The 12th Annual Pharmaceutical Regulatory and Compliance Congress
November 2-4, 2011

“Facilitating Disclosure and Prohibiting Retaliation”

Perspective of a Qui Tam Plaintiffs’ Counsel
Research Findings

• Observers of corporate wrongdoing rarely report it to anyone.*

• Example: During corporate accounting frauds that led to enactment of Sarbanes-Oxley Act, knowledgeable employees rarely spoke out about wrongdoing because of “a compelling norm of silence among employees.”*  

Research Findings

• Those who do decide to blow the whistle are more inclined to report internally than externally.

Research Findings

• Nearly every observer of perceived wrongdoing who reports it to someone outside the organization has reported it \textit{first} to at least one party \textit{within} the organization.

Trend in Pharmaceutical Qui Tam Matters Handled by Vogel, Slade & Goldstein

At Least Two of These Three Factors Usually Are Present:

• Wrongful Practice is Part of Corporate Business Plan
• Relator did not report to Compliance Office
• Relator Humiliated as a Result of Wrongful Practice or Reporting Thereof
Factor 1:
Wrongful Practice is Part of Corporate Business Plan

• Kickbacks
• Off-Label Promotion
• Nationwide Billing Policy
Factor 1:
Wrongful Practice is Part of Corporate Business Plan

Immediate supervisor has no discretion to change plan, and/or corporate sales forecasts and budget dependent on continuation of illegal practice
Factor 2:

Relator did not report to Compliance Office

- Compliance office off radar screen
- Lack of familiarity → lack of trust
- Concerns voiced to supervisor
Factor 3: Relator Humiliated

- In response to raising concerns with supervisor,
- By failure to compete successfully in corrupt environment, and/or
- By public excoriation for following illegal training or instruction
Factor 3:

Relator Humiliated

Nature of humiliation: dressed down in group; poor performance evaluation; citation for ethical violation; placed on PIP; and/or merit increase or bonus cut or denied.