

JUNE 2024



# COMPLIANCE CONNECTION



This newsletter is prepared monthly by the Midland Health Compliance Department and is intended to provide relevant compliance issues and hot topics.

## IN THIS ISSUE

### Feature Article

Laboratory Marketer and North Carolina Physicians Agree to Pay Over \$1.3M to Settle Kickback Allegations

### Midland Health PolicyTech

Policy: Code of Conduct for Medical Staff and Practitioners (See Page 2)

## FRAUD & ABUSE LAWS

The five most important Federal Fraud and Abuse Laws that apply to physicians are:

- 1. False Claims Act (FCA):** The civil FCA protects the Government from being overcharged or sold shoddy goods or services. It is illegal to submit claims for payment to Medicare or Medicaid that you know or should know are false or fraudulent.
- 2. Anti-Kickback Statute (AKS):** The AKS is a criminal law that prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs (e.g., drugs, supplies, or health care services for Medicare or Medicaid patients).
- 3. Physician Self-Referral Law (Stark law):** The Physician Self-Referral Law, commonly referred to as the Stark law, prohibits physicians from referring patients to receive "designated health services" payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies.
- 4. Exclusion Statute:** OIG is legally required to exclude from participation in all Federal health care programs individuals and entities convicted of the following types of criminal offenses: (1) Medicare or Medicaid fraud; (2) patient abuse or neglect; (3) felony convictions for other health-care-related fraud, theft, or other financial misconduct; and (4) felony convictions for unlawful manufacture, distribution, prescription, or dispensing of controlled substances.
- 5. Civil Monetary Penalties Law (CMPL):** OIG may seek civil monetary penalties and sometimes exclusion for a wide variety of conduct and is authorized to seek different amounts of penalties and assessments based on the type of violation at issue. Penalties range from \$10,000 to \$50,000 per violation.

Resource:

<https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/>



MIDLAND HEALTH

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## Laboratory Marketer and North Carolina Physicians Agree to Pay Over \$1.3M to Settle Kickback Allegations

Laboratory marketer Thomas Anthony Carnaggio, of Irmo, South Carolina, and his marketing company, as well as three physicians in Charlotte, North Carolina, Steven Bauer, M.D., Larry Berman, M.D. and Alireza Nami, M.D., and their medical practices, have agreed to pay a total of \$1,373,400 to resolve alleged False Claims Act violations arising from their involvement in laboratory kickback schemes. The parties have agreed to cooperate with the Justice Department's investigations of other participants in the alleged schemes.

"Using financial inducements to steer patients to a particular laboratory for taxpayer-funded testing can distort medical decision making and result in unnecessary services," said Principal Deputy Assistant Attorney General Brian M. Boynton, head of the Justice Department's Civil Division. "We will diligently pursue those who undermine the integrity of federal health care programs by violating rules designed to protect the programs and their beneficiaries from fraud and abuse."

The Anti-Kickback Statute prohibits offering, paying, soliciting or receiving remuneration to induce referrals of items or services covered by Medicare, TRICARE, and other federally funded healthcare programs. The Anti-Kickback Statute is intended to ensure that medical providers' judgments are not compromised by improper financial incentives and are instead based on the best interests of their patients.

The settlement announced today resolves allegations that a marketer and his marketing company offered kickbacks to doctors on behalf of a laboratory in Anderson, South Carolina, and that doctors and their medical practices received kickbacks from the laboratory in return for laboratory referrals. The alleged kickbacks resulted in the submission of false or fraudulent laboratory testing claims to Medicare and TRICARE in violation of the False Claims Act.

Read entire article:

<https://www.justice.gov/opa/pr/laboratory-marketer-and-north-carolina-physicians-agree-pay-over-13m-settle-kickback>



MIDLAND HEALTH Compliance HOTLINE

855-662-SAFE (7233)

ID#: 6874433130

ID# is required to submit a report.

You can make your report or concern **ANONYMOUSLY**.



MIDLAND HEALTH



**CODE OF CONDUCT FOR MEDICAL STAFF AND PRACTITIONERS**

**1.0 Purpose:** This policy is to ensure that Midland Memorial Hospital is a safe and constructive workplace for everyone who is striving to provide the highest-quality patient care and to provide a method for reviewing and reporting events of physician behavior that are unexpected or in violation of the medical staff bylaws, regulations, and policies.

**1.1** It is the expectation of the [Midland Memorial Hospital] board of trustees that all members of the medical staff act in a professional and cooperative manner at the hospital, treating all patients and persons involved in their care with courtesy, dignity, and respect. These expectations are defined by the code of conduct.

**1.2** Each member of the medical staff (individually, "physician") granted privileges at the hospital shall be required to acknowledge and agree to be bound by the code of conduct at the time of appointment/reappointment to promote and focus awareness of the essential elements of this policy.

**1.3** This policy sets forth procedures for reviewing and addressing behavioral incidents when a member of the medical staff conducts himself or herself in a manner that is inconsistent with this code of conduct.

**2.0 DEFINITIONS:** Disruptive or inappropriate behavior can be defined as an aberrant style of personal interaction between members of the healthcare team, patients, and/or their family members that interferes with the delivery of excellent patient care. The behavior could take the form of language, personal habits, or physical confrontation. The following is a list of examples and is not intended to be all-inclusive of disruptive or inappropriate behavior.

*Read entire Policy:*

*Midland Health PolicyTech #6541 – "Code of Conduct for Medical Staff & Practitioners"*

**Midland Health PolicyTech Instructions**

Click this link located on the Midland Health intranet "Policies"

<https://midland.policytech.com/dotNet/noAuth/login.aspx?ReturnUrl=%2f>



**IN OTHER COMPLIANCE NEWS**

**LINK 1**

**What Happens if You Violate HIPAA?**

<https://www.hipaajournal.com/what-happens-if-you-violate-hipaa/>

**LINK 3**

**How Should You Respond to an Accidental HIPAA Violation?**

<https://www.hipaajournal.com/accidental-hipaa-violation/>

**LINK 2**

**OCR Updates Guidance on the Use of Online Tracking Technologies by HIPAA Regulated Entities**

<https://www.hipaajournal.com/ocr-updated-online-tracking-technology-guidance/>

**LINK 4**

**The Three Pillars of HIPAA Compliance**

<https://www.hipaajournal.com/three-pillars-of-hipaa-compliance/>

**Doctor Convicted for \$5.4M Medicare Fraud Scheme**

A federal jury convicted a New Jersey doctor today for causing the submission of over \$5.4 million in fraudulent claims to Medicare for orthotic braces ordered through a telemarketing scheme.

According to court documents and evidence presented at trial, Adarsh Gupta, M.D., 51, of Sewell, signed thousands of prescriptions for orthotic braces for over 2,900 Medicare beneficiaries whom he was connected with by telemarketers who convinced the beneficiaries to accept unnecessary braces. After briefly speaking to the beneficiaries over the telephone, Gupta prescribed orthotic braces for them. For instance, Gupta prescribed a back brace, shoulder brace, wrist brace, and knee brace for an undercover agent after speaking with the agent for just over a minute on the telephone. In another instance, Gupta prescribed a knee brace for a Medicare beneficiary whose legs had previously been amputated. The evidence presented at trial showed that Gupta could not possibly have diagnosed the beneficiaries or determined that the braces were medically necessary during his brief telephonic encounters with them. Nonetheless, Gupta signed prescriptions for braces that falsely represented that the braces were medically necessary and that he diagnosed the beneficiaries, had a care plan for them, and recommended that they receive certain additional treatment. Gupta's false prescriptions were used by brace supply companies to bill Medicare more than \$5.4 million.

The jury convicted Gupta of three counts of health care fraud and two counts of false statements relating to health care matters. He is scheduled to be sentenced on October 8, 2024 and faces a maximum penalty of 10 years in prison on each of the health care fraud counts and five years in prison on each of the false statements relating to health care matters counts. A federal district court judge will determine any sentence after considering the U.S. Sentencing Guidelines and other statutory factors.

*Read entire article:*

<https://www.justice.gov/opa/pr/doctor-convicted-54m-medicare-fraud-scheme>

**COVID-19 TESTING FRAUD SCHEME**

**Laboratory Owners Charged in \$36M COVID-19 Testing Fraud Scheme**

An indictment was unsealed today in the Southern District of Florida charging three men for their alleged roles in an approximately \$36 million health care fraud, wire fraud, and money laundering scheme that involved submitting false and fraudulent claims for COVID-19 testing to health care benefit programs, including Medicare and the Health Resources and Services Administration (HRSA) COVID-19 Uninsured Program.

Enrique Perez-Paris, 47, of Aventura, Florida, and Diego Sanudo Sanchez Chocron, 47, of Venice, California, made their initial appearances today in the U.S. District Court for Southern District of Florida. Gregory Charles "Milo" Caskey, 57, of San Antonio, Texas, made his initial appearance today in the U.S. District Court for the Western District of Texas.

According to court documents, Perez-Paris, Sanchez, and Caskey were owners of Innovative Genomics, an independent laboratory. Between November 2019 and June 2023, the defendants and others allegedly conspired to submit claims for medically unnecessary and non-reimbursable COVID-19 testing. The defendants also allegedly paid illegal kickbacks and bribes to patient recruiters who arranged for health care providers to refer the tests to Innovative Genomics. At times, the defendants allegedly caused the HRSA COVID-19 Uninsured Program to be improperly billed for tests for Medicare beneficiaries. The defendants allegedly further billed for tests that the Food and Drug Administration had not approved for emergency-use authorization.

*Read entire article:*

<https://www.justice.gov/opa/pr/laboratory-owners-charged-36m-covid-19-testing-fraud-scheme>



**Do you have a hot topic or interesting Compliance News to report?**

**If so, please email an article or news link to:**

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