whistleblowers

a rare breed

BY GROVER L. PORTER, CPA

> "Our lives begin to end the day we become silent about things that matter."
> —*Martin Luther King, Jr.*

The "Persons of the Year" honored in 2002 by *Time* magazine (Dec. 30, 2002) are called whistleblowers. That issue of *Time* provides comprehensive coverage about those whistleblowers and the organizations they blew the whistle on: Sherron Watkins, Enron; Coleen Rowley, Federal Bureau of Investigation; and Cynthia Cooper, WorldCom. The current *Merriam-Webster Dictionary* definition of a whistleblower is: "One who reveals something covert or informs against another person."

Although the *Time* article focused on high-profile whistleblowers, there are many other ethical persons who have blown the whistle on the illegal and/or unethical practices of individuals and organizations. One CFO, and his family, faced great professional and personal risks when he blew the whistle on Quorum Health Group Inc. and Columbia/HCA.

The case began at the small North Valley Hospital in Whitefish, Mont., in 1990. James Alderson, after a 17-year association with the hospital, was its chief financial officer. Soon after Quorum, a former division of HCA, took over the management of the hospital, Alderson was told Quorum created a secret set of books. The second set of books would be used as a basis for reporting higher-than-actual expenses to the government for reimbursement. He refused to use the secret accounting method devised by HCA, however, saying it was illegal and unethical.

Alderson was abruptly fired five days after he questioned these accounting methods. He secured documentation about the false claims being filed in annual Medicare "cost reports" by Quorum. These documents included copies of pages from the secret books stamped "Confidential" by Quorum. Hospital employees were instructed not to disclose the existence of these books to Medicare auditors.

Alderson also learned that other Quorum hospitals were cooking their books. After discussing this situation with a former Medicare auditor, he and the auditor, at Alderson's expense, went to Washington to talk with the U. S. Department of Justice. Alderson eventually brought a whistleblower ("qui tam") lawsuit under the federal

False Claims Act against Quorum and Columbia/HCA. "When I first filed suit in 1993, I approached this with expectations that it would be a sprint to the finish line," Alderson says. "Instead, it turned into an exhausting marathon."

HCA'S BIRTH AND GROWTH

The Hospital Corporation of America (HCA) was formed in Nashville, Tenn., in 1968 by Dr. Thomas Frist, Sr., Dr. Thomas Frist, Jr., and Jack C. Massey. The Drs. Frist are, respectively, the father and brother of U. S. Senator Bill Frist (R.-Tenn.). Massey was the brain behind the investors that purchased Kentucky Fried Chicken from Col. Harlan Sanders and grew the company into a global corporation.

One of the nation's first hospital companies, HCA worked closely with local physicians and used innovative business practices and private capital to improve quality and reduce costs. The company grew rapidly, building new hospitals in underserved communities, acquiring facilities and contracting to manage hospitals for other owners. With 11 hospitals, HCA filed its initial public offering in 1969. By the end of that year, HCA had 26 hospitals and 3,000 beds.

In the 1970s, HCA experienced the rapid growth that characterized the industry in that decade. In the early 1980s, the focus shifted to consolidation with HCA acquiring General Care Corporation, General Health Services, Hospital Affiliates International, and Health Care Corporation. By the end of 1981, HCA operated 349 hospitals with more than 49,000 beds. Operating revenue had grown to $2.4 billion in 1981.

In February 1994, HCA merged with Columbia Management Companies Inc. Columbia/HCA then acquired Medical Care America and several other healthcare businesses. At its peak, the $20 billion company had more than 350 hospitals, 145 outpatient surgery centers, 550 home care agencies, and several other ancillary businesses.

In 1997, following the fallout from the whistleblowing lawsuits, Dr. Thomas Frist, Jr., returned as chairman and CEO of HCA. Dr. Frist immediately announced plans to restructure the company and focus on providing high-quality healthcare through a core group of leading hospitals. The legal name selected for the restructured corporation was HCA Inc.

Dr. Frist was instrumental in the development and implementation of a comprehensive corporate ethics and compliance program. This program includes a strict code of conduct and a senior vice president of ethics, compliance, and corporate responsibility.

HCA sold its nonhospital businesses as well as several facilities that didn't fit the company's new strategy during Dr. Frist's tenure. He also laid the groundwork for a Corporate Integrity Agreement with the Office of Inspector General at the U. S. Department of Health and Human Services. Dr. Frist stepped down as chairman and CEO of the restructured corporation and became chairman emeritus in 2000.

Jack Bovender, Jr., is the current chairman and CEO of HCA Inc. HCA is composed of locally managed facilities that include approximately 200 hospitals and 70 outpatient surgery centers today. Operating revenue had grown to $18.0 billion in 2001.

> "Whistleblowers *often jeopardize their livelihoods to do what's right.*"

A WHISTLEBLOWER'S EXILE

Alderson left town in search of work a few months after his 1990 firing because there aren't a lot of hospital finance jobs in Whitefish. Over 10 years, the family moved to five different towns as Alderson tried to balance earning a paycheck with gathering evidence. Wherever they went, the Aldersons tried to keep a low profile. Alderson's wife Connie compares this time with being in the witness-protection program: "The only difference is that we weren't receiving any protection or money to keep us going." Alderson's anonymity ended abruptly in 1998 when the U. S. government, in deciding to join the lawsuit, made his case public and *60 Minutes* profiled him on television.

The federal government and Alderson had gotten a major break in 1996 when another insider, John Schilling, told the FBI that his employer, Columbia/HCA, had falsified billing records in Florida. Raids by the FBI on Columbia/HCA hospitals all across the United States and corporate headquarters yielded 14,000 boxes of papers that helped federal prosecutors prevail in court.

According to the government's complaint, the companies kept two sets of books for reporting healthcare costs for Medicare patients—one an inflated ledger that was sent to the federal government for reimbursement, and another that detailed actual costs of hospital operations. The fallout from these whistleblowing lawsuits had a significant impact on HCA. The CEO and a number of other top executives were relieved of their positions with HCA.

HCA reimbursed the U. S. government a total of $840 million in 2001. The payment consisted of $745 million in civil damages and $95 million in criminal penalties. Although the company denies improper conduct, HCA recently agreed to pay another $881 million to settle all remaining fraud charges and other overpayment claims against the company. The U. S. District Court of Columbia approved the settlement agreement between HCA and the U. S. Department of Justice in June 2003.

THE COST OF DOING WHAT'S RIGHT

Although the Sarbanes-Oxley Act of 2002 protects whistleblowers today, there was no such legal protection available for Alderson in 1990. Now the better-managed corporations have ethics and compliance officers that an employee can go to regarding ethical issues. As Alderson said, "There was no compliance officer for me to go to in 1990." Also, the boards of directors of many corporations are acting in a more responsible manner regarding employee claims of illegal and/or unethical behavior by executives. As Alderson said, "I met with the hospital board in 1990, but to no avail."

There are limited support systems in professional accounting for whistleblowers today. The IMA has a hotline ((800)-6ETHICS) that accountants may call to discuss ethical issues with an objective professional counselor. Although all the major professional accounting organizations (AICPA, FEI, IMA) have codes of ethics, none includes specific whistleblowing statements. I believe professional codes of ethics should contain a positive whistleblowing statement.

The federal False Claims Act allows whistleblowers ("Relators") to receive 15% to 25% of the settlement proceeds. Alderson says, "I won't deny that money provided an incentive, but it was only part of the motivation. What Quorum and HCA were doing was wrong, and it took me 13 years and my career to prove it. Fortunately, I received enough money from the settlement to retire."

"Any money that Alderson gets is much deserved," says U.S. Rep. Peter Stark (D.-Calif.). The Aldersons plan to use the money received from the whistleblower lawsuit to pay off debts incurred over the years after his firing in 1990, to take their first real vacation in more than a decade, and to cover retirement expenses.

Connie Alderson said, "Knowing what I know now and knowing how long it's been, I'm not sure I would have agreed to pursuing the case. I don't think that any amount of money is going to take care of what we've been through."

Sen. Charles Grassley (D.-Iowa) says, "Whistleblowers often jeopardize their livelihoods to do what's right." As Alderson added, "If you are known as a whistleblower, it makes it very difficult to find a job in your own industry. Even though I had a major impact in reducing healthcare fraud by $10 billion annually, I had one hospital CEO tell me to my face that I had ruined the industry and that I had given it a black eye."

Robert McCallum, Jr., assistant U. S. attorney general for the Civil Division, said, "We are grateful for the assistance given by the whistleblowers over the course of the past nine years of investigation and litigation." In response to the accolades, Alderson commented, "The companies I sued have paid back $1.7 billion in cash to the Medicare program. We cannot turn our backs on fraud."

Although he says, "Yes, I would do it again," he recently lamented, "I can't believe it's over. But then again, it will never be over."

James Alderson is indeed one of a rare breed of whistleblowers whose credo is: "Whatever the cost, do what's right!" ■

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Sources: www.hcahealthcare.com; HCA 2001 Annual Report; HCA 2001 Form 10-K; U.S. ex rel. James F. Alderson v. Columbia/HCA, case no. 99-3290 (RCL), part of 01-MS-50 (RCL) (District of Columbia); U.S. ex rel. John Schilling v. Columbia/HCA, case no. 99-3289 (RCL), part of 01-MS-50 (RCL) (District of Columbia).

This article is based on discussions with James Alderson (2002-2003), the *60 Minutes* profile (Dec. 28, 1998), articles in *The Washington Post* (Oct. 6, 1998), *The New York Times* (Oct. 18, 1998), *The Tennessean* (1998-2003), and other news media.