Contents

About the Authors v

What Is . . . Qui Tam 1

I. What Is Qui Tam Litigation? 1

II. The FCA Substantive Legal Framework 3
   A. Evolution of the FCA 3
   B. FCA-Like Regimes 4
   C. Government Actors 5
   D. Elements of FCA Liability 8
      1. The Conduct: False Claims, False Statements, Reverse False Claims, and Conspiracies 8
      2. The Scienter: Knowingly 11
      3. The Falsity of the Conduct 14
      4. The Materiality of the Falsity 19
      5. The Damages: Treble Damages and Penalties 21
      6. The Relator’s Award 22
      7. Costs and Attorney Fees 24

III. Legal Obstacles to FCA Actions 25
   A. Disallowed Relators 25
   B. Disallowed Defendants 26
C. Disallowed Actions
   1. Actions by Non-original Sources That Are Based on Public Disclosures 28
   2. Actions by Subsequent Relators: The First-to-File Bar 32
   3. Other Precluded Actions 34

IV. The FCA Procedural Framework for Qui Tam Litigation: At Inception 34
   A. The Complaint 34
      1. FRCP 9(b) 35
      2. Patient Health Information 37
      3. Retaliation Claims 40
   B. The Disclosure Statement 41
   C. Jurisdiction and Venue 42
   D. Statute of Limitations 42
   E. Burden of Proof 45

V. The FCA Procedural Framework for Qui Tam Litigation: The Seal Period 45
   A. Length and Purpose of Seal 45
   B. Discovery During the Seal 47

VI. The FCA Procedural Framework for Qui Tam Litigation: End of Seal Period 50
   A. Intervention versus Declination 50
   B. Rights of the Parties after Intervention 51
   C. Rights of the Parties after Declination 51
   D. Rights of Discovery from the Government 53

VII. Resolving the Case Prior to Trial: Settlement 54

VIII. Trial of the Qui Tam Case 56

IX. Conclusion 57

Appendix
The Federal False Claims Act 59