gorumba, qui tam  
as relator, and for a cause of action alleges as follows:

I. JURISDICTION and VENUE

1.1 Jurisdiction exists pursuant to 31 U.S.C. §3730(b)(1) and 31 U.S.C. §3732 in that  
this action seeks remedies on behalf of the United States of America for violations of 31 U.S.C.  
§3729 by the Defendants.

COMPLAINT AND JURY DEMAND - 1

Stephen A. Teller, Attorney at Law  
710 Second Avenue, Suite 700  
Seattle, WA 98104  
(206) 324-8969 Fax: 860-3172

1 1.2 The "allegations or transactions" upon which this suit is based have not been publicly  
2 disclosed in a criminal, civil, or administrative hearing, in a congressional, administrative, or  
3 Government Accounting Office report, hearing, audit or investigation, or from the news media.  
4 31 U.S.C. 3730(e)(4)(A).

5 1.3 The Qui Tam plaintiff is the original source in that he "has direct and independent  
6 knowledge of the information on which the allegations are based." 31 U.S.C. §3730(e)(4)(B).  
7 He has been providing information through this litigation and previously provided information to  
8 agents of the United States Government in connection with this matter.  
9

10 1.4 Seattle Cancer Treatment & Wellness Center is a Washington Corporation which  
11 resides and transacts business at Seattle, Washington, within the Western District of Washington.

12 1.5 Venue exists in this District pursuant to 31 U.S.C. §3730(b)(1) in that Defendants are  
13 qualified to do business in the State of Washington and transact substantial business in the  
14 District.

## 15 II. PARTIES

16 2.1 The Defendant CANCER TREATMENT CENTERS OF AMERICA  
17 PROFESSIONAL CORPORATION OF WASHINGTON, P.C., is Washington Corporation,  
18 doing business as SEATTLE CANCER TREATMENT AND WELLNESS CENTER  
19 (hereinafter "SCTWC"), with its principal place of business in Seattle, and is engaged in the  
20 business of medicine, including, *inter alia*, treating cancer patients using naturopathic and  
21 "holistic" medicine, and with chemotherapy.  
22

23 2.2 Many of SCTWC's patients are receiving financial support through the Medicare  
24 programs of the United States Government ("Medicare"), and SCTWC receives payments from  
25 Medicare for treating a subset of its patients.



1 services, the Physician's Assistant's services must be billed to Medicare at a lower rate, and is  
2 reimbursed by Medicare with less money than if the Physician was present in the facility.

3 3.4 As another example, a full comprehensive physical exam with review of multiple  
4 physical systems (such as heart, lungs, nervous system, etc.) is reimbursed by Medicare at a  
5 higher rate, i.e., for more money, than a more limited examination.

6 **B. SCTWC Treats with Chemotherapy and Naturopathy**

7 3.5 Seattle Cancer Treatment & Wellness Center treats approximately 20 patients a day  
8 with chemotherapy. An unknown proportion of those patients are eligible for Medicare.  
9 SCTWC bills Medicare for services it provides to these eligible patients.

10 **C. Charging for Services Beyond the Scope of the Provider's License**

11 3.6 When Relator Gorumba started working for SCTWC, he was not yet approved by the  
12 State of Washington to provide Physician's Assistant services. Relator Gorumba became so  
13 qualified in October, 2001, and his license was retroactively effective as of October 1, 2001.

14 3.7 Prior to Relator Gorumba becoming qualified, physicians employed by SCTWC  
15 dictated notes, and SCTWC billed Medicare at Physician or Physician's Assistant "incident to"  
16 rates based on services Relator Gorumba had provided, usually without the doctor having seen  
17 the patient at all on that occasion.

18 3.8 Another Physician's Assistant named Bennett Reyes was seeing patients in a similar  
19 capacity as Relator Gorumba. Mr. Reyes was not qualified to see patients in the capacity of  
20 Physician's Assistant before November 1, 2001. Nevertheless, upon information and belief,  
21 prior to him becoming qualified, SCTWC billed for Mr. Reyes' services, or under other names  
22 for services he had provided, at Physician or Physician's Assistant "incident to" rates.  
23  
24  
25

1 **D. Overbilling for Unsupervised "incident to" Services**

2 3.9 Throughout Relator Gorumba's employment, Dr. Chue regularly arrived at the office  
3 in the late morning or early afternoon, but patients were seen and treated with chemotherapy  
4 beginning in the early morning.

5 3.10 During a period in December, 2001, P.A. Reyes and/or Relator Gorumba saw  
6 patients "incident to" the supervision of Dr. Ben Chue, however, Dr. Chue was not present at all  
7 because he was too sick to work for a period of approximately two weeks.

8 3.11 On occasion, Dr. Chue and/or Dr. Cox left early, left to visit patients at another  
9 facility, took vacation, was out of town at CTCA meetings, or was ill, and therefore was not  
10 present in the facility to supervise the PA's treatment of patients.

11 3.12 Despite these absences, SCTWC billed Medicare for many patients seen by Relator  
12 Gorumba or P.A. Reyes "incident to" the supervision of Dr. Chue or Dr. Cox at times when the  
13 supervising doctor was not present in the facility. On many of these occasions, no doctor was  
14 present in the facility.  
15

16 3.13 On information and belief, such practices began long before Relator Gorumba  
17 became employed by SCTWC, and have continued since his employment ended.

18 3.14 Dr. Wilfred W. Cox started working at SCTWC in December, 2001, but at first did  
19 not have a Medicare billing number. Dr. Manoucher Sardo formerly worked for SCTWC, before  
20 Mr. Gorumba became employed there. On information and belief, patients seen by or incident to  
21 the supervision of Dr. Cox were billed under Dr. Sardo's name and number initially.  
22

23 **E. Billing for Full Examination when Less Comprehensive Exams Were Provided**

24 3.15 On many occasions, physicians employed by SCTWC dictated chart notes for a full  
25 examination and SCTWC billed Medicare for a full examination performed by Relator Gorumba,

1 PA Bennett Reyes, Dr. Chue, Dr. Cox, and others, whether or not a full examination had been  
2 conducted on the patient.

3 3.16 SCTWC billing procedures involve the health care provider marking a form with the  
4 billing codes. Administrative staff then submitted bills to Medicare. Dr. Chue told Relator  
5 Gorumba that he had previously had problems with Medicare, or wanted to avoid problems with  
6 Medicare, and so he wanted to mark his own billing on the forms.

7 3.17 Prior to that conversation, Dr. Chue instructed Relator Gorumba to mark "99215" on  
8 the forms. Unbeknownst to Relator Gorumba, this number reflected a full or comprehensive  
9 physical examination, however Relator Gorumba had not provided a comprehensive examination  
10 to the patient, but a lesser, more limited exam. In this time frame, Relator Gorumba also  
11 observed Dr. Chue to dictate chart notes for a more comprehensive examination than had been  
12 performed. On information and belief, Dr. Chue similarly caused overbilling for work by PA  
13 Reyes and others.

14 3.18 Subsequent to that conversation, Relator Gorumba dictated records for patients he  
15 saw, and marked on the billing sheet the number of minutes of contact he had with the patient.  
16 Dr. Chue, without seeing the notes Gorumba had dictated, marked the billing forms. Dr. Chue  
17 had insufficient knowledge of what level of services Relator Gorumba had actually provided to  
18 the patient at the time Dr. Chue initiated the Medicare billing process for that patient visit, and  
19 could not have accurately billed. On information and belief, Dr. Chue overbilled, and similarly  
20 overbilled for work by PA Reyes and others.

21 3.19 When Relator Gorumba was working under the supervision of Dr. Cox, Cox  
22 instructed Gorumba to dictate portions of the chart notes, then say "normal program." This was  
23 an instruction to the transcriptionist to cut and paste a record of a comprehensive examination  
24  
25

1 into the chart, even though a comprehensive exam had not been conducted. Dr. Cox instructed  
2 Relator Gorumba to mark "99214" on the billing forms for these "normal program"  
3 examinations. This billing number reflects an examination which is only slightly less thorough  
4 than a comprehensive examination. However, Relator Gorumba had not conducted a  
5 comprehensive examination or a nearly comprehensive examination. On information and belief,  
6 Dr. Cox similarly caused overbilling for work by PA Reyes and others.

7  
8 3.20 Upon information and belief, informed by the habits of SCTWC employees, SCTWC  
9 bills, and for years has billed, for a full examination, whether or not anyone actually conducted a  
10 full examination on the patient, and such conduct continues.

#### 11 **F. Non-Medicare-Reimbursable Services Were Paid By Medicare**

12 3.21 SCTWC treats many patients with naturopathic treatments. On occasion, treatments  
13 which would be rejected if authorized by naturopathic physicians have been instead ordered by  
14 the medical doctors of SCTWC, who, on information and belief, did not see or treat the patient in  
15 question.

#### 16 **G. Medicare Billing, Not the Patient's Health Care, Drove Treatment Decisions**

17 3.22 Many patients came to SCTWC and CTCA for naturopathic, holistic, acupuncture,  
18 massage, and similar treatments because they had little other hope after chemotherapy had failed  
19 to cure them. SCTWC and CTCA naturopaths referred patients to the SCTWC oncologists,  
20 including those identified herein.

21  
22 3.23 Relator Gorumba was informed by said oncologist that treatment of some said  
23 patients with chemotherapy is "pointless" and "isn't doing any good." However, said  
24 oncologists prescribed chemotherapy anyway, because Medicare would pay for it, and solely for  
25 purposes of billing. Such treatment was not reasonable or necessary.

1 **H. These are Fraudulent Misrepresentations**

2 3.24 Relator Gorumba discussed his concerns about the above-referenced billing practices  
3 with SCTWC Administrator Kim Carlson. Ms. Carlson encouraged such practices, indicating  
4 for example, that the "normal program" procedure meant Medicare would be billed for more  
5 money than if the chart and bills reflected that fewer systems were reviewed. She said each  
6 chemotherapy patient was worth \$50,000 to \$55,000 to SCTWC. She instructed him to "play the  
7 game," meaning he, too, should participate in Medicare and insurance fraud.

8  
9 3.25 The purpose of falsifying the billing records is to obtain monies for Seattle Cancer  
10 Treatment & Wellness Center from the United States Government, which monies Seattle Cancer  
11 Treatment & Wellness Center would not otherwise obtain.

12 3.26 The defendants knowingly presented, or caused to be presented, to an officer or  
13 employee of the United States Government, false or fraudulent claims for payment or approval.

14 3.27 The defendants knowingly made, used, or caused to be made or used, a false record  
15 or statement to get a false or fraudulent claim paid or approved by the Government.

16 3.28 The defendants conspired to defraud the Government by getting a false or fraudulent  
17 claim allowed or paid.

18 3.29 The defendants' representations to the Government or its agent regarding the  
19 presence of a doctor in the same facility for "incident to" billing purposes were false  
20 representations of material fact.

21 3.30 The defendants' representations to the Government or its agent regarding the  
22 qualifications of health care providers who served Medicare-eligible patients were false  
23 representations of material fact.  
24  
25

1 3.31 The defendants' representations to the Government or its agent regarding the extent  
2 of Physician or Physician Assistant evaluations, number of systems evaluated, and/or "level" of  
3 the evaluations were false representations of material fact.

4 3.32 The defendants made these false representations of material fact knowingly as that  
5 term is defined in 31 U.S.C. § 3729(b).

6 3.33 The false representations were believed by the government and acted upon by the  
7 government to its damage.

8 3.34 These practices resulted in billing for more services than actually were provided, and  
9 resulted in SCTWC, and, through it, CTCA, receiving more money from Medicare than it was  
10 entitled to.

11 3.35 Based on information and belief, these fraudulent practices have been ongoing and  
12 continuing for a period of years before Relator Gorumba's employment and continued after his  
13 termination.

14  
15 **I. Pattern and Practice of Fraud Perpetrated by CTCA**

16 3.36 Based on information and belief, these practices are encouraged, condoned,  
17 organized, or required by CTCA, and are part of a pattern and practice of fraudulent billing,  
18 upcoding, and overbilling by other CTCA-affiliated corporations.

19  
20 **J. Wrongful Retaliatory Termination**

21 3.37 Relator Gorumba became dissatisfied with this system as he came to understand the  
22 above-referenced procedures were illegal. He told Administrator Carlson that he had concerns  
23 and did not want to have anything to do with the Medicare and other insurance fraud referenced  
24 above. She told him "This place is about making money," and he should just "play the game."  
25 Mr. Gorumba refused. In retaliation, his employment was terminated the next day.

**IV. CLAIMS OF THE UNITED STATES**

4.1 The facts stated above give rise to a violation of the Federal False Claims Act, 31 U.S.C. 3729(a)(1)(2)(3).

4.2 The defendants are liable for the actions of their agents, and their employees under the doctrine of Respondeat Superior.

**V. DAMAGES SUFFERED BY THE UNITED STATES**

5.1 As a proximate cause of the fraudulent practices described above the United States of America has suffered damages in amounts fraudulently billed to the United States.

**VI. CLAIMS OF RELATOR GORUMBA FOR HIMSELF**

6.1 Jeffrey Gorumba's employment was terminated because he opposed illegal practices referenced herein. This conduct violates 31 U.S.C. §3730(h). As a separate claim arising out of similar facts, this conduct violates the common law of the State of Washington, specifically the tort of Wrongful Discharge in Violation of Public Policy.

**VII. DAMAGES SUFFERED BY RELATOR GORUMBA**

7.1 As a proximate cause of the fraudulent practices described above Jeffrey Gorumba has suffered damages in the form of lost wages, damage to his career (future earning capacity), general damages for emotional distress, and other actual damages.

**VIII. PRAYER FOR RELIEF**

**WHEREFORE** plaintiff prays for damages as follows on behalf of the United States, and/or on his own behalf as appropriate:

**On behalf of the United States:**

1. Economic damages in an amount to be proven at time of trial.
2. A civil penalty of not less than \$5000 and not more than \$10,000 per violation.

1 3. Treble damages as provided for in 31 U.S.C. §3729(a).

2 **On behalf of Jeffrey Gorumba:**

3 4. Lost wages and benefits of employment, both past and future, lost future earning capacity,  
4 and other economic damages in amounts to be proven at time of trial.

5 5. General damages for emotional distress.

6 6. Other actual damages in amounts to be proven at time of trial.

7 **On behalf of either or both the United States and Jeffrey Gorumba.**

8 6. Prejudgment interest.

9 7. Reasonable attorney fees and costs.

10 8. Whatever additional damages the court shall deem to be just and equitable.

11 DATED this 2<sup>nd</sup> day of November, 2002.

12 

13  
14 Stephen A. Teller, WSBA #23372  
15 Attorney for Relator Gorumba