

IN THE CIRCUIT COURT FOR GIBSON COUNTY, TENNESSEE
TWENTY-EIGHTH JUDICIAL DISTRICT AT HUMBOLDT

STATE OF TENNESSEE,

Plaintiff,

v.

JOEL SCOTT CRAIG, DPM,
both individually and doing business as
MILAN FOOT CARE,

Defendant.

No. H 4144

Division _____

Jury Demand

COMPLAINT

1. The State of Tennessee brings this civil action against Defendant Dr. Joel Scott Craig (Dr. Craig), both individually and doing business as Milan Foot Care, to recover mandatory treble damages and civil penalties pursuant to the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 to -185 (TMFCA), and restitution pursuant to the equitable common law theories of unjust enrichment and payment by mistake of fact.

INTRODUCTION

2. Dr. Craig is a doctor of podiatric medicine who operates two clinics in Gibson County, Tennessee, through which he provides podiatry services to patients enrolled in the Tennessee Medicaid program, which is known as TennCare.

3. For the time period August 1, 2014 to December 31, 2019, Dr. Craig presented false claims to TennCare and created false records material to those false claims when he fraudulently billed TennCare for foot and ankle strapping services that were medically unnecessary.

TIME 1:15 **FILED** AM/PM

AUG 13 2020

AMANDA BROWN, CLERK
BY: Amanda C&M

Upon information and belief, the State of Tennessee alleges the following:

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 71-5-183.

5. Venue lies in this judicial district pursuant to Tenn. Code Ann. § 71-5-185 because it is the place where the alleged acts occurred.

6. This Court may exercise personal jurisdiction over Dr. Craig pursuant to Tenn. Code Ann. § 20-2-222 because he transacted business in this judicial district during the relevant period, and because Dr. Craig resides in this county.

THE PARTIES

PLAINTIFF

7. Plaintiff, the State of Tennessee, brings this action through the Tennessee Attorney General. The Attorney General has standing to bring this action pursuant to Tenn. Code Ann. § 71-5-183(a).

DEFENDANT

8. Dr. Craig resides at 50 Raymond Walker Road, Humboldt, TN 38343.

9. Dr. Craig does business as a sole proprietorship, Milan Foot Care. As Milan Foot Care, Dr. Craig operates two podiatry clinics in Humboldt, Tennessee: at 4039 Highland Street; and at 3525 Chere Carol Road.

LEGAL AND REGULATORY BACKGROUND

THE MEDICAID/TENNCARE PROGRAM

10. The Medicaid Program, enacted under title XIX of the Social Security Act of 1965, 42 U.S.C. § 1396 et seq., provides funding for medical and health-related services for certain individuals and families with low incomes and virtually no financial resources. Those eligible for Medicaid include pregnant women, children, and persons who are blind or suffer from other disabilities and who cannot afford the cost of healthcare. 42 U.S.C. § 1396d. The Medicaid program is a joint federal–state program. 42 U.S.C. § 1396b. If a state elects to participate in the program, the costs of Medicaid are shared between the state and the federal government. 42 U.S.C. § 1396a(a)(2). In order to receive federal funding, a participating state must comply with requirements imposed by the Social Security Act and regulations promulgated thereunder.

11. The State of Tennessee participates in the Medicaid program pursuant to Tenn. Code Ann. §§ 71-5-101 to -199. The federal government, through the Centers for Medicare & Medicaid Services (CMS), provides approximately 65% of the funds used by the Tennessee Medicaid program to provide medical assistance to persons enrolled in the Medicaid program.

12. In return for the receipt of federal subsidies, the State of Tennessee is required to administer its Medicaid program in conformity with a state plan that satisfies the requirements of the Social Security Act and accompanying regulations. 42 U.S.C. §§ 1396–1396vj; Tenn. Code Ann. § 71-5-102. In Tennessee, the Department of Finance & Administration (F&A) administers the state Medicaid program through the Bureau of TennCare. Tenn. Code Ann. § 71-5-104. TennCare operates as a special demonstration project authorized by the Secretary of the Department of Health and Human Services under the waiver authority conferred by 42 U.S.C. § 1315. F&A supervises TennCare’s administration of medical assistance for eligible recipients. Tenn. Code Ann. §§ 71-5-105 to -107. F&A is authorized to promulgate rules and regulations to carry

out the purposes of TennCare. Tenn. Code Ann. §§ 71-5-124 to -134.

13. The Bureau of TennCare contracts with private managed care contractors (MCCs)¹ through contracts known as Contractor Risk Agreements (CRAs), which must conform to the requirements of 42 U.S.C. § 1395mm, along with any related federal rules and regulations. Tenn. Code Ann. § 71-5-128. The MCCs contract directly with healthcare providers to provide services to eligible TennCare beneficiaries. Providers who enter such contracts with MCCs are known as Participating Providers. Tenn. Comp. R. & Regs. § 1200-13-13-.01(89).

14. TennCare distributes the combined state and federal Medicaid funding to the MCCs based on a capitation model. Under the capitation model, TennCare pays each MCC a set amount each year for each TennCare member enrolled with that MCC. The MCCs, in turn, use the capitated payments to pay Participating Providers for treatment of TennCare beneficiaries. TennCare-eligible persons seeking medical assistance enroll with an MCC to receive healthcare services from a Participating Provider. The MCCs provide claims data to TennCare on a regular basis and, based on that data, TennCare adjusts the capitation rate annually. Calculation of the capitation rate is a complicated process. Generally, TennCare pays a higher capitation rate when there has been an increase in MCC claims. The payment of fraudulent claims by TennCare MCCs wrongfully inflates future capitation payments by TennCare.

TENNCARE REIMBURSEMENT REQUIREMENTS

15. TennCare supervises the administration of medical assistance for eligible recipients. Tenn. Code Ann. § 71-5-105(a)(1). The term “medical assistance,” defined at 42 U.S.C. § 1396d and Tenn. Code Ann. § 71-5-103(7), includes payment for the cost of provision of medical services by qualified, licensed practitioners to an eligible person.

¹ MCCs are sometimes referred to as Managed Care Organizations (MCOs).

16. TennCare will only pay for services that are within the scope of the TennCare program and that are medically necessary. Tenn. Code Ann. § 71-5-144(a). Thus, TennCare regulations and the CRAs include requirements that Participating Providers can bill only for medically necessary services.

17. A service is not medically necessary under the TennCare program unless it is “required in order to diagnose or treat an enrollee’s medical condition.” Tenn. Code Ann. § 71-5-144(b)(1).

18. A service is not medically necessary under the TennCare program unless it is “safe and effective.” To qualify as safe and effective, the type and level of service must be consistent with the symptoms or diagnosis and treatment of the particular medical condition, and the reasonably anticipated medical benefits of the service must outweigh the anticipated medical risks based on the patient’s condition and scientifically supported evidence. Tenn. Code Ann. § 71-5-144(b)(2).

19. A service is not medically necessary under the TennCare program unless it is the “least costly alternative course of diagnosis or treatment that is adequate for the medical condition of the enrollee.” Tenn. Code Ann. § 71-5-144(b)(3).

20. In order to be reimbursed for services provided to TennCare enrollees, a Participating Provider must submit claims to TennCare using a standardized process that includes standard claims forms and standardized coding to identify diagnoses and services provided. Tenn. Code Ann. § 71-5-191.

21. To be eligible to bill and receive reimbursement for services provided to TennCare enrollees, a Participating Provider must possess a unique provider identification number. All claims for reimbursement must be submitted under a valid provider identification number for the

identified provider. 42 C.F.R. § 455.440.

CPT CODES

22. To obtain TennCare reimbursement for certain outpatient items or services, providers and suppliers submit claims using certain five-digit codes, known as Current Procedural Terminology (CPT) codes, that identify the services rendered and for which reimbursement is sought, and the unique billing identification number of the “rendering provider.” *See* 45 C.F.R. § 162.1002. The MCCs assign reimbursement amounts to CPT codes.

23. Participating Providers submit claims for reimbursement for services to MCCs through either paper or electronic forms. On these forms, the provider identifies the services for which reimbursement is sought using standard, uniform code numbers such as CPT codes. TennCare and the MCCs have adopted the CPT Manual—a reference guide published by the American Medical Association that lists the identifying codes and describes the corresponding services—for the purpose of identifying services for which providers seek reimbursement. Each CPT code corresponds to a specific service as described in the CPT Manual.

24. Participating Providers must properly document in the patient’s medical record each service performed for which they seek TennCare reimbursement. 42 C.F.R. § 431.107(b)(1).

25. Typically, a Participating Provider does not include medical records when submitting a claim to an MCC. TennCare, through the MCCs, processes approximately two million claims for payment per month, totaling \$12.7 billion in payments per year to 35,000 Participating Providers.

26. Because most Participating Providers are honest, and because of the enormous volume of claims being processed every day, TennCare’s reimbursement of providers has historically focused on prompt payment. In fact, MCCs are required by contract and statute to pay claims

quickly. Tenn. Code Ann. § 56-32-126.

27. In return, providers are required by law to file true and correct claims. Tenn. Code Ann. § 71-5-182. While prompt pay requirements benefit honest providers, they make it difficult for TennCare and the MCCs to identify fraudulent billing before making payment. Thus, fraud detection and recovery efforts generally arise after payment has been made.

28. Providers who seek reimbursement for providing foot and/or ankle strapping to patients are required to use CPT 29540.

29. When an ankle or foot strapping procedure is performed bilaterally—that is on both ankles or feet—the appropriate CPT code should be submitted with a designation known as “Modifier 50.”

30. CPT 29540 includes the actual medical procedure—i.e., the actual wrapping of the body part itself—and all E&M services that go along with preparing for and completing the procedure.

TENNESSEE MEDICAID FALSE CLAIMS ACT

31. The TMFCA creates a cause of action for the State of Tennessee against any person who:

- (A) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval under the medicaid program;
- (B) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim under the medicaid program;
- (C) Conspires to commit a violation of subdivision (a)(1)(A), (a)(1)(B), or (a)(1)(D); or
- (D) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money, or property to the state, or knowingly conceals, or knowingly and improperly, avoids, or

decreases an obligation to pay or transmit money or property to the state, relative to the medicaid program.

Tenn. Code Ann. § 71-5-182(a)(1). Any such person is liable to the State of Tennessee for both treble damages and civil penalties “of not less than five thousand dollars (\$5,000) and not more than twenty-five thousand dollars (\$25,000)” per violation, subject to adjustment for inflation. *Id.*

32. The TMFCA defines “knowingly” to mean that a person, with respect to 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.

Tenn. Code Ann. § 71-5-182(b). Accordingly, an individual who did not have actual, contemporaneous knowledge of the falsity of claims or statements may nevertheless be liable under the TMFCA if the individual acted either in deliberate ignorance of or with reckless disregard to the claims’ or statements’ truth or falsity.

33. In this Complaint, whenever the State of Tennessee alleges that Dr. Craig acted “knowingly,” it also alleges, in the alternative, that Dr. Craig acted with “deliberate ignorance” or “reckless disregard” as those terms are used in the TMFCA.

SCHEME OF FRAUD

34. From at least August 1, 2014 through December 31, 2019, Dr. Craig devised and engaged in a fraud scheme whereby he instructed TennCare patients to come in for office visits on a weekly or bi-weekly basis to receive medically unnecessary foot or ankle strapping (CPT 29540) procedures, for which Dr. Craig fraudulently billed TennCare.

35. Dr. Craig knew that the billing information he presented to TennCare was material to its decisions to pay for his services, and he knew that the information was false when he presented, or caused it to be presented, to TennCare for payment.

**DEFENDANT BILLED TENNCARE FOR MEDICALLY
UNNECESSARY STRAPPING PROCEDURES**

36. When performed by podiatrists, strapping refers to the application of overlapping strips of rigid, non-elastic tape to the foot or ankle to exert pressure and serve as a splint to hold a structure in place and reduce motion.

37. Foot or ankle strapping is a foot taping technique designed to support the arch of the foot, improve foot posture and reduce stress on the foot and lower limb during activity.

38. Foot or ankle strapping procedures are considered medically necessary for the following indications: acute foot and ankle sprains and strains; foot and ankle dislocations; foot and ankle fractures; foot and ankle tendinitis and synovitis; plantar fasciitis; and tarsal tunnel syndrome.

39. In general, foot or ankle strapping procedures are used by podiatrists for no more than two to three weeks as an initial treatment to alleviate pain, to allow the patient to heal, and if necessary, to prepare the patient for appropriate alternative treatments, such as orthoses. After two to three weeks, patients are expected to improve with the treatment or transition to alternative courses of treatment.

40. Dr. Craig performed strapping on his patients long past the two to three-week period that might have been medically necessary, sometimes continuing for years.

41. The medial records of his patients do not support any medically sound reason for the excessive number of times that Dr. Craig performed strapping on his patients.

42. Dr. Craig bills TennCare for CPT 29540 more than any other podiatrist who participates in TennCare. When compared to other TennCare-enrolled podiatrists, Dr. Craig is an extreme outlier in: the percentage of his claims for CPT 29540; the percentage of his claims for CPT 29540 that are billed bilaterally using Modifier 50; the average number of times that CPT 29540 is performed on each recipient; and the percentage of his TennCare income that is derived from CPT 29540. These statistics are summarized in the table below:

	Dr. Joel Craig	Peer Podiatrist Average
Percentage of TennCare Patients Receiving CPT 29540	81%	16.83%
Percentage of CPT 29540 Performed Bilaterally Using Modifier 50	51.8%	1.7%
Average Number of Times CPT 29540 Performed on Each Patient	17.3 times	1.52 times
Percentage of TennCare Income from CPT 29540	43%	2.3%

43. Dr. Craig's extreme outlier status is consistent with his patients' medical records in showing that most of the strapping services that he performed were not medically necessary.

44. Dr. Craig knew that billing TennCare for these strapping procedures was fraudulent because they were not medically necessary.

Specific Examples of Claims Submitted and Paid Under This Scheme of Fraud

45. The following patient experiences with Dr. Craig are representative examples only.

PATIENT A²

46. Dr. Craig treated Patient A three times per month over the course of more than three years, between September 14, 2015 and December 17, 2018, for a total of 122 office visits. He

² Patient names are omitted to protect privacy but will be provided to the Defendant.

initially saw Dr. Craig to remove an ingrown toenail and for the treatment of foot pain associated with weight gain.

47. At each appointment, Dr. Craig strapped Patient A's feet and prescribed approximately 10 hydrocodone pills. Dr. Craig never recommended any alternative treatments.

48. For each of Patient A's appointments, Dr. Craig billed TennCare for a bilateral foot/ankle strapping (CPT 29540 with Modifier 50).

49. Except for Patient A's first few procedures, his 122 consecutive bilateral CPT 29540 procedures were medically unnecessary because they were not required to treat Patient A's medical condition and were ineffective.

PATIENT B

50. Patient B is diabetic and started seeing Dr. Craig to monitor her foot health. Despite a lack of specific foot problems, Dr. Craig scheduled Patient B for repeat appointments every Tuesday. Patient B made it to her appointments about 2-3 times per month over the course of approximately two and half years.

51. At all of Patient B's appointments, Dr. Craig trimmed Patient B's toenails as needed and applied brown footpads and a white cloth strap to her feet.

52. After approximately six months of treatment, Dr. Craig prescribed Patient B diabetic shoe inserts which were paid for by TennCare. Nevertheless, Dr. Craig continued to schedule Patient B for weekly appointments to trim her toenails and apply foot straps.

53. For each of Patient B's appointments, Dr. Craig billed TennCare for a bilateral foot/ankle strapping (CPT 29540 with Modifier 50).

54. Except for her first few procedures, Patient B's repeated bilateral CPT 29540 procedures were medically unnecessary because they were not required to treat Patient B's medical condition and were ineffective.

PATIENT C

55. Over the course of approximately one year, Dr. Craig treated Patient C approximately twice a month for painful hammertoes. At each visit, Dr. Craig trimmed Patient C's calluses and strapped her feet. Dr. Craig did not discuss alternative treatments.

56. As the weeks of treatment went on, Patient C found Dr. Craig's treatment to be repetitive and not helpful and became frustrated with her lack of improvement despite frequent treatment.

57. After approximately one year, Patient C left Dr. Craig's treatment for a different podiatrist who immediately suggested performing surgery to alleviate Patient C's symptoms. Patient C has since had surgery to correct her hammertoes and is no longer experiencing pain.

58. For each of Patient C's appointments, Dr. Craig billed TennCare for a bilateral foot/ankle strapping (CPT 29540 with Modifier 50).

59. Except for her first few procedures, Patient C's repeated bilateral CPT 29540 procedures were medically unnecessary because they were not required to treat Patient C's medical condition and were ineffective.

LEGAL CLAIMS

COUNT ONE

Presentation of False Claims to the TennCare/Medicaid Program

60. The State of Tennessee re-alleges and incorporates by reference the allegations in paragraphs 1-59.

61. By and through the acts described above, from August 2014 through December 2019, Dr. Craig knowingly presented, or caused to be presented, false or fraudulent claims for payment under the TennCare/Medicaid program in violation of the TMFCA. Tenn. Code Ann. § 71-5-182(a)(1)(A).

62. Specifically, by submitting or causing to be submitted to TennCare MCCs claims for payment for medically unnecessary CPT 29540 procedures, Dr. Craig billed for and received funds he would not have been paid but for their fraudulent conduct.

63. Dr. Craig knew the claims were false, or he deliberately ignored or recklessly disregarded whether they were false.

64. As a result of the false or fraudulent claims presented, or caused to be presented, by Dr. Craig, the State has suffered damages, in an amount to be determined at trial, and is entitled to treble damages under the TMFCA, plus a civil penalty of \$5,000 to \$25,000 for each violation.

COUNT TWO
***Making or Using False Records or Statements Material to
False Claims Under the TennCare/Medicaid Program***

65. The State of Tennessee re-alleges and incorporates by reference the allegations in paragraphs 1-59.

66. By and through the acts described above, from August 2014 through December 2019, Dr. Craig knowingly made, used, or caused to be made or used, false records or statements material to false or fraudulent claims under the TennCare/Medicaid program in violation of the TMFCA. Tenn. Code Ann. § 71-5-182(a)(1)(B).

67. Specifically, by filling out, using, and/or submitting billing forms (“superbills”) and/or patient records that contained false information about whether the services or procedures

performed were medically necessary, Dr. Craig made, used, or caused to be made or used, false records or statements material to false or fraudulent claims under the TennCare/Medicaid program.

68. Dr. Craig knew the superbills and/or patient records contained false information, or he deliberately ignored or recklessly disregarded whether the superbills and/or patient records were false.

69. As a result of the false records or statements made, used, or caused to be made or used by Dr. Craig, the State has suffered damages, in an amount to be determined at trial, and is entitled to treble damages under the TMFCA, plus a civil penalty of \$5,000 to \$25,000 for each violation.

COUNT THREE
Payment by Mistake of Fact

70. The State of Tennessee re-alleges and incorporates by reference the allegations in paragraphs 1 through 59.

71. As a result of the acts described above, from August 2014 through December 2019, the State of Tennessee paid claims submitted by Dr. Craig for medically unnecessary CPT 29540 procedures under the erroneous belief that such claims for payment were based upon representations that were factually accurate and represented reimbursable services.

72. At the time such payments were made, the State of Tennessee was unaware of the wrongful conduct of Dr. Craig. Had the State known that Dr. Craig was not entitled to receive reimbursement or payment, the State would not have paid such claims.

73. The State's erroneous belief was material to the payments made by the State through the TennCare program to Dr. Craig.

74. Because of these mistakes of fact, Dr. Craig received monies to which he was not entitled.

75. By reason of the overpayments described above, the State of Tennessee is entitled to and requests damages in an amount to be determined at trial exclusive of interest and costs.

COUNT FOUR
Unjust Enrichment

76. The State of Tennessee re-alleges and incorporates by reference the allegations in paragraphs 1-59.

77. By and through the acts described above, from August 2014 through December 2019, Dr. Craig wrongfully received and retained the benefit of government monies paid from the TennCare program for medically unnecessary CPT 29540 procedures.

78. Dr. Craig was unjustly enriched with those government monies from the TennCare program, which Dr. Craig should not in equity and good conscience be permitted to retain, and which Dr. Craig should account for and disgorge to Tennessee, in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the State of Tennessee respectfully requests this Court grant the following relief against Defendant:

- a) Damages to be proved at trial, believed to exceed \$150,000.00, trebled as required by Tenn. Code Ann. § 71-5-182(a);
- b) Civil penalties up to the statutory amount as provided by Tenn. Code Ann. § 71-5-182(a) for each violation;
- c) Pre-judgment and post-judgment interest; and
- d) Any additional remedies the Court finds fair and just.

The State of Tennessee further respectfully requests a jury trial.

Respectfully submitted,


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