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Department of Justice

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District of Maryland

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Pain Management Physician Convicted On Charges Of Accepting Kickbacks And Submitting Fraudulent Bills For Anesthesia Services

Practice CFO, Diagnostic Testing Laboratory Owner and CEO, and Testing Lab Marketing Agent Previously Pled Guilty to Related Charges

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Baltimore, Maryland – On October 27, 2017, following a thirteen-day trial, a federal jury convicted Atif Babar Malik, age 48, of Germantown, Maryland, on 26 felony counts arising from two criminal schemes that involved referring patients' urine toxicology specimens to a New Jersey diagnostic testing lab in return for \$1.376 million in kickbacks and fraudulently billing for anesthesia services provided in connection with spinal nerve block injections. Malik was convicted on one count of conspiracy to violate the federal Anti-Kickback Act and the Travel Act; 12 counts of violating the Anti-Kickback Act; three counts of violating the Travel Act; six counts of health care fraud; and three counts of making false entries in patients' medical records.

Malik's convictions were announced by Acting United States Attorney for the District of Maryland Stephen M. Schenning; Special Agent in Charge Gordon Johnson of the Federal Bureau of Investigation, Baltimore Field Office; and Special Agent in Charge Nicholas DiGiulio, Office of Investigations, Office of Inspector General of the Department of Health and Human Services; Special Agent in Charge Kimberly Lappin of the Internal Revenue Service - Criminal Investigation, Washington, D.C. Field Office; Special Agent in Charge Robert E. Craig Jr. of the Defense Criminal Investigative Service - Mid-Atlantic Field Office; and Special Agent in Charge Drew Grimm of the Office of Personnel Management – Office of Inspector General.

Malik was one of six defendants who were charged in connection with the kickback or fraudulent billing schemes. His practice co-owner and co-defendant Sandeep Sherlekar, age 52, of Germantown, Maryland, was also charged with participating in the referrals-for-kickbacks conspiracy and the fraudulent anesthesia billing scheme, as well as with making false entries in patients' medical records. Following the return of the original indictment in late June 2016, Sherlekar

committed suicide shortly before his scheduled initial appearance and arraignment in early October 2016.

Konstantin Bas, age 41, of Brooklyn, New York, the former owner and Chief Executive Officer of a Linden, New Jersey-based diagnostic testing lab known as Accu Reference; Mubtagha Shah Syed, age 50, of Jersey City, New Jersey, who worked as a marketer for Accu Reference; and Vic Wadhwa, 39, of Frederick, Maryland, the Chief Financial Officer (CFO) of Malik's and Sherlekar's medical practice, all previously pled guilty to charges of conspiring to violate the Anti-Kickback Act or to an individual charge of violating the Anti-Kickback Act, and are currently awaiting sentencing. Muhammad Ahmad Khan, age 44, the Chief Administrative Officer of Drs. Malik's and Sherlekar's practice, who was also charged in connection with the kickbacks and Travel Act conspiracy, is a fugitive and is believed to be in Pakistan.

Dr. Malik is a physician trained in pain management and Dr. Sherlekar was trained in both pain management and in anesthesiology. The two merged their pain management practices in February 2009 to create Advanced Pain Management Services, LLC (APMS), which initially had three offices in Maryland and one in New Jersey, but that later expanded to as many as ten offices. In August 2010, APMS began doing business under the name of American Spine Center, LLC (APMS/ASC). Khan was the CEO of APMS/ASC and co-conspirator Vic Wadhwa was its CFO.

APMS/ASC physicians periodically required patients who were prescribed controlled substances as pain relief medications to submit urine specimens for testing as means of monitoring the levels of pain medication or other narcotics in their bodies. According to evidence presented at trial, in the late winter of 2011, Accu Reference's marketing agent Mubtagha Syed proposed to Khan and Wadhwa that APMS/ASC discontinue using its current testing lab and start referring its patients' urine toxicology specimens to Accu Reference in return for the payment of kickbacks. After Drs. Malik and Sherlekar approved the plan, which also came to include back braces from another Bas-controlled company, APMS/ASC began submitting all of its patients' urine specimens to Accu Reference in April 2011.

Starting in the late spring of 2011 and continuing through the end of July 2012, APMS/ASC each month referred between 700 to as many as 1,300 patient urine specimens to Accu Reference for testing in return for the payment of kickbacks. Accu Reference submitted claims for performing diagnostic tests on these specimens to Medicare and various private insurers for reimbursement, receiving in return approximately \$4.4 million in payments. After deducting its overhead expenses on the testing, Accu Reference split its profits 50/50 with Khan, Wadhwa, Sherlekar, and Malik. (Syed also received a share of Accu Reference's profits.) From the time the kickback payments commenced in June 2011 until the end of the scheme in August 2012, Bas caused his companies to pay kickbacks totaling \$1.376 million to Sherlekar, Malik, Khan and Wadhwa. Khan and Wadhwa deceived Drs. Sherlekar and Malik about the full amount of the kickback payments Accu Reference was paying, however, and thus were able to retain more than 60% of the kickback payments for themselves. Drs. Sherlekar and Malik each received approximately \$240,000 in kickback funds before the scheme came to an end in the late summer of 2012.

Among the services APMS/ASC provided to its patients were diagnostic or therapeutic nerve blocks and injections in connection with spinal conditions, which were often provided in conjunction with anesthesia. If two physicians were present during a surgical procedure, with one performing the surgical procedure and the other administering the anesthesia, then the anesthesiologist could bill separately for the anesthesia service. However, if a single surgeon or anesthesiologist was alone in the procedure room and administered the anesthesia while also performing the surgical procedure,

then the anesthesia service could not be billed as a separate charge, but was instead treated as included within the fee established for the surgical procedure.

According to evidence presented by the government at trial, during the period from January 2010 through the summer of 2012, it was relatively common for only one physician at APMS/ASC to both perform the spinal injection and administer the anesthesia. In a number of these cases, APMS/ASC then submitted bills to Medicare and private insurers using a billing code that represented that two separate physicians had respectively provided the nerve block and the anesthesia, and as a result received a higher level of reimbursement. For example, evidence presented by prosecutors demonstrated that on January 3, 2012, a date when Dr. Sherlekar alone provided both spinal injections and anesthesia to a large number of patients at APMS/ASC's Frederick office, he advised Dr. Malik by text that "I am using your name today as surgeon as we have 34 procedures here [in Frederick] and 20 in Waldorf," to which Malik responded "ok," although he was seeing patients at his office in Hackettstown, New Jersey that day, more than 200 miles from Frederick.

In addition to the kickback-related and health care fraud and false medical records charges that were at issue in this trial, the Court has severed out for a separate trial another count of the indictment that charged Drs. Malik and Sherlekar with conspiring to defraud the IRS by not reporting as income cash payments received by APMS/ASC, and by filing false corporate tax returns that overstated the practice's expenses and understated its revenues. This count is currently scheduled to go to trial in February 2018.

Malik faces potential maximum sentences of 10 years in prison for each of his six health care fraud convictions; five years in prison for conspiring to violate the Anti-Kickback Act and the Travel Act; five years in prison for each of the three Travel Act convictions and for the three counts of making false statements on patients' medical records; and two years in prison for each of his 12 convictions on charges of soliciting and receiving health-care related kickbacks. His actual sentencing range will be calculated using the Federal Sentencing Guidelines, however, and the Court will have a wide range of discretion in imposing sentence.

Acting United States Attorney Stephen M. Schenning commended the FBI; the Department of Health and Human Services – Office of the Inspector General (HHS-OIG); the IRS - Criminal Investigation Division; and the Defense Criminal Investigative Service and the Office of Personnel Management – Office of the Inspector General (OPM-OIG) for their work on the investigation. Mr. Schenning also thanked Assistant U.S. Attorneys Jefferson M. Gray and Sean R. Delaney, who led the investigation and tried the case against Dr. Malik.

Component(s):

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