

### **CRIMINAL PLEA AGREEMENT BY MICHIGAN HOSPITAL HIGHLIGHTS NEED TO RESPOND TO INTERNAL COMPLAINTS**

By Robert R. Stauffer

In a rare criminal conviction of a hospital for health care fraud and abuse, the United Methodist Hospital ("UMH") in Greenville, Michigan pled guilty to a felony charge of defrauding Blue Cross Blue Shield of Michigan for the performance of medically unnecessary procedures in its operating room. Two individual physicians also pled guilty, and a third was charged with perjury for allegedly lying to a grand jury. The plea agreement highlights the need for hospitals and other health care entities to respond internally when complaints are raised concerning potentially illegal practices.

The plea stems from the activities of Dr. Jeffrey Askanazi, who was recruited in 1993 by UMH to provide full time anesthesia services. According to the plea agreement, shortly after arriving at the hospital, Dr. Askanazi began performing pain management procedures as well, despite a lack of experience or training in pain management. Within months, pain management became his primary practice, and during 1994 the procedures he performed increased tenfold. Two other physicians, Dr. Daniel Seward, UMH's Chief of Staff, and Dr. Matthew DeWys, the Chief of Emergency Medicine, formed a partnership with Dr. Askanazi to build a free-standing clinic. Dr. Seward and Dr. DeWys also had responsibility for supervising UMH's medical staff, and despite the recommendation of at least one doctor that they recuse themselves due to a conflict of interest, they continued to sit on committees responsible for reviewing and regulating Dr. Askanazi's pain management practice.

By September 1994, complaints about Dr. Askanazi began to arise from a variety of sources. Nurses complained about the pace of his practice, his lack of sterile techniques, and his treatment of patients who were having no observable improvement. They also complained that he freely admitted that he was at UMG to make money, and that he often treated walk-in patients without conducting any apparent examination to determine medical necessity. Several of the complaining nurses were told that Dr. Askanazi was bringing in significant income for UMH and that they should keep their concerns to themselves or leave the hospital.

Physicians also expressed concerns to UMH officials about repetition of the same procedures on patients who were not benefitting from them. At least one physician raised concerns about medical necessity because of the lack of a thorough examination of the patient before treatment. Some doctors refused to refer patients to Dr. Askanazi, and at least one recommended that he not be given expanded pain management privileges.

One doctor who continued to voice concerns about Dr. Askanazi's practice was told by the then-CEO that his comments were not welcome, and his medical referrals dwindled after he voiced concerns about the financial conflicts of interest.

Even patients complained on occasion. One patient reported to her doctor, who sat on the UMH Profession Activities Committee ("PAC"), that Dr. Askanazi admitted doing procedures simply for the reimbursement. Neither the doctor nor the PAC took any action to investigate this complaint.

The plea agreement focuses on UMH's lack of response to these complaints. By May 1995, UMH Board became aware of concerns about Dr. Askanazi. It directed the PAC to determine the appropriateness of the procedure Dr. Askanazi was using. In response, UMH's CFO reported to the Board that Dr. Askanazi's practice had a favorable financial impact on the hospital, and the PAC never responded to the Board's inquiry. In 1996, the then-CFO of UMH advised a Board member that Dr. Askanazi's practice constituted one-third of UMH's income and stated that UMH would not want to hurt Dr. Askanazi.

At one point, the PAC sought the opinion of an outside medical expert concerning the medical necessity of Dr. Askanazi's procedures, and that expert reported an inability to render such an opinion given the lack of medical documentation. Nonetheless, the PAC took no action for eight months, and then merely counseled Dr. Askanazi to improve his paperwork.

Finally, in July 1996, one of Dr. Askanazi's patients died as a result of one of his procedures, and UMH management obtained a substantive review of his practice. Dr. Askanazi continued to treat patients without restriction for another month. A few months later, the Peer Review Organization of Michigan concluded that the evaluative process with respect to Dr. Askanazi's patients was "uniformly inadequate," that there was a lack of support for the purported diagnostic impressions, and that there was apparent routine overuse of invasive techniques without clear indications. Nonetheless, UMH continued for several more years to collect the fees that were generated by Dr. Askanazi's procedures.

Dr. Askanazi was convicted in December 1998, and was sentenced to 36 months in prison and was assessed fines and restitution.

UMH, Dr. Seward and Dr. DeWys were indicted in March 2002. The Hospital pled guilty on January 8, 2003. Under normal circumstances, the guilty plea would likely give rise to exclusion of UMH from governmental health care programs. However, an unusual element of the plea agreement allowed UMH to sidestep this consequence. The guilty plea was taken under advisement by the Court for three years. If, after that time, UMH has fully complied with its terms, the United States will move to dismiss the charges.

In some respects, this arrangement will arguably not constitute a conviction. Nonetheless, the parties agreed that UMH would pay a criminal fine of over a million dollars, a provision which the Court accepted. UMH also agreed to pay restitution to various parties in an amount of over \$750,000 and to reimburse the government for the cost of prosecution. UMH agreed to become subject to an acceptable compliance plan which will be designed to ensure that it does not violate any federal or state statutes, rules or regulations and will include a yearly independent audit of its medical coding and billing. UMH also agreed that certain individuals no longer will be affiliated with it in any way.

Doctors Seward and DeWys separately pled guilty to a state misdemeanor charge of aiding and abetting larceny by false pretenses, and agreed to be placed in the Federal Pretrial Diversion Program for two years. Each was also fined in the amount of \$60,000, became jointly responsible for the Hospital's restitution, and agreed to perform community service and participate in continuing medical education. If they successfully complete the Pretrial Diversion Program, the federal charges against them will be dismissed.

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