

# MEDICARE COMPLIANCE

## Fla. Physician Acquitted in Fraud Case Over Excluded Contractor

A Tampa-area physician who operated a general medical practice recently beat the health care fraud charges brought against her in February by the federal government, according to her attorney and court documents.

A jury found Jayam Iyer, M.D., not guilty of health fraud on July 29 even though the physician used a contractor who was excluded from Medicare and Medicaid, according to court documents and her defense lawyer.

Although Iyer was acquitted, the case is a reminder of the perils of employing or contracting with excluded employees. The HHS Office of Inspector General's website has an abundance of civil monetary penalty settlements with hospitals and other facilities for their failures in the area of excluded employees or contractors (*RMC 11/1/10, p. 1*).

Iyer was charged with submitting \$457,000 in fraudulent Medicare claims for services she did not render, the U.S. Attorney's Office for the Middle District of Florida said on Feb. 17. The case was announced as part of the Medicare Fraud Strike Force operations during a nationwide effort against a total of 111 defendants that involved \$225 million in alleged false billing.

The feds alleged that the services billed by Iyer actually were provided by Michael Spuza, another physician, who had been excluded from Medicare for multiple criminal health care fraud counts. Spuza was under contract with the practice, but was not a partner, says Clearwater, Fla., attorney George Tragos, who represented Iyer.

According to the superseding indictment filed against Iyer in June, Spuza was hired in October 2006. The feds say Spuza told them an attorney informed Iyer in 2006 that Spuza had been excluded. The feds give no other information about who that attorney was. Tragos says the attorney testified during the trial that he does not remember meeting with Iyer about Spuza and that his time records do not reflect the meeting.

From October 2006 through June 2007, the feds say Iyer let Spuza treat beneficiaries and then submit fraudulent claims seeking Medicare Part B reimbursement under Iyer's name and provider number. They also alleged that when she submitted provider applications

to the Medicare carrier, she omitted that Spuza was affiliated with the practice.

Although Iyer's practice screens partners and managers for Medicare and Medicaid exclusions, it was not checking on contract employees, Tragos tells *RMC*. This gap was exposed when Spuza was busted again for alleged possession with attempt to distribute Oxycodone. He told the feds he was still treating Medicare patients at Iyer's practice, says Tragos. Spuza offered to testify against Iyer — alleging that he had informed the practice of his excluded status — in exchange for a plea agreement and a reduction in his 96-month prison sentence, according to Tragos.

### Defendant and Patients Are Thrilled

Had the practice known about Spuza's Medicare exclusion, Tragos says, it would have shifted federal health care beneficiaries to another doctor for treatment. He adds that the practice now will be more cautious about checking the excluded status of new hires.

Spuza's deal with the feds, plus his previous conviction, ultimately damaged his credibility with the jury, Tragos contends. The jury in Tampa found Iyer not guilty of all six health care fraud counts.

Iyer and her patients are "thrilled" with the outcome, Tragos says. "They're dependent on her for their daily lives," he says.

The U.S. Attorney's Office says it respects the jury's decision.

Without commenting on this particular case, Judith Waltz of Foley & Lardner LLP said that pursuing employers who knowingly hire and bill for the services of an excluded provider seems consistent with the priority that federal officials have put on provider enrollment as an enforcement tool.

"Medicare wants to know who is providing services to its beneficiaries and gathers that information as part of the enrollment process. OIG excludes individuals it thinks are not appropriate to provide Medicare services. So if services are provided by an excluded individual, but claimed under another provider's billing number, both enrollment safeguards and the exclusion

authorities have failed, and in OIG's view, beneficiary care and/or program integrity may be at risk," she says.

Waltz points out that OIG's website reflects several large monetary settlements for employers and those who contract with excluded individuals or entities, usually following a self-disclosure. The feds also have vowed to exclude the people in charge of organizations that commit fraud.

"DOJ's action [in this case] is consistent with OIG's focus on managing and controlling individuals, and seems

to further the risks associated with noncompliance with the excluded provider rules," Waltz says. Those risks also need to be considered when an entity is making a decision as to whether to self-disclose a discovery of an excluded employee or contractor, she adds.

Read more about the case at [www.justice.gov/usao/flm](http://www.justice.gov/usao/flm) and [www.flmd.uscourts.gov](http://www.flmd.uscourts.gov) (username and password required). Contact Tragos at (727) 441-9030 and Waltz at [jwaltz@foley.com](mailto:jwaltz@foley.com). ✧