

Northern California Chiropractor Sentenced to Prison for Grand Theft and Insurance Fraud

JUDGE MAKES STRONG COMMENTS ON DEVIANT INSURANCE BILLING PRACTICES

Editorial Staff

Despite the impassioned pleas of the three attorneys representing Northern California chiropractor, Alan L. Burke, and the testimony of family, friends, and many letters of support, Judge Ronald M. Sabraw of the California Superior Court, after a four-hour sentencing hearing, found Dr. Burke guilty of three counts of grand theft and one count of insurance fraud,

All of the charges stemmed from Dr. Burke's billing practices.

Dr. Burke's troubles began when the Alameda County district attorney's office began investigating one of his patients, Shansher Singh, a man who had been involved in many questionable automobile accidents. This investigation revealed numerous irregularities in Dr. Burke's billing practices. Charges were brought against both Shansher Singh and Alan Burke, D.C. as co-defendants.

In February 1985, Mr. Singh was involved in a legitimate auto accident involving a drunk driver. He sought the care of Dr. Burke for this injury. It was at this time that the district attorney's office believes he hit upon the idea of manufacturing auto "accidents" and collecting compensation via medical claims. According to the testimony of a CHP officer every accident, except for the initial accident, was staged.

According to Alice Spague, the deputy district attorney who prosecuted the case, Mr. Singh was involved in accidents in November 1985, August 1986, October 15, 1986, April 28, 1987, January 4, 1988, and April 20, 1988. Mr. Singh purchased automobile insurance the day before his accident in November of 1985. Some of the accidents included or involved Mr. Singh's brothers and/or friends.

In each case where Dr. Burke treated Mr. Singh and others, he gave them the same battery of tests: thermograms, conducted in a lab owned by Dr. Burke, at a cost of \$900 each; two arterial doppler tests for each accident; plethysmography and TENS units were prescribed.

Dr. Burke charged patients a \$14 per day rental fee on TENS units that the patients rented for at least one month (\$434) and later sold the unit to the patients for approximately \$405. Mr. Singh was found to own four TENS units. The court discovered that the actual price of a TENS unit was approximately \$80.

No sales records of TENS units were ever found.

The scenario of testing, and TENS units was the same for all the collision patients with insurance coverage. They were treated three times per week for four months. All personal injury cases and insurance related cases (workers' compensation) were handled the same, if covered by insurance.

Cash patients, naturally, were not subjected to the inflated prices and care.

In his sentencing of Dr. Burke, Judge Ronald M. Sabraw made numerous comments about the billing practices involved:

"Under Rule (A) (1), the court finds that Dr. Burke did engage in a pervasive practice of overbilling and in some instances overtreating his patients who either had Med Pay insurance coverage or were pursuing personal injury or workers' compensation cases which were covered by insurance. The widespread billing irregularities of Dr. Burke were testified to by members of his office staff called by the prosecution as well as those of his office staff called by the defense.

"For example, it was revealed in the testimony at trial that all personal injury patients and workers' compensation patients received thermograms and TENS units as a matter of routine. It also appears that patients who did not have insurance or were not seeking recovery in personal injury cases or workers' compensation cases did not receive thermograms or TENS units except under rare circumstances.

"Additionally, Dr. Burke consistently billed patients for missed appointments and characterized those missed appointments as routine brief treatments. This was done by Dr. Burke despite his knowledge that insurance companies would not pay for missed appointments, and he therefore used the routine brief treatments code in order to be paid for those missed appointments. Although the payment for routine brief treatment was only approximately \$22, the cumulative effect of Dr. Burke's billing practices for missed appointments as routine brief treatments was significant when taken in the context of this practice being used with all of his patients. I should say all of his insurance patients.

"It is also apparent from the evidence that Dr. Burke manipulated other aspects of his computerized billing system in order to maximize insurance payment for chiropractic and related treatment modalities rendered by his office. This included misrepresentation of massage treatments by charging all one-half hour massages as 45 minutes. In addition, although the massages were done by the massage therapist immediately preceding or following treatment performed by Dr. Burke, the billings showed that the massages were done on the following day. This practice enabled Dr. Burke to charge for two office visits rather than one and therefore use a higher multiplier rate in the R.V.S. code system, in essence charging for an additional office visit.

"It is also apparent that the treatment provided to the co-defendant and his brothers in these matters that those treatments appeared substantially similar in that they all received thermographs and TENS units and in certain instances doppler ultrasound.

"In short, the office practices of Dr. Burke evidence a clear intention by Dr. Burke to engage in a widespread scheme of insurance fraud. These practices were done in a deliberate and calculated way that was difficult to detect and prove and for which the defendant was able to reap a substantial economic benefit.

"With regard to subsection (A) (5), the amount of monetary loss directly attributable to Dr. Burke is substantial. Even though the amounts on individual bills or the amounts billed for individual services is relatively small, the pervasive nature of Dr. Burke's billing scheme suggests that mandatory loss suffered by the victims in this case and other insurance companies is substantial.

"Under subsection (A) (6), the court finds that Dr. Burke was actively engaged in

committing the insurance fraud and was supervising the operation of his office during the periods of time in question.

"Under subsection (A) (8), the manner in which Dr. Burke was operating his practice and billing for services that were not rendered indicate an appreciable level of criminal sophistication."

Judge Sabraw added this thought:

"I'm also struck by what seems to me an illustration of many of the problems that we face in our society today. That appears to be the irony that I find with a man who could lead a moral and valuable life with his family and with his community and in his church and have ethical standards which I know of in the Mormon Church and of which I know about involved in the Boy Scouts, and to have those very important principles part of your personal and private life and yet have those principles devoid of your professional practice. It seems in our society today that we tell the truth perhaps sometimes when we deal with our family and when we deal with our church and when we deal with our friends, but if we're talking to insurance companies or we're talking to the I.R.S. or we're talking to our former spouse or someone like that, then maybe we don't need to tell the truth. I find that a lamentable circumstance that is existent in this case, and it is existent throughout our society."

In an exclusive interview, Alice Spague, the deputy district attorney who prosecuted the case, was asked:

DC: Do you expect to see more cases like this?

Ms. Sprague: I do. This case has had a lot of publicity, the insurance companies and their attorneys are more aware and will be looking for this sort of thing. New laws mandate that insurance companies set up fraud detection units. In addition, the company is required to set aside a certain amount of every insurance premium for fraud investigation to a fund that reimburses district attorneys, offices, and other law enforcement agencies to investigate insurance fraud. There is a very substantial amount of money (in the millions) in this fund. These are cases that the state will compensate law enforcement agencies to investigate and prosecute. In the past, you could not afford to conduct this kind of investigation.

DC: Are these kinds of cases unique to the chiropractic profession or are you seeing these problems in other health care profession?

Ms. Sprague: I think that they aren't unique to chiropractors, unfortunately chiropractors' billings are looked at more than those of MDs. I'm hoping that reading this will have an effect on chiropractors, that they may be dissuaded by the thought of being convicted, losing their license, and spending time in prison. Insurance companies are going to be looking for these types of things."

Dr. Burke could have received a maximum of four years on each of the four counts, a total of 16 years to be served consecutively. Instead, the judge gave him a total of two years to be served concurrently, which he has been serving since December 24, 1991. In addition, Dr. Burke was ordered to pay more than \$20,000 to the insurance companies involved.

As the department of corrections can reduce an inmate's sentence by one-third to one-half for good conduct/work credit, Dr. Burke could be out of prison as early as the end of this year.

Dr. Burke is currently serving his sentence at San Quentin.

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