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Department of Justice

U.S. Attorney's Office

Southern District of Florida

FOR IMMEDIATE RELEASE

Tuesday, February 7, 2017

**Dr. Gary Marder and the United States Consent to a Final
Judgement of Over \$18 Million to Settle False Claims Act
Allegations**

Gary L. Marder, D.O., a physician residing in Palm Beach County and the owner and operator of the Allergy, Dermatology & Skin Cancer Centers in Port St. Lucie and Okeechobee, and the United States of America have stipulated to a consent final judgment of over \$18 million to settle False Claims Act allegations against Dr. Marder. Co-defendant, Robert I. Kendall, M.D., a physician practicing in Coral Gables, has also agreed to pay the United States \$250,000 to settle allegations that he violated the False Claims Act.

Wifredo A. Ferrer, United States Attorney for the Southern District of Florida, Shimon R. Richmond, Special Agent in Charge, U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG), Miami Region, and John F. Khin, Special Agent in Charge, Defense Criminal Investigative Service (DCIS), Southeast Field Office, made the announcement.

The allegations arose from a qui tam lawsuit filed by whistleblower, Theodore A. Schiff, M.D., alleging that Dr. Marder knowingly submitted claims to federal healthcare programs for medically unnecessary biopsies and radiation therapy services, radiation therapy services performed in contravention of standard practice regarding the amount of time between radiation treatments, and radiation therapy services performed without direct supervision and by unlicensed and/or unqualified physician assistants. The lawsuit further alleged that Dr. Kendall submitted false claims to federal and state healthcare programs for laboratory services tainted by kickbacks to, and improper financial relationships with, Dr. Marder. The United States intervened in the Civil Action on October 14, 2014, and filed its Complaint in Intervention on November 19, 2014.

In September 2016, the Court granted summary judgment in favor of the United States with respect to several key issues in the case, finding that Dr. Marder knowingly submitted false claims to Medicare by requesting reimbursement for services that he never actually performed or

directly supervised due to his frequent absence from his medical clinics (including expansive periods of foreign travel) on days corresponding to over fifty percent of the payments that Dr. Marder received from Medicare. The Court further found that all Dr. Marder's claims for medical physicist services submitted to Medicare since 2011 were false, and that Dr. Marder had actual knowledge that a physicist did not perform the corresponding services. The Court made no determination of liability against Dr. Kendall in this matter.

"Today's settlement demonstrates this Office's ongoing commitment to hold accountable healthcare providers who receive reimbursements from government-sponsored healthcare programs for services that are never actually performed. This conduct results in significantly increased costs to the federal government and others," said Wifredo A. Ferrer, United States Attorney for the Southern District of Florida.

"Doctors who are more concerned with boosting their profits at the expense of taxpayer-funded health care programs than they are with patient safety will be held accountable," said Shimon R. Richmond, HHS-OIG Miami Special Agent in Charge. "Working with our law enforcement partners, we will continue to protect the integrity of federal health care programs and the patients served by those programs."

"This settlement highlights the commitment of DCIS and its law enforcement partners to protect the integrity of TRICARE, the Department of Defense health care program serving our warfighters, their family members, and military retirees," said Special Agent in Charge John F. Khin of DCIS Southeast Field Office. "Health care providers who seek financial gain through false claims and irresponsible treatment of their patients, will be diligently investigated and held accountable for their actions."

The settlement was the result of a coordinated effort by the United States Attorney's Office for the Southern District of Florida, HHS-OIG, DCIS, U.S. Office of Personnel Management, Office of Inspector General (OPM-OIG) and the Federal Bureau of Investigation (FBI). The case was investigated and the settlement negotiated by Assistant U.S. Attorney's Mark Lavine and John Spaccarotella.

The case is captioned United States of America and the State of Florida ex rel. Theodore A. Schiff, M.D. v. Gary L. Marder, D.O., Allergy, Dermatology & Skin Cancer Center, Inc., Megan Bock, P.A., Martin Burke, P.A., Robert I. Kendall, M.D., and Kendall Medical Laboratory, Inc., Case No. 1:13-cv-24503-KMM (S.D. Fla.). The claims asserted against Dr. Marder and Dr. Kendall are merely allegations.

Related court documents and information may be found on the website of the District Court for the Southern District of Florida at www.flsd.uscourts.gov or on <http://pacer.flsd.uscourts.gov>.

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