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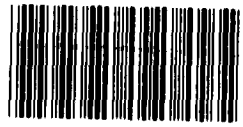
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Mr. Jay B. Constantine
Chief, Health Professional Staff
Committee on Finance
United States Senate

SENC 1119

Subject: Validation of the Health Care Related Convictions Attributed to the Office of Investigations of the Department of Health and Human Services (HRD-81-34)

DLC 05255

Dear Mr. Constantine:

This is in response to your July 30 and August 18, 1980, requests to evaluate information the Committee received indicating that (1) the Office of Investigations (OI) of the Office of Inspector General of the Department of Health and Human Services (HHS) had exaggerated its effectiveness by claiming credit for convictions resulting from investigations carried out by others and (2) the Office of Inspector General had done virtually nothing in following up on a September 1977 offer of assistance from a laboratory which was later a focal point of assistance to the Federal Bureau of Investigation (FBI) in its investigation and related convictions for Medicare-Medicaid fraud in Southern California.

Because of time and staff constraints, we limited our efforts to validating the accuracy of the number of health care financing convictions attributed to the Office of Inspector General and/or OI in the Inspector General's 1978 and 1979 Annual Reports and to obtaining information on the extent of HHS followup with the subject laboratory and the extent and nature of its interaction with the Department of Justice, including the FBI, in the Southern California investigations.

In summary, we found that:

--The 1978 Annual Report identified 19 cases involving 31 convictions in 1978 under the category "Investigations Involving Medicare/Medicaid Investigations

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by the Office of Inspector General." We believe 5 cases and 13 convictions were misclassified under this category.

--The 1979 Annual Report under "Trends in the Office of Investigations (OI) Accomplishments" attributed 54 health care financing convictions in 1979 to OI with a footnote to the effect that the numbers for 1977, 1978, and 1979 "included Project Integrity I cases." 1/ This type of presentation could be confusing in understanding OI's role; therefore, we obtained a revised 1979 list from OI showing 20 convictions attributable to Project Integrity I cases and 35 attributed to OI investigations--a net increase of 1. We believe eight Project Integrity I and five OI convictions were questionable attributions.

--The Office of the Inspector General had at least five contacts with the subject laboratory between October 1977 and January 1978, most of which involved the Audit Agency regional office. We were informed that the specific information obtained was used in connection with an ongoing audit of clinical laboratories in California. Also, extensive interaction and coordination occurred between components of the Office of Inspector General and the Department of Justice concerning the laboratory investigations in California. Although we cannot assess the usefulness of such interactions, we believe the Office of Inspector General made significant efforts to cooperate with the Department of Justice.

Additional information on these matters is presented below.

1/Project Integrity I was initiated by the Office of the Inspector General to detect fraud or error through computer analysis of Medicaid payments to physicians and pharmacists in all participating States.

CONVICTIONS SHOWN BY 1978 REPORT

On page 50 of the Inspector General's 1978 Annual Report, 1/ 31 convictions (involving 19 cases) were attributed to OI. A synopsis of the convictions was presented in appendix C to that report. After assessing available information in the OI case files on OI's participation in and contribution to these cases and convictions, we concluded that 5 of the cases and 13 of the related convictions should have been attributed instead to the Office of Program Integrity (OPI) of HHS' Health Care Financing Administration (HCFA) or to a State agency.

The 5 cases and 13 convictions were identified in appendix C of the 1978 Annual Report as follows.

Page number	Items	Number of convictions	Applicable HHS case no. (not shown in report)
207	6-14	9	A-9-10
208	a/15	1	DA-9-138
208	16	1	A-9-16
210	a/22	1	A-9-56
211	a/26	1	A-9-87
Total		13	

a/Report acknowledges some involvement or contribution by OPI.

Additional information on each of the cited cases is included in enclosure I to this letter. Our review of available OI documents supports the information received by the Committee that some convictions more closely associated with investigations initiated and carried out by OPI had been attributed to OI in the 1978 Annual Report.

1/Section 204(a) of Public Law 94-505 requires the Inspector General to submit a report to the Secretary and to the Congress summarizing the Office's activities during the preceding calendar year.

Appendix C of the Annual Report also showed a synposis of 26 "Convictions Involving Medicare/Medicaid Investigations by OPI (HCFA) excluding those done jointly with the Office of Investigations." Because the 1978 Annual Report was formatted in a manner which attributed accomplishments to individual HHS organizational components, greater care could have been taken to credit the statistics to the component that had the dominant role in the investigation.

CONVICTIONS SHOWN BY 1979 REPORT

On page III-2 of the Inspector General's 1979 Annual Report, the following convictions involving Medicare-Medicaid cases were attributed to OI.

	Number of convictions		
	1977	1978	1979
Health Care Financing (note a)	32	34	54

a/Includes Project Integrity I cases.

In contrast to the 1978 report, the convictions were not supported by references to specific cases, nor was there a breakout of OPI cases.

The inclusion of Project Integrity I cases in the statistics could be confusing in understanding OI's role in the investigations and related convictions. Project Integrity I used computers to analyze payments to physicians and pharmacists under Medicaid in all participating States to detect fraud or error. After the Audit Agency validated the data for the 50 most promising cases in each State, over 530 cases were identified for full investigation. Although HHS retained some of the cases, most were investigated by the States. Thus, OI could have merely monitored the States' investigations or could have worked directly on cases itself--two entirely different roles. At our request, OI provided us with the following breakout which indicated a net increase of one conviction in 1979.

Category of case	Number of Cases	Number of Convictions
Project Integrity I	a/14	20
OI	23	35
Totals	37	55

a/Of the 14 Project Integrity cases, 11 involved State investigations, 2 involved other Federal agencies, and 1 involved OPI.

In our opinion, it is questionable as to whether five cases and eight related convictions can be attributed to Project Integrity I because (1) State investigative and/or prosecution activities had been initiated before the subjects were identified or targeted under that effort, (2) the convictions pertaining to income tax evasion and illegal distribution of drugs and the related investigations were carried out by the Internal Revenue Service (IRS) and the Drug Enforcement Administration (DEA), or (3) the conviction resulted from work initiated and carried out by OPI on allegations unrelated to Project Integrity data.

Under the OI category, it is questionable whether five cases and the related five convictions should be attributed to OI because they were principally OPI, FBI, or State investigations.

The 10 questionable cases and 13 related convictions attributed to Project Integrity and OI investigative efforts are discussed in more detail in enclosure II and are summarized below.

Category of case	Aplicable HHS case no.	Number of convictions	Reason questioned
Project Integrity I	SF-9-21	1	Prior State case
	B-9-10	1	Prior State case
	BA-9-195	1	Separate IRS case
	DA-9-168	1	Separate DEA case
	K-9-81	4	Prior OPI case
		8	
OI	B-6-6	1	State case
	B-9-6	1	OPI case
	K-9-4	1	FBI case
	K-9-71	1	FBI case
	K-9-82	1	FBI case
		5	
Total		13	

The 1979 Annual Report contained less detail on the nature and substance of health care investigative activities than the 1977 and 1978 reports. We believe that, when accomplishments are presented in terms of number of convictions, additional information should be provided describing OI's role, which can vary widely from routine monitoring of others' work, to referring for prosecution cases developed by others, to making full field investigations and referrals. Such additional information would help put OI's contributions and accomplishments in the proper perspective.

CAUSES FOR THE MISCLASSIFICATION OF 1978 AND 1979 CONVICTIONS

The principal causes for the misclassification of convictions cited in the Inspector General's 1978 and 1979 reports appeared to be (1) an emphasis upon attributing convictions to Project Integrity to help deter fraud and abuse among

Medicaid providers and (2) inadequate review of information available in some of OI's case files.

FOLLOWUP ON OFFER OF ASSISTANCE FROM CLINICAL LABORATORY AND COORDINATION WITH FBI IN SOUTHERN CALIFORNIA

In July 22, 1980, hearings before the Subcommittee on Health, Senate Committee on Finance, FBI representatives testified that, after some initial arrests in December 1978, two clinical laboratories came forward to offer assistance in ongoing FBI investigations. On August 8, 1980, the president of one of the laboratories indicated to the Subcommittee that his firm had contacted the Inspector General of the Department of Health, Education, and Welfare (now HHS) in September 1977 to offer assistance in Medicare/Medicaid fraud investigations, but that little had happened until his firm started working with the FBI in February 1979.

Because the laboratory president would not be in a position to know the full extent of HHS' response to the offer, the Subcommittee asked that we follow up with the Inspector General's office to determine what had been done.

The Office of Inspector General had at least five contacts with the laboratory between October 1977 and January 1978, principally by representatives of the Audit Agency's San Francisco regional office. This unit, which is under the jurisdiction of the Inspector General, was working on a nationwide audit of clinical laboratories.

In an internal memorandum summarizing a November 10, 1977, meeting with representatives of the laboratory, a regional office official indicated that the following fraudulent, abusive, and/or questionable activities were discussed.

1. Doctors soliciting and receiving various forms of "kickbacks" from laboratories for referring Medicare/Medicaid business.

2. Doctors billing the Federal programs for tests at amounts greater than the amounts the laboratory billed the doctors (physician markups on laboratory services).

3. Doctors billing for tests as if they performed the tests when the tests were actually performed by a clinical laboratory.

4. Doctors who own the clinical laboratories overbilling Medicaid by having the doctor-owned laboratory bill the doctor for more tests than were performed. Presumably these inflated paid bills would then be presented to Medicaid for reimbursement.

5. Laboratories charging doctors less than they billed Medicaid for the same tests (i.e., having a lower schedule of charges for doctors than for Medicaid).

In connection with these contacts, the Inspector General's office said that the subject laboratory had made allegations involving 10 specific laboratories.

Our review of documents made available by the Inspector General's office showed that items 2, 3, and 5 were covered in the audit and related reports. However, the issue of "kickbacks" from the laboratories to doctors for their referrals of Medicare/Medicaid business did not appear to have been extensively explored by the audit effort. 1/ This was the area developed by the FBI in its undercover (or "sting") operation in California.

Also, of the 10 laboratories associated with specific allegations, we were advised that 5 were not included in the audit because of their relatively small Medicaid receipts. Two of the other five laboratories were not reviewed because of ongoing criminal investigations. Three laboratories were

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1/The Assistant Regional Audit Director, HHS Region IX, informed us that assessements were made to identify potential kickbacks (item 1) when financial records were available. In two laboratories the records were not available because of subpoenas on behalf of the FBI. A possible "kickback" was identified through an examination of the financial records of another laboratory and was referred for criminal investigation. He also advised us that HHS audits routinely assessed the issue of doctor ownership and related billing practices (item 4). Apparently none of the laboratories were in that category.

reviewed, and possible overpayments of about $1.8 million were identified.

In January and February 1979 memorandums of telephone conversations involving an HHS Audit Agency regional office official and an FBI agent showed that the HHS official had been instrumental in arranging for the laboratory's cooperation with the FBI.

The Office of Inspector General also gave us a chronology of events between March 1978 and February 1980 evidencing its coordination and cooperation of units with the FBI in California. Because we understand that some of the laboratories or individuals involved may still be under investigation, we were given a "sanitized" version of the documents; however, our staff has reviewed the "unsanitized" copies of the documents. Generally, the documents can be classified into the following categories.

--Request for clearance from the FBI and/or the assistant U.S. attorney for the Audit Agency to make audits at specific laboratories.

--Audit Agency personnel providing briefings, working papers, or other information on the audits of specific laboratories.

--Department of Justice requests for an audit of a specific laboratory.

--Briefings by FBI agents concerning their investigations.

--Correspondence with the State referring to FBI clearance for the State to seek recoveries from a specific laboratory.

Although we cannot assess the effectiveness of these rather extensive interactions and coordination by the the Audit Agency and OI, which are components of the Office of

Inspector General, we believe that the Office of the Inspector General made significant efforts to cooperate with the FBI and Department of Justice.

Sincerely yours,

Edward A Densmore

for Gregory J. Ahart
Director

Enclosures - 2

ENCLOSURE I

1978 CONVICTIONS

In the Inspector General's Annual Report for 1978, 19 health care cases and 31 related convictions were attributed to the work of the Office of Investigations (OI). We concluded that at least 5 of those cases and 13 convictions were for the most part the work of other Department of Health and Human Services (HHS) entities or agencies. The cases in that category included:

1. HHS Case Number A-9-10

This case and nine associated convictions were attributed to the Health Care Financing Administration's (HCFA's) Office of Program Integrity (OPI) on pages 134 and 135 (Item #28) of the Inspector General's 1977 report. The predominant role of HCFA/OPI was clearly outlined. Somehow, this case became an OI statistic in the 1978 report.

After a 2-year investigation by OPI and the U.S. attorney's office, a Federal grand jury in Florida returned two indictments on June 16, 1977, charging 13 doctors and 3 laboratory officials with more than 200 counts of conspiracy, mail fraud, and Medicare fraud involving kickbacks. Of the nine persons covered by the first indictment, six pleaded guilty and were sentenced on December 15 and 16, 1978. The other three persons were tried, convicted on November 18, 1977, and sentenced on January 3, 1979. On March 21, 1979, the Fifth Circuit U.S. Court of Appeals dismissed the charges and overturned the convictions.

The case file documented OI's interest in the case, but clearly showed that OI served in a supportive role. OI memorandums and other internal and external correspondence established that the case was developed and carried out by OPI in conjunction with the U.S. attorney's office. The same OPI specialist continued to serve as the case agent throughout the case, including a 120-day period when he was detailed to OI-Atlanta. During that time, he remained at his duty station in Miami, Florida, and continued necessary work in support of the U.S. attorney's office.

ENCLOSURE I

2. HHS Case Number DA-9-138

We concluded that OPI should have been credited with this case. The heading in the 1978 report gave the impression that the OPI role was limited to a preliminary inquiry. However, the case file indicated that OPI was the principal investigative agency in the case, which resulted in the conviction of a medical equipment supplier for conspiracy to submit false claims intended to defraud the U.S. Government and for submission of false claims to the U.S. Government. In addition, an internal OI document dated October 1, 1978, from the former director, Division of Investigations, stated that "This case was investigated, presented, and prosecuted by the Office of Program Integrity, HCFA."

3. HHS Case Number A-9-16

We concluded that the State of Georgia identified this case and proceeded with the investigation and prosecution on its own initiative.

The State investigated a pharmacist because he continued to bill Medicaid on behalf of recipients who had taken their business to other providers. The pharmacist was indicted by a Lowndes County, Georgia, grand jury on September 15, 1977, and was convicted by a State court on April 4, 1978.

The case file contained conflicting and inaccurate information pertaining to the origin and conduct of the case. Although Project Integrity identified the pharmacist as a provider who filled recipients' prescriptions at about four times the average rate among a universe of 970 providers, this information was not the basis for the State's action. When OI contacted the State about the Project's findings, the State evidenced little interest in the data and informed OI that an independent State criminal investigation was almost finished. On July 7, 1977, the State advised OI that the investigation had been completed and that the case had been turned over to a local district attorney for presentation to the grand jury.

The case file contained additional related information:

--On July 29, 1977, OI-Atlanta recommended opening and assigning an investigative case.

--On August 11, 1977, (according to OI-Atlanta), the Tampa, Florida, task force of the Department of Justice had developed the case, and the U.S. attorney had requested an investigation, which was to be conducted by the task force as a joint OI/FBI investigation.

--In a separate August 11, 1977, "Advice of Scheduled Investigation," the OI-Atlanta synopsis of the case, cited above (Aug. 11, 1977), was crossed out and annotated as "Project Integrity (Region IV-GA-D-3)."

--On August 16, 1977, OI-Atlanta stated in a communication to OI headquarters that the original OI case synopsis was incorrect and that the case was initiated from Project Integrity (which was incorrect) and that the State of Georgia was conducting the investigation (which was correct).

--On September 15, 1977, the pharmacist was indicted by a Georgia grand jury.

4. HHS Case Number A-9-56

We concluded that OPI was the agency conducting the investigation that resulted in the conviction of a physician for Medicare fraud (i.e., billing for services not rendered).

The OPI investigation originated from (1) a referral from a Medicare carrier (Group Health Incorporated) and (2) a request from the U.S. attorney pertaining to testimony received during a case of auto insurance fraud, wherein a witness accused the doctor of Medicare fraud.

The case file demonstrated that OI did not begin investigating the doctor until after OPI and the U.S. attorney obtained an indictment against the doctor in September 1977 for Medicare fraud. At the time that OI-Atlanta recommended opening the case (Sept. 8, 1977), OI Atlanta's objectives were to (1) monitor the criminal proceedings already underway against the physician, (2) credit the case statistics against

Project Integrity I, and (3) obtain Project Integrity materials and OPI/HCFA reports in order to assess the potential for developing Medicaid-related aspects in the case. At the time of the indictment, OI-Atlanta had not yet received the Project Integrity folder on the doctor.

This case continues to be listed in Project Integrity I statistics and was cited as an OI accomplishment in the 1978 annual report. Neither classification is accurate.

5. HHS Case Number A-9-87

We concluded that this case, which resulted in the conviction of a chiropractor for Medicare fraud, was developed throughout the investigation, preindictment, and trial phases almost entirely by OPI-HCFA. However, the narrative heading for the case in the 1978 report understated OPI's role by making only a passing reference to an "OPI-HCFA inquiry."

After Blue Shield of Alabama referred the case to OPI and the carrier made a survey, OPI made a detailed investigation that gave the HCFA Office of Medicare a basis for notifying the carrier on May 15, 1978, to suspend Medicare payments to the chiropractor. On May 31, 1978, OPI referred the case to OI, stressing the need for prompt action and volunteering the services of the OPI case agent in promptly resolving the case. OI accepted the offer of the OPI case agent's services, and that case agent presented the case to the assistant U.S. attorney in Birmingham, Alabama, and then followed up on the U.S. attorney's needs in the pretrial phase. The chiropractor was convicted on 24 counts October 12, 1978, and was sentenced on October 25. The chiropractor appealed his case to the Fifth U.S. Circuit Court of Appeals, which affirmed the conviction on April 19, 1979.

In this case, besides the OI case file, we also considered information available from OPI in Atlanta. It represents the sole exception to our criteria of using the OI case files as the basis for our conclusions.

ENCLOSURE II

1979 CONVICTIONS

Part A of this enclosure pertains to 5 of the 20 cases that OI attributed to Project Integrity. Part B pertains to 5 of the 35 cases attributed to OI.

Part A--1979 convictions (Project Integrity I)

1. HHS Case Number SF-9-21

We concluded that this case should have been attributed to the State of California, which initiated a Surveillance and Utilization Review Section assessment of a physician's practice in late July and early August 1977.

The Surveillance and Utilization Review Section notified the physician in March 1979 that he was liable for $474,815.94 in Medi-Cal overpayments and that he had billed Medi-Cal for services (pap smears) not performed in his office. A Federal grand jury returned a 22-count indictment for false claims submitted to HHS, and on October 10, 1979, the doctor pleaded guilty to three misdemeanor counts for theft of Government property (18 U.S.C. 641). All 22 counts of the Federal grand jury indictment were dismissed by the assistant U.S. attorney for the physician's testimony in a clinical laboratory case under investigation by the FBI. On November 8, 1979, the doctor was sentenced to 1 year imprisonment (suspended); to serve 125 days at the Lompoc, California, Federal Correctional Institution; to 3 years' probation; and to a $2,000 fine.

In a July 19, 1979, letter, OI-San Francisco notified OI headquarters that Project Integrity I data had been referred to the Surveillance and Utilization Review Section, which in turn informed OI that the State review had been completed and that the data would be referred to the State Department of Health, Office of Investigation, for its use. We concluded that the Project Integrity data did not precede or contribute to the review of the doctor's practice and the follow-on investigation and conviction of the physician.

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2. HHS Case Number B-9-10

The case was attributed to Project Integrity and resulted in the conviction of a Maine pharmacist for Medicaid fraud. We concluded that the conviction should have been attributed to the State of Maine with significant assistance from OI, but was not related to Project Integrity.

Our review of the case file showed no relationship between Project Integrity and the identification, audit, investigation, and conviction of the pharmacist. The subject was not among the 25 Maine pharmacists targeted under Project Integrity.

In early October 1977, a State team conducted an onsite audit of the pharmacist's Medicaid billings and related practices. The audit was conducted as part of a random selection of pharmacies by the Maine Division of Medicaid Surveillance. Proceeding from the audit findings, the State assistant attorney general requested assistance in December 1977 from OI for an expanded investigation. OI provided extensive onsite and other assistance to the State throughout the investigation.

On February 12, 1979, the pharmacist pleaded guilty to a seven-count charge of conspiracy, theft by deception, and unsworn falsification related to fraudulent Medicaid billings (i.e., generic substitutions for name brand drugs). The subject was sentenced to incarceration for 18 months (suspended), a $3,000 fine, and $3,000 in total restitutions in equal payments over an 18-month period; was terminated from the State Medicaid program; and had his license suspended for 45 days.

3. HHS Case Number BA-9-195

This case was attributed to Project Integrity but resulted in the conviction of a Virginia physician for income tax evasion. We concluded that, although the doctor was identified by Project Integrity, the investigation and conviction of the physician were the work of the Internal Revenue Service (IRS) and the case should not have been included in Project Integrity or other HHS statistics.

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On December 17, 1977, the Baltimore-OI office requested authority to open a case to monitor ongoing investigations of the subject by IRS and the Virginia Medical Assistance Program. The Virginia investigation was deferred to the IRS investigation, and the physician was convicted on June 6, 1979, on three counts of income tax evasion (26 U.S.C. 7201) covering calendar years 1972, 1973, and 1974. The doctor was sentenced to 2 years' probation and a $24,000 fine (reduced to $10,500), and Baltimore-OI closed its case on July 13, 1979. The case file does not reflect any further investigation or action against the physician for Medicare or Medicaid fraud, although the subject had been identified by Project Integrity.

4. HHS Case Number DA-9-168

This case was attributed to Project Integrity but resulted in the conviction of a New Mexico physician on charges developed by the Drug Enforcement Administration pertaining to the illegal distribution of drugs. We concluded that the Project Integrity data (i.e., billing for services not rendered and billing several members of a family for the same services on the same day) were not relevant to the investigation and conviction of the doctor.

A proposed investigation based upon the Project Integrity data was deferred at the request of the Drug Enforcement Administration. The doctor surrendered his licenses to practice medicine and to prescribe drugs on August 8, 1979. He was convicted on nine counts of illegal distribution of drugs on August 10, 1979, but he committed suicide on September 14, 1979, before sentencing.

5. Case Number K-9-81

This case against a Kansas physician, his practice, another physician, and two other employees was initiated by HCFA/OPI in response to leads provided by an informant in August 1978. The informant alleged that the physician was falsifying Medicare and Medicaid billings by (a) claiming payment for services not rendered and (b) claiming compensation for separate services for certain laboratory tests that were really combined into a single service.

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The Project Integrity data in the case file stated that fraud or abuse were not indicated in a "mail audit" of the doctor's practice but categorized the case as "possible overutilization" and placed it in the 2A (administrative action) status. Furthermore, the Project Integrity form was annotated "* * * This action should not affect the current Program Integrity case as the issues appear totally unrelated." We agree.

We concluded that the case was initiated by OPI and investigated by OPI and the Kansas Medicaid State Agency Fraud and Recoupment Unit with the assistance of the U.S. Postal Service. The physician, his practice, and two of his employees were convicted of fraud against the Government on charges pertaining to the informant's allegation. The other physician was found not guilty. The Project Integrity data on "overutilization" were after-the-fact and did not contribute to the four convictions.

Part B--1979 convictions (OI)

1. HHS Case Number B-6-6

Although this case was listed as an OI conviction, there was no indication in the case file that the subject, a nursing home operator, was convicted for health care fraud during 1979. However, on April 6, 1979, a status report from OI-Boston cited statistics pertaining to an April 20, 1978, conviction of the subject by the State of Rhode Island for Medicaid fraud. In that case, the nursing home operator was sentenced by the Providence Superior Court to 1 year in the Rhode Island Adult Correctional Institution (sentence suspended and placed on 1 year probation) and was required to reimburse the State $54,000 ($10,000 immediately and the remainder in 11 equal increments). Another OI-Boston report, dated December 31, 1979, stated that the Rhode Island Fraud Control Unit had obtained a negotiated settlement of $249,000 from the nursing home operator. A previous Federal case against the subject was concluded in 1977. Monthly status reports from OI-Boston during 1979 indicated that the State was conducting a case but that OI was providing only limited assistance. There was no evidence of any conviction of the subject during 1979.

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2. HHS Case Number B-9-6

This case pertained to a medical equipment supplier and his operations in New York and Connecticut. OPI developed and investigated the case and on July 26, 1977, referred it for prosecution to the U.S. attorney for the Southern District of New York, citing an interest in the case by an assistant U.S. attorney in the Southern District office and recommending prompt action by the Department of Justice. On August 12, 1977, OPI referred the case file to OI-New York. Later, the case file was referred to OI-Boston, opened as a Boston case, transferred back to New York at the request of the U.S. attorney's office, and assigned to the assistant U.S. attorney first cited by OPI. The OPI case file was later used in indicting and convicting the medical equipment supplier of Medicare fraud on December 15, 1977. On January 9, 1979, the subject was sentenced on 93 counts of Medicare fraud by the U.S. District Court, Southern District of New York. Apparently, OPI continued to actively investigate the case after referring the case to the U.S. attorney's office in July 1977 and after referring the case file to OI in August 1977. Considering the brief time that elapsed between the referral to the Department of Justice and the conviction, it was evident that OI functioned primarily in a coordinating role and was not responsible for the investigation or the follow-on conviction. The case file acknowledged the OPI role.

3,4,& 5. HHS Case Numbers K-9-4 (pharmacy owner), K-9-82 (pharmacy manager), and K-9-71 (osteopath)

We concluded that these three cases should have been attributed to the FBI. The three individuals in these cases were joint participants in opening and operating an unregistered pharmacy in the osteopath's office and in charging the Kansas State Medicaid Agency a higher fee for filling each prescription than they were entitled. The convictions related to these actions.

An investigation was opened on the pharmacy owner (K-9-4) in 1977 after two competing pharmacists, in an interview pertaining to nursing home kickbacks, alleged that the subject was engaged in Medicaid

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fraud. Furthermore, congressional investigators identified the subject to OI, along with other pharmacists and several nursing home operators, as suspected participants in nursing home kickback activities. Although OI and OPI engaged in joint intelligence gathering activities relating to these allegations, nothing in the case file indicated that any progress was made in developing charges of fraud against the suspect.

On January 18, 1978, the U.S. attorney (District of Kansas), in a letter to HCFA/OPI, stated that he was assigning investigative responsibility to the FBI for the nursing home operators cited by the congressional investigators. On March 8, 1978, OI-Kansas City, in a letter to the OI Director, Division of Investigations, cited the U.S. attorney's January 18, 1978, letter and stated that, although the suspected pharmacists were not mentioned, it was assumed that they would be included in the FBI investigation. He added that the FBI had not requested OI assistance but that OI would participate if requested.

The osteopath (K-9-71) was referred by OPI to the U.S. attorney's office in August 1974 for prosecution on charges of allowing medical treatment to be performed by a medical assistant, without supervision, and of billing for nonrendered services, including X-rays and hospital visits. The OPI case was settled out of court by the U.S. attorney after the doctor made financial reimbursement. The doctor was referred to the State of Missouri for further investigation. There was no indication of any State followup until 1977, when the Missouri Division of Investigations confronted the doctor on questionable Medicaid claims. The case was terminated by the Missouri investigators when the doctor provided an explanation that was deemed acceptable. The OI case file included additional information that the doctor's clinic had a local reputation as a "Medicaid mill." In April 1978, HHS audit data identified the practitioner as exceeding the established limits for injections and analyses. An OPI external audit of 12 of the osteopath's patients indicated discrepancies in several cases.

As a result of the FBI investigation (which credited assistance on the joint case to the Drug Enforcement Administration, the Kansas City SRS

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Fraud Unit, and the HHS Audit Agency), a Federal grand jury indicted the three subjects on November 28, 1978. All were convicted on May 8, 1979, by the U.S. District Court, District of Kansas. The sentence included fines of $25,000 for the osteopath, $25,000 for the pharmacy owner, and $12,500 for the pharmacy manager. Each defendant was sentenced to 3 months' confinement in Leavenworth Prison Camp.

Initially, the cases were not claimed for Project Integrity statistics by OI. Taking into consideration the background of the two principal defendants and the tenuous relationship of the HHS audit findings to the bases for the conviction, we concur. Furthermore, we believe the role of OI was minimal in the final and definitive development of the case and cannot agree with attributing the conviction to OI.