

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 04-14349-CIV-MIDDLEBROOKS

UNITED STATES OF AMERICA, <u>ex rel.</u>)	COMPLAINT OF THE UNITED
THOMAS GAYESKI,)	STATES OF AMERICA FOR:
)	
Plaintiff,)	(1) VIOLATIONS OF THE FALSE
)	CLAIMS ACT, 31 U.S.C. § 3729(a)(1);
v.)	(2) VIOLATIONS OF THE FALSE
)	CLAIMS ACT, 31 U.S.C. § 3729(a)(2);
LINDA I. BLAND, M.D. and TREASURE)	(3) UNJUST ENRICHMENT; and
COAST NEUROSURGICAL ASSOCIATES,)	(4) PAYMENT BY MISTAKE.
P.A.,)	
)	
Defendant.)	

For its complaint the United States of America alleges as follows:

NATURE OF ACTION

1. The United States brings this action against Defendants Linda I. Bland, M.D. (Bland or Defendant) and Treasure Coast Neurosurgical Associates, P.A. (TCNA) to recover damages and civil penalties under the False Claims Act (hereinafter FCA or the Act), 31 U.S.C. §§ 3729-33, and to recover damages and other monetary relief under the common law and equitable theories of unjust enrichment and payment by mistake of fact.

2. This action concerns false and fraudulent claims Bland and TNCA knowingly submitted or caused to be submitted to the Medicare Program as a result of medically unnecessary surgical procedures that Bland performed at Sebastian Hospital, Inc. d/b/a Sebastian River Medical Center (SMRC) on elderly patients. Bland and TNCA systematically defrauded Medicare by submitting false and fraudulent claims for payment as described below.

JURISDICTION

3. The Court has subject matter jurisdiction over this action under 28 U.S.C. § 1345 because the United States is the Plaintiff. In addition, the Court has subject matter jurisdiction over the False Claims Act cause of action under 28 U.S.C. § 1331, and supplemental jurisdiction to entertain the common law and equitable causes of action under 28 U.S.C. § 1367(a). The Court may exercise personal jurisdiction over the Defendants pursuant to 31 U.S.C. § 3732(a).

VENUE

4. Venue is proper in the Southern District of Florida, under 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b), because Defendant Bland resided in this District during the operative period and TCNA currently resides in this District. Both Defendants committed acts within this District that were a substantial part of the scheme that violated 31 U.S.C. § 3729 and the common law.

PARTIES

5. Plaintiff is the United States of America (hereinafter United States or Government). The United States brings this action on behalf of the United States Department of Health and Human Services (HHS), including its components, the Centers for Medicare and Medicaid Services (CMS), formerly known as the Health Care Financing Administration. The Secretary of HHS administers the Medicare Program through CMS.

6. Relator Thomas Gayeski, M.D., is an anesthesiologist who practiced at SRMC. Currently, he is a resident of New York.

7. Defendant Bland is a resident of Florida, whose last known address is 606 Oak Harbour Drive, Juno Beach, Florida 33408. Bland was a licensed neurosurgeon who performed

surgery at SRMC. SRMC submitted claims for payment for Bland's surgical services to the Medicare program. Additionally, Bland owned and operated a medical office known as "Treasure Coast Neurosurgical Associates, M.D., P.A." in Fort Pierce, Florida. Dr. Bland provided outpatient care to patients, including surgeries, some of which were reimbursable under the Medicare Part B Program.

8. Defendant TCNA is a Florida corporation, whose last known principal place of business was 606 Oak Harbour Drive, Juno Beach, Florida 33408.

THE LAW

9. Except as specifically noted in this Complaint, the allegations in this Complaint apply to the period from on or about January 1, 1999 to on or about November 3, 2003 (the relevant time period).

The False Claims Act

10. The FCA provides, in pertinent part that:

(a) Any person who (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government; (3) conspires to defraud the Government by getting a false or fraudulent claim paid or approved by the Government; . . .
* * * is liable to the United States Government

(b) For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to the information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

31 U.S.C. § 3729.

The Medicare Program

11. In 1965 Congress enacted the Health Insurance for the Aged and Disabled Act, 42 U.S.C. § 1395, *et seq.*, known as the Medicare Program, as part of Title XVIII of the Social Security Act to pay for the costs of certain health care services. Entitlement to Medicare is based on age, disability or affliction with end-stage renal disease. See 42 U.S.C. §§ 426, 426-1. The regulations implementing the Medicare Program are found at 42 C.F.R. § 409, *et seq.*

12. HHS is responsible for the administration and supervision of the Medicare Program. CMS is an agency of HHS and is directly responsible for the administration of the Medicare Program. Part A of the Medicare Program authorizes payment for institutional care, including hospital, skilled nursing facility and home health care. See 42 U.S.C. §§ 1395c-1395i-4. Medicare Part B covers physician services as well as a variety of "medical and other health services," including durable medical equipment and supplies. The allegations herein relate to Part A and Part B services provided by Bland and TCNA with Part A services rendered at SRMC. In addition to other limitations on coverage, Medicare covers only those services that are "reasonable and necessary." 42 U.S.C. § 1395(a)(1)(A).

13. To participate in the Medicare program, a hospital must file a provider agreement with the Secretary of HHS (the Secretary). 42 U.S.C. § 1395cc. The provider agreement requires compliance with the requirements that the Secretary deems necessary for participation in the program. Id.

14. Medicare reimburses only for services furnished to beneficiaries that are "reasonable and necessary for the diagnosis or treatment of illness or injury" 42 U.S.C. § 1395y(a)(1)(A). In submitting Medicare claim forms, including the UB-92, providers must

certify that the information included on the form presents an accurate description of the services rendered and that the services were medically necessary.

(1) Claims Submitted By Hospitals

15. To assist in the administration of Medicare Part A, CMS contracts with “fiscal intermediaries.” 42 U.S.C. § 1395h. Fiscal intermediaries, typically insurance companies, are responsible for processing and paying claims and cost reports. The fiscal intermediaries pay providers using monies allocated by the United States Federal Hospital Insurance Fund. See 42 U.S.C. §§ 1395i & 1395g.

16. Once a provider is authorized by Medicare to render Part A services, the fiscal intermediary will pay the provider an interim amount periodically throughout the year that is based on estimated treatment costs for the provider’s Medicare patients. *See* 42 U.S.C. § 1395g(e). At the end of the year, the provider submits a final accounting of its costs for the year to the fiscal intermediary in a document called a “cost report.” 42 C.F.R. § 413.20(b). The fiscal intermediary uses the cost report to determine the total reimbursement actually due the provider for Medicare services that year.

17. Federal regulations require Part A providers to furnish the fiscal intermediary with accurate and sufficient data to ensure proper payment. 42 C.F.R. § 413.24(c).

18. In preparing cost reports, providers must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the health care industry.

42 C.F.R. § 413.20(a).

19. The cost report is signed by the provider’s administrator or chief financial officer.

The signing official must also certify that the report is “true, correct, complete and prepared from the books and records of the provider in accordance with applicable instructions, except as noted” 42 C.F.R. § 413.24(f)(4)(iv). The signing official further certifies familiarity with the laws and regulations regarding the provision of health care services and attests that the services identified in the cost report were provided in compliance with those laws and regulations. *Id.*

(2) Claims Submitted by Doctors

20. "Part B" of the Medicare Program covers certain facilities and medical services provided to qualified patients/beneficiaries on an outpatient basis. Among the services covered are services by a physician from his/her offices, such as the services rendered by Bland.

21. Part B of the Medicare Program is funded by insurance premiums paid by enrolled Medicare beneficiaries and contributions from the federal treasury. Eligible individuals who are age 65 or older, or disabled, may enroll in Part B to obtain benefits in return for payments of monthly premiums as established by HHS. However, payments under the Medicare Program are often made directly to service providers such as physicians, rather than to the patient/beneficiary. This occurs when the provider accepts assignment of the right to payment from the beneficiary. In that case, the provider bills the Medicare Program.

22. The United States provides reimbursement for Medicare claims from the Medicare Trust Fund through CMS. To assist in the administration of Part B of the Medicare Program, CMS contracts with "carriers." 42 U.S.C. § 1395u. Carriers, typically insurance companies, are responsible for processing the payment of Part B claims to providers on behalf of CMS. *Id.* First Coast Services Options, Inc. ("First Coast") was the carrier responsible for processing the payment of Part B claims to Bland on behalf of CMS.

23. At all times relevant to this complaint, Bland knowingly submitted bills to Medicare through its contractor, First Coast.

24. In order to bill the Medicare Program, a provider must submit an electronic or hard-copy claim form called "CMS 1500 " to the carrier. When the CMS 1500 is submitted, the provider certifies that the services in question were "medically indicated and necessary for the health of the patient." Providers wishing to submit the CMS 1500 electronically must first submit a provider enrollment form.

25. Bland submitted an enrollment form to permit her to electronically submit the CMS 1500. Bland certified to the following language on the CMS 1500 form that she submitted to Medicare: "I certify that the services shown on this forms were medically indicated and necessary for the health of the patient"

26. A physician's services must be "reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 U.S.C. § 1395y(a)(i). A physician may not be reimbursed by Medicare for medically unnecessary services.

27. Bland was required to comply with all the applicable statutes, regulations and guidelines in order to be reimbursed by Medicare Part B and had a duty to be knowledgeable of the statutes, regulations and guidelines regarding coverage for Medicare services. Bland certified that she was knowledgeable of Medicare's requirements in the provider enrollment form she submitted and each time she submitted the CMS form 1500.

28. The Medicare Program paid SRMC and Bland a total of \$2,743,983.00 for Medicare beneficiaries on whom Bland performed surgery at SRMC.

**FRAUDULENT SCHEME: PERFORMANCE OF MEDICALLY
UNNECESSARY SURGERIES ON MEDICARE AND MEDICAID BENEFICIARIES**

29. From on or about January 1, 2000 to on or about November 3, 2003, Bland performed neurosurgery at SRMC. Bland was not an employee of SRMC but rather provided neurosurgery services as an independent contractor and through TCNA.

30. Bland often performed multiple neurosurgical procedures on the same patients on successive days, some of which were unnecessary, which increased their risk for infection and other complications and also increased the payments to the hospital for those services since it resulted in longer hospital stays for the patients.

31. Bland often began non-emergency neurosurgical procedures after 5:00 PM and many of these procedures continued until late in the night. The scheduling of these surgeries was not because Bland was hardworking but rather because she chose to only work two days a week. For example, Bland performed the following late night procedures at SRMC:

Date	Procedure	Time In	Time Out
1/13/2000	craniotomy	12:50 PM	9:10 PM
1/18/2000	VP shunt removal	10:15 PM	12:05 AM (next day)
1/27/2000	lumbar laminectomy	7:20 PM	11:10 PM
2/15/2000	lumbar laminectomy	8:37 PM	1:55 AM (next day)
3/28/2000	remove hardware	8:10 PM	10:25 PM
5/24/2000	anterior cervical discectomy	4:45 PM	7:03 PM
6/14/2000	ventricular peritoneal shunt	5:10 PM	7:05 PM
6/27/2000	anterior cervical discectomy	4:55 PM	8:00 PM
9/29/2000	removal of ACD plate	4:45 PM	6:07 PM
10/27/2000	incision, drainage, debred.	8:12 PM	10:08 PM
11/14/2000	lumbar laminectomy	4:55 PM	10:05 PM
11/21/2000	closure of position	6:50 PM	9:43 PM
12/14/2000	lumbar laminectomy	9:40 PM	12:33 AM (next day)
12/19/2000	lumbar laminectomy	6:15 PM	10:55 PM
12/20/2000	anterior cervical discectomy	5:30 PM	8:30 PM
01/16/2001	lumbar laminectomy	5:30 PM	9:20 PM
01/30/2001	lumbar laminectomy	5:44 PM	10:32 PM

01/31/2001	herniated disk	4:58 PM	7:46 PM
02/07/2001	cervical spondectomy	5:00 PM	11:55 PM
02/20/2001	lumbar HNP	5:19 PM	1:50 AM (next day)
02/21/2001	cervical ??	5:45 PM	8:35 PM
02/27/2001	lumbar laminectomy	5:40 PM	12:50 AM (next day)
03/14/2001	lumbar discectomy	7:30 PM	12:05 AM (next day)
03/27/2001	lumbar laminectomy	9:50 PM	11:45 PM
04/10/2001	anterior cervical discectomy	8:20 PM	11:35 PM
04/17/2001	lumbar discectomy	6:25 PM	9:50 PM
04/18/2001	anterior cervical discectomy	6:35 PM	10:00 PM
04/24/2001	wound exploration	6:18 PM	8:58 PM
05/21/2001	right frontal bur.	10:23 PM	11:39 PM
05/22/2001	lumbar laminectomy	7:43 PM	1:49 AM (next day)
06/05/2001	posterior cervical lamin.	6:53 PM	11:50 PM
06/12/2001	anterior cervical lamin.	6:35 PM	10:35 PM
08/07/2001	cervical HNP	9:45 PM	3:20 AM (next day)
08/08/2001	posterior cervical discectomy	7:00 PM	12:31 AM (next day)
08/28/2001	lumbar laminectomy	7:55 PM	3:10 AM (next day)
09/28/2001	anterior cervical discectomy	9:08 PM	1:05 AM (next day)
12/11/2001	debredment	6:45 PM	8:16 PM
01/22/2002	cervical discectomy	7:00 PM	10:10 PM
02/13/2002	lumbar laminectomy	6:26 PM	8:33 PM
03/12/2002	lumbar laminectomy	6:32 PM	8:55PM
03/12/2002	lumbar laminectomy	9:25 PM	2:45 AM (next day)
03/19/2002	anterior cervical discectomy	9:42 PM	2:05 AM (next day)
03/20/2002	anterior cervical discectomy	8:58 PM	2:45 AM (next day)
06/26/2002	anterior cervical discectomy	10:25	4:00 AM (next day)
07/16/2002	anterior cervical discectomy	6:30 PM	10:45 PM
08/20/2002	lumbar laminectomy	5:08 PM	9:35PM
12/04/2002	anterior cervical discectomy	8:47 PM	11:50 PM
02/11/2003	lumbar laminectomy	6:05 PM	10:10 PM

32. A review of the medical records a statistical sample of the patients on whom Bland performed surgery at SRMC demonstrated that approximately fifty percent (50%) of Bland's surgeries at SRMC were medically unnecessary. Medically unnecessary procedures were performed by Bland at SRMC on the following patients:

Partial HIC No.	Patient Initials	Admission Dates	Amount Paid
XXX-XX-3859A	P.B.	02/12/2002	\$7,369

XXX-XX-0707A	D.P.	09/26-29/2000	\$19,243
XXX-XX-6357A	R.R.	11/07/2001	\$21,418
XXX-XX-4601B	G.T.	03/19-22/2002	\$33,588
XXX-XX-0690A	C.I.	12/20/2001	\$21,108

In order to protect the privacy of these patients, the United States has provided this list without complete names and HIC numbers. However, the United States will provide, concurrent with the service of the complaint, a list with the full patient names and the HIC numbers to Defendants' counsel.

33. Despite the fact that many of her patients did not need surgery, Bland performed surgery on these patients at SRMC. Bland knew that SRMC was billing Medicare for the services performed on these beneficiaries at SRMC.

34. Bland in turn, knowingly submitted bills for payment to the Medicare Program for reimbursement for office visits at TCNA associated with the medically unnecessary surgeries she routinely performed on her patients and was reimbursed a substantial amount of money by the Medicare Program.

35. From January 1, 2000 to November 3, 2003, surgeries performed by Bland at SRMC resulted in over \$ 2.7 million in payments from the Medicare program to the SRMC. Additionally, during the same time period, Medicare Part B paid Bland for 1,426 claims for office visits.

DAMAGES

36. The United States was damaged because of the acts of Bland in submitting, or causing to be submitted, false claims, statements and records in that it paid Bland for items and

services for which Bland was not entitled to reimbursement.

37. Bland profited unlawfully from this scheme of routinely performing medically unnecessary surgeries on elderly patients.

FIRST CAUSE OF ACTION
(False Claims Act: Presentation of False Claims)
(31 U.S.C. § 3729 (a)(1))

38. Plaintiff repeats and realleges ¶¶ 1 through 41 as if fully set forth herein.

39. Bland knowingly presented or caused to be presented false or fraudulent claims for payment or approval to the United States, including claims for reimbursement for services that were not medically necessary.

40. By virtue of the false or fraudulent claims presented or caused to be presented by the defendants, the United States suffered damages and therefore is entitled to statutory damages under the FCA, to be determined at trial, plus a civil penalty for each violation.

SECOND CAUSE OF ACTION
(False Claims Act: Making or Using a False
Record or Statement to Cause Claim to be Paid)
(31 U.S.C. § 3729 (a)(2))

41. Plaintiff repeats and realleges ¶¶ 1 through 41 as if fully set forth herein.

42. Bland knowingly made, used, or caused to be made or used, false records or statements, i.e., the false certifications and representations made or caused to be made by Bland when initially submitting the electronic payment enrollment form and the false certifications made or caused to be made by or on behalf of Bland in submitting the CMS 1500.

43. By virtue of the false records or false statements made or caused to be made by Bland, the United States suffered damages and therefore is entitled to statutory damages under the FCA, to be determined at trial, plus civil penalty for each violation.

**THIRD CAUSE OF ACTION
(Payment by Mistake of Fact)**

44. Plaintiff repeats and realleges ¶¶ 1 through 41 as if fully set forth herein.

45. This is a claim for the recovery of monies paid by the United States to Bland as a result of mistaken understandings of fact.

46. The false claims which Bland submitted or caused to be submitted to the United States' agents were paid by the United States based upon mistaken or erroneous understandings of material fact.

47. The United States, acting in reasonable reliance on the truthfulness of the claims and the truthfulness of certifications and representations by Bland, paid to Bland certain sums of money to which she was not entitled, and Bland is thus liable to account and pay such amounts, which are to be determined at trial, to the United States.

**FOURTH CAUSE OF ACTION
(Unjust Enrichment)**

48. Plaintiff repeats and realleges ¶¶ 1 through 41 as if fully set forth herein.

49. This is a claim for the recovery of monies by which Bland has been unjustly enriched.

50. By directly or indirectly obtaining Government funds to which she was not entitled, Bland was unjustly enriched, and is liable to account and pay such amounts, or the proceeds therefrom, which are to be determined at trial, to the United States.

PRAYER FOR RELIEF

WHEREFORE, the United States demands and prays that judgment be entered in its favor against defendant as follows:

1. On the First and Second Causes of Action under the False Claims Act, as amended, for the amount of the United States' statutory damages and such civil penalties as were required by law, together with all such further relief as may be just and proper.

2. On the Third and Fourth Causes of Action for Payment by Mistake and Unjust Enrichment, for the damages sustained and or amounts by which Bland was unjustly enriched or by which Bland retained illegally obtained monies, plus interest, costs, and expenses, and all such further relief as may be just and proper.

Dated: February 5, 2007
Miami, Florida

Respectfully submitted,

PETER D. KEISLER
ASSISTANT ATTORNEY GENERAL

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

By: _____

JEFFREY W. DICKSTEIN
Assistant United States Attorney
Fla. Bar No. 434892
Jeffrey.Dickstein@usdoj.gov
United States Attorney's Office
Southern District of Florida
99 N.E. 4th Street
Miami, FL 33132
Tel.(305) 961-9453
Fax (305) 530-7139

MICHAEL F. HERTZ
DANIEL R. ANDERSON
ALICIA J. BENTLEY
Attorneys
United States Department of Justice
Commercial Litigation Branch
P.O. Box 261

Ben Franklin Station
Washington, D.C. 20044
Tel: 202-616-9854
Fax: 202-514-0280