



What You Don't Say Can be Used Against You: Assessing the Fifth Amendment's Role in Qui Tam Litigation

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In 1987, current Florida governor Rick Scott used his life savings to start Columbia Hospital with the idealistic goal of cutting healthcare costs and improving patient care. A few years later, Columbia merged with the Tennessee-based hospital chain, Hospital Corporation of America ("HCA"), and quickly became one of the largest publicly traded hospitals in the country, boasting a network of over 340 hospitals and more than \$20 billion in revenue. The future looked bright for Scott's little hospital start-up.

It was until 1997, when former employees of Columbia/HCA filed nine separate qui tam lawsuits against Columbia/HCA pursuant to the False Claims Act ("FCA" or the "Act"). The suits were based on the hospital's fraudulent Medicare and Medicaid claim practices, which, according to the qui tam relators, included billing Medicare and Medicaid for unnecessary lab tests, creating false diagnoses to claim higher reimbursements, and providing doctors lucrative incentives to bring in patients.¹

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