

Lawsuit claim: Medicare fraud by All Saints anesthesiologists

MICHAEL BURKE mick.burke@journaltimes.com



RACINE — From 2011 to at least 2014, Ascension All Saints Hospital's contracted anesthesiology group systematically overbilled Medicare and Medicaid for millions of dollars, according to a federal lawsuit. It was brought by a whistleblower who believes he was fired for refusing to participate in the alleged overbilling scheme.

The False Claims Act case was brought by anesthesiologist Dr. John Mamalakis against TeamHealth, the anesthesiology group still in place at All Saints, his former employer. It accuses TeamHealth and numerous doctors who worked for the company of a scheme to overcharge Medicare and state insurance programs in 16 U.S. states and the District of Columbia.

Mamalakis filed the case in U.S. District Court for the Eastern District of Wisconsin in 2014. His complaint alleges that fraudulent billing practices, and anesthesiological practices that can sometimes endanger patients, continue to this day at All Saints and other places where TeamHealth works in hospitals.

Asked for comment, TeamHealth said it cannot comment on pending litigation but said it “has a robust and long-standing compliance and ethics program” and investigates all compliance-related inquiries. Similarly, a spokeswoman for Ascension Wisconsin stated: “We take compliance and patient care issues seriously. This lawsuit is between TeamHealth and one of their former employees. Therefore, we cannot comment further.”

The U.S. Department of Justice looked into the allegations in the case and decided not to take it over but did clear Mamalakis and his lawyers to proceed if they wished to.

Mamalakis had been working at what is now Ascension All Saints Hospital for two years with Southeastern Anesthesia Consultants; he became an employee of Anesthetix when the hospital switched to that company for its anesthesia services. Anesthetix was then bought out by TeamHealth which took over at All Saints in January 2011.

Fired after complaints

One year, seven months after All Saints switched its anesthesia provider, Mamalakis would be fired for not participating in what he says was systemic, rampant insurance fraud. He is now an anesthesiologist with ProHealth Waukesha Memorial Hospital.

Mamalakis' filed complaint is full of allegations of blatant falsification of records by his former fellow anesthesiologists, falsifications that claimed those doctors were present or available to All Saints operating rooms when they were actually elsewhere.

The following examples from Mamalakis' case involve alleged cases of TeamHealth doctors billing as though they were present in operating rooms when they were elsewhere. All of the doctors in these examples are named in the lawsuit. However, The Journal Times is only using their last initials in this story because efforts to reach them for comment were unsuccessful.

One example involves Dr. P. According to the complaint, in spring 2010 she claimed to be providing medical direction at 8:30 a.m. in an All Saints operating room.

“However, Dr. (P.) had contacted (Mamalakis) from Illinois, asking him to enter an operating room assigned to her and treat a patient’s low blood pressure during a total hip replacement,” the complaint states. “Dr. (P) had left the hospital immediately after induction and was not present for the remainder of the procedures, nor did she return for the remainder of the day, yet she signed and billed for medical direction.”

Medical direction is a higher level of oversight by an anesthesiologist during surgery than medical supervision, and comes with a higher billing charge than medical supervision.

The complaint continues, “Similarly, in fall 2010, Dr. (P.) billed for providing medical direction in two rooms when she wasn’t at the hospital. When Medical Director Sonya Pease (of TeamHealth) arrived for a surprise visit and Dr. (P.) was not in the hospital, (Mamalakis) had to call Dr. (P.) and inform her that she needed to return to the hospital immediately.”

More examples

In another example alleged in the fraud lawsuit, in June 2011 a TeamHealth anesthesiologist claimed to be medically directing three operating rooms but had left the hospital between 11 a.m. and noon and spent the rest of the afternoon waiting at his home for the delivery of a new piano.

But the absent doctor “signed and billed for medically directing the rooms even while he was home, claiming that he was present throughout, periodically monitored the procedures, and was immediately available in case of complications,” the complaint alleges.

And in one more of many examples Mamalakis alleges in his legal action, in spring or early summer 2010, certified registered nurse anesthesiologist Colette Fitzpatrick contacted Mamalakis “to express her concern that no anesthesiologists were present in the hospital while she was performing a high-risk procedure involving an elderly Medicare patient. Dr. (G.) was supposed to be at the hospital providing medical direction.

“However, CRNA Fitzpatrick stated that when she contacted Dr. (G.) and asked about her location, Dr. (G.) claimed that she had left the hospital to prepare her horses for a show that weekend and would not be returning.”

The alleged scheme

The False Claims Act complaint alleges that from at least 2010 through when the action was filed in 2014, TeamHealth — both as its predecessor Anesthetix and as TeamHealth — “routinely submitted false claims to Medicare, Medicaid and TriCare for reimbursement of nonexistent or nonreimbursable services purportedly performed at ... All Saints Hospital ... as well as other TeamHealth affiliated hospitals and clinics.”

After TeamHealth fired him, Mamalakis explained, “When people found out that I was fired, they called me and said, ‘It’s happening here,’ and ‘It’s happening here.’ It was part of a me-too movement.”

The complaint states that TeamHealth typically bills Medicare for anesthesiology services as “medical direction,” which brings a higher billing rate than “medical supervision.” By federal law, medical direction can be billed only if seven specific services are performed throughout the procedure, and for a maximum of four concurrent anesthesia procedures.

If any of the seven services have not been performed, or the anesthesiologist performs more than four concurrent procedures, Medicare must be billed at the lower rate, for medical supervision.

The complaint then states, “Relator” — the term used for the person bringing a False Claims Act suit — “has personal knowledge that, as part of the scheme, TeamHealth anesthesiologists are or were typically not available and knowingly did not perform many of the steps required to medically direct such services, and nearly 100 percent of the time do or did not perform at least one of the (required) steps, all of which are required for services to be considered ‘medically directed’ by Medicare ...”

Mamalakis said it was easy for TeamHealth doctors to, he claims, get away with overbilling. “It’s a tremendous responsibility to take care of patients in an operating room,” he said. “It’s that point in people’s lives where they’re totally vulnerable, unconscious, partially or totally naked, under anesthesia, trusting their physician and

their nurse to take care of them.”

“If you go to your physician in the clinic and they don’t see you, you know they didn’t see you,” Mamalakis pointed out. “If you go to the ER and you’ve gotta see the doctor and you don’t, you say, ‘Hey, I never saw the doctor.’”

“(But) if you’re in the operating room and the anesthesiologist never comes in, you have no idea that’s happening. So, you can get away with it so much easier.”

“What they said is, ‘Everyone’s doing it. This is how we do it.’ ”

TeamHealth would not say whether it provides anesthesiology services at any other hospitals in southeastern Wisconsin.

Claim: patients put at risk

Mamalakis’ complaint states, “The conduct of TeamHealth and the negligence of many of its anesthesiologists reflects a complete institutional abandonment of their patients and nurses. In some instances, the absence of the TeamHealth anesthesiologists at All Saints’ operating rooms and ICUs has placed the patients’ lives at unnecessary risk.”

In one case, Mamalakis alleges, in fall 2010 Dr. D. of TeamHealth was supposed to handle a cataract extraction with intraocular lens implant with Dr. Lawrence Platt, a Racine ophthalmologist, as the surgeon. “According to CRNA Echo Fisher, Dr. (D.) never entered the operating room, even after complications occurred, and never created an anesthetic plan (one of the seven requirements for billing Medicare for medical direction),” the complaint states.

“Dr. (D.) billed for medically directing this Medicare case procedure.”

TeamHealth’s entire response to Mamalakis’ action was: “Our values are centered around integrity, and all TeamHealth affiliates and subsidiaries utilize a comprehensive compliance and ethics program to ensure associates act in accordance to company policies and the law. TeamHealth by and through its subsidiary Racine Anesthesia Services, LLC holds the anesthesiology contract at Ascension All Saints Hospital in Racine, Wisconsin. This is an active TeamHealth affiliate contract, and we are aware of the complaint filed by a former associate. As a matter of company policy, we cannot comment on the specifics of pending litigation.

“However, we can state that TeamHealth has a robust and long-standing compliance and ethics program, which incorporates the components recommended by the (Office of Inspector General) compliance program guidance, including a chief compliance officer, policies and procedures, a code of conduct, initial and annual compliance training, internal auditing and monitoring, and a compliance hotline. As a matter of protocol, all compliance-related inquiries are taken seriously and investigated.”

Refused participation

Mamalakis says, in his complaint and in interviews, that he didn't just refuse to participate in the alleged overbilling — he repeatedly reported the Medicare violations to senior TeamHealth officials. “Dr. Pease ignored these complaints and took no action to stop them.”

He says that eventually got him fired without cause.

After that, Mamalakis found it difficult to obtain other employment, except for temporary positions.

“The hardest thing was for me to think, ‘I may never be able to be a doctor again.’ Because what (Pease) told me was: If I didn't sign this thing saying I did all these things that weren't true, that I would never work again as a physician. Ever.”

But eventually, St. Joseph Hospital in Milwaukee, then part of Wheaton Franciscan Healthcare, hired him; Mamalakis started in April 2014. Three months later, Wheaton made him chairman of its Professional Review Committee, putting him in charge of professionalism and end quality of care for all of Wheaton North market's anesthesiologists.

The case has dragged on since its filing in 2014 as TeamHealth's lawyers have tried to get the case dismissed in federal court. Most recently, on May 22 Mamalakis' lawyers filed a motion opposing TeamHealth's motion to dismiss the case.

TeamHealth's lawyers came back on June 4 with a reply in further support of its motion to dismiss the case.

Mamalakis said the case has yet to even reach the deposition stage, where witnesses will give their accounts.

Looking back, Mamalakis said, he would have documented everything and kept records, because his lawyers told him that would have made this a slam-dunk case — a case that has yet to even reach the deposition stage.

“This case is David and Goliath,” Mamalakis commented. “This one skinny guy ... against the vast resources of a huge corporation, a big legal department, expensive outside counsel, and all I have is the truth.”