

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

May 19 10 28 AM '00

UNITED STATES OF AMERICA,)
Ex Rel. BETH A. KOHLER, SUSAN)
L. BRIGHT and THOMAS R. SCHOLLER,)

DEPT. CLERK)
BY _____, DEPUTY)
ATTORNEYS.)

Plaintiffs,)

CIVIL ACTION

v.)

NO. 97-1029-JTM

JOSEPH P. GALICHIA, M.D., an individual;)
THE GALICHIA MEDICAL GROUP, P.A., a)
Kansas Professional Association; GALICHIA)
MEDICAL GROUP OF KANSAS, P.A., a Kansas)
Professional Association; GALICHIA HEALTH)
SYSTEMS, L.L.C., a Kansas Limited Liability)
Company; GALICHIA LABORATORIES, INC.,)
a Kansas Corporation; THE GALICHIA)
RESEARCH INSTITUTE OF KANSAS, INC.,)
a Kansas Corporation,)

Defendants.)

ENTRY OF CONSENT JUDGMENT

COMES NOW, the United States of America by and through the Department of Justice, on behalf of the Office of Inspector General of the United States Department of Health and Human Services (HHS-OIG), collectively referred to herein as the "United States"; and Joseph P. Galichia, M.D., an individual; and the Galichia Medical Group, P.A. (GMED), a Kansas professional association, collectively referred to herein as "Galichia"; and Relators Beth A. Kohler, Susan L. Bright, and Thomas R. Scholler, collectively referred to herein as "Relators", and all of the above herein referred to as "the parties", and state to the Court as follows:

RECITALS

1. Joseph P. Galichia, M.D., is a physician licensed by the State of Kansas. Galichia

Medical Group, P.A. is a Kansas professional association organized and existing under the laws of the State of Kansas and having its principal place of business in Kansas. Dr. Galichia is the controlling shareholder of Galichia Medical Group, P.A. Galichia Research Institute of Kansas, Inc., Galichia Health Systems, L.L.C. and Galichia Laboratories, Inc. have ceased to do business, or will immediately in the future cease to do business, and their assets and liabilities have been consolidated (or will be consolidated) in Galichia Medical Group, P.A.

2. In January 1997, Relators filed a *qui tam* complaint against Galichia pursuant to the provisions of the False Claims Act, 31 U.S.C. §§ 3729-3733 *et seq.* (hereinafter the "Action").

3. As a result of its investigation, which included information received as a result of a tip to the United States Attorney's Medicare Fraud Tipline, the United States contends that between 1993-1998, Galichia submitted or caused to be submitted certain claims on behalf of Galichia, for services provided to Medicare patients whose treating physician was listed as Dr. Joseph P. Galichia, that were upcoded (the practice of billing for a level of service higher than was provided), double billed, and included unnecessary tests and procedures, hereinafter referred to as "Covered Conduct". Pursuant to these allegations, the United States contends that it has certain claims and causes of action arising out of Galichia's billings to the Medicare program between January 1, 1993 and December 31, 1998, predicated upon the False Claims Act, 31 U.S.C. §§ 3729-33, as amended, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-12; the provisions for permissive exclusion from participation in federal health care programs, 42 U.S.C. § 1320a-7(b), the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; and common law theories of payment by

mistake, unjust enrichment, breach of contract and fraud, for damages and penalties.

4. Galichia denies the contentions of the United States in Paragraph 3 above. Before taking any testimony, upon the pleadings and without adjudication of any issue or fact or law, the parties have reached a full and final settlement as set forth below in order to avoid the uncertainty and expense of litigation.

TERMS OF THE CONSENT JUDGMENT

In accordance with the mutual covenants and agreements made herein, and with full authority to enter into this agreement and judgment, and to be bound thereby, the parties agree and IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

5. The United States is hereby granted judgment against Galichia, its beneficiaries, assigns and successors, in the amount of \$1,525,000.00. This amount represents the total principal amount of \$1,284,827, plus interest at 6.8% of \$240,173.

6. Payment of this judgment shall be made with the sum of \$500,000 to be paid within forty-eight hours of the signing of this Consent Judgment by the parties, and continuing with further payments to be made in the amount of \$125,000 per year with the first payment due on or before January 2, 2001, and continuing with further payments to be made on or before January 2 of each succeeding year until paid in full with the final payment of \$400,000 on or before January 2, 2006, containing all accrued interest. This amount will be paid to the United States Treasury, c/o the United States Attorney's Office, Financial Litigation Unit, 444 Quincy, Topeka, Kansas 66683. Default will be deemed to have occurred if any payment is not received by the United States within ten days of the date any installment is due, whereupon, the United States, at its option may declare the total principal amount plus interest at 18% per annum, less

any payments made prior to the date of default, due and owing, and may apply to the United States District Court for the District of Kansas for the issuance of a Writ of Execution or such other judicial process as may be appropriate. In the event of default by Galichia, the United States may also, at its option, offset the total principal amount plus interest at 18% per annum, less any payments made prior to the date of default, from any amounts due and owing to Galichia by any Department, Agency or Agent of the United States. At the time of such default, for example, this offset may be made in the form of a reduction, or withhold, to be implemented by the Medicare program by means of a recoupment imposed against Galichia pursuant to 42 C.F.R. § 405.370-.375, and Galichia waives all notice provisions and defenses, and agrees not to contest any offset or withhold imposed pursuant to this Agreement, either administratively or in any federal or state court.

7. The United States shall pay to Relators eighteen percent (18%) of the payments made to the United States under Paragraph 6 of the Consent Judgment. These payments shall be made to Relators over time, within a reasonable time of the Government's receipt of funds from Galichia. The United States shall not be obligated to pay Relators unless and until the United States receives payment from Galichia. Relators shall have no recourse against Galichia for non-payment.

8. All payments to Relators under Paragraph 7 above shall be made payable to and transmitted to an account in Relators' names in accordance with the written instructions of Relators' counsel. All correspondence for Relators in this matter should be addressed to that counsel, as follows: Christopher P. Christian, Attorney, Hutton & Hutton, P.O. Box 638, Wichita, Kansas 67201-0638, (316) 688-1166.

9. Galichia recognizes its obligation pursuant to 31 U.S.C. § 3730(d)(1) to pay Relators' reasonable expenses, attorney's fees and costs, the amount of which shall be determined by the Court at a later date. Such sums are in addition to the Settlement Amount in Paragraph 6 above.

10. Release by Relators

a. Except as provided above in Paragraph 9, Relators release Galichia from any and all claims and demands, known or unknown and of any nature whatsoever and whenever, arising directly or indirectly out of Relators' employment with Galichia, their separation from such employment, and from any and all issues raised in the Action.

b. Relators agree that by signing this Consent Judgment, they immediately release any and all claims, of whatever kind, against the United States arising out of or relating to the Complaint, Relators' allegations and the Covered Conduct, including claims for a share of settlement proceeds under 31 U.S.C. § 3730(d) or § 3730(b)(5).

11. Galichia releases Relators from any and all claims and demands, known or unknown and of any nature whatsoever and whenever, arising directly or indirectly out of their employment with Galichia, their separation from such employment or services, and from any and all issues raised in the Action.

12. Subject to the exceptions in Paragraph 14 below, in consideration of the obligations of Galichia set forth in this Consent Judgment, conditioned upon Galichia's payment in full of the Judgment, and subject to Paragraph 25, below (concerning bankruptcy proceedings commenced within 91 days of any payment made pursuant to this Judgment), the United States agrees to release Galichia from any civil or administrative monetary claim the United States has

or may have under the False Claims Act, 31 U.S.C §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act. 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

13. In consideration of the obligations of Galichia set forth in this Consent Judgment and in the Corporate Integrity Agreement (CIA) referenced below in Paragraph 15, conditioned upon Galichia's payment in full of the Judgment Amount, and subject to Paragraph 25 below (concerning bankruptcy proceedings commenced within 91 days of any payment made pursuant to this Judgment), the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative claim or any action seeking exclusion from any Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Galichia under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law), or 42 U.S.C § 1320a-7(b) (permissive exclusion), for the Covered Conduct, except as reserved in Paragraph 14, below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Galichia from the Medicare, Medicaid or other Federal health care program under 42 U.S.C. § 1320a-7(a)(mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in Paragraph 14 below.

14. Notwithstanding any term of this Consent Judgment, specifically reserved and excluded from the scope and terms of this Judgment as to any entity or person (including Galichia) are any and all of the following:

- (1) Any civil, criminal or administrative claims arising under Title 26, U.S.

Code (Internal Revenue Code);

(2) Any criminal liability;

(3) Except as explicitly stated in this Consent Judgment, any administrative liability, including mandatory exclusion from Federal health care programs;

(4) Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

(5) Any claims based upon such obligations as are created by this Consent Judgment;

(6) Any express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services, provided by Galichia, except to the extent such claims are based on the Covered Conduct; and

(7) Any claims against individuals or entities other than Galichia.

15. Galichia has entered into a CIA with HHS, attached as Exhibit 1 which is incorporated into this Consent Judgment by reference. Galichia will immediately upon execution of this Judgment begin to implement Galichia's obligations under the CIA.

16. Galichia waives and will not assert any defenses Galichia may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Judgment bars a remedy sought in such criminal prosecution or administrative action. Galichia agrees that this Judgment is not punitive in purpose or effect. Nothing in this Paragraph or any other provision of this Consent Judgment constitutes an

agreement by the United States concerning the characterization of the Judgment Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

17. Galichia fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney fees, costs, and expenses of every kind and however denominated) which Galichia has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, agents and Relators related to the Covered Conduct and the United States' investigation and prosecution thereof.

18. The Amount that Galichia must pay pursuant to this Judgment pursuant to Paragraph 6 above, will not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and Galichia agrees not to resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

19. Galichia agrees that all costs (as defined in the Federal Acquisition Regulations (FAR) § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd (1997) and 1396-1396v(1997), and the regulations promulgated thereunder) incurred by or on behalf of Galichia in connection with: (1) the matters covered by this Consent Judgment, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Judgment, (3) Galichia's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Judgment (including attorney's fees) and including the obligations undertaken pursuant to the CIA incorporated in this Judgment, (4) the negotiation of

this Judgment and the CIA, and (5) the payments made pursuant to this Judgment, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employee Health Benefits Program (FEHBP) (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for by Galichia, and Galichia will not charge such unallowable costs directly or indirectly to any contracts with the United States or any state Medicaid program, or seek payment for such unallowable costs through any cost report, cost statement, information statement or payment request submitted by Galichia or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

Galichia further agrees that within 60 days of the effective date of this Judgment, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any unallowable costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid Program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Galichia or any of its subsidiaries, and will request, and agree, that such cost reports, cost statements, information reports or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. Galichia agrees that the United States will be entitled to recoup from Galichia any overpayment as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice, and/or the affected agencies. The United States reserves its rights

to disagree with any calculations submitted by Galichia or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on Galichia or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Consent Judgment shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

20. This Consent Judgment is intended to be for the benefit of the Parties, only, and by this instrument the Parties do not release any claims against any other person or entity. Prior to or upon entry of this Consent Judgment, the United States shall intervene in the Action, and the United States and Relators will file a Stipulation of Dismissal providing that the Action be dismissed with prejudice to Relators, and be dismissed without prejudice to the United States, except insofar as claims in the Action are released by the United States in this Consent Judgment.

21. Galichia agrees that it will not seek payment for any of the health care billings covered by this Consent Judgment from any health care beneficiaries or their parents or sponsors. Galichia waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Judgment.

22. Dr. Galichia and GMED have provided financial information to the United States and the United States has relied on the accuracy of said financial information in reaching this Consent Judgment. Dr. Galichia and GMED warrant that prior to the signing of this Consent Judgment, they have provided the United States with sworn financial disclosure statements that are thorough, accurate and complete as of December 31, 1999. Dr. Galichia and GMED further warrant that they did not own or have an interest in any assets which were not disclosed in the Financial Statements, and that they have made no misrepresentations on, or in connection with,

the Financial Statements. In the event the United States learns of asset(s) in which Dr. Galichia or GMED had an interest as of December 31, 1999 which were not disclosed in the Financial Statements, or in the event the United States learns of a misrepresentation by Dr. Galichia or GMED on, or in connection with, the Financial Statements, and in the event such nondisclosure or misrepresentation results in an under-representation of the estimated net worth of Dr. Galichia or GMED set forth on the Financial Statements by fifty thousand dollars (\$ 50,000) or more, the United States may collect the principal amount plus interest, less any payments made prior to the discovery of such nondisclosure or misrepresentation, plus one hundred percent (100%) of the value of the assets of Dr. Galichia or GMED previously undisclosed. Dr. Galichia and GMED agree not to contest any collection action undertaken by the United States pursuant to this provision.

23. Galichia expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payments to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Judgment, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Galichia, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

24. In the event Galichia commences, or a third party commences, within 91 days of any payment made pursuant to this Consent Judgment, any case, proceeding, or other action (a) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking

to have any order for relief of Galichia's debts, or seeking to adjudicate Galichia as bankrupt or insolvent, or (b) seeking appointment of a receiver, trustee, custodian or other similar official for Galichia or for all or any substantial part of Galichia's assets. Galichia agrees as follows:

a. Galichia's obligations under this Consent Judgment may not be avoided pursuant to 11 U.S.C. § 547, or Galichia will not argue or otherwise take the position in any such case, proceeding or action that: (i) Galichia's obligations under this Consent Judgment may be avoided under 11 U.S.C. § 547; (ii) Galichia was insolvent at the time this Consent Judgment was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Consent Judgment do not constitute a contemporaneous exchange for new value given to Galichia.

b. In the event that Galichia's obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Judgment, and bring any civil and/or administrative claim, action or proceeding against Galichia for the claims that would otherwise be covered by the releases provided in Paragraphs 10, 12 and 13 above. If the United States chooses to do so, Galichia agrees that (i) any such claims, actions or proceedings brought by the United States (including any proceedings to exclude Galichia from participation in any federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this Paragraph, and that Galichia will not argue or otherwise contend that the United States' claims, actions or proceedings are subject to an automatic stay; and (ii) that Galichia will not plead, argue or otherwise raise any defenses under the theories of statute or limitations, laches,

estoppel or similar theories, to any such civil or administrative claims, actions or proceeding which are brought by the United States within 60 calendar days of written notification to Galichia that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the date of the signing of this agreement; and

c. Galichia acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Consent Judgment.

25. Except as otherwise set forth in this Consent Judgment, each party to this Consent Judgment will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Consent Judgment.

26. Galichia and Relators represent that this Consent Judgment is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

27. This Consent Judgment is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the District of Kansas, except that disputes arising under the CIA shall be resolved exclusively under the dispute resolution provisions of the CIA.

28. This Consent Judgment and attached CIA constitute the complete agreement between the Parties. Galichia and OIG-HHS must agree in writing to modification of the CIA, pursuant to the CIA.

29. The undersigned individuals signing this Consent Judgment on behalf of Galichia represent and warrant that they are authorized by Galichia to execute this Consent Judgment. The undersigned United States signatories represent that they are signing this Consent Judgment

in their official capacities and that they are authorized to execute this Consent Judgment.

30. This Consent Judgment may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Consent Judgment.

31. This Consent Judgment is effective on the date of signature of the last signatory to the Consent Judgment.

32. Galichia hereby consents to the United States' disclosure of this Consent Judgment, and information about this Consent Judgment, to the public.

33. This Consent Judgment is binding on successors, transferees, heirs and assigns.

IT IS SO ORDERED.

DATE: May 19, 2000


HONORABLE J. THOMAS MARTEN
UNITED STATES DISTRICT COURT JUDGE

APPROVED AND AGREED:



Laurie A. Oberembt
Commercial Litigation Branch
Civil Division
United States Department of Justice

Dated: 5/4/00


Richard L. Schodorf

Dated: 5-19-2000

Assistant United States Attorney
District of Kansas



Dated: 5/3/00

Lewis Morris
Assistant Inspector General
Office of Counsel to the Inspector General
Office of Inspector General
United States Department of Health and Human Services
Office of Inspector General



Dated: 5/16/00

Joseph P. Galichia, M.D.
Personally and for
Galichia Medical Group, P.A.



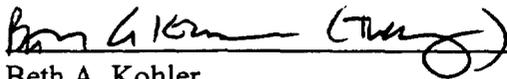
Dated: 5-16-00

Gary L. Ayers
FOULSTON & SIEFKIN L.L.P., as attorneys for
JOSEPH P. GALICHIA, M.D., an individual;
and THE GALICHIA MEDICAL GROUP, P.A., a
Kansas Professional Association



Dated: 5-15-2000

Christopher P. Christian
HUTTON & HUTTON, as attorneys for
Relators Beth A. Kohler, Susan L. Bright and
Thomas R. Scholler



Dated: 5/9/00

Beth A. Kohler

Susan L. Bright
Susan L. Bright

Dated: May 10, 2000

Thomas R. Scholler
Thomas R. Scholler

Dated: May 11, 2000

John W. Wells
U.S. Attorney

May 19, 2000