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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA *ex rel.*
NINA MARIE CHAVEZ,

Plaintiff,

v.

FUSION PHYSICAL THERAPY AND
SPORTS WELLNESS, P.C. AND
CAROLYN SUE MAZUR,

Defendants.

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

FUSION PHYSICAL THERAPY AND
SPORTS WELLNESS, P.C. AND
CAROLYN SUE MAZUR,

Defendants.

**COMPLAINT-IN-INTERVENTION OF
THE UNITED STATES OF AMERICA**

17 Civ. 9757 (RA)

The United States of America, by its attorney, Geoffrey S. Berman, United States Attorney for the Southern District of New York, alleges for its complaint-in-intervention as follows:

PRELIMINARY STATEMENT

1. This is a civil fraud action brought by the United States of America (the “United States” or the “Government”) against Fusion Physical Therapy and Sports Wellness, P.C. (“Fusion Physical Therapy”), and Carolyn Sue Mazur (together, “Defendants”), under the False Claims Act (the “FCA”), 31 U.S.C. §§ 3729-3733, to recover treble damages sustained by, and civil penalties owed to, the Government resulting from the submission of false and fraudulent claims for reimbursements to the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395 *et seq.* (“Medicare”).

2. Fusion Physical Therapy operates two physical therapy and rehabilitation centers in Manhattan, New York. Carolyn Mazur is Fusion Physical Therapy’s founder, owner, and chief executive officer. From April 15, 2016, to August 11, 2017, Defendants engaged in a fraudulent scheme to submit false and fraudulent claims to Medicare for reimbursement.

3. Defendants submitted or caused the submission of claims to Medicare for services rendered using the name and National Provider Identification number (“NPI”) of a physical therapist who did not perform or supervise the physical therapy services claimed. Defendants also submitted or caused the submission of claims to Medicare where the individual who actually performed the services was not credentialed under Medicare. Medicare rules prohibit physical therapy centers like those operated by Fusion Physical Therapy from billing for services rendered by non-credentialed providers. Those rules also prohibit physical therapy providers from billing Medicare when the identity of the individual who provided the services is misrepresented in the claim for reimbursement. Medicare would therefore not have paid claims for services if: (a) it knew that the claims had been submitted for services provided by non-credentialed providers or (b) if those claims misrepresented who actually provided such services.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331 and 1345.

5. Venue lies in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1391(b) and 1391(c) because Defendants transact business in this district.

PARTIES

6. Plaintiff is the United States of America suing on its own behalf and on behalf of the United States Department of Health and Human Services (“HHS”), and its component agency, the Centers for Medicare & Medicaid Services (“CMS”), which administers the Medicare Program.

7. Defendant Fusion Physical Therapy and Sports Wellness, P.C., which does business as Fusion Physical Therapy and Sports Performance, operates two physical therapy and rehabilitation centers, each located in Manhattan, New York. Fusion Physical Therapy is located at 60 Reade Street, New York, NY 10007.

8. Defendant Carolyn Sue Mazur (“Mazur”) is Fusion Physical Therapy’s founder, owner, operator, and Chief Executive Officer. Mazur was responsible for the claims that Fusion Physical Therapy submitted to Medicare during the relevant time period. Her office is located at 60 Reade Street, New York, NY 10007.

FACTS

A. The Medicare Program

9. In 1965, Congress enacted Title XVIII of the Social Security Act, known as the Medicare program, to pay for the costs of certain healthcare services. Entitlement to Medicare is based on age, disability or affliction with end-stage renal disease. *See* 42 U.S.C. §§ 426, 426A.

10. Medicare has several parts, including Part B, which covers physician services and certain non-physician services incident to physician services, including rehabilitation services such as occupational and physical therapy.

11. Claims for Medicare Part B services are submitted on CMS form 1500. The CMS 1500 form requires the provider who signs the form to represent that: “[i]n submitting this claim for payment from federal funds, I certify that: ... the services on this form were ... personally furnished by me.” Under the line, “Signature of Physician (or Supplier),” the individual is also directed to represent: “I certify that the services listed above were personally furnished by me.” In the Medicare Program Integrity Manual, CMS lists misrepresenting the identity of the individual who furnished the services as an example of Medicare fraud. *See* Medicare Program Integrity Manual, Ex 27, Section 4.2.1, Rev. 675, effective 12-12-16.

B. National Provider Identification Numbers and Credentialing

12. The NPI is a unique 10-digit identification number for healthcare providers that is used by all health plans, including Medicare, in the submission of claims for reimbursement. All healthcare providers are eligible to receive an NPI. All Health Insurance Portability and Accountability Act (“HIPAA”) covered healthcare providers, whether they are individuals (such as physicians, nurses, dentists, chiropractors, physical therapists, or pharmacists) or organizations (such as hospitals, physical therapy centers, and clinics, etc.) must obtain an NPI in order to identify themselves in HIPAA standard transactions, such as Medicare claim submissions.

13. Physical therapists, along with all Medicare Part B providers, must enroll in the Medicare program in order to be paid for services rendered to Medicare recipients. *See* 24 C.F.R. 424.505.

14. If a physical therapist enrolled in the Medicare program joins a practice group like Fusion Physical Therapy, she or he must also file a “Reassignment of Medicare Benefits” application (Form CMS-855R) before that practice group can receive payments for services rendered by that physical therapist. *See* Medicare Enrollment for Physicians, NPPs, and Other Part B Suppliers, MLN (Medicare Learning Network) Booklet, Dec. 2017; *see also* 42 C.F.R. § 424.80(b).

15. Medicare rules prohibit Medicare Part B providers from seeking reimbursement from the Medicare program for services rendered or supervised by a physical therapist unless that physical therapist is both enrolled with the Medicare program when the services were rendered and the reassignment of his or her Medicare benefits to the billing provider has been approved (collectively known as being “credentialed” with the Medicare program). *See, e.g.*, 42 C.F.R. § 424.5(a)(2).

C. The False Claims Act

16. The FCA establishes liability to the United States for any person who “knowingly presents, or causes to be presented, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval,” 31 U.S.C. § 3729(a)(1), or “knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim,” § 3729(a)(1)(B). “Knowingly” is defined to include actual knowledge, reckless disregard, and deliberate indifference. *Id.* § 3729(b). No proof of specific intent to defraud is required. *Id.*

D. Defendants Billed Medicare For Services Performed by Non-Credentialed Providers and Misrepresented the Rendering Provider of the Services Claimed

17. Fusion Physical Therapy and Mazur knew that Medicare rules prohibited Fusion Physical Therapy from billing Medicare for services performed or supervised by non-credentialed physical therapists. Fusion Physical Therapy and Mazur also knew that Medicare rules prohibited Fusion Physical Therapy from misrepresenting to Medicare the identity of the provider who provided the physical therapy services underlying a claim. Fusion Physical Therapy, however, billed Medicare for services rendered by non-credentialed providers and made false representations regarding the identity of rendering providers.

18. Specifically, although Fusion Physical Therapy represented to Medicare that certain claimed services had been performed or supervised by Mr. X—a credentialed physical therapist—in truth, Fusion Physical Therapy no longer employed Mr. X after April 15, 2016.¹ Nonetheless, after April 15, 2016, Fusion Physical Therapy submitted over 275 claims to Medicare that falsely represented that Mr. X was the rendering provider of the physical therapy services underlying the claims. The claimed services, however, had been performed by wholly different Fusion employees, with no involvement by Mr. X at all.

19. For example, on July 21, 2016, a Fusion employee prescribed therapeutic exercises to Patient A in relation to a knee injury. On that same day, Patient A performed those exercises under Fusion Physical Therapy’s care and direction at one of Fusion Physical Therapy’s Manhattan facilities. Fusion Physical Therapy, however, billed Medicare for these services under the NPI of Mr. X, even though Mr. X was no longer employed by Fusion Physical

¹ “Mr. X” is a pseudonym used herein to refer to the credentialed physical therapist who formerly worked at Fusion Therapy.

Therapy.

20. Fusion Physical Therapy and Mazur effectuated this scheme by using Mr. X's NPI information to submit the claims to Medicare. In some instances, the services underlying the false and fraudulent claims were actually performed by a physical therapist who was not credentialed by Medicare. Mr. X, however, was not aware that Fusion Physical Therapy used his NPI information after he was no longer employed there.

21. At the direction of Mazur, Fusion Physical Therapy employees also fraudulently altered their internal records as part of this scheme. For example, a "Daily Note / Billing Sheet" for Patient A's July 21, 2016, appointment includes Mr. X's purported signature and states that the record was "[c]ompleted by [Mr. X,] PT on August 1, 2016." Mr. X, however, did not sign that note or generate that record. Indeed, he had not been employed by Fusion Physical Therapy for months.

22. Fusion Physical Therapy's misrepresentations to Medicare continued through August 11, 2017. For example, on January 25, 2017, a physical therapist employed by Fusion Physical Therapy treated Patient B for lower back and leg pain. Fusion Physical Therapy billed Medicare for these services under the NPI of Mr. X. Mr. X had not, however, performed the services underlying the claim and was not, as of the date of the services, employed by Fusion Physical Therapy.

23. Fusion Physical Therapy and Mazur knew, or were reckless in not knowing, that such information provided to Medicare was false. Mr. X could not in fact have performed the services on the date reported.

24. Fusion Physical Therapy and Mazur reported false information regarding the identity of the physical therapists who had performed the services, and, in doing so, defrauded

Medicare of thousands of dollars.

25. Had Medicare known that the physical therapist whose NPI was used to bill Medicare did not render or supervise the services in question or that the physical therapist who actually rendered the services was not properly credentialed, Medicare would not have paid such claims.

CLAIM FOR RELIEF

FIRST CLAIM

Violation of the False Claims Act: Presenting False Claims for Payment (31 U.S.C. § 3729(a)(1)(A))

26. The United States incorporates by reference each of the preceding paragraphs as if fully set forth in this paragraph.

27. The Government seeks relief against Fusion Physical Therapy and Mazur under Section 3729(a)(1)(A) of the False Claims Act.

28. As a result of billing for medical services using the NPI of a physical therapist who did not perform the services, Fusion Physical Therapy and Mazur knowingly presented false claims for reimbursement by Medicare, in violation of 31 U.S.C. § 3729(a)(1)(A).

29. By reason of these false or fraudulent claims that Fusion Physical Therapy and Mazur presented to Medicare, the United States has paid substantial Medicare reimbursements to Fusion Physical Therapy, and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

SECOND CLAIM

Violation of the False Claims Act: Use of False Statements (31 U.S.C. § 3729(a)(1)(B))

30. The United States incorporates by reference each of the preceding paragraphs as if

fully set forth in this paragraph.

31. The Government seeks relief against Fusion Physical Therapy and Mazur under Section 3729(a)(1)(B) of the False Claims Act.

32. As a result of billing for medical services using the a NPIs of physical therapist who did not perform the services, Fusion Physical Therapy and Mazur knowingly caused false records or statements to be made that were material to getting false or fraudulent claims paid by Medicare, in violation of 31 U.S.C. § 3729(a)(1)(B).

33. By reason of these false or fraudulent records or statements that Fusion Physical Therapy and Mazur caused to made, the United States has paid substantial Medicare reimbursements to Fusion Physical Therapy and Mazur, and is entitled to recover treble damages plus a civil monetary penalty for each false claim.

PRAYER FOR RELIEF

WHEREFORE, the United States demands judgment against Defendants as follows:


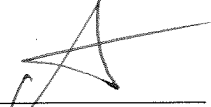
- A. A sum equal to treble the United States' damages and civil penalties to the maximum amount allowed by law;
- B. Award of costs pursuant to 31 U.S.C. § 3792(a)(3); and
- C. Such further relief as is proper.

Dated: New York, New York
June 14, 2019

Respectfully submitted,

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Southern District of New York
Attorney for the United States

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