

6TH CIRCUIT FEDERAL COURT OF APPEALS AFFIRMS CONVICTION OF PAIN MANAGEMENT PHYSICIAN FOR OVERUTILIZATION & BILLING FRAUD

Robert S. Iwrey, Esq.

The Health Law Partners, P.C., Southfield, MI

On December 1, 2009, the United States Court of Appeals for the Sixth Circuit affirmed the conviction of Ohio anesthesiologist Dr Jorge A Martinez who was charged with illegally distributing controlled substances, mail fraud, wire fraud, and healthcare fraud, including two counts that resulted in the death of patients

In 2002, the FBI began investigating Dr Martinez's pain management clinic in Parma, OH in response to reimbursement and billing patterns placing him above his peers for certain procedures. At trial, the government alleged that from 1998 until 2004, Dr Martinez engaged in fraud and endangered patients by omitting physical examinations of the patients, ignoring "red flags" of patient addiction to pain medication, providing more injections than were medically necessary or advisable and providing at-risk patients with treatments that would likely lead to increased dependence upon him for additional pain medication. The government was able to demonstrate that Dr. Martinez administered far more injections than his peers (e.g., each of Dr Martinez's patients averaged 64 nerve block injections per year whereas the state average for pain patients in Ohio was 2.5 nerve block injections per year) Moreover, Dr Martinez saw more patients per day than other physician in Ohio, sometimes exceeding 100 patients during an 8.5 hour timeframe. Witnesses testified that he frequently spent only 2 to 5 minutes with patients during their scheduled appointments and performed



little or no physical examination during these brief visits. The government also demonstrated that two patient deaths were reasonably foreseeable consequences of Dr. Martinez's course of treatment which fell far below the applicable standards of care.

Much of the government's case focused on Dr. Martinez's failure to comply with the requirements for billing the highly-reimbursed nerve blocks he allegedly performed. While the applicable standards of care require careful, precise placement of the injection needle, Dr. Martinez was seen entering the room, quickly and repeatedly injecting patients, and exiting the room—all within a few minutes. One of the main issues on appeal concerned the government's

use of video evidence of a non-witness physician performing a nerve block injection in the "proper" manner—creating a direct visual contrast between what was labeled as the proper way to perform the injection and the manner in which Dr. Martinez performed the injection. The Appeals Court found that while the video evidence did constitute impermissible hearsay, its admission was harmless in light of the overwhelming evidence that Dr. Martinez was not performing medically necessary procedures and that the procedures he was performing were not the same as the ones for which he billed.

In addition to upholding Dr. Martinez's conviction, the Appeals Court also upheld his sentence for life imprisonment and over \$14 million in restitution. The full text of the case can be found at: <http://www.healthlawattorneyblog.com/U.S.%20v.%20Martinez.pdf> ▲

Robert S. Iwrey is a founding partner of The Health Law Partners, P.C. in Southfield, Michigan, where he focuses his practice on contracts, litigation, dispute resolution, licensure, staff privileges, Medicare, Medicaid and Blue Cross/Blue Shield audits and appeals, defense of health care fraud matters, compliance and other healthcare related issues. He may be contacted at (248) 996-8510 or riwrey@thehlp.com.

