

## ► Najmuddin Pervez

Age: 62

**Background:** Born in Simla, India; educated and raised in Karachi, Pakistan; emigrated to U.S. in 1969, became a naturalized U.S. citizen in 1977 and lives in New York.

**Family:** Married for second time; two daughters, two grandsons.

**Education:** Bachelor's degree in commerce, Government College of Commerce & Economics, Karachi, 1962; master's degree in business administration and finance, Graduate School of Business & Economics (a Karachi university sponsored by the Ford Foundation in affiliation with the Wharton School of Economics, now called the Institute of Business Administration), 1964.

**Previous Jobs:** 1969-73, Haskins & Sells (predecessor of Deloitte & Touche), Medicare reimbursement consultant; 1973-91, Beth Israel Medical Center, New York, began as accounting supervisor and left as senior vice president of financial services; 1991 to present, self-employed financial management consultant.

# He blew the whistle

*It wasn't a shooting incident that forced Pervez into action; it was a hospital renegeing on a promise*

It wasn't the smoking muzzle of a sub-machine gun or a professional disagreement that turned Najmuddin Pervez into a whistle-blower. It was a hospital messing with his health benefits.

Some whistle-blowers are motivated by greed, revenge or a quest to right perceived wrongs. Pervez, a private, reserved father of two grown daughters and grandfather of two boys, reached his breaking point when his former hospital employer allegedly broke its promise to pay for his gunshot-related medical claims.

Indeed, Pervez didn't sue Beth Israel Medical Center in New York after a former colleague opened fire on him in 1982; or when Pervez, after an 18-year career at the hospital, left the organization—or even when he said the hospital's chief financial officer asked him to overlook what he thought were questionable cost-reporting practices.

But when Beth Israel changed his medical benefits, the hospital's former senior vice president of financial services could restrain himself no longer. The Pakistani immigrant and naturalized U.S. citizen contested his former employer's alleged refusal to pay medical claims in a 1998 lawsuit, leading to the filing of a 2001 whistle-blower lawsuit against the hospital.

On Nov. 30, 2005, Beth Israel resolved allegations that it had falsified Medicare cost reports from 1992 through 2001. Michael Garcia, U.S. attorney in New York, alleged that Beth Israel "intentionally and improperly" included unallowable costs, primarily related to physician practices. Garcia charged in a 22-page complaint filed in U.S. District Court in New York that Beth Israel defrauded Medicare by causing it to overpay for nonreimbursable costs,

such as salaries, supplies, equipment and administrative overhead provided to the private outpatient practices of hospital faculty physicians.

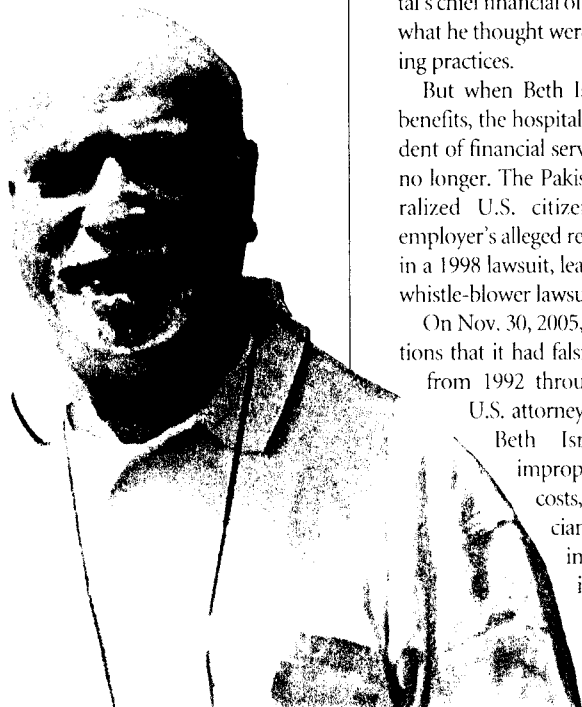
Pervez' allegations continue a recent trend of whistle-blower lawsuits filed by former hospital financial executives, insiders whose intimate knowledge of Medicare cost-report preparation gave them a bird's-eye view of alleged fraud schemes. He joins former hospital accountants James Alderson and John Schilling, who split \$100 million from the whistle-blower share of the \$1.6 billion in settlements that hospital chain HCA paid from 1999 to 2001.

Another case involved whistle-blower Mark Razin, a former reimbursement specialist with Healthcare Financial Advisers. Razin shared in the \$25 million recovery from former HFA client hospital Lovelace Health System, Albuquerque, which resolved cost-reporting fraud allegations in 2002. Razin has reportedly sued 25 to 30 other HFA-client hospitals in his 1998 lawsuit.

### Protecting healthcare dollars

"This settlement reflects the government's resolve to zealously protect our healthcare dollars and to ensure that they are properly spent for costs that are recoverable under the law," U.S. Attorney Garcia said in a news release regarding the Beth Israel settlement. "No provider—big or small—can be allowed to manipulate cost reports for the purpose of fraudulently inflating its reimbursement under the Medicare program."

Beth Israel, part of five-hospital Continuum Health Partners, agreed to the civil settlement without admitting wrongdoing. In a news release, the hospital said the settlement will not affect patient care or current renovation and redevelopment plans. "We are grateful that this review is behind us, and we look forward with great enthusiasm to continuing our mission to assist the tens of thousands of New Yorkers who



turn to us for care," according to the hospital.

Spokesman Jim Mandler says the entire amount was reserved on the hospital's balance sheet by the end of 2004. Beth Israel declined to comment on Pervez or the fraud allegations.

### Gunfire and its consequences

Pervez's experience in the 2001 whistleblower lawsuit, which earned him a \$15 million share of the settlement, almost pales beside what indirectly launched it nearly 20 years earlier. His encounter with an Uzi occurred, not in the Pakistani province of Karachi, where he moved as a child after a 1947 civil war pitted the newly created Muslim nation against the country of his birth, India.

And not on the sometimes mean streets of New York City.

But in his office. In a hospital. By a man he helped to hire.

Pervez, 62, had arrived late at work that morning in 1982 after dropping off his car at a mechanic's shop. He remembered speaking on the telephone with his office door open when he heard loud noises and a popping sound.

"At first I thought it was a toy gun, but after he fired a few shots into the door and I saw the shells eject from the gun, I realized it was no toy," Pervez says.

The spraying bullets shattered glass windows and doors, and plaster flew about Pervez's office. Flying glass and at least one bullet struck him in the shoulder. His attacker was Beth Israel's former director of internal audits and systems, Barry Simowitz, a man he recommended for the job. Simowitz then turned again to Pervez and aimed. But when the shooter's gun jammed, Pervez escaped and a co-worker disarmed Simowitz in the lull.

Pervez rose, "only to realize that a gush of warm fluid was running down my shoulder and legs. My chair and the floor below were full of blood. I came out of the office and ran towards the exit," he recalls. He hobbled to Beth Israel's emergency room about a block away.

After arriving, he passed out while the wound was probed and awakened in the recovery room, alive, but in pain and quite shaken.

"I was very well taken care of by the staff in the emergency room," he says. "I had never been around gunfire before. I don't know if anyone can ever be prepared to be shot."

Even now Pervez still marvels at the quirk of fate that garnered blazing headlines and irrevocably altered his health, career and life.

Pervez seems an unlikely whistleblower, a loyal accountant who first consulted with hospitals for Haskins & Sells, a predecessor company

of Deloitte & Touche, as HCFA (now the CMS) was introducing Medicare cost reports in the late 1960s. In 1973, he joined Beth Israel, a hospital client of his, four years after arriving in the U.S.

With a newly pregnant wife, a Pakistani physician, he left the accounting firm and its hectic travel schedule for a regular commute from the suburbs.

Pervez advanced through Beth Israel's finance department, undeterred by the shooting. "I have a lot to be thankful for," Pervez acknowledges.

"My wife joked that I'm lucky that Simowitz was an accountant and not a very good shot."

But the gunfire severely damaged Pervez's brachial plexus nerves, which resulted in physical limitations and required repeated nerve blocks and epidural procedures. He also needs lifelong medication, including potent painkillers, anti-inflammatory drugs and muscle relaxers, which cause sluggishness, lack of energy and loss of short-term memory. His injuries, which caused severe neck and shoulder spasms, required surgery and physical therapy.

Pervez says his 1991 departure from the hospital was amicable. "We had a difference of opinion" over the way the hospital wanted faculty physician-practice expenses accounted, he recalls. "The hospital wanted to handle things differently. I could not then foresee the hospital doing things illegally, but I would be putting myself in a bind to do things this way."

### Improper methods

But because of his experience and historic knowledge of Beth Israel cost-reporting practices, Pervez continued to consult for the hospital, that is, until a change in administration at the hospital in the early '90s introduced new cost-reporting practices that he questioned.

"I met with the CFO and discussed with him that these new methods were improper," Pervez recalls. "He said it was none of my business. He laughed it off and told me I was a little carried away with things."

Pervez said his responsibility was to inform his clients of improper actions, but accomplishing that, he stopped consulting with them.

"The practices that had started after I left were clearly illegal. I told them that, and they didn't ask me to help them anymore."

The consulting relationship began to deteriorate around 1994 and ended in 1996. At that time the role of national accounting firm Ernst & Young, which had assisted the hospital in preparing cost reports since the early '80s, expanded.

Pervez said that in his 1991 separation agree-

ment Beth Israel agreed to cover his shooting-related healthcare expenses for the rest of his life, an obligation the self-insured hospital complied with until 1997, he says, when he filed a new medical claim.

"But the hospital simply refused to honor its commitment," he says. "When I pushed for this claim, they stopped making payments."

He says Beth Israel tried to settle his medical claims, providing he agreed to join a managed-care plan and place Medicare as the primary insurance when he became eligible. "I refused, believing it to be illegal," he says. "A hospital cannot pass its on-the-job injury-related liability to Medicare. And it adds insult to injury when an employee is asked to become a partner in a scheme to commit Medicare fraud for the hospital's financial benefit."

Pervez filed a lawsuit over his medical claims with Beth Israel in 1998 and, in the discovery process of that case, uncovered evidence of the alleged cost-reporting fraud scheme he'd suspected years earlier. That led to his filing a whistleblower lawsuit in U.S. District Court in New York in 2001.

It wasn't the first time Beth Israel faced legal actions for allegedly fraudulent behavior. In

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—Najmuddin Pervez

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2001, the hospital paid \$1.2 million to resolve separate civil allegations that it failed to document certain procedures and did not comply with Medicare coding and reimbursement rules. The hospital did not admit wrongdoing, but signed a five-year corporate integrity agreement and developed a compliance program.

Pervez's attorney, Philip Michaels of the New York office of Troutman Sanders, says sometimes hospital budgets are plugged with one-time revenue and questionable ways of balancing budgets. "Over time, the institution relies on the revenues and can't dismantle the scheme because the whole financial framework would collapse," Michaels says. He says hospital administrators haven't gotten the message on healthcare fraud: "I think they believe that government is there to be plucked."

The Beth Israel case was "not an outlier and not a dead issue. There's been a great deal of activity that may be well forthcoming on cost report cases. Unfortunately, it's an area of gigantic fraud because it relies upon self-reporting that the government lacks the resources to investigate and monitor. It's a place they think they can get away with it," he says.

Stephen Meagher, a whistle-blower attorney

specializing in Medicare cost-reporting fraud cases who represented Alderson, Schilling and Razin, says hospitals can't perform cost-reporting fraud in isolation, noting that their accounting firms either look the other way or are complicit.

He says Pervez differs from some whistle-blowers he's known. "It took an amazing amount of perseverance. He was inside the company for a long, long time and was inside fighting it out with them trying to fix this. It took him much longer than most to file a whistle-blower lawsuit. He is the kind of person to try to do the right thing and do it from within. But that didn't work," Meagher says.

Cost-reporting cases are particularly difficult, not just because of the financial complexity, but because cost reports are moving targets; he says HCFA changed the rules every year or two, which continues under the CMS. "To see this through, a single expert wouldn't have been enough. You needed somebody like Naj who was aware of the evolution of the cost-reporting process. That was a huge advantage in this case."



Sadowski: Pervez is the "cream of the crop of whistle-blowers."

Robert Sadowski, a former assistant U.S. attorney in New York who led the Beth Israel prosecution from 2001 until joining the law firm of Olshan, Grundman, Frome, Rosenzweig & Wolosky just before the settlement last

year, says Pervez is "the cream of the crop of whistle-blowers in terms of knowledge and expertise. This was a very complex case that took a lot of forensic accounting to ferret out the issues. But Naj was very good at keeping the focus of the investigation where it belonged."

Sadowski says that other cost-reporting cases relating to nonreimbursable cost centers and cost-to-charge ratios may be percolating. "I would venture a guess that these are certainly problems that many institutions have," he says. "But they are very difficult to discover."

Pervez says he plans no major changes in his life as a result of the settlement money. He says he wants to help Pakistani families hit hard by last year's earthquake there. "I have friends and family members who had people directly hurt, and we're going to try to do what we can to assist."

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