

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

<b>UNITED STATES OF AMERICA</b>	*	<b>CRIMINAL NO. 15-61</b>
<b>VERSUS</b>	*	<b>SECTION: "E" (5)</b>
<b>CARY PAYTON</b>	*	
	*   *   *	

**FACTUAL BASIS**

1. If this matter were to proceed to trial, the United States would introduce the following facts with relevant and admissible testimony and exhibits to support the violations alleged in Count 2 of the indictment, a violation of Title 18, United States Code, Sections 371 (conspiracy to pay and receive illegal kickbacks in violation of 42 U.S.C. §1320a-7b(b)(1) and 1320a-7b(b)(2)):

2. Wendy Naquin from AdvanceMed, the Zone Program Integrity Contractor (ZPIC) over home health claims in this state, would testify that during all times mentioned in the indictment, Abide Home Care Services, Inc. (Abide) was enrolled as a provider able to bill Medicare for providing home health services to qualified beneficiaries.

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3. LeAnne Dodson would testify that that she is a registered nurse (RN) employed for ZPIC AdvanceMed as a team leader for the Home Health Agency Review Team. Dodson, who has testified as an expert in the field of home health, would testify that the home health benefit generally is for elderly or disabled beneficiaries who are acutely ill and for whom it is a taxing or considerable effort to get out of the home to receive medical care by going to a physician or an outpatient facility.

4. Abide witnesses, and organization charts would establish that Cary Payton was employed at Abide as an LPN. A job description seized from Abide during the execution of a search warrant would establish that Mr. Payton's duties as a LPN were to perform skilled nursing services under the supervision of a registered nurse. Mr. Payton was to observe, record, and report the general physical and mental conditions of the patients, assist the physician and/or RN in performing specialized procedures, assist the patient with activities of daily living and encourage appropriate self-care, and prepare clinical and/or progress notes and incorporate them into the clinical record weekly. The evidence would establish that the job description applicable to Mr. Payton followed the requirements of Medicare found in Paragraph 16 of the indictment.

5. Abide bank records from Capital One would show that on April 26, 2012, Abide paid Payton \$300 with check no. 35022 for referring a patient to Abide for home health. The check noted "patient referral" in the memo line. Witnesses would testify that Crinel told both her

employees and non-employees that she would pay these incentives to anyone who referred Medicare beneficiaries to Abide.

6. Payroll evidence would establish that Mr. Payton was routinely paid by Abide for his services as an LPN. The \$300 check paid to Mr. Payton was not for providing the nursing services for which he was hired at Abide; instead, the payment was an illegal per-patient kickback he received for his referral of a Medicare beneficiary and was not intended to compensate for any services covered by Medicare. Mr. Payton was not under contract with Abide to provide any recruiting services recognized by any Anti-Kickback exceptions.

7. Finally, Lisa Crinel would testify that she caused Cary Payton to be paid a \$300 kickback to bring a Medicare beneficiary to Abide. Crinel would testify about the numerous employees and non-employees to whom she paid these illegal incentives and, specifically, about how the only purpose of the fee was to induce these individuals to bring Medicare beneficiaries to her agency.

8. Crinel and others would testify that when the Medicare beneficiaries for whom kickbacks were paid did not have their own physicians, Abide routinely assigned “House Doctors” being paid by Crinel to have them certify the Medicare beneficiaries for home health in spite of the fact that the beneficiary’s own physician had not initiated the referral to home health based upon a personal knowledge of his/her patient and a particularized medical necessity for home health services. An expert in the home health field knowledgeable about home health eligibility would testify that, without having a Medicare beneficiary’s own physician refer

him/her to home health, and instead having an illegally compensated physician performing the certification, any determination on eligibility for home health service is unreliable.

KENNETH ALLEN POLITE, JR.  
UNITED STATES ATTORNEY

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PATRICE HARRIS SULLIVAN  
Assistant United States Attorney

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CARY PAYTON

Defendant

Date: \_\_\_\_\_

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BRANDEN J. VILLAVASO

Counsel for Defendant

Date: \_\_\_\_\_

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GARRON MATTHEW JOHNSON

Counsel for Defendant

Date: \_\_\_\_\_

Initials:

PHS:\_\_\_\_\_

BJV:\_\_\_\_\_

GMJ:\_\_\_\_\_

CP:\_\_\_\_\_