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U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

10 JUN 16 PM 3:03

SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
KAMAL TIWARI )  
 )  
Defendant. )

**1 : 10-cr-0103 SEB-KPF**

Cause No. 1:10-cr-

INDICTMENT

The Grand Jury charges that:

INTRODUCTION

At all times relevant to this indictment:

**Background**

1. Defendant KAMAL TIWARI is a doctor licensed to practice in the State of Indiana. He maintains a medical practice in, among other places, Bloomington, Indiana. He does business as The Pain Management Center of Southern Indiana, P.C., The Pain Management & Surgery Center of Southern Indiana, Inc., and Southern Indiana Anesthesiology, Inc., P.C. formerly known as Kamal K. Tiwari, Inc., P.C. He has a Drug Enforcement Administration practitioner's registration for Controlled Substances Schedules I-IV. He is a participating provider in Medicare, Indiana Medicaid, and other private insurance plans including Anthem Blue Cross Blue Shield.

2. Health care benefit programs are any public or private plan or contract under which any medical benefit item or service is provided to any individual. During all events relevant to this indictment health care benefit programs only pay for medical services that are medically necessary, which means that the service is reasonable and necessary for the diagnosis or treatment of disease, injury or defect.

3. Medicare, Medicaid, and private health insurance plans, including those listed herein, are all federal health care benefit programs within the meaning of 18 U.S.C. § § 24(b) and 1347.

4. Percocet, oxycodone, morphine and Methadone are Schedule II narcotic drug controlled substances, pursuant to Title 21, United States Code, Section 812.

- Percocet is a brand name for a substance that contains oxycodone and acetaminophine. A "7.5/325" milligram tablet of Percocet contains 7.5 milligrams of oxycodone and 325 milligrams of Acetaminophine. Amounts of Percocet described hereafter will only refer to the amount of oxycodone in a single tablet.
- Percocet, oxycodone, morphine and Methadone are typically prescribed for the management of pain. Oxycodone is the generic name of a Schedule II controlled substance, and is also the active ingredient in Oxycontin, a brand name Schedule II controlled substance.

5. As Schedule II controlled substances, Percocet, oxycodone, morphine and Methadone are legally available only when prescribed by a licensed medical physician registered by the United States Drug Enforcement Administration to dispense Schedule II Controlled Substances. The term "dispense" includes the prescribing of Controlled Substances.

6. KAMAL TIWARI is a licensed medical physician and is registered and authorized by the United States Drug Enforcement Administration to dispense Schedule II Controlled Substances within the scope of professional practice for legitimate medical purposes. He is enrolled as a participating provider in the Medicare and Indiana Medicaid Program and Anthem.

7. A person registered and authorized to dispense Percocet, oxycodone, morphine and Methadone violates Title 21, United States Code, Section 841(a)(1), when he dispenses them outside of the bounds of professional practice and not for a legitimate medical purpose.

8. A subcutaneous reservoir pump (“pain pump”) is a device that is surgically installed in a patient and automatically dispenses medicine, typically Schedule II controlled substances such as morphine, into the patient for the management of pain.

9. Facet Joint Blocks, Trigger Point Injections, Radiofrequency Ablations and Epidurals are surgical procedures typically used for the management of pain.

- Facet Joint Blocks, Trigger Point Injections and Epidurals typically involve the injection of medicine, such as steroids and anesthetic drugs, into the area of pain of a patient.
- Radiofrequency Ablation is a surgical procedure that involves the surgical burning of a nerve ending to inhibit its ability to transmit signals and thereby reduce pain.

#### **The Medicare Program**

10. The Medicare Program was enacted by Congress under Title XVIII of the Social Security Act. Medicare provides medical insurance benefits primarily to the elderly and disabled.

11. The Centers for Medicare and Medicaid Services (CMS), formerly known as the Health Care Finance Administration (HCFA), is the agency of the United States Department of Health and Human Services (HHS) delegated with administering the Medicare program.

12. Medicare pays benefits to health care providers, including physicians (“providers”), on the basis of reasonable charges for covered services provided to beneficiaries (patients), pursuant to written provider agreements entered into between Medicare and providers. The agreements and Medicare criteria require that the provider keep and provide to Medicare records necessary to fully disclose the services actually provided.

13. National Government Services (NGS), formally known as Administar, was the Medicare contractor for provider claims during the period of time covered by this Indictment. Contractors are private organizations under contract with CMS to review, process and pay Medicare claims on a reasonable charge basis.

14. Medicare reimburses health care providers for covered services for Medicare patients. Medicare determines what types of services are covered and therefore reimbursable, and at what rate the covered service will be reimbursed.

15. Providers enrolled in the Medicare program agree to submit claims for only medically and reasonably necessary services that are covered under the program and to only seek compensation to which the provider is legally entitled. Medicare defines “medically and reasonably necessary services” as services that meet current professional standards commonly held to be applicable to the case.

16. Providers of Medicare services in Indiana submit claims for payment to the carrier using written claim forms (CMS 1500 and UB 92). The carrier reviews and processes the claims

and issues payments to physicians for claims that appear to meet Medicare criteria.

17. During the period covered by this indictment, TIWARI was a participating Medicare provider pursuant to his written provider agreement. TIWARI submits Medicare claims and receives payment of those claims via electronic means and U.S. mail.

18. From January 1, 2002 through December 18, 2007, TIWARI was paid \$7,267,703.04 by Medicare for claims submitted to Medicare.

### **The Indiana Medicaid Program**

19. Under the Social Security Act, the United States shares with the fifty states the cost of medical services provided to indigent families with dependent children, and to aged, blind, and disabled individuals whose income and resources are insufficient to meet the cost of medical services.

20. Medicaid is a federally assisted grant program for the states. Medicaid enables the states to provide medical assistance and related services to needy individuals. CMS is delegated with administering Medicaid on the federal level. Within broad federal rules, however, each state decides who is eligible for Medicaid, the services covered, payment levels for services, and administrative and operation procedures. The state directly pays the providers of Medicaid services, with the state obtaining the federal share of the payment from accounts drawn on funds of the United States Treasury.

21. The State of Indiana (Indiana) participates in the Medicaid program (hereinafter Indiana Medicaid). The federal share of each state's Medicaid program varies by individual states. In Indiana the federal share is approximately two-thirds; the state share is one-third, so that for each payment to a provider, two-thirds is from the federal government and one-third is

from the State of Indiana.

22. The United States provides funds to Indiana through the Medicaid program. Providers of medical services to Medicaid patients who participate in the Medicaid program are eligible for reimbursement for covered services from these funds. Medicaid reimburses health care providers on the basis of reasonable charges for covered services provided to beneficiaries (patients), pursuant to written provider agreements entered into between Medicaid and providers. By participating in Medicaid and in order to receive reimbursement, providers agree to abide by the rules, regulations, policies and procedures governing reimbursement, and to keep and allow access to records and information as required by Medicaid.

23. Indiana Medicaid reimburses health care providers for covered services for Medicaid patients. Indiana Medicaid determines what types of services are covered and therefore reimbursable, and at what rate the covered service will be reimbursed.

24. Providers enrolled in the Indiana Medicaid program agree to submit claims for only medically and reasonably necessary services that are covered under the program and to only seek compensation to which the provider is legally entitled. Medicaid defines "medically and reasonably necessary services" as services which meet current professional standards commonly held to be applicable to the case.

25. Typically, and at all times covered by this Indictment, when a medical service is provided by a provider for a Medicaid patient the service provider submits a claim to Medicaid for payment and, if the service meets eligibility criteria, Medicaid pays the provider.

26. During the period covered by this indictment, TIWARI was a participating Medicaid provider pursuant to his written provider agreement. TIWARI submits Medicaid

claims and receives payment of those claims via electronic means or U.S. mail.

27. From January 2002 through December 2007, TIWARI was paid \$11,426,830.12 by Indiana Medicaid for claims.

#### **Private Insurance**

28. Private health care benefit programs reimburse providers for claims for services along the same rules and procedures as described above for Medicare and Medicaid, including written agreements to pay providers reasonable charges for medically and reasonably necessary covered services.

29. TIWARI also has been a participating provider with, and has submitted claims and received reimbursement from, private health insurance plans, including but not limited to Anthem, a private health care benefit program operating under a variety of business names, including Anthem Blue Cross Blue Shield ("Anthem"). Between 2002 and 2007, TIWARI was paid approximately \$2,923,154.88 by Anthem for claims.

#### **Pertinent Current Procedural Terminology (CPT) Codes**

30. The American Medical Association (AMA) assigns codes to procedures and services provided by health care providers. The Current Procedural Terminology (CPT), and Health Care Common Procedure Coding System (HCPCS) codes, published annually by the AMA, are systematic listings and codings of procedures and services performed by physicians. The CPT and HCPCS books include codes for office visits, surgical and medical procedures, for example, trigger points, radiofrequency ablations, epidurals and pain pumps. Physicians and health care benefit programs use the CPT and HCPCS codes to describe the services and procedures for which the physicians claim and receive payment. Each health care benefit

program establishes its own fee reimbursements for each procedure and service described by CPT and HCPCS codes.

### **The Scheme To Defraud**

31. From during in or about 2002 through during in or about December 2008, in the Southern District of Indiana, and elsewhere, KAMAL TIWARI did devise and intend to devise a scheme and artifice to defraud and to obtain money by means of false and fraudulent pretenses, representations and promises.

32. It was part of the scheme and artifice that TIWARI claimed and received reimbursement from health care benefit programs for medical procedures, such as facet blocks, radiofrequency ablations, and epidurals and other injection procedures, when these procedures were not medically necessary.

33. It was further part of the scheme and artifice that, beginning in 2005, TIWARI performed medical procedures, such as facet blocks, radiofrequency ablations, trigger points, and epidurals and other injection procedures that were not medically necessary and were performed in a frequency and pattern that generally conformed to the maximum number of such procedures that could be performed and still be reimbursed by health care benefit programs in order to maximize his income.

34. It was further part of the scheme and artifice that TIWARI required and attempted to require patients to undergo medically unnecessary injection procedures performed by him as a condition of receiving controlled substance prescriptions that he issued, which injection procedures were beyond the bounds of medical practice and were not for a legitimate medical purpose in the usual course of professional practice.

35. It was further part of the scheme and artifice that TIWARI administered controlled substances intravenously to patients that were beyond the bounds of medical practice or not for a legitimate medical purpose.

36. It was further part of the scheme and artifice that TIWARI prescribed controlled substances, including Schedule II and III controlled substances, at such dosage frequencies, combinations of controlled substances, and in such amounts to drug-dependent patients, as were likely to cause and that did cause those patients to submit to unwanted and unnecessary injection procedures and other services, and to cause those patients to become dependent on the medically unnecessary procedures of TIWARI.

37. It was further part of the scheme and artifice that TIWARI had pain pumps installed in patients that were not medically necessary.

38. It was further part of the scheme and artifice that TIWARI knew that persons who came to see him were addicted to Controlled Substances and/or other substances of abuse, but continued nevertheless to issue prescriptions to those persons beyond the bounds of medical practice and not for a legitimate medical purpose.

#### **Specifications of Fraud**

39. It was further part of the scheme and artifice to defraud that TIWARI engaged in the following conduct including, but not limited to:

40. **Patient K.G.:** a 43 year old female who began seeing TIWARI for neck and shoulder pain.

A. From March 2003 through December 2007, Patient K.G. received approximately 276 separate injections such as facet blocks, trigger points,

radiofrequency ablations, and epidurals in a frequency and pattern that was not medically necessary.

B. From June 2005 through December 2007, Patient K.G. received 3480 tablets for a total of 26,377.5 milligrams of Percocet.

41. **Patient P.H.:** A 40 year old male who began seeing TIWARI for back pain.

A. From April 2002 through October 2007, Patient P.H. received approximately 201 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From January 2003 through December 2007, Patient P.H. received 5820 tablets for a total of 52,200 milligrams of Methadone.

42. **Patient A.C.:** A female patient now deceased who began seeing TIWARI for back, head and neck pain.

A. From March 2003 through August 2008, Patient A.C. received approximately 118 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From March 2003 through August 2008 Patient A.C. received 10,143 tablets for a total of 100,980 milligrams of Methadone.

43. **Patient S.B.:** A 57 year old female patient who began seeing TIWARI for back pain.

A. From February 2002 through November 2007, Patient S.B. received approximately 90 separate injections such as trigger points, facet blocks,

radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From September 2002 through November 2007 Patient S.B. received 5550 tablets for a total of 55,500 milligrams of Methadone.

44. **Patient C.B.:** A 50 year old male patient who began seeing TIWARI for hip and shoulder pain.

A. From January 2002 through September 2007, Patient C.B. received approximately 135 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From October 2003 through November 2007, Patient C.B. received 6120 tablets for a total of 58,200 milligrams of Percocet.

C. From April 2007 through November 2007, Patient C.B. received 450 tablets for a total of 11,400 milligrams of Oxycontin.

45. **Patient D.H.:** A 52 year old male patient who began seeing TIWARI for back pain.

A. From April 2002 through December 2007, Patient D.H. received approximately 154 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From April 2002 through December 2007, Patient D.H. received 6307 tablets for a total of 62,770 milligrams of Methadone.

C. From February 2003 through December 2007, Patient D.H. received 5904 tablets for a total of 44,280 milligrams of Percocet.

46. **Patient B.H.:** A 55 year old female patient who began seeing TIWARI for back and leg pain.

A. From May 2002 through November 2007, Patient B.H. received approximately 166 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From July 2002 through November 2007, Patient B.H. received 7935 tablets for a total of 74,655 milligrams of Methadone.

47. **Patient H.H.:** A female patient now deceased who began seeing TIWARI for back pain.

A. From April 2004 through August 2006, Patient H.H. received approximately 191 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From October 2004 through October 2005, Patient H.H. received 6,337.5 milligrams in 845 tablets of Percocet.

48. **Patient W.K.:** A 67 year old male patient who began seeing TIWARI for back and leg pain.

A. From January 2001 through December 2007, Patient W.K. received a pain pump that injected Schedule II controlled substances in a frequency and pattern that was not medically necessary.

B. From June 2005 through November 2007, Patient W.K. received 9293 tablets for a total of 113,165 milligrams of oxycodone.

49. **Patient J.K.:** A 47 year old male patient who began seeing TIWARI for back pain.

A. From July 2002 through November 2007, Patient J.K. received approximately 139 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From September 2002 through November 2007, Patient J.K. received 7980 tablets for a total of 79,500 milligrams of Methadone.

C. From November 2003 through August 2005, Patient J.K. received 2160 tablets for a total of 16,200 milligrams of Percocet.

50. **Patient D.K.:** A 46 year old female patient who began seeing TIWARI for back pain.

A. From December 2001 through December 2007, Patient D.K. received a pain pump that injected Schedule II controlled substances in a frequency and pattern that was not medically necessary.

B. From June 2004 through November 2007, Patient D.K. received approximately 51 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

C. From July 2003 through November 2007, Patient D.K. received 2880 tablets for a total of 27,525 milligrams of Percocet.

51. **Patient R.M.:** A 45 year old male patient who began seeing TIWARI for back pain.

- A. From August 2001 through June 2003, Patient R.M. received a pain pump that injected Schedule II controlled substances in a frequency and pattern that was not medically necessary.
- B. From October 2003 through November 2007, Patient R.M. received approximately 104 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.
- C. From March 2002 through March 2008, Patient R.M. received 5510 tablets for a total of 55,100 milligrams of Methadone.

52. **Patient P.M.:** A 49 year old female patient who began seeing TIWARI for back pain.

- A. From January 2002 through November 2007, Patient P.M. received approximately 146 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.
- B. From July 2002 through December 2007, Patient P.M. received 7,860 tablets for a total of 78,600 milligrams of Methadone.

53. **Patient M.P.:** A 47 year old male patient who began seeing TIWARI for back and leg pain.

- A. From January 2002 through May 2007, Patient M.P. received approximately 215 separate injections such as trigger points, facet blocks,

radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From January 2002 through September 2007, Patient M.P. received 8910 tablets for a total of 89,100 milligrams of Methadone.

54. **Patient L.T.:** A 56 year old male patient who began seeing TIWARI for back pain.

A. From July 2002 through December 2007, Patient L.T. received approximately 65 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From January 2002 through November 2007, Patient L.T. received 6450 tablets for a total of 64,500 milligrams of Methadone.

C. From November 2006 through November 2007, Patient L.T. received 1260 tablets for a total of 9,450 milligrams of Percocet.

55. **Patient D.O.:** A male patient now deceased who began seeing TIWARI for back pain and fibromyalgia.

A. From August 2004 through December 2008, Patient D.O. received approximately 174 separate injections such as trigger points, facet blocks, radiofrequency ablations, and epidurals, in a frequency and pattern that was not medically necessary.

B. From June 2004 through December 2008, Patient D.O. received 12,985 tablets for a total of 128,350 milligrams of Methadone.

**COUNT ONE**  
**(Health Care Fraud, 18 U.S.C. § 1347)**

56. Paragraphs 1-55 are realleged and incorporated by reference as if fully set forth herein.

57. Beginning during in or about 2002 and continuing through December 2008, within the Southern District of Indiana, and elsewhere; KAMAL TIWARI, the defendant herein, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute and attempt to execute a scheme and artifice to: (1) defraud a health care benefit program; and (2) obtain money under the custody and control of a health care benefit program by false and fraudulent pretenses, representations and promises;

All in violation of Title 18, United States Code, Section 1347.

**COUNT TWO**  
**(Health Care Fraud Resulting In Serious Bodily Injury, 18 U.S.C. § 1347)**

58. Paragraphs 1-57 are realleged and incorporated by reference as if fully set forth herein.

59. Beginning during in or about 2002 and continuing through December 2008, within the Southern District of Indiana, and elsewhere; KAMAL TIWARI, the defendant herein, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute and attempt to execute a scheme and artifice to: (1) defraud a health care benefit program; and (2) obtain money under the custody and control of a health care benefit program by false and fraudulent pretenses, representations and promises, resulting in serious bodily injury to the individuals specified in paragraphs 39 - 56;

All in violation of Title 18, United States Code, Section 1347.

**COUNTS THREE - THIRTEEN**

**(Illegal Drug Distribution, 21 U.S.C. § 841(a)(1))**

The Grand Jury further charges that:

60. Paragraphs 1 through 59 are realleged and incorporated by reference as if fully set forth herein.

61. On or about the dates listed below, within the Southern District of Indiana and elsewhere, KAMAL TIWARI, the defendant herein, did knowingly, intentionally and unlawfully distribute and dispense, and caused to be distributed and dispensed, a mixture and substance containing a detectable amount of the Schedule II narcotic drug controlled substance listed below, not for a legitimate medical purpose and beyond the bounds of medical practice, to the following persons and in the following quantities:

Count	Date	Patient	Controlled Substance	Number of tablets @ strength per tablet
3	12/3/08	D.O.	Methadone	90 tablets @ 5 mg.
4	11/6/07	W.K.	Oxycontin IR ("Immediate Release")	240 tablets @ 5 mg.
5	11/16/07	W.K.	Oxycontin IR	240 tablets @ 5 mg.
6	10/26/07	W.K.	Oxycontin	90 tablets @ 40 mg.
7	11/16/07	W.K.	Oxycontin	90 tablets @ 40 mg.
8	10/29/07	J.K.	Methadone	180 tablets @ 10 mg.
9	11/30/07	J.K.	Methadone	180 tablets @ 10 mg.
10	11/12/07	R.M.	Methadone	150 tablets @ 10 mg.
11	12/10/07	R.M.	Methadone	150 tablets @ 10 mg.
12	10/24/07	L.T.	Percocet	90 tablets @ 7.5/325 mg.

13	11/26/07	L.T.	Percocet	90 tablets @ 7.5/325 mg.
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All in violation of Title 21, United States Code, Section 841(a)(1).

## FORFEITURE

1. In keeping with Federal Rule of Criminal Procedure 32.2, the United States hereby gives the defendant notice that it will seek forfeiture of property pursuant to Title 18, United States Code, Section 982(a)(7) and/or Title 21, United States Code, Section 853 as part of any sentence imposed.

2. Pursuant to Title 18, United States Code, Section 982 and Federal Rule of Criminal Procedure 32.2, if convicted of either of the offenses set forth in Counts One and Two of the Indictment, the defendant shall forfeit to the United States:

- a. any property, real or personal, constituting or derived from gross proceeds the defendant obtained as the result of the offenses charged in Counts One and Two; or
- b. a sum of money equal to the total amount of money involved in the offense(s) of which he is convicted.

3. If convicted of any of the offenses set forth in Counts Three through Thirteen of the indictment, the defendant shall forfeit to the United States:

- a. any and all property constituting or derived from any proceeds the defendant obtained directly or indirectly as a result of the offense or offenses of which he is convicted; and
- b. any and all property used or intended to be used in any manner or part to commit or to facilitate the commission of the offense or offenses of which he is convicted; or
- c. a sum of money equal to the total amount of money involved in the offense(s) of which he is convicted.

4. Pursuant to Title 21, United States Code, Section 853(p), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in Paragraphs 2 and 3, if, by any act or omission of the defendant, the property described in Paragraphs 2 and 3, or any portion thereof:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;

- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty.

In keeping with the foregoing, it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of all forfeitable property as described above in Paragraphs 2 and 3.

A TRUE BILL *W.D.O.*

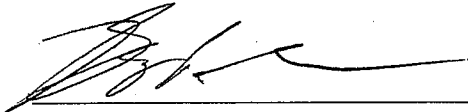
FOREPERSON ~

TIMOTHY M. MORRISON  
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by:

  
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by:

  
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