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Department of Justice

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District of Maryland

FOR IMMEDIATE RELEASE

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Five Defendants Face Federal Charges in Pain Management Clinic Kickback Scheme

Physicians, CEO, Company Owner and Marketer Also Charged in Tax and Health Care Fraud Schemes

Baltimore, Maryland – A federal grand jury indicted five defendants on charges arising from a scheme whereby physicians and administrative personnel associated with a Maryland pain management practice agreed to refer urine specimens to a testing lab for evaluation in return for \$1.37 million in kickbacks:

Sandeep Sherlekar, age 51, of Germantown, Maryland,
Atif Babar Malik, age 46, of Germantown,
Muhammad Ahmad Khan, age 43, of Pakistan,
Mubtagha Shah Syed, age 49, of Jersey City, New Jersey, and
Konstantin Bas, age 40, of Brooklyn, New York.

The indictment also charges Sherlekar, Malik and Khan with conspiring to defraud the IRS, and Sherlekar and Malik are further charged with health care fraud and making false statements on patient medical records. The indictment was returned on June 28, 2016 and unsealed today.

The indictment was announced by United States Attorney for the District of Maryland Rod J. Rosenstein; Special Agent in Charge Kevin Perkins 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 Thomas Jankowski of the Internal Revenue Service - Criminal Investigation, Washington, D.C. Field Office; Special Agent in Charge Robert Craig of the Defense Criminal Investigative Service - Mid-Atlantic Field Office; and Special Agent in Charge Scott Rezendes of the Office of Personnel Management – Office of Inspector General.

Sherlekar and Malik were physicians trained in pain management and Sherlekar was also trained in anesthesiology. The two merged their Maryland pain management practices in February 2009 to create Advanced Pain Management Services, LLC (APMS), first in Frederick, Maryland, and expanding to multiple offices in Maryland. Starting in August 2010, APMS began doing business under the name of American Spine Center, LLC (APMS/ASC) and the APMS entity was thereafter used in submitting bills for medical services. Khan was the CEO of APMS/ASC and co-conspirator Vic Wadhwa was its CFO.

Bas was the owner and CEO of a medical testing laboratory principally located in Linden, New Jersey. Syed was a marketing agent who solicited medical practices to submit blood and urine specimens to the medical laboratory for testing. Bas also owned a company which provided pharmaceuticals and medications; and a third company which provided medical and surgical supplies, including orthotic devices.

Kickback Scheme

APMS/ASC required patients who were prescribed pain relief medications to submit urine samples for testing in order to monitor the levels of pain medication or other narcotics in their bodies. From spring 2011 to August 2012, APMS/ASC typically generated approximately 700 to 1,000 urine samples each month which were sent to an outside lab for testing.

According to the 36 count indictment, starting in February 2011, Bas agreed to pay kickbacks to the principals of APMS/ASC in return for the referral of APMS/ASC patients to his companies for the testing of urine samples, for back braces, and for pain creams. Syed is charged with facilitating the referrals-for-kickbacks arrangement, and receiving 5% of the proceeds of the agreement.

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 approximately \$1.37 million to Sherlekar, Malik, Khan and Wadhwa. Out of the total amount of the kickback payments, the indictment charges that Sherlekar and Malik received approximately \$244,000 each, Khan received approximately \$400,000, and the balance of the kickback payments were retained by Wadhwa.

All five defendants face a maximum sentence of five years in prison for conspiring to violate the Anti-Kickback Act. Sherlekar and Malik also face five years in prison on each of 12 counts of soliciting and receipt of unlawful remuneration in violation of the Anti-Kickback Act.

Defrauding the IRS

The indictment charges that from January 2009 to the end of 2013 Sherlekar, Malik and Khan conspired 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.

Specifically, the indictment charges that Sherlekar, Malik, Khan and Wadhwa caused cash payments received from patients to be collected without being recorded in the APMS/ASC accounting records, and provided fraudulent accounting records to an accountant to use in preparing inaccurate tax returns for APMS and its related entities. The indictment further charges

that Sherlekar and Malik caused Wadhwa: to collect and distribute unrecorded cash payments; and to purchase luxury items such as expensive jewelry on their behalf, including an engagement ring and a watch purchased for Malik's benefit in October 2010, with over \$10,000 in cash skimmed from the business receipts of APMS. Sherlekar, Malik, Khan and Wadhwa also caused their accountant to falsely inflate corporate expenses, to shift revenue between different APMS-related entities, and to file false individual income tax returns on behalf of both Sherlekar and Malik.

Sherlekar, Malik and Khan face a maximum sentence of five years in prison for conspiring to defraud the IRS.

Health Care Fraud

APMS/ASC provided diagnostic or therapeutic nerve blocks and injections and other surgical procedures related to spinal conditions, which may be provided in conjunction with anesthesia services. If two providers are present during a surgical procedure, and one performs the surgical procedure and the other administers the anesthesia, then the anesthesiologist may separately bill for the anesthesia service. However, if a surgeon or anesthesiologist is alone in the procedure room and administers the anesthesia service while also performing the surgical procedure, then the anesthesia service may not be billed separately, but instead is included within the fee for the surgical procedure.

The indictment charges that from January 2010 to the summer of 2012, only one physician at APMS/ASC performed both the spinal injection and administered the anesthesia. On certain specified occasions, Sherlekar caused separate bills to be submitted for the surgical and anesthesia procedures as if both a surgeon and an anesthesiologist had been present. For example, on one occasion in January 2012, with Malik's consent, Sherlekar caused patients' medical records to reflect that Malik had also been present for the procedure when, in fact, he was in New Jersey at the time.

Sherlekar and Malik face a maximum sentence of 10 years in prison for health care fraud. Malik faces a maximum sentence of five years in prison for making false statements relating to health care matters.

No court appearance has been scheduled for the defendants.

An indictment is not a finding of guilt. An individual charged by indictment is presumed innocent unless and until proven guilty at some later criminal proceedings.

Vic Wadhwa, age 39, of Frederick, Maryland, previously pleaded guilty to his participation in the kickback scheme and awaits sentencing.

United States Attorney Rod J. Rosenstein commended the FBI, Department of Health and Human Services – OIG, IRS - Criminal Investigation, Defense Criminal Investigative Service and Office of Personnel Management – OIG for their work in the investigation. Mr. Rosenstein also thanked Assistant U.S. Attorneys Jefferson M. Gray and Sean Delaney, who are prosecuting the cases.

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Topic:

Healthcare Fraud

Tax

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