

# Medicaid fraud: Case would wrongly expand physician liability

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A health professional doesn't know that a patient she is seeing is a Medicaid recipient. She types up notes about her patient interactions, but a physician in the clinic writes the prescriptions, codes the interaction and bills the government. Can she be convicted of Medicaid fraud?

A Michigan trial court did just that. An appeals court upheld the decision and now the Michigan Supreme Court will have the final say on whether the conviction will stand.

The Litigation Center of the American Medical Association and State Medical Societies joined the Michigan State Medical Society (MSMS) in filing an amicus brief that urges the state's highest court to overturn her convictions on two counts of Medicaid fraud.

"The breadth of this finding is of great concern to MSMS, AMA and their members," the brief tells the court. "Under the lower courts' conviction rationale, other clinic employees whose tasks are completely unrelated to billing—and those who are involved with billing but who do not set billing policies or assign diagnostic codes and who must rely upon others in the performance of their duties—are likewise at risk for criminal liability."

AMA policy supports efforts to clearly define health care fraud and calls for laws that ensure the equal application of due-process rights to physicians in health care fraud prosecution.

The AMA Litigation Center brief filed in the case, *Michigan v. Wang*, notes that the Medicaid False Claim Act says that a person will not file a claim "knowing the claim to be false." The act defines "knowing" or "knowingly" to mean a "person is in possession of facts under which he or she is aware or should be aware of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a Medicaid benefit" and includes "acting in deliberate ignorance of the truth or falsity of facts or acting in reckless disregard of the truth or falsity of facts."

"Respectfully, the evidence presented at trial did not satisfy the statutory requirements for a knowing

violation,” the brief tells the court.

## **Expectation that others follow law**

Xun Wang, the defendant in the case, is a Chinese national who earned a medical degree there and earned a PhD in basic medical science from Purdue University College of Veterinary Medicine. She began a student rotation at Livernois Family Clinic in Detroit in 2013 and ultimately became an employee.

Wang met with patients, gathered their medical histories, documented their illnesses and presented her observations, along with the medication and dosage recommendations, to the clinic’s physician. The physician determined whether to write a prescription.

Further, Wang typed her handwritten notes into the computer, the physician reviewed the notes and would “make changes if necessary” and signed the notes, court documents show. The computer system then automatically generated the diagnosis code that the clinic used to bill Medicaid. An office employee testified that Wang did not participate in the billing process.

“The lower courts erred,” the brief says. “Ms. Wang was entitled to presume that her colleagues would follow the law and use proper descriptions and billing codes for the services she provided. Given her lack of involvement in the billing process, Ms. Wang had no reason to know that truthful billings would not be submitted.”

## **No case like this in 40 years**

The AMA Litigation Center and MSMS did not find any published court decisions resulting in convictions based on a fact pattern similar to what was presented at Wang’s trial.

“Rather, in nearly 40 years of case law, the knowing falsity element was satisfied by evidence that the defendants received a manual containing Medicaid regulations, voluntarily participated in the Medicaid program, formulated office policies and procedures, were knowledgeable about coding requirements, and authorized the submission of claims for services using particular descriptions, designated codes and specified amounts,” the AMA Litigation Center brief tells the court. It notes defendants were typically entity owners who enrolled to be Medicaid providers, established billing procedures and signed off on claims.

The brief concludes that “no such evidence exists as to Ms. Wang. Given the nearly four decades of case law addressing this issue, Wang is clearly an errant aberration. The Medicaid false claim convictions should be overturned.”