

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA

5:22-cr-00390-JLS

v.

MUHAMAD ALY RIFAI

**PRO SE MOTION FOR SANCTIONS AND LITIGATION FEES (HYDE MOTION)**

Defendant Muhamad Aly Rifai (Dr. Rifai) *pro se* respectfully submits to this Honorable Court a motion requesting attorney fees and litigation costs and a consideration for sanctions for prosecutors representing the United States. Dr. Rifai, citing the Third Circuit Court of Appeals precedential case US v Manzo<sup>1</sup>, “ Under a statutory provision known as the “Hyde Amendment,” a district court in criminal cases “may award to a prevailing party, other than the United States, a reasonable attorney’s fee and other litigation expenses, where the court finds that the position of the United States was vexatious, frivolous, or in bad faith, unless the court finds that special circumstances make such an award unjust”<sup>2</sup>.

On May 9, 2024, a Jury found defendant Dr. Rifai NOT GUILTY on all charges (ECF No 70). On January 10, 2025, Dr. Rifai moved for the verdict (which had *not* been entered by the clerk) to be entered under Rule 32 (k)(1) of the Federal Rules of Criminal Procedure (ECF No 84). This Honorable Court ordered the verdict to be entered on January 14, 2025 (ECF No 85). Dr. Rifai now timely submits this motion under the “Hyde Amendment” 18 U.S.C. § 3006A, relying on the Third Circuit Court of Appeals precedential cases US v Manzo<sup>1</sup> and US v Reyes-Romero<sup>3</sup>.

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<sup>1</sup> United States v. Manzo, 712 F.3d 805, 810 (3d Cir. 2013)

<sup>2</sup> Pub. L. No. 105-119, § 617, 111 Stat. 2440, 2519 (1997), reprinted in 18 U.S.C. § 3006A, Statutory Note

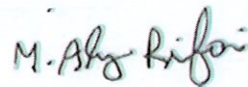
<sup>3</sup> United States v. Reyes-Romero, 959 F.3d 80 (3d Cir. 2020)

### REQUEST FOR RELIEF

Dr. Rifai submits a prayer for relief to this Honorable Court to declare the following:

- A. The entire Government investigation and prosecution violated his rights under the 4th Amendment, 5th Amendment, and 14th amendment of the Constitution, and that this prosecution was frivolous and vexatious.
- B. The entire Government investigation and prosecution violated due process as well as other regulations of the Department of Justice and should be declared in bad faith.
- C. Award Dr. Rifai attorney's fees and litigation costs in excess of \$650,000.
- D. Further, Dr. Rifai respectfully moves this court to issue an order of public reprimand for the prosecutors representing the United States for their bad faith actions during this prosecution.
- E. Dr. Rifai respectfully requests from this court a public endorsement for complaint seeking an internal investigation of the prosecutors representing the United States by the Office of Professional Responsibility (OPR) of the Department of Justice.
- F. Dr. Rifai prays that this court would also grant Expungement as the remedy for these constitutional violations in this vexatious, frivolous prosecution done in bad faith.
- G. Grant any further relief this Honorable Court may deem just and proper.

Respectfully Submitted,



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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE UNITED STATES OF AMERICA

5:22-cr-00390-JLS

v.

MUHAMAD ALY RIFAI

**PRO SE MEMORANDUM IN SUPPORT OF MOTION FOR SANCTIONS AND  
ATTORNEY FEES AND COST (HYDE MOTION)**

Defendant Rifai has submitted two separate yet sister *pro se* motions; the first one is to expunge the arrest and prosecution record and this second motion for sanctions, attorney's fees and costs (Hyde Motion). These two motions rely on guidance from separate and distinct precedential cases from the Third Circuit court of appeals (US v. Rowlands<sup>1</sup>, US v. Reyes-Romero<sup>2</sup>). They are one of the same and both aim to show that this prosecution was invalid and illegal, or as Congress frames it; frivolous, vexatious, or ("and" in our case) in bad faith.

**Case History**

Defendant Dr. Rifai repeats and avers the case history as outlined in his motion for expungement filed recently, Dr. Rifai adds this following relevant history.

On November 8, 2017, Cynthia Reddy filed under seal a *qui tam* action in this court alleging violations of the False Claims Act<sup>3</sup>. The complaint was amended in March 2018 to include Leigh Keller, another employee of Dr. Rifai. The case (presumably stale) remains under seal before

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<sup>1</sup> US v. Rowlands, 451 F.3d 173 (3d Cir. 2006)

<sup>2</sup> United States v. Reyes-Romero, 959 F.3d 80 (3d Cir. 2020)

<sup>3</sup> Reddy and Keller v Rifai, 17-5059-JLS, remains under seal eight years later before this Honorable Court. The case was assigned to Assistant United States Attorney (AUSA) Joel Sweet from the civil division who referred the case to the criminal division for criminal prosecution.

this Honorable Court eight years later, though the majority of medical records pertaining to this case would've been destroyed in accordance with Pennsylvania medical record retention statute<sup>4</sup>.

In January 2018, prosecutors representing the United States requested, through subpoenas, complete financial information on Dr. Rifai and Blue Mountain Psychiatry. The Internal Revenue Service was also instructed to initiate audit(s) of Dr. Rifai and Blue Mountain Psychiatry. Tax years 2016, 2017, 2018, 2019 returns of Dr. Rifai, his family and businesses were audited. This information was not presented at trial, as the audits revealed no deficiencies (ECF no 82 at 49-60). In August 2017, the Northeast Uniformed Program Integrity Contractor (NE UPIC) Safeguard Services LLC, initiated a medical record audit of Blue Mountain Psychiatry and Dr. Rifai. The United States instructed Safeguard Services LLC to withhold the audit results from Dr. Rifai (ECF No 78 at 62-64) in violation of 42 CFR § 405.904(a)(2)). A representative of Safeguard Services LLC testified at trial that they did not support the case presented by the United States. Even though representatives of Safeguard Services LLC disavowed the 2017 audit report under oath at trial (ECF No. 78 at 62-64). Safeguard Services LLC under instructions from the United States resubmitted in July 2024 to the Center for Medicare Services (CMS) the 2017 audit report with its flawed and fabricated data to falsely seek unsubstantiated repayment from Dr. Rifai (Exhibit 1).

In March 2018, defendant Dr. Rifai settled with CMS (Carbon, Monroe, Schuylkill) Medical Care Corporation and Blue Mountain Health System, a civil suit brought before Honorable Court alleging discrimination and contract violations, and the public settlement record showed a large settlement payment to Dr. Rifai<sup>5</sup>.

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<sup>4</sup> Commonwealth of Pennsylvania, 49 Pa. Code § 16.95. Medical records.

<sup>5</sup> Rifai v. CMS Med. Care Corp., CIVIL ACTION NO. 15-1395 (E.D. Pa. Sep. 21, 2017)

On Monday December 13, 2021, agents of Department of Health and Human Services (OIG-HHS) accompanied by agents of the Drug Enforcement Administration (DEA) executed a search warrant on Dr. Rifai's offices while he and his staff were engaged in COVID-19 vaccination efforts, as assigned by the Pennsylvania Department of Health (Exhibit 2) vaccinating almost 1% of the residents of Northampton County, Pennsylvania. The agents disconnected the electric power supply to the office to disable the video surveillance system leading to a large number of COVID-19 vaccines to be spoiled. OIG-HHS agents, whose 2020 strategic plan was Goal 1: PROTECT PEOPLE (Exhibit 3)<sup>6</sup>, forcefully summoned an employee of Dr. Rifai, who was off on that day, from home to help locate medical records. The employee fearing arrest and prosecution came to the office with her eight months old baby who contracted COVID-19 from the unmasked OIG-HHS agents, other employees also did contract COVID-19 having been forced to take their masks off for identification in the midst of a public Health emergency.



<sup>6</sup> Office of the Inspector General for the Department of Health and Human Services. OIG Strategic Plan: Oversight of COVID-19 Response and Recovery (May 2020) available at (Exhibit 3). <https://oig.hhs.gov/reports/featured/coronavirus/oig-strategic-plan-oversight-of-covid-19-response-and-recovery-may-2020/>

On Friday, November 30, 2023, heavily armed DEA agents accosted Dr. Rifai while at his Mosque at the Easton Phillipsburg Muslim Association (1017 Lehigh Street Easton PA 18042), to deliver a civil notification of an order to show cause (that could have been sent by mail or email). This action was unnecessary and aimed to terrorize and intimidate and caused significant alarm in the Easton Muslim community as the Mosque was guarded by Pennsylvania Constables due to recent assassination attempts in the area on Muslim Imams. The DEA agents' action was malicious and in bad faith as they were aware that Dr. Rifai was represented by two attorneys, Mr. Paul Hetznecker and Mr. Ronald Chapman II, both of whom the DEA agents had previously communicated with numerous times by email.

### **The Prosecutors**

The Third Circuit indicated in its precedential US v. Reyes-Romero ruling, "In sum: The Hyde Amendment demands we "[f]ocus[] on the prosecutors' conduct," Monson, 636 F.3d at 439 (emphasis added), and ask **whether the alleged prosecutorial misconduct was so "pervasive" as to "render the government's litigating position as a whole vexatious, frivolous, or in bad faith,"** Mixon, 930 F.3d at 1112 (emphasis added)."

### **Joan E Burnes**

Assistant United States Attorney (AUSA) Joan E. Burnes, a graduate from Syracuse University with a bachelor's in art in 1993 and a Temple University school of law JD graduate in 1998 with magna cum laude, represented the United States (ECF No 75 at 10). To demonstrate the prosecutorial insolence of AUSA Burnes, we review her prosecutorial relevant history (past behavior is the best predictor of future behavior), in the prosecution of Dorothy June Brown, who was the founder of the cyber school movement<sup>7</sup>. The case ended in a mistrial after the jury could

<sup>7</sup> United States v. Brown, CRIMINAL ACTION NO. 12-0367 (E.D. Pa. Oct. 3, 2013)

not reach a verdict. Dr. Dorothy June Brown's co-defendants were all found not guilty. The case was ultimately dismissed by the United States<sup>6</sup>. Defense attorney William McSwain represented Dr. Brown and indicated, commenting on AUSA Burnes' in his closing statement, "She is facing all these counts because the Federal Government is obsessed with the compensation she received and had to make up a scheme" (12-0367 ECF No 282 at 120)<sup>7</sup>. Attorney McSwain's statements carry credence as he was later appointed the US Attorney for the Eastern District of Pennsylvania (2017-2021).

### **Jacqueline C. Romero**

United States Attorney Jacqueline C. Romero was hailed as the first woman to hold the position of United States Attorney for the Eastern District, in addition, she is the first woman of color and first LGBTQIA+ person to become U.S. Attorney for the Eastern District of Pennsylvania as publicized by the Philadelphia Gay Network<sup>8</sup>. US Attorney Romero's expertise was in the healthcare fraud field, and she supervised the indictment after becoming US attorney in July 2022 (ECF No 1). US Attorney Romero did not exhibit prudence nor sound judgment in the supervision of personnel and prosecutors (Exhibit 4)<sup>9</sup>.

### **The Agents**

#### **Stephanie Yeager**

Special Agent Stephanie Yeager reports joining with the Office of Investigations at OIG-HHS in May 2015. She held a bachelor's degree in psychology from York College of Pennsylvania and a master's degree in applied psychology from the University of Baltimore. She had completed

<sup>8</sup> Philadelphia Gay News, *Out US Attorney Jacqueline C. Romero Speaks on LGBTQ+ Visibility*, Jeremy Rodriguez, (November 22, 2023) <https://epgn.com/2023/11/22/out-u-s-attorney-jacqueline-c-romero-speaks-on-lgbtq-visibility/>

<sup>9</sup> Congressman Lloyd Smucker, *Smucker, Cotton: DOJ Inspector General Should Investigate US Attorney Jacqueline Romero*, (June 18, 2024) <https://smucker.house.gov/media/press-releases/smucker-cotton-doj-inspector-general-should-investigate-us-attorney-jacqueline>

the criminal investigator training program at the federal law-enforcement training center in August 2015. When this investigation commenced in January 2018, Agent Yeager had only been on the job for two and a half years. Review of her work history with OIG-HHS reveals that the Center for Medicare Services (CMS) disagreed with the majority of her report recommendations as a team leader in the Office of Evaluation and Inspections from August 2006 to May 2015. For example, in a 2012 OIG-HHS report lead by Auditor Yeager (later Special Agent), CMS vehemently disagreed with the flawed assertions of Lead Auditor Yeager who had misinterpreted the code of federal regulation (OEI-03-12-00550 at 34), "CMS does not concur with this recommendation. Section 1881(b)(14)(A)(i) of the (Social Security Act) act requires CMS implement a payment system"<sup>10</sup>. This demonstrates the investigative inclinations of Special Agent Yeager with a total disregard for the constitutional and statutory framework enacted by Congress governing the Department of Health and Human Services operations and payment integrity (Exhibit 5). Similarly, in this prosecution she disregarded 45 CFR § 164.501, a measure passed by Congress to enshrine due process protections for Medicare providers like Dr. Rifai. As the lead agent for OIG-HHS, Ms. Yeager supervised agents during December 13, 2021, search of Dr. Rifai's office, where the agents intentionally ignored the Public Health Emergency precautions, something that the Department of Health and Human Services was broadcasting to the public. These actions together demonstrate the lawless attitude of special agent Yeager.

#### **Andrew J Timonere**

Special Agent Andrew J Timonere joined OIG-HHS Office of Investigations in November 2018 after being an air marshal for the Department of Homeland Security (2016-2018). In June

<sup>10</sup> Department of Health and Human Services, *Update: Medicare Payments for End Stage Renal Disease Drugs*, (March, 2024) <https://www.govinfo.gov/content/pkg/GOVPUB-HE-PURL-gpo68741/pdf/GOVPUB-HE-PURL-gpo68741.pdf>

2019, he submitted an affidavit of probable cause for a search warrant in this prosecution, despite having no prior experience with the Medicare system or medical coding. This was his first search warrant affidavit after completing the Federal Law Enforcement Training Academy. At trial, Agent Timonere testified that he did not undertake any analysis of financial data despite having a degree in accounting and the government having collected all the financial and tax data of defendant Dr. Rifai (ECF No 82 49-60). Agent Timonere is related to the disgraced and disbarred<sup>11</sup> attorney James M. Timonere, who was found guilty and convicted of smuggling cocaine and being the money launderer for Columbian cartel leader Pablo Escobar<sup>12</sup>.

In US v. Reyes-Romero, the Third Circuit clearly articulated, \* 33 “To be clear, misconduct by law enforcement officers or other executive departments can be relevant to a Hyde Amendment application if prosecutors leverage that misconduct to further a prosecution that has no factual or legal basis or that is brought for purposes of harassment.”<sup>3</sup>. Here, prosecutors leveraged these agents for four search warrants without probable cause and one illegal administrative subpoena.

### **The Indictment**

AUSA Burnes submitted to this Honorable Court a trial memorandum (ECF No 37), “On November 8, 2022, a federal grand jury sitting in the Eastern District of Pennsylvania returned an indictment charging defendant Muhamad Aly Rifai with four counts of healthcare fraud in violation of 18 U.S.C. § 1347. The indictment charges that the defendant Rifai executed a scheme to defraud Medicare from on or about January 1, 2015 through in or about October, 2022, by directing his staff to submit claims for higher levels of care and for services that were never provided to Medicare beneficiaries. For each of the four substantive counts, the indictment charges

<sup>11</sup> Disciplinary Counsel v. Timonere, 74 Ohio St. 3d 629, 660 N.E.2d 1171 (Ohio 1996)

<sup>12</sup> Tampa Bay Times, *Lawyer Guilty in Drug Scheme*, Thomas Tobin (November 16, 1991).  
<https://www.tampabay.com/archive/1991/11/16/lawyer-guilty-in-drug-scheme/>

causing the submission of claims for 30 minutes of psychotherapy services (CPT code 90833) when the provider (a Rifai employee) performed only a 15-minute medication check.”.

Dr. Rifai disputes that elements required for conviction under 18 USC § 1347 were even closely met. In US v Reyes-Romero the Third Circuit clarifies \* 7, “In assessing frivolousness, therefore, we view the prosecution through the lens of the elements of the criminal charge and the evidence required to satisfy those elements.”. At the core of the indictment (ECF 1) are four charges of healthcare fraud in violation of 18 USC § 1347 as the indictment claims that defendant Dr. Rifai knowingly and willfully executed a scheme and artifice to defraud healthcare benefit program, that is Medicare, and to obtain money and property owned by and under the custody in the control of the healthcare benefit program by means of false and fraudulent pretenses, representation and promises in connection with a delivery of payment for healthcare, benefits, items, and services by submitting and causing to be submitted fraudulent health insurance claims described below for services that were not actually provided. The indictment further alleges four fraudulent services of psychotherapy under the American Medical Association Current Procedural Terminology (CPT) code 99308 (ECF No 1).

Defendant Dr. Rifai did not execute, nor attempt to execute, any scheme or artifice to defraud any health care benefit program. He also did not obtain by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any healthcare benefit program. All the monies that were paid to Dr. Rifai by Medicare were legitimate and based on services provided and rendered appropriately and lawfully. As testimony in trial showed, all the services provided by Dr. Rifai were compliant (to the best of Dr. Rifai’s ability) with all prevailing relevant rules and regulations of the Medicare program at that time (ECF No 79 at 5-60).

### Basis of the Indictment

AUSA Burnes, after a lengthy close to a 5-year investigation to include 4 search warrants (rife with 4th, 5th, and 14th Amendment(s) violations, obtained permission from her supervisors to empanel a grand Jury for charges of healthcare fraud under 18 USC § 1347 (ECF 1). The target, Psychiatrist Defendant Dr. Rifai, according to the United States, billed Medicare for services not provided as they were not documented. The grand jury approved an indictment and jury trial proceeded without any expert witness testimony for the United States (neither an expert in medical and psychiatric coding nor an expert in the field of psychiatry). The case presented by the United States collapsed at trial after the glaring and incorrect information in the indictment was revealed. At the core of the indictment are assumptions and suppositions about the provisions of medical billing and coding for psychiatric services. AUSA Burnes proffered, without any expert witness advice or guidance, suppositions and postulations as evidenced by trial motions and memorandums (ECF No 36, 37). These theories and conjectures, about the billing and coding of complex psychiatric services, advanced by AUSA Burnes at trial were discredited by expert witnesses for Defendant Dr. Rifai (ECF 79, 82), as those were the only fact witnesses presented by the defense (an expert certified medical coder; David Klein, CPC, CPMA, CHC and a practicing psychiatrist Kenneth DiNella, MD). Again, the United States brought no credible expert witness to support the assertions and contentions in the indictment (ECF No 1, ECF No 78).

The fact that a United States Attorney's Office would initiate a criminal indictment and prosecution against a psychiatrist in the Eastern District of Pennsylvania without any professional guidance nor testimony from a specialist trained in medical or psychiatric coding is a frightening situation. This is analogous to someone without any licensure, experience or certification professing to being able to drive a large tractor trailer truck after briefly riding on a bus as a

passenger. The results were disastrous for both the United States and Dr. Rifai. In fact, the results were catastrophic for the citizens of the Eastern District of Pennsylvania who lost access to psychiatric services, due to this prosecution, in the midst of the COVID-19 Public Health Emergency.

AUSA Burnes pinpointed Dr. Rifai through the frivolous civil proceeding *qui tam* filing Reddy v Rifai (the best evidence of frivolousness is that the *qui tam* prosecution remains dormant 8 years later). AUSA Burnes then leveraged the federal agents to use the flawed and fabricated 2017 NE UPIC audit as additional evidence while intentionally denying Dr. Rifai due process to dispute its validity. Finally, AUSA Burnes reviewed the financial records of Dr. Rifai. It was with sinister motives and moral obliquity that AUSA Burnes decided to pursue this illegal and invalid prosecution “The Government had to make up a scheme”.

In his lecture to Federal Prosecutors many decades ago, Supreme Court Justice Robert H. Jackson said, “prosecutors can easily succumb to the temptation of first 'picking the man and then searching the law books, or putting investigators to work, to pin some offense on him.’”<sup>13</sup>. The record clearly indicates that AUSA Burnes and her supervisors unleashed these agents on this Middle Eastern Muslim defendant and leveraged them to disregard Dr. Rifai’s constitutional rights. AUSA Burnes also disregarded established Federal regulations and Dr. Rifai’s rights to due process. AUSA Burnes and Federal Agents conducted four searches with faulty and invalid search warrant affidavits as well as an administrative subpoena advancing the position of the United States that was frivolous, vexatious, and in bad faith.

### **MEETING THE HYDE AMENDMENT BURDEN**

In US v Manzo<sup>1</sup> the Third Circuit, citing its sister circuits indicates \*7, “The defendant

<sup>13</sup> 24 J. Am. Jud. Soc’y 18 (1940), 31 J. Crim. L. 3 (1940) (address at Conference of United States Attorneys, Washington, D.C., April 1, 1940).

bears the burden of meeting any one of the three grounds under the statute, and acquittal by itself does not suffice.” Isaiah, 434 F.3d at 519.

In US v. Reyes Romero<sup>3</sup> the Third Circuit clarifies \*33, “We have taken the amendment’s use of the disjunctive “or” to mean that each ground must be assessed separately.” We outline how the position of the United States in this case was Frivolous, Vexatious and in Bad Faith (emphasis added with modification from *or* to **and**);

<b>Frivolous</b>	<ol style="list-style-type: none"> <li>1. The <i>qui tam</i> case which was the catalyst of this prosecution remains under seal and unprosecuted eight years after it was filed.</li> <li>2. The United States relied on incorrect, obviously wrong and outdated text for the American Medical Association Current Procedural Terminology (CPT) and did not rely on any expert coders or clinicians to support their findings.</li> <li>3. The United States intentionally presented an incorrect interpretation of 45 CFR § 164.501 on the definition of “Psychotherapy Notes”</li> </ol>
<b>Vexatious</b>	<ol style="list-style-type: none"> <li>1. The United States conducted four search warrants and submitted one administrative subpoena all based on no probable cause.</li> <li>2. The United States denied Dr. Rifai his due process rights by depriving him, in its press releases, of the presumption of innocence.</li> <li>3. The four charges presented in the indictment were not supported by the evidence and the United States witnesses forswore the charges.</li> <li>4. The witnesses for United States who were presented as expert(s) disavowed the investigation and did not support the case of the United States.</li> </ol>
<b>In Bad Faith</b>	<ol style="list-style-type: none"> <li>1. The United States intentionally and recklessly deprived Dr. Rifai of due process as codified in 42 CFR § 405.904(a)(2)).</li> <li>2. The United States instigated the initiation of a frivolous order to show cause by the Drug Enforcement Administration (DEA)</li> <li>3. The United States published press releases that disadvantaged Dr. Rifai and deprived him of due process violating the Justice Manual</li> </ol>

## THE POSITION OF THE UNITED STATES WAS FRIVOLOUS

The Third Circuit in Reyes-Romero \* 34 indicated, “In assessing frivolousness, therefore, we view the prosecution through the lens of the elements of the criminal charge and the evidence required to satisfy those elements.”

We detail how this Prosecution is frivolous and groundless:

- 1) The *qui tam* case which was the catalyst of this prosecution by the United States remains under seal and unprosecuted eight years after it was filed.

In US v. Manzo, the Third Circuit citing Gilbert indicated, “Courts have interpreted a “frivolous” action as one that is “groundless[,] with little prospect of success.” Gilbert, 198 F.3d at 1299 (alteration and internal quotation marks omitted).” On November 8, 2017, Cynthia Reddy (a former employee of Dr. Rifai), filed under seal a *qui tam* action in this court alleging violations of the False Claims Act<sup>4</sup>. The complaint was amended in March 2018 to include Leigh Keller, another employee of Dr. Rifai. Both employees testified for the United States at trial. Eight years later, the case (presumably stale) remains under seal before this Honorable Court.

The *qui tam* action was the catalyst for this criminal prosecution by the United States. AUSA Sweet and the realtors (Cynthia Reddy and Leigh Keller) in this case have presumably abandoned this litigation as no action has been taken in more than 8 years and most of the medical and other records pertaining to this *qui tam* case would’ve been destroyed in accordance with Pennsylvania medical record retention statute<sup>4</sup>.

To understand how this criminal prosecution, which was triggered by the *qui tam* action, is frivolous, we can examine the standard for prevailing in a civil federal action codified in 2 CFR 180.990;

“Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.”

Based on the trajectory of the *qui tam* action (which mirrored in its false allegations this frivolous criminal prosecution), The United States and the realtors do not believe they can even meet the preponderance of evidence standard “more probably true than not.” This is the absolute definition of frivolousness in a criminal case; a criminal prosecution that relied mainly on the testimony of *qui tam* realtors where the United States now believe, demonstrated by their lack of any action, that they **could not** even meet the preponderance of evidence civil litigation standard.

Additionally, the position of the United States was frivolous because it did not follow the Department of Justice Manual<sup>14</sup> guidance on the grounds for commencing a prosecution as evident in the supportive *qui tam* action being stale, the Justice Manual clearly states:

The attorney for the government should commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution

In US v. Reyes-Romero, \*34 citing Monson, 636 F.3d at 440, the Third Circuit affirmed that to be frivolous, a prosecution must be, “utterly without foundation in law or fact” (citation omitted).

2) The United States relied on incorrect, obviously wrong and outdated text for the American Medical Association Current Procedural Terminology and did not rely on any expert coders or clinicians to support their findings.

The Third Circuit clarified in US v. Reyes-Romero, “[A] case is frivolous when the government’s position was foreclosed by binding precedent or [is] obviously wrong ... .” Capener, 608 F.3d at 401 (first alteration in original) (internal quotation marks omitted).”

<sup>14</sup> Department of Justice Manual Section 9-27.220, Grounds for Commencing or Declining Prosecution, <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution#9-27.220>

The United States misrepresented the criteria adapted by the American Medical Association Current Procedural Terminology (CPT) for psychiatry. The violation of these criteria was the core basis of a charge of healthcare fraud prosecution claiming services were billed to Medicare without being provided. These misrepresentations of the CPT (omitting from the probable cause affidavit and the entire prosecution's several critical information from the CPT code) rendered this prosecution "Obviously wrong." Furthermore, the description of "Medication Check", code 90862 (ECF 75 at 13, 26, 27), as cited within the CPT 2012 book: "pharmacological management, including prescription, use, and review of medication with no more than minimal medical psychotherapy." So even if the government meant that "Med Checks" were the code performed by Dr. Rifai and his staff, code 90862 includes, "no more than minimal psychotherapy" which renders even the incorrect position advanced by the government further baseless and incorrect and ultimately frivolous (Psychotherapy was performed even according to the Government wrong position).

The case advanced by the United States is objectively groundless because it presented an abstraction of the Current Procedural Terminology book while the real book would have completely made the charges baseless. The Government's case is objectively deficient and lacks factual foundation as the Government's main expert did not support the government's case upon cross examination.

The Third Circuit quoting its sister Second Circuit clearly declared, "A Hyde Amendment award is not available simply because a defendant was acquitted or because the government engaged in "contentious and hard-fought" litigation tactics. *United States v. Schneider*, 395 F.3d 78, 88 (2d Cir. 2005). To the contrary, "government attorneys are entitled to be zealous advocates of the law on behalf of the . . . people of the United States," and "[w]hile a prosecutor is not at

liberty to strike foul blows, he may strike hard ones . . . —indeed, he should.” *United States v. Knott*, 256 F.3d 20, 29 (1st Cir. 2001) (internal quotation marks and citation omitted). Noreen Thomas, RN (ECF 78 at 62-64), the Government chosen witness on cross examination, did not endorse the Government’s case or investigation. The prosecution sequence in this case was all illegal foul blows. The jury saw the foul blows firsthand and rendered a verdict of NOT GUILTY.

The opinions about the facts of the case depended on the views of the prosecutors and agents representing the United States. AUSA Burnes issued the Target Letter in December 2021, based solely on her suspicion and assessment without any expert consultation about a complex medical coding and billing issue. According to DOJ policy, a target is a “putative defendant”, meaning that there is sufficient evidence and a sufficient likelihood of conviction to warrant bringing criminal charges. In fact, AUSA Burnes did not meet with a team from Safeguard Services LLC’s consultant reviewer for Medicare until March 2022 and did not bring charges until 11 months after the target letter, and only one month before the expiration of the statute of limitations. Even the chosen witnesses for United States, presented as experts, disavowed the investigation and did not support the case of the United States.

Citing the Third Circuit in *Reyes-Romero* at 34, “*Bove*, 888 F.3d at 608 (frivolousness requires a prosecution that is “[m]anifestly insufficient or futile” (alteration in original) (citation omitted));”. The United States illegally utilized the flawed UPIC audit by deciding to ignore Federal regulations that gave Defendant Dr. Rifai five lines of appeal and redress before this flawed audit would ever be considered as evidence. The Government Prosecutors and Agents applied for another search warrant in 2021 that lacked probable cause, further violating the fourth amendment rights of this defendant, and despite conducting a thorough search, the Agents and Prosecutors were not satisfied and couldn’t find the records they were looking for, then resorting to

manufacturing a frivolous administrative proceeding through the DEA, an arm of the United States Department of Justice, the record of an undercover police officer they had sent to this defendant's practice, then used the record in the criminal case while continuing with a frivolous administrative hearing that was baseless and illegal.

3) The United States intentionally presented an incorrect interpretation of 45 CFR§ 164.501 on the definition of "Psychotherapy Notes"

The Third Circuit citing its sister Eleventh Circuit affirms in *US v Reyes-Romero* "In particular, a defendant must show that the government's position underlying the prosecution amounts to prosecutorial misconduct – a prosecution brought vexatiously, in bad faith, or so utterly without foundation in law or fact as to be frivolous." *United States v. Gilbert*, 198 F.3d 1293, 1299 (11th Cir. 1999). The Code of Federal Regulations Defines; "Psychotherapy notes means notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record. Psychotherapy notes excludes medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: Diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date."

The Government's assertion about "psychotherapy notes" being a requirement to prove psychotherapy is quite laughable and "obviously wrong" considering that Medicare indicated on January 21, 2005<sup>15</sup> that providers are not required to provide psychotherapy notes. In fact, the policy clearly states, "This policy instructs contractors not to request that a provider submit

<sup>15</sup> Centers for Medicare and Medicaid Services, *Publication 100-08 on Medicare Program Integrity (Transmittal 98)*, <https://www.cms.gov/Regulations-and-Guidance/Transmittals/downloads/R98PI.pdf>

psychotherapy notes.” The Policy further states, “Finally, it indicates that the provider is responsible for extracting the information needed to support that the claim is reasonable and necessary.” The United States position was utterly wrong.

### **THE POSTION OF THE UNITED STATES WAS VEXATIOUS**

The Third Circuit in US v. Manzo provides a definition: “Vexatiousness embodies two elements: (i) “that the criminal case was objectively deficient, in that it lacked either legal merit or factual foundation”; and (ii) “that the government’s conduct, when viewed objectively, manifests maliciousness or an intent to harass or annoy.” Manzo, 712 F.3d at 810.

We review how the United States was vexatious in this prosecution.

#### **1. The United States conducted four search warrants and submitted one administrative subpoena all based on no probable cause**

Citing US v. Knott the Third Circuit clarifies in US v. Manzo \* “To establish that the government’s prosecution was “vexatious,” a petitioner must show “both ... that the criminal case was objectively deficient, in that it lacked either legal merit or factual foundation, and ... that the government’s conduct, when viewed objectively, manifests maliciousness or an intent to harass or annoy.” Knott, 256 F.3d at 29 <sup>16</sup>. Defendant Dr. Rifai, his practice Blue Mountain Psychiatry, and his patients, the citizens of the Eastern District of Pennsylvania, endured four lawless search warrant(s) without probable cause and one administrative subpoena (also without probable cause) all attempting to “**pin some offense on him**” (emphasis added). We have argued in our motion for expungement how these search warrants were void and illegal and violated the Fourth Amendment rights of Dr. Rifai. These experiences are a case study in vexatiousness.

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<sup>16</sup> United States v. Knott, 256 F.3d 20, 28 (1st Cir. 2001)

2. The United States denied Dr. Rifai his due process rights by depriving him, in its press releases, of the presumption of innocence.

This prosecution was done under a “dishonest purpose or moral obliquity.” Manzo, 712 F.3d at 811 (quoting Gilbert, 198 F.3d at 1299). In United States v Manzo, the Third Circuit indicated, “bad faith requires more than bad judgment or negligence. It demands the conscious doing of the wrong because of dishonest purpose or moral obliquity.” The Third Circuit also indicated that in assessing whether the position of the United States was ..... in bad faith. We may not delve into the minds and motivation of individual prosecutors “instead we must “engage in objective inquiry.”. Defendant Dr. Rifai counters that in this illegal and invalid criminal prosecution we have a window in the “minds and motivation of individual prosecutors” along with an “objective inquiry” when we review the drafting and the language of the Press release Published by the United States (published at <https://www.justice.gov/usao-edpa/pr>)

The original press release, about this prosecution published on November 14, 2022, and its updated version released October 28, 2024, violates multiple sections of The United States Department of Justice Manual, to include sections 1-7.400, 1-7.500, 1-7.610, 1-7.310 and 1-7.710<sup>17</sup>. The press release omitted the disclaimer “the charge is merely an accusation, and the defendant is presumed innocent until proven guilty.” Dr. Rifai’s due process rights of the

<sup>17</sup> The press release in its original and updated versions violated the following Sections of the Justice Manual:

Section 1-7.500, Disclosure of Information; “A news release issued before a finding of guilt should state that the charge is merely an accusation, and the defendant is presumed innocent until proven guilty”. The original press release, published on November 14, 2022, and its updated version released October 28, 2024, do not contain that statement.

Section 1-7.610, “observation about a defendant or party Character” and “Opinions as to the Defendant’s guilt”.

Section 1-7.310, “United States Attorney will exercise discretion and sound judgment with this policy.” It is clear to any independent arbiter from the text of the original and updated release that no discretion or sound judgement was exercised in the drafting of the press release and its update.

Section 1-7.400, “DOJ generally will not confirm the existence of or otherwise comment about ongoing investigations. Except as provided in subparagraph C of this section, DOJ personnel shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress before charges are publicly filed.” The press release in its original and updated form creates an eternal investigation status of Muhamad Aly Rifai, MD and Blue Mountain Psychiatry.

presumption of innocence were infringed upon by omitting this disclaimer. It is only Dr. Rifai, the Muslim defendant of Middle Eastern ancestry, who was deprived of the presumption of innocence while defendants in twenty *prior* press releases were afforded this right by including the presumption of innocence disclaimer<sup>18</sup>. Furthermore, in twenty additional press releases for dates *after* the press release of Dr. Rifai was published all defendants were afforded the presumption of innocence<sup>19</sup>.

The Government carries the full responsibility of all its announcements to the Media. Section 1-7.310 of the Justice Manual states, "Each of the 93 United States Attorneys will exercise discretion and sound judgment, consistent with this Policy, as to matters affecting their own district, ... The United States Attorney has responsibility for all matters involving the local media." It is not a sound judgment to deprive Dr. Rifai of due process rights and the presumption of innocence. The United States exhibited "moral obliquity" and lacked discretion, demonstrating that this prosecution was "vexatious and in bad faith".

3. The four charges presented in the indictment were not supported by the evidence and the United States witnesses forswore the charges.

Courts have held that a "vexatious" position is one that is "without reasonable or probable cause or excuse." Id. 1298-99 (internal quotation marks omitted); see also *United States v. Lain*, 640 F.3d 1134, 1137 (10th Cir. 2011) (same); *United States v. Monson*, 636 F.3d 435, 439 (8th Cir. 2011) (same). The Government's core allegations, among other uncharged conduct, were that psychotherapy services under code 99308 were not provided by Dr. Rifai and his staff. These were add-on services meaning that they were provided in addition to a medical service (evaluation and

<sup>18</sup> Press Release Dates 10/17/2022, 10/13/2022, 10/4/2022, 9/23/2022, 9/22/2022, 9/20/2022, 9/9/2022, 8/10/2022, 7/25/2022, 6/28/2022, 6/24/2022, 6/23/2022, 6/13/2022, 6/1/2022, 5/17/2022, 5/16/2022, 5/5/2022, 4/28/2022, 4/11/2022, 2/18/2022, 2/10/2022, 2/9/2022.

<sup>19</sup> Press Release Dates 12/7/2022, 12/9/2022, 1/18/2023, 1/26/2023, 3/31/2023, 4/19/2023, 5/19/2023, 4/24/2023, 6/12/2023, 7/13/2023, 7/20/2023, 8/23/2023, 9/12/2023, 11/30/2023, 1/30/2024, 1/31/2024, 2/5/2024, 2/14/2024, 3/11/2024.

management) utilizing CPT codes 99308 and 90833. The government's core four representative charges are that on four occasions Dr. Rifai and his staff fraudulently submitted add-on psychotherapy services 90833 while only providing the medical service. The government case is false and baseless because it claimed that the services provided by Dr. Rifai and his staff are Med Checks (CPT code 90862), however the term "Med Check" under CPT code 90862 was removed from the CPT in 2013 (Not valid after 12/31/2012). Most of the Government's allegations centered about Dr. Rifai performing a code that was not applicable (analogous to charging a defendant under a statute of law that was repealed; rendering the charges wrong and baseless), thus the Government's case and assertions were "obviously wrong." The services claimed to be fraudulent *were* actually provided, and the witnesses had no memory of the nature of the services provided.

4. The witnesses for United States who were presented as expert(s) disavowed the investigation and did not support the case of the United States.

The Government prosecutors depended on the views and opinions of witnesses as well as their own interpretation(s) of complex medical coding issues without the benefits of a coding expert or a psychiatrist. This is analogous to a litigant receiving legal advice from a person, at worst, aspiring to be in law school or, at best, a paralegal trainee; an obviously wrong and groundless prosecution resulted from this posture by the United States.

Furthermore, when the proclaimed expert witness for the United States did not support the Government's investigation in this prosecution, AUSA Burnes should have adhered to her obligations under *Napue v Illinois*<sup>20</sup>, to correct known, false and wrongful testimony. She did not! and doubled back on the false information (ECF No 78 page 65), as Witness Noreen Thomas

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<sup>20</sup> *Napue v. Illinois*, 360 U.S. 264 (1959)

testified earlier that she only reviewed a few records (ECF No 78 page 35-40) and had no way of knowing that the remaining 51 records were received or reviewed.

**THE POSITION OF THE UNITED STATES WAS IN BAD FAITH**

Bad faith requires more than “bad judgment or negligence”; it demands “the conscious doing of a wrong because of dishonest purpose or moral obliquity.” Manzo, 712 F.3d at 811. And in assessing whether the “position of the United States was . . . in bad faith,” 18 U.S.C. § 3006A app., we may not “delve into the minds and motivations of individual prosecutors,” Manzo, 712 F.3d at 813. Instead, we must “engage in an objective inquiry,” Manzo, 712 F.3d at 811 (citing Shaygan, 652 F.3d at 1313–14).

We describe why this case is in bad faith:

1. The United States choose to deprive Dr. Rifai of due process as codified in 42 CFR § 405.904(a)(2).

Congress enshrined in the code of Federal Regulations 42 CFR § 405.904 Due Process to protect Medicare providers from Government overreach and granted Dr. Rifai appeal rights to the NE UPIC audit results. The Government instructed the Medicare contractor, SafeGuard Services LLC, not to disclose the audit results to Dr. Rifai or allow him due process in appealing the results prior to the flawed report being used as evidence of criminal behavior in a search warrant affidavit (ECF No. 78 at 64). 42 CFR § 405.904 clearly outlines five levels of appeal and an ultimate Federal District Court appeal prior to the results of any report being accepted as valid for purposes of Medicare services payment denial.

42 CFR § 405.904 Claim appeals. The Medicare contractor makes an initial determination when a claim for Medicare benefits under Part A or Part B is submitted. A beneficiary who is dissatisfied with the initial determination may request that the contractor perform a redetermination of the claim if the requirements for obtaining a redetermination are met. Following the contractor's redetermination, the beneficiary may request, and the Qualified Independent Contractor (QIC) will perform, a reconsideration of the claim if the requirements for obtaining a reconsideration are met.

Following the reconsideration, the beneficiary may request a hearing before an ALJ. If the beneficiary obtains a hearing before the ALJ and is dissatisfied with the decision of the ALJ, or if the beneficiary requests a hearing and no hearing is conducted, and the beneficiary is dissatisfied with the decision of an ALJ or attorney adjudicator, he or she may request the Council to review the case. If the Council reviews the case and issues a decision, and the beneficiary is dissatisfied with the decision, the beneficiary may file suit in Federal district court if the amount remaining in controversy and the other requirements for judicial review are met.

The Government violated Dr. Rifai's constitutional due process rights under the Fifth and Fourteenth amendments. Despite the disastrous testimony at trial about the NE UPIC audit, the United States instructed SafeGuard Services LLC to repackage the audit and falsely demanded repayment from Dr. Rifai and Blue Mountain Psychiatry in July 2024 after the conclusion of the trial.

2. The United States instigated the initiation of a frivolous order to show cause by the Drug Enforcement Administration

The Third Circuit, once again in US v. Manzo \* 9, "Finally, "bad faith" means "not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; ... it contemplates a state of mind affirmatively operating with furtive design or ill will." Gilbert, 198 F.3d at 1299 (omission in original) (internal quotation marks omitted); cf. Franks v. Delaware, 438 U.S. 154, 171 (1978) (defining bad faith in the law enforcement context to include "reckless disregard for the truth"). Courts engage in an objective inquiry when determining whether a prosecution was pursued in "bad faith." See Shaygan, 652 F.3d at 1313-14."

After conducting an extensive search on Blue Mountain Psychiatry offices on December 13, 2021, the Government proclaimed they were unable to locate the clinical file of undercover police officer Gretchen Kraemer (although all they had to do was to ask for the file).

In April 2023, Diversion Investigator (DI) Austin Lastoskie emailed Attorney Paul Hetznecker indicating defendant Dr. Rifai should surrender his DEA registration or show cause proceedings would initiate in September 2023. The DEA, by means of an Administrative Subpoena, requested the medical chart of patient “Gretchen Davis,” undercover police officer, Gretchen Kraemer. The DEA returned two months later in November 2023 with an order to show cause for revocation of Dr. Rifai’s DEA registration. The requested medical records through administrative subpoena were also delivered to AUSA Burnes in this criminal case as alleged evidence of fraud. This violates previous correspondence to Dr. Rifai’s attorney, Ronald Chapman II, where DI Lastoskie stated the undercover record would only be used for administrative proceedings.

At trial, Officer Kraemer admitted that the entirety of the encounter was not recorded, explaining why the medical record and audio and video recording of the visit do not match up (ECF No. 71 at 78). Yet the frivolous DEA administrative process continues to this day, demonstrating bad faith.

3. The United States published press releases that disadvantaged Dr. Rifai and deprived him of due process violating the Justice Manual

The drafting of language in the press release(s) published about this prosecution, demonstrates the discriminatory animus harbored by those representing the United States. The denial of the presumption of innocence in the text of the press release provides a window into the hearts and motivation of the prosecutors, coupled with an objective inquiry. Confirmation bias coupled with discriminatory animus is on display in a “Freudian Fashion”<sup>21</sup>. Prosecutors representing the United States were 100% sure of Dr. Rifai’s guilt (A Middle Eastern Muslim

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<sup>21</sup> Sigmund Freud, MD Austrian Psychoanalyst elaborated the theory of “unconscious”.

Defendant as the name betrays) that they unconsciously skipped the presumption of innocence disclaimer despite including it in twenty press releases preceding his and twenty press releases after Dr. Rifai's. The presumption of innocence was afforded to child molesters, murderers and violent criminals whose crimes were publicized in those 40 other press releases but was unconsciously missing from the press release of Muhamad Aly Rifai. This is bad faith embodied, with the stench of discriminatory animus. The position of the United States in this prosecution is indeed frivolous, vexatious and in BAD FAITH.

### **Request for Attorney Fees**

Defendant Dr. Rifai is requesting the United States pays for attorneys' fees and litigation cost incurred by Dr. Rifai for the following attorneys and experts.

Attorneys: Paul Hetznecker, Esq and Roanld Chapman II, Esq

Litigation services; Cornerstone Discovery, Chapman Investigative Group

Expert Witnesses; David Kline (DK Consulting) and Kenneth DiNiella, MD, Sean Weiss (Doctor's Group).

### **Request for Sanctions and Office Professional Responsibility (OPR) investigation**

Considering these violations of the high professional standards expected from prosecutors and agents representing the United States, an investigation into the complex legal and ethical issues arising from this invalid and illegal prosecution is paramount. Dr. Rifai respectfully requests this Honorable Court endorses a referral to OPR for an investigation into the improprieties and injustice Dr. Rifai endured. Dr. Rifai prays that this Honorable Court will impose any sanctions it may deem necessary in ensuring the administration of justice.

### **REQUEST FOR RELIEF**

Dr. Rifai submits a prayer for relief to this Honorable Court to declare the following:

A. The entire Government investigation and prosecution violated his rights under the 4th Amendment, 5th Amendment, and 14th amendment of the Constitution, and that this prosecution was frivolous and vexatious.

B. The entire Government investigation and prosecution violated due process as well as other regulations of the Department of Justice and should be declared in bad faith.

C. Award Dr. Rifai attorney's fees and litigation costs in excess of \$650,000

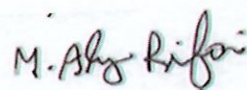
D. Dr. Rifai further respectfully moves this court to issue an order of public reprimand for the prosecutors representing the United States for their bad faith actions during this prosecution.

E. Dr. Rifai respectfully requests from this Court a public endorsement for a complaint seeking an internal investigation of the prosecutors representing the United States by the OPR of the Department of Justice.

F. Dr. Rifai prays that this Court would also grant Expungement as the remedy for these constitutional violations in this vexatious, frivolous prosecution that was done in bad faith.

G. Grant any further relief this Honorable Court may deem just and proper.

Respectfully Submitted,



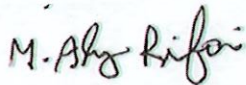
Muhamad Aly Rifai, MD  
Defendant  
Blue Mountain Psychiatry  
241 North 13th Street Easton, PA 18042  
Phone: 610-253-2500  
Email: Dr.Rifai@BluePsychiatry.org

**PROOF OF SERVICE**

I hereby certify that on February 11, 2025, I served the Government attorney of record by US Postal service a copy of this motion.

Mailed to

AUSA Joan E Burnes  
United States Attorney's Office  
Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106



Muhamad Aly Rifai, MD  
Defendant  
Blue Mountain Psychiatry  
241 North 13 th Street Easton, PA 18042  
Phone: 610-253-2500  
Email [Dr.Rifai@BluePsychiatry.org](mailto:Dr.Rifai@BluePsychiatry.org)

**Exhibit 1:**  
**CMS Audit Report**



**SafeGuard  
Services**  
LLC

**Confidentiality Notice:** This message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender and destroy all copies of the original message.

**To:**

Blue Mountain Psychiatry LLC  
Attn: Muhamad Rifai MD  
241 N 13<sup>th</sup> Street  
Lehigh Valley Wellness  
Easton, PA 18042-3211

**From:**

Ruth Morin  
Northeastern Unified Program Integrity Contractor  
1250 Camp Hill Bypass, SGS Suite 200  
Camp Hill, PA 17011

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**SafeGuard  
Services  
LLC**

**Date:** July 10, 2024

**To:**  
Blue Mountain Psychiatry LLC  
Attn: Muhamad Rifai MD  
241 N 13<sup>th</sup> Street  
Lehigh Valley Wellness  
Easton, PA 18042-3211

**Reference Number:** CSE-170111-41252  
**Provider NPI Number:** 1679819908  
**Provider PTAN:** 263713  
**Provider Name:** Blue Mountain Psychiatry LLC  
**Overpayment:** \$13,067.73

Dear Blue Mountain Psychiatry LLC:

The Northeastern Unified Program Integrity Contractor (NE UPIC), SafeGuard Services, was selected by the Centers for Medicare & Medicaid Services (CMS) to perform fraud, waste and abuse detection, deterrence and prevention activities for Medicare and Medicaid claims processed within the Northeastern Jurisdiction. Program integrity functions of the UPIC focus on the following areas, but are not limited to medical review, data analysis, provider education, and potential fraud detection, investigation and prevention.

The NE UPIC's responsibilities include reviewing the accuracy and justification of all services reimbursed by the programs. The NE UPIC also ensures the correct amount has been paid for covered and correctly coded services rendered to eligible beneficiaries by legitimate providers. The purpose of this letter is to describe the steps involved in this review process, in addition to an overview of the results of your review, identified billing discrepancies, and to provide educational information to assist with your future claims for Medicare reimbursement.

**Background:**

This investigation is predicated on a complaint questioning whether or not the services billed were being rendered and data analysis which revealed billings showed a suspicious standard billing practice.

A Medicare beneficiary billing history for ten (10) beneficiaries was requested and received for dates of service January 3, 2016 to May 25, 2017, in which you were paid a total of \$15,507.40, from February 22, 2016 to June 19, 2017.

In accordance with the reopening rules found at 42 C.F.R. § 405.980, medical records for ten (10) Medicare beneficiaries were requested by FedEx on August 29, 2017 to your address of record. Copies of medical records for ten (10) Medicare beneficiaries were received by our office.



**SafeGuard  
Services  
LLC**

The NE UPIC is authorized to request records for a post-payment review of claims due to the reopening rules cited in 42 C.F.R. § 405.980. Good cause has been established because new and material evidence was not available or known at the time of the original determination. This evidence includes a complaint questioning whether or not the services billed were being rendered and data analysis which revealed billings showed a suspicious standard billing practice.

**Overpayment Summary:**

Claims were selected for medical review as a result of proactive data analysis by the NE UPIC. A medical review determined if the claims and submitted documentation met Medicare requirements set forth by federal statute (Title XVIII of the Social Security Act) and regulations, the Medicare Program Integrity Manual, and the Pennsylvania Contractor's Local Coverage Determination(s). Ten (10) of the ten (10) Medicare beneficiaries' medical records, relevant documents and pertinent information were subjected to detailed medical review. All specific rules, regulations, and guidelines utilized for this medical review were in effect when the review service was performed.

The medical record sample consisted of ten (10) beneficiaries, 63 claims with 402 total services units. There were forty (40) service units that were denied at the Mac level and were not included in this review. A review of the medical records resulted in:

336 of the 362 services or 92.8% being denied, and twenty-four (24) services or 6.6% being allowed, and two (2) services or 0.6% being reduced.

Notable findings from the medical review include:

- Documentation submitted does not support service billed.
- Required documentation not received.

**Summary of Review Findings:**

There was a total of 225 service units of the psychotherapy and interactive complexity code (90833 and 90785) in the medical review sample.

- There were 204 service units denied.
- There were twenty-one (21) service units that were not under review.

The services were denied as the documentation was insufficient to support the requirements for the Current Procedural Terminology Manual (CPT) billed. In the records reviewed, the documentation was insufficient to support the requirements for the psychotherapy CPT when performed with an evaluation and management (E/M) service code. The psychiatric treatment plans were generalized and vague. The documentation did not support that an individualized written plan of care was considered during the therapy visit. There was no documentation that stated the type, amount, frequency, and duration expected of the psychotherapy services billed. There was no documentation of how the treatment was expected to improve and/or preserve the patient's level of functioning. The content of the psychotherapy session documentation was not significant and separately identifiable from the E/M visit documentation on the same date of service.



You also billed for the CPT code 90785, Interactive Complexity, in addition to the psychotherapy codes. The documentation was insufficient to support the requirements for CPT 90785. The documentation did not support specific communication factors present during the visits that would complicate the delivery of the primary psychiatric procedure. There was no documentation of any adaptations utilized in the session and the rationale for employing any interactive technique. Therefore, these services were denied.

Additionally, there were some beneficiary records that did not have documentation to support the billing of the psychotherapy and interactive complexity CPT's on some of the dates of service. Examples of the aforementioned include, but are not limited to:

- A beneficiary with date of service 03/02/2017: The documentation was insufficient to support billing psychotherapy services. There was no documentation to support that an individualized written plan of care was considered during the therapy visit. There was no documentation that stated the type, amount, frequency and duration of the psychotherapy services billed. The records provided did not reflect measurable treatment goals or methods of monitoring the outcomes of those goals. Furthermore, there was no documentation of how the treatment was expected to improve and/or preserve the patient's level of function. The content of the psychotherapy session documentation was not significant and separately identifiable from the E/M visit documentation on the same date of service. For this date of service there is no documentation regarding the amount of time spent in psychotherapy during this visit. There is not a Psychiatric Treatment Plan update for this date of service. The plan of care last dated on 7/28/2016, is a check box style documentation form that is lacking individualization, diagnosis, medications, interventions, modality or frequency of treatment.
- Another beneficiary with date of service 02/04/2016: The documentation was insufficient to support billing psychotherapy services. There was no documentation to support that an individualized written plan of care was considered during the therapy visit. There was no documentation that stated the type, amount, frequency and duration of the psychotherapy services billed. The records provided did not reflect measurable treatment goals or methods of monitoring the outcomes of those goals. Furthermore, there was no documentation of how the treatment was expected to improve and/or preserve the patient's level of function. The content of the psychotherapy session documentation was not significant and separately identifiable from the E/M visit documentation on the same date of service. The Plan of Care is generalized and vague consisting of a check box style documentation form that is lacking individualization, diagnosis, medications, interventions, modality or frequency of treatment.
- A third beneficiary with date of service 02/18/2016: There is no qualifying documentation provided to support billing for interactive complexity. The documentation does not support specific communication factors present during a visit that complicate the delivery of the primary psychiatric procedure. The documentation does not include the adaptations utilized in the session and the rationale for employing these interactive techniques. Additionally, this is an add-on code and the primary code was denied for this date of service.
- A fourth beneficiary with date of service 12/09/2016: There were no records for this date of service provided for review to support that the service for CPT 90833 and CPT 90785 was rendered as billed.



- A fifth beneficiary with date of service 8/03/2016: There were no records for this date of service provided for review to support that the service for CPT 90833 and CPT 90785 was rendered as billed.

There was a total of eleven (11) service units of the transcranial magnetic stimulation treatment codes (90867 and 90868) in the medical review sample. All eleven (11) service units were allowed.

There was a total of 122 service units of the Evaluation and Management (E/M) codes in the medical review sample.

- There were thirteen (13) service units allowed.
- There were ninety-eight (98) service units denied.
- There were two (2) service units recoded.
- There were nine (9) service units that were not under review.

You billed E/M services in the assisted living facility, inpatient hospital, and nursing facility. When the documentation was not present to support the E/M service was rendered as billed or the documentation was insufficient to support the rendering provider of record was the provider of the E/M services on the date of service billed, the services were denied. This was supported by the Social Security Act 1833 (e) and CFR 424.5 (a)(6).

Additionally, there was one E/M service billed as an initial visit but the documentation provided for review did not support the initial visit. According to Internet Only Manual (IOM) Publication 100-04, Chapter 12, Section 30.6.7, "A. Definition of New Patient for Selection of E/M Visit Code, Interpret the phrase "new patient" to mean a patient who has not received any professional services, i.e., E/M service or other face-to-face service (e.g., surgical procedure) from the physician or physician group practice (same physician specialty) within the previous 3 years."

Examples of the above include, but are not limited to:

- For a beneficiary with date of service 03/09/2016: There were no records for this date of service provided for review to support the billed E/M (CPT 99233) service was rendered as billed.
- For a beneficiary with date of service 07/28/2016: The beneficiary was billed CPT 99204 on this date of service. The documentation was contradictory and indicated the beneficiary was an established patient and did not support that this was an initial visit for this beneficiary. Additionally, the billing summary indicated the beneficiary was billed for chronic care management monthly in 2016.
- For a beneficiary with date of service 01/20/2016: The documentation did not support the rendering provider of record (Dr. Rifai) was the provider of the E/M services on this date of service. The E/M service was documented by the PA-C on this date of service.

There were two E/M services in which the documentation was insufficient to support the level of E/M service billed. This was supported by the SSA 1833(e) and the IOM Publication, Chapter 12, Section 30.6.1.



Examples of the beneficiaries in which the E/M service was recoded to the appropriate level include:

- One beneficiary with date of service 02/18/2016: The documentation provided does not support the CPT 99310 billed on this DOS and was recoded to CPT 99307. The documentation supported a detailed history, problem focused exam and straightforward medical decision making.
- Another beneficiary with date of service 02/04/2016: The documentation provided does not support the CPT 99310 billed on this date of service and was recoded to CPT 99308. The documentation contained a comprehensive history, problem focused exam and low complexity of medical decision making.

There was a total of twenty-five (25) service units of the chronic care management code (99490) in the medical review sample.

- There were twenty-one (21) service units denied.
- There were four (4) service units that were not under review.

The documentation in the medical review sample did not support that chronic care management was performed. There was no documentation of the creation or update of a comprehensive care plan. There was no documentation of care regarding all chronic diagnoses or any documentation of continuity or coordination of care. Blue Mountain Psychiatry frequently billed for chronic care management the day after seeing the beneficiary for an E/M visit.

Examples of this include, but are not limited to:

- One beneficiary with date of service 9/29/2016: The medical records submitted for review do not support that chronic care management was performed for a beneficiary residing in a skilled care facility. There is no documentation of a comprehensive care plan creation or update. There is no documentation of continuity or coordination of care.
- Another beneficiary with date of service 10/23/2016: The medical records submitted for review do not support that chronic care management was performed for a beneficiary residing in a skilled care facility. There is no documentation of a comprehensive care plan creation or update. There is no documentation of continuity or coordination of care. There is no documentation provided to support that Blue Mountain Psychiatry uses an electronic health record (EHR) for patient information, there is no comprehensive care plan, no documentation of enhanced communication availability.

There were six (6) total service units for the smoking cessation (99406), annual alcohol misuse screen (G0442), annual depression screen (G0444), and annual wellness visit (G0439), subsequent visit in the medical review sample.

- There were four (4) service units denied.
- There were two (2) service units that were not under review.

The documentation was not sufficient to support the services billed for the above listed codes or there were no records for the date of service and the services were denied.



Examples of this include:

- A beneficiary with date of service 07/15/2016: The documentation is insufficient to support the CPT 99406 billed. The was documentation of the amount of time spent, the depth of counseling or materials provided for smoking and tobacco use cessation to the beneficiary for this date of service.
- Another beneficiary with date of service 02/23/2016: There were no records for this date of service provided for review to support that the service (G0439) was rendered as billed.

There were thirteen (13) total service units for the telehealth originating site facility fee (Q3014) in the medical review sample.

- There were nine (9) service units denied.
- There were four (4) service units that were not under review.

The documentation was not sufficient to support the Q3014 billed. Some of the services billed did not have records provided to support the telehealth service and the services were denied. The documentation reviewed did not have the type of service designated. The GT modifier (via interactive audio and video telecommunications system) was not appended to the billed service code. There is no documentation of the technology used for telehealth. There is no documentation that the patient was participating in a telehealth visit. The rendering provider documents that the beneficiary was seen by a PA-C and himself on the same DOS for some of the services.

Examples of this include:

- A beneficiary with dates of service; 1/20/2016, 3/30/2016, 7/20/2016: The documentation supplied for review was insufficient to support the service billed. There was no documentation of the technology used for telehealth found in the notes for this date of service. The services for this date appear to have been face to face. There is a psychiatry note documented by PA-C, but the MD provider's name is pre-printed on the form and a psychotherapy note provided by the MD provider with routine documentation of 90785, Interactive Complexity. The MD provider notes "assisting PA in this difficult case". There is documentation on the bottom of the PA-C's psychiatry visit note where the MD provider documents "seen by me, agree with note, less depressed, cont. with meds, CCM".
- Another beneficiary with dates of service; 6/15/2016, 8/03/2016, 8/24/2016, 9/28/2016: There were no records for this date of service provided for review to support that the service was rendered as billed.

**References:**

- Title XVIII of the Social Security Act, Section 1833(e)
- Title 42 of the Code of Federal Regulations (CFR), Section 410.78
- Title 42 of the Code of Federal Regulations (CFR), Section 424.5(a)(6)



- The Centers for Medicare & Medicaid Services' (CMS) Internet Only Manual (IOM) Publication 100-04, Chapter 12
  - Section 30.6.1, *Selection of Level of Evaluation and Management Service*
  - Section 30.6.7, *Payment for Office or Other Outpatient Evaluation and Management (E/M) Visits (Codes 99201-99215)*
  - Section 190.4 *Conditions of Payment*
  - Section 190.6.1 *Submission of Telehealth Claims for Distant Site Practitioners*
- Novitas Solutions, Inc., Local Coverage Determination (LCD) L35101 *Psychiatric Codes*
- Novitas Solutions, Inc., Local Coverage Determination (LCD): *Transcranial Magnetic Stimulation (TMS) for the Treatment of Depression (L34998)*
- American Medical Association (AMA), *Current Procedural Terminology, 2016 and 2017 Professional Edition*
  - *Section Psychiatry, Interactive Complexity and Psychotherapy*
- Department of Health and Human Services Centers for Medicare & Medicaid Services, Medicare Learning Network, *Evaluation and Management Services 1995 Guidelines, August 2015*

Based on our medical review, we have determined an overpayment amount for each claim and have totaled the claims to identify the overpayment. An overpayment amount of **\$13,067.73** is due to the Medicare Program.

A spreadsheet with a detailed explanation of the claims reviewed and the overpayment computation will be forwarded upon request.

The Medicare Administrative Contractor (MAC), Novitas Solutions, Inc. has been notified of this overpayment. You will receive a demand letter from the MAC regarding the specifics of the overpayment and repayment process. Do not forward payment or appeal this determination until you have been notified by the MAC as the MAC controls, tracks and completes all appeal requests.

**Documentation Requirements:**

The documentation of all services rendered is **absolutely necessary** for a claim to be properly reevaluated. The medical records should be complete and legible. Documentation is the recording of pertinent facts of and observations about an individual's health history including past and present illness, test results, treatment, and outcomes. The documentation of each patient encounter should include: the date, the reason for the encounter, appropriate history and physical examination, review of laboratory results, x-ray results, other ancillary services (where appropriate), assessment, and plan of treatment.



Section 1833(e) of the Social Security Act requires the Centers for Medicare & Medicaid Services (CMS) to ensure "no payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the amounts are being paid or for any prior period." This places the burden upon the provider to furnish such information as necessary to determine if payment is (or was) due and the amount of the payment. Therefore, when a review is conducted, medical records will be requested to substantiate the Medicare claim(s).

The documentation should be of such content and clarity as to make it abundantly clear to any third-party reviewer, the patients' symptoms, history, physical findings, and plan of treatment. Services that are not proven to be reasonable or medically necessary are denied under the authority of Section 1862(a)(1)(A) of the Social Security Act.

Please be aware of the importance of medical documentation, especially in the post-payment review process, as it involves the analysis of data documented in your medical records. These records document your primary treatment in regard to the quality and continuity of patient care. Moreover, these medical records are the NE UPIC's primary means to determine whether money was paid in accordance with CMS policy. If no documentation was provided, we could not validate the services billed; therefore, we consider the services as not rendered in accordance with Section 1833 (e) of the Social Security Act.

### **Limitation of Waiver of Liability/Without Fault:**

Section 1879 of the Social Security Act permits Medicare payments to be made to providers on assigned claims for certain services otherwise not covered, if neither the beneficiary nor the provider knew, or could reasonably be expected to know, that the services were not covered. Services affected are those disallowed as not medically reasonable or necessary for the diagnosis or treatment of illness or injury, or to improve the functioning of a malformed body member. Beneficiaries may not be billed for any overpayment amount that is refunded by offsetting against future Medicare payments payable to you by reason of assignment. Under provisions of Section 1879 of the Social Security Act, beneficiaries are waived of any liability for services, which they did not know (or could not have reasonably been expected to know), would not be allowed and paid by Medicare.

Section 1870 of the Social Security Act permits Medicare to not recover inappropriate payments with respect to an individual deemed without fault in having caused the overpayment. For the "without fault" provision to apply, the individual must have complied with all pertinent regulations and instruction materials. These include Current Procedural Terminology (CPT-4) procedure code definitions and Medicare Updates and/or Bulletins. The individual is expected to have had a reasonable basis for assuming the payments received were correct or, if there was reason to question the payment, to promptly bring such a question to the contractor's attention.



In addition, the individual is expected to have made full and accurate disclosure of material facts. Following are the specific reasons why we have determined that you are "with fault" and are liable for the overpayment:

- Documentation submitted does not support service billed.
- Required documentation not received.

It is important that the management of any medical practice treating a significant number of Medicare beneficiaries understand the conditions governing which services will be reimbursed under the Medicare Program. Pertinent information was available from the law and regulations, from Medicare Updates and/or Bulletins and from your peers in the medical community. Lacking any information that the provider is "without fault", we have found that Section 1870 of the Social Security Act does not apply and that you are liable for the overpayment.

**Conclusion:**

Please be advised, this letter is intended to be educational in regards to the appropriate submission of Medicare claims. You may be subject to a follow-up review of your billing practice in the future to ensure compliance with the information and recommendations in this letter. Additionally, continuation of identified problems can result in exclusion from the Medicare Program in accordance with Section 1128(b) of the Social Security Act; Civil Monetary Penalties; and/or suspension of Medicare payments under 42 C.F.R. § 405.370 *et seq.*

In addition, we remind you regulation 42 C.F.R. § 424.535 authorizes us to revoke Medicare billing privileges under certain conditions. In particular, we note that per 42 C.F.R. § 424.535(a)(8)(ii), CMS has the authority to revoke a currently enrolled provider's or supplier's Medicare billing privileges if CMS determines the provider or supplier has a pattern or practice of submitting claims that fail to meet Medicare requirements.

If you have any questions regarding the information in this letter, please contact me at one of the phone numbers or email address indicated below.

Sincerely,

*Ruth Morin*

Ruth Morin  
Program Integrity Investigator  
Northeastern Unified Program Integrity Contractor  
571-508-4628  
[Ruth.morin@peraton.com](mailto:Ruth.morin@peraton.com)  
Toll Free 1-855-235-4911

CC: Novitas Solutions, Inc.

**Exhibit 2:**

**Letter from the Pennsylvania  
Department of Health doing COVID  
vaccinations**



January 12, 2021

MUHAMAD ALY RIFAI, CHIEF PSYCHIATRIST AND INTERNIST  
BLUE MOUNTAIN PSYCHIATRY  
241 NORTH 13TH STREET  
EASTON, PA 18042

RE: COVID-19 Vaccination Program Enrollment

Dear Provider:

Thank you for enrolling in Pennsylvania's COVID-19 Vaccination Program. The CDC COVID-19 Vaccination Program Provider Agreement enrollment form submitted for the above reference location has been received and is being processed for the following location: **Blue Mountain Psychiatry**. As required by the Centers for Disease Control and Prevention, all patient vaccine information and COVID-19 vaccine inventory must be reported to the Pennsylvania Statewide Immunization Registry (PA-SIIS).

To receive a PA-SIIS user account, all users must complete the online training course listed below:

**PA-BHSR: Mandatory Reporting of COVID-19 Vaccine Inventory and Patient Vaccination Information to PA-SIIS** located at <https://www.train.org/pa/course/1095033/>.

If your staff needs assistance creating a TRAIN PA user account, please visit <https://www.train.org/tutorials/> and then view the video on "Setting Up Your TRAIN Account".

All primary and backup Vaccine Coordinators must take the course for your location to report receipt of COVID-19 vaccines, which must be reported in PA-SIIS within 24 hours of receipt of the shipment. In addition, your location must report patient COVID-19 vaccine information within 24 hours of administering a COVID-19 vaccine. If you are transmitting HL7 messages to report patient COVID-19 vaccine information to PA-SIIS, then only your vaccine coordinators will need PA-SIIS user accounts. However, if you are not submitting patient vaccine information through HL7 messages, then PA-SIIS user accounts will be required for those staff that are responsible for entering patient information directly into PA-SIIS.

At the conclusion of the course, your employees will be provided with a link to download the PA-SIIS User Account Request form. If your employee already has a PA-SIIS user account with the proper access to perform the activities necessary to support the COVID-19 Vaccine Program, then your employee should not submit another PA-SIIS User Account Request form. However, if your employee is new to PA-SIIS or if your employee requires a modification of permissions within PA-SIIS, then your employee should submit a new PA-SIIS User Account Request form.

To assist us in streamlining the user enrollment process, your employee should use their legal name when registering for a TRAIN PA user account and when completing the PA-SIIS User Account Request form. In addition, we are requesting that your employee enter the information below into fields 3 to 9 of the PA-SIIS User Account Request form:

Blue Mountain Psychiatry  
PA-SIIS Clinic ID: 1224  
241 North 13th Street  
Easton, Monroe County, 18042

If you have submitted a CDC COVID-19 Vaccination Program Provider Agreement for another location, we ask that you refrain from submitting user request forms for any other location at this time. We will send you separate correspondence as other location's enrollment forms have been processed.

Additional information and training on Pennsylvania's COVID-19 Vaccination Program will soon be available online at <https://www.health.pa.gov/topics/programs/immunizations/Pages/COVID-19-Vaccine-Providers.aspx>. If you have questions specific to Pennsylvania's COVID-19 Vaccine Program, please contact us at [ra-dhccovidvax@pa.gov](mailto:ra-dhccovidvax@pa.gov) or by phone at 717-787-5681.

If you need have questions on how to register for a PA-SIIS user account or how to report COVID-19 vaccine information into PA-SIIS, please contact the Immunization Registry by email at [ra-dhpasiis@pa.gov](mailto:ra-dhpasiis@pa.gov) or by phone at 877-774-4748 from 7 am to 7 pm, weekdays.

Sincerely,

Pennsylvania Immunization Registry  
Pennsylvania's COVID-19 Vaccination Program

**Exhibit 3:**

**OIG-HHS strategic Plan for COVID 19**

**PROTECT PEOPLE**

# OIG Strategic Plan: Oversight of COVID-19 Response and Recovery

May 2020



Our  
**MISSION**

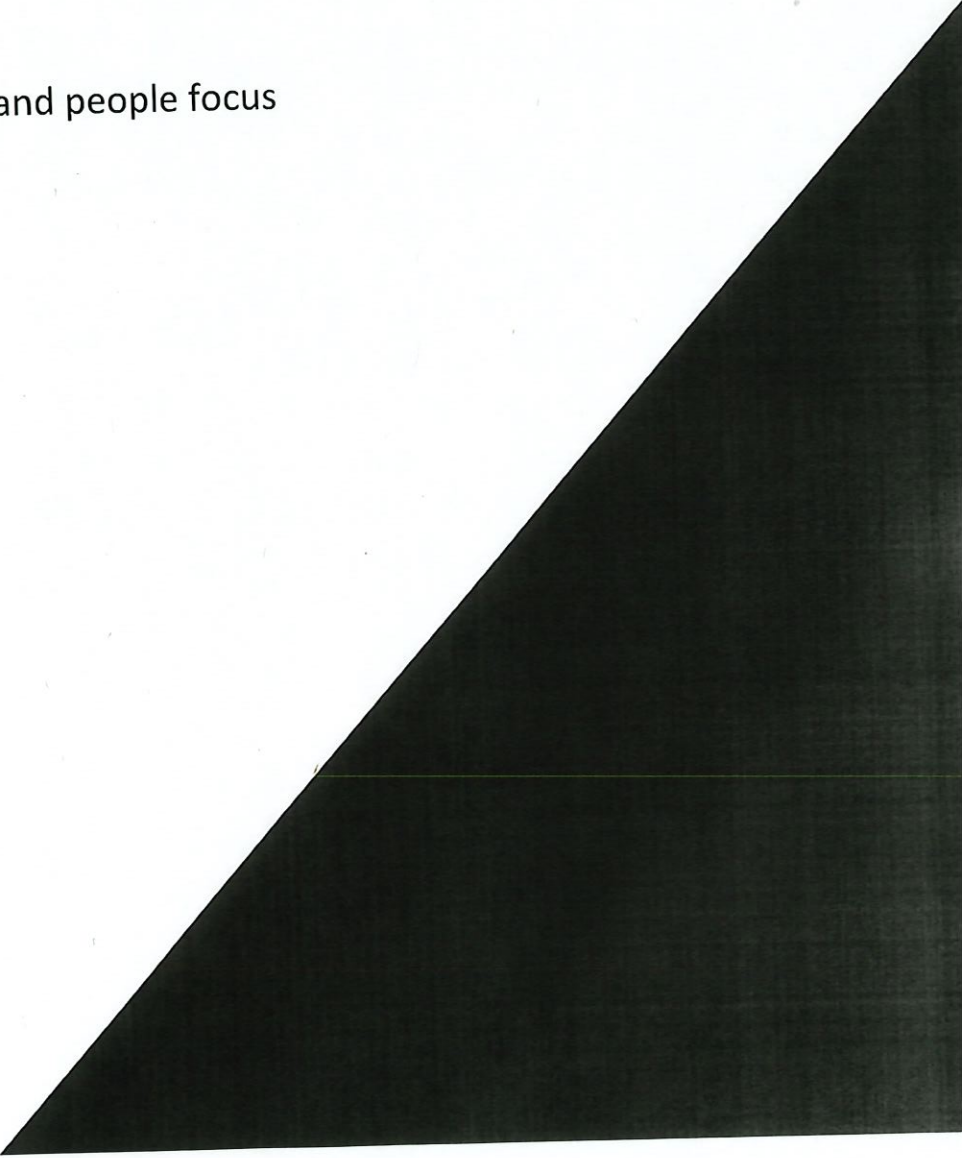
Provide objective oversight to promote the economy, efficiency, effectiveness, and integrity of HHS programs, as well as the health and welfare of the people they serve

Our  
**VISION**

Drive positive change in HHS programs and in the lives of the people served by these programs

Our  
**VALUES**

Impact, innovation, and people focus



## Introduction

The emergence of coronavirus disease 2019 (COVID-19) has created unprecedented challenges for the Department of Health and Human Services (HHS) and for the delivery of health care and human services to the American people. HHS leads the Federal public health and medical response during public health emergencies.

This plan sets forth the four goals that drive the Office of Inspector General's (OIG's) strategic planning and mission execution with respect to HHS's COVID-19 response and recovery. These goals are to (1) protect people, (2) protect funds, (3) protect infrastructure, and (4) promote effectiveness of HHS programs—now and into the future. This plan highlights our main objectives and ongoing and potential OIG work to advance each goal. Additional information about OIG work related to COVID-19 is available on our website, [COVID-19 Portal](#).

OIG is using risk assessment and data analytics to identify, monitor, and target potential fraud, waste, and abuse affecting HHS programs and beneficiaries and to promote the effectiveness of HHS's COVID-19 response and recovery programs. We use expert staff and modern tools and technologies, including artificial intelligence, to detect trends and patterns of suspicious activity and to shape and strengthen our oversight and enforcement. As appropriate and feasible, we share data analytics and technical assistance with HHS officials to strengthen program integrity, effectiveness, and management practices. Further, we are coordinating our work with key oversight and law enforcement partners, including the Pandemic Response Accountability Committee (PRAC); Federal, State, local, and Tribal entities; and the Government Accountability Office, among others, to ensure adequate oversight, avoid duplication, and share insights.

## Goal 1: Protect People

An essential HHS responsibility during the COVID-19 pandemic is to protect the health and safety of people. This responsibility includes protection of all Americans through the HHS public health mission as well as specific responsibilities to protect beneficiaries who receive services through HHS health care and human services programs. As such, protecting the health and safety of people takes on heightened urgency for OIG. OIG is providing oversight and support to help ensure that HHS efforts to protect people are effective, combating fraud schemes that endanger people, and issuing public information and guidance about fraud and abuse.

**Objective A: Assist in and support ongoing COVID-19 response efforts, while maintaining independence**

- Issue guidance on the application of OIG's administrative fraud enforcement authorities to support providers in delivering needed patient care during the public health emergency.
- Conduct rapid-cycle reviews of conditions affecting HHS beneficiaries or health care and human service providers to inform and support effective COVID-19 response efforts.
- Deploy law enforcement personnel, as needed, to protect HHS personnel and resources to help ensure continuity of HHS operations during the public health emergency.

**Objective B: Fight fraud and scams that endanger HHS beneficiaries and the public**

- Investigate suspected fraud, with priority to cases involving patient harm, in coordination with Federal, State, local, and Tribal law enforcement partners.
- Alert HHS, its beneficiaries, and the public to fraud schemes related to COVID-19, including testing and identity theft scams.

Objective C: Assess the impacts of HHS programs on the health and safety of beneficiaries and the public

- Conduct audits and evaluations focused on the health and safety of HHS beneficiaries in selected health care settings, such as nursing homes, as well as in HHS human services programs, such as child care programs.
- Conduct audits and evaluations of HHS operations to protect public health, such as the acquisition, management, and distribution of resources from the Strategic National Stockpile; the production, approval, and distribution of COVID-19 tests; vaccine and treatment research and development; and others.

## Goal 2: Protect Funds

OIG oversight and enforcement activities protect HHS funds from fraud, waste, and abuse and promote transparency of, and accountability for, HHS spending. As of mid-May 2020, HHS was appropriated \$251 billion for COVID-19 response and recovery, which includes \$175 billion for the Provider Relief Fund and \$76 billion for the HHS Office of the Secretary and certain Operating Divisions to prevent, prepare for, and respond to coronavirus. In addition, the Department is expending substantial funds from other appropriations for activities related to the COVID-19 public health emergency, including increases in the Federal match for Medicaid and in reimbursement for some Medicare services. Ensuring accurate payment in accordance with program requirements is a longstanding HHS management challenge, and OIG's work will address contracts, grants, program payments, and other payment mechanisms.

Objective A: Prevent, detect, and remedy waste or misspending of COVID-19 response and recovery funds

- Conduct audits and evaluations of HHS's oversight, management, and internal controls for awarding, disbursement, and use of funds.
- Audit fund recipients to assess whether they met use, reporting, and other requirements, and, where appropriate, recommend recovery of misspent funds.
- Participate on, and coordinate closely with, the PRAC to prevent and detect fraud, waste, abuse, and mismanagement, and to mitigate major risks that cut across program and agency boundaries.

Objective B: Fight fraud and abuse that diverts COVID-19 funding from intended purposes or exploits emergency flexibilities granted to health and human services providers

- Identify and investigate suspected fraud, in coordination with Federal, State, local, and Tribal law enforcement partners, and exercise OIG's administrative enforcement authorities when appropriate.
- Conduct audits and evaluations to identify program integrity vulnerabilities and recommend safeguards.
- Alert HHS, enforcement partners, and industry stakeholders to potential fraud risks or schemes to steal funds.

## Goal 3: Protect Infrastructure

The security of HHS information technology (IT) systems, infrastructure, and the personal information and data collected and maintained by HHS programs is critically important to the health and well-being of the American people. This urgency is heightened as cyberattacks against HHS, health care institutions, and researchers have increased since the COVID-19 pandemic started. It is critically important to protect against research and intellectual property theft. In addition, the technologies that are being employed in COVID-19 response may be subject to cyberattacks. OIG conducts cybersecurity audits, makes recommendations to strengthen cybersecurity, and investigates cybersecurity attacks against HHS.

Objective: Protect the security and integrity of IT systems and health technology

- Audit HHS capabilities for detecting IT vulnerabilities and incidents, mitigating threats, and restoring IT services.
- Audit whether known cybersecurity vulnerabilities related to networked medical devices, telehealth platforms, and other technologies being used in COVID-19 response have been mitigated.
- Investigate cybersecurity threats to, and attacks on, HHS systems.
- Provide technical assistance to HHS to support a secure and robust IT infrastructure.

## Goal 4: Promote Effectiveness

OIG oversight work will identify opportunities and strategies to increase the effectiveness of ongoing HHS COVID-19 response and recovery programs at the Federal, State, and local levels. Drawing on relevant historical work and new analyses, OIG will highlight lessons learned and make recommendations to support HHS's effective preparation for, and response to, future emergencies and to improve the delivery of health and human services.

Objective A: Support the effectiveness of Federal, State, and local COVID-19 response and recovery efforts

- Conduct audits and evaluations of ongoing response and recovery efforts that identify opportunities to increase effectiveness (e.g., opportunities for better coordination across Federal, State, and local response efforts).
- Conduct audits and evaluations to help ensure that recipients of HHS COVID-19 response and recovery funding achieve program goals.

Objective B: Leverage successful practices and lessons learned to strengthen HHS programs for the future

- Identify successful practices and lessons learned from the COVID-19 response at the Federal, State, and local levels and make recommendations to strengthen future emergency preparedness and response.
- Review pandemic preparedness planning to identify how preparedness funding was spent, the utility of preparedness plans and activities, and recommendations for improvements.
- Assess the impacts of COVID-19 emergency flexibilities on HHS programs and beneficiaries to inform program decisions after the current public health emergency ends (e.g., impacts of expanded telehealth in Medicare during the emergency and implications for future Medicare policies).

## ABOUT THE OFFICE OF INSPECTOR GENERAL

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

**The Office of Audit Services (OAS)** provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These audits help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

**The Office of Evaluation and Inspections (OEI)** conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

**The Office of Investigations (OI)** conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

**The Office of Counsel to the Inspector General (OCIG)** provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

### **OIG Public Hotline (for reporting fraud):**

Website: <https://oig.hhs.gov/fraud/report-fraud/index.asp>


Phone: 1-800-HHS-TIPS (1-800-447-8477)

TTY (for hearing impaired): 1-800-377-4950

U.S. Department of Health and Human Services  
Office of Inspector General

330 Independence Avenue, SW  
Washington, DC 20201  
<https://oig.hhs.gov>

   OIGatHHS

 HHS Office of Inspector General

**Exhibit 4:**  
**Press Release Package**



PO Box 1360  
Easton PA 18044-1360  
Phone: 610-253-2500  
Fax: 888-972-2853  
www.bluepsychiatry.org

December 21, 2024

Carrie Adamowski  
Media Contact  
United States Attorney Office  
Eastern District of Pennsylvania  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106

**Re; United States of America v Muhamad Aly Rifai 5:22-cr-00390-JLS**  
**Request for Information Removal**  
Website publication dated November 14, 2022

<https://www.justice.gov/usao-edpa/pr/lehigh-valley-psychiatrist-charged-stealing-medicare-through-improper-billing-scheme>

### Background

On October 11, 2024 I wrote to the United States Attorney's Office for the Eastern District of Pennsylvania asking for the removal of the press release dated November 14, 2022 referenced above, in accordance with Section 515 of Public Law 106-554 (OMB Memorandum M-19-15), known as the Information Quality Act, which requires agencies to maximize the quality, objectivity, utility, and integrity of information disseminated to the public, and define mechanisms for redress by affected parties, where appropriate.

On October 28, 2024, United States Attorney's Office for the Eastern District of Pennsylvania responded that an update was added to the press release without removing it in its entirety as requested "UPDATE - On May 9, 2024, a federal jury acquitted Dr. Muhamad Aly Rifai of the charges alleged in the indictment described in the press release below".

The original press release, published on November 14, 2022, and the updated version are in violation of the Department of Justice Policy on Confidentiality and Media Contact as outlined in the Justice Manual section 1-7. Specifically, the text of the press release unambiguously violates the Justice Manual which "sets forth Internal Department of Justice Policies and Procedures" Section 1-1.100. <https://www.justice.gov/jm/jm-1-1000-introduction>

*The removal of the Press Release in its entirety is the only available remedy to stop the defamatory injury and harm created by the press release since it was made public on November 14, 2022 and its revision on October 28, 2024.*

**Easton Campus**  
241 North 13<sup>th</sup> street  
Easton PA 18042

**Palmerton Health Campus**  
217 Franklin Avenue Suite 101  
Palmerton PA 18071

**Stroudsburg Campus**  
1803 West Main Street  
Stroudsburg PA 18360

**610-253-2500**  
[www.bluepsychiatry.org](http://www.bluepsychiatry.org)

## Statement

The original press release, published on November 14, 2022, and its updated version released October 28, 2024, violates The United States Department of Justice Manual "Justice Manual" sections 1-7.400, 1-7.500, 1-7.610, 1-7.310 and 1-7.710, as I will outline in detail below. The press release in its original and updated versions violated section 1-7.500 on Disclosure of Information; "A news release issued before a finding of guilt should state that the charge is merely an accusation, and the defendant is presumed innocent until proven guilty". The original press release, published on November 14, 2022, and its updated version released October 28, 2024 does not contain such statement.

Second, the press release in its original and updated versions violated section 1-7.610 of the Justice Manual on Concerns of Prejudice as the press release contains "observation about a defendant or party Character" and "Opinions as to the Defendant's guilt". Third, the press release in its original and updated versions violated section 1-7.310 of the Justice Manual on United States Attorneys as the "United States Attorney with exercise discretion and sound Judgement with this Policy". It is clear to any independent arbiter from the text of the original and updated release that no discretion or sound judgement was exercised in the drafting of the press release and its update.

Last, the press release in its original and updated versions violated section 1-7.400 of the Justice Manual as "DOJ generally will not confirm the existence of or otherwise comment about ongoing investigations. Except as provided in subparagraph C of this section, DOJ personnel shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress before charges are publicly filed.". The press release in its original and updated form creates an *eternal* investigation status of Muhamad Aly Rifai, MD and Blue Mountain Psychiatry.

- 1) **The United States Attorney Office of the Eastern District of Pennsylvania egregiously and blatantly violated Justice Manual section 1-7.500 causing continuous harmful and irreparable injury to the reputation of Muhamad Aly Rifai and Blue Mountain Psychiatry.**

Section 1-7.500 of The Justice Manual clearly states:

1-7.500-Release of Information in Criminal, Civil, and Administrative Matters—Disclosable Information

A news release issued before a finding of guilt should state that the charge is merely an accusation, and the defendant is presumed innocent until proven guilty.

This statement is suspiciously and blatantly missing from the press release made public on November 14, 2022 and its revised version on October 28, 2024. This action is discriminatory and intentional on the part of the office of the United States Attorney for the Eastern District of Pennsylvania. This action creates a defamatory injury as the United States Government presumed the guilt of Defendant Muhamad Aly Rifai in violation of the United States Supreme Court precedent in *Coffin v. United States of America* 156 U.S. 432 (1895). The Supreme Court stated that the presumption of innocence in criminal cases is "axiomatic and elementary".

**Easton Campus**  
241 North 13<sup>th</sup> street  
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**Palmerton Health Campus**  
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Palmerton PA 18071

**Stroudsburg Campus**  
1803 West Main Street  
Stroudsburg PA 18360

**610-253-2500**  
[www.bluepsychiatry.org](http://www.bluepsychiatry.org)

Muhamad Aly Rifai, MD was deprived of the right of presumption of innocence as it was transmitted to the public and the statement about the presumption of innocence was missing from the press release on November 14, 2022 and its revised version updated on 10/28/2024. The omission of the statement about the presumption of innocence of Muhamad Aly Rifai was not an error or an oversight but was a malicious, intentional and a discriminatory act toward a Muslim and Middle Eastern physician who is a pillar of the Lehigh Valley Community in the Eastern District of Pennsylvania. <https://www.mcall.com/2018/05/18/newsmaker-muhamad-aly-rifai-doctor-and-researcher/>

For example, a press release from of the office of the United States Attorney for the Eastern District of Pennsylvania on November 4, 2022 "SEPTA Video Surveillance Manager, Equipment Vendor Indicted for Extensive Bribery and Extortion Scheme" contains the following statement: "An indictment, information, or criminal complaint is an accusation. A defendant is presumed innocent unless and until proven guilty". <https://www.justice.gov/usao-edpa/pr/septa-video-surveillance-manager-equipment-vendor-indicted-extensive-bribery-and>

In another example from the office of the United States Attorney for the Eastern District of Pennsylvania. the same day November 4, 2022 and 10 days prior to the publication of the defamatory press release about Muhamad Aly Rifai, MD another press release published on November 4, 2022 "Philadelphia Man Indicted for Stalking and Nearly Blinding Ex-Girlfriend in Broad Daylight Attack " contains the following statement: "An indictment, information, or criminal complaint is an accusation. A defendant is presumed innocent unless and until proven guilty". <https://www.justice.gov/usao-edpa/pr/philadelphia-man-indicted-stalking-and-nearly-blinding-ex-girlfriend-broad-daylight>

Hence, the removal of the Press Release in its entirety is the only available remedy to stop the defamatory injury and irreparable harm created by the press release since it was made public on November 14, 2022 and its revision on October 28, 2024.

- 2) The Office of the United States Attorney for the Eastern District of Pennsylvania egregiously and blatantly violated Justice Manual section 1-7.310 causing continuous harmful and irreparable defamatory injury to the reputation of Muhamad Aly Rifai and Blue Mountain Psychiatry.

Section 1-7.310 of The Justice Manual clearly states:

#### 1-7.310 - United States Attorneys

Each of the 93 United States Attorneys will exercise discretion and sound judgment, consistent with this Policy, as to matters affecting their own district, but must coordinate their news media contacts with OPA in cases that transcend their district or are of national importance. The United States Attorney has responsibility for all matters involving the local media.

The office of the United States Attorney for the Eastern District of Pennsylvania did not exercise discretion nor sound judgement when it did not follow the policies of the Justice Department as outlined in the Justice Manual section 1-7 on Confidentiality and Media Contact.

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The office of the United States Attorney for the Eastern District of Pennsylvania did not take responsibility for denying Muhamad Aly Rifai the right to a presumption of innocence. The office of the United States Attorney for the Eastern District of Pennsylvania released statements to the local media about the definitive guilt of Muhamad Aly Rifai and did not exercise sound judgement to afford Muhamad Aly Rifai the presumption of innocence. <https://www.lehighvalleylive.com/news/2022/11/easton-psychiatrist-billed-medicare-for-treating-dead-patients-in-1m-fraud-scheme-feds-say.html>

Furthermore, the office of the United States Attorney for the Eastern District of Pennsylvania did not exercise sound judgement in correcting the misinformation disseminated by its defamatory and injurious press releases on 11/14/2022 and 10/28/2024. Despite Media requests for comments and clarification "the U.S. Attorney spokeswoman Carrie Adamowski confirmed the verdict but declined to comment on it" as reported by Rudy Miller from Lehigh Valley Live who contacted the Media Contact in the of the United States Attorney for the Eastern District of Pennsylvania. <https://www.lehighvalleylive.com/news/2024/05/jury-clears-easton-psychiatrist-of-1m-health-care-fraud-allegation.html>

Therefore, the removal of the Press Release in its entirety is the only available remedy to stop the defamatory injury and harm created by the press release since it was made public on November 14, 2022 and its revision on October 28, 2024.

- 3) The United States Attorney Office of the Eastern District of Pennsylvania egregiously and blatantly violated Justice Manual section 1-7.610 causing significant prejudice and continuous harmful and irreparable injury to the reputation of Muhamad Aly Rifai and Blue Mountain Psychiatry.

Section 1-7.610 of The Justice Manual clearly states:

1-7.610 - Concerns of Prejudice

Because the release of certain types of information could prejudice an adjudicative proceeding, DOJ personnel should refrain from disclosing the following, except as appropriate in the proceeding or in an announcement after a finding of guilt:

- A. Observations about a defendant's or party's character;
- F. Any opinion as to the defendant's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense.

The office of the United States Attorney for the Eastern District of Pennsylvania titled the press release on 11/14/2022 "Lehigh Valley Psychiatrist Charged With Stealing From Medicare Through Improper Billing Scheme" and included in its text that "the defendant was a licensed psychiatrist who was the sole owner of Blue Mountain Psychiatry". These statements are inaccurate, defamatory and impugned the character of Muhamad Aly Rifai, MD and implied an opinion about his guilt in violation of the Department of Justice Policy 1-7.610 about the Concerns of Prejudice.

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Merriam-Webster Dictionary defines <https://www.merriam-webster.com/dictionary/steal> the word stealing as "to take the property of another wrongfully and especially as a habitual or regular practice". Yet at the core of the presumption of innocence is the lack of the veracity of the unproven allegations in the press release and that defendant Muhamad Aly Rifai, MD acted appropriately and did not steal from Medicare.

Merriam-Webster Dictionary also defines the term "was" as "past tense first- and third-person singular of be" <https://www.merriam-webster.com/dictionary/was#dictionary-entry-1>. The use of the language "the Defendant was a licensed psychiatrist" implies that as a results of these unproven allegation for which the presumption of innocence was denied, Muhamad Aly Rifai, MD ceased to be a licensed psychiatrist. This language not only violates the Justice Manual guidelines but also Section 515 of Public Law 106-554 the Information Quality Act. This is a false and defamatory statement as confirmed by the listings on the website of the Commonwealth of Pennsylvania, Department of State indicating that at no time was the medical license of Muhamad Aly Rifai, MD encumbered in any way by the false allegations by the office of the United States Attorney of the Eastern District of Pennsylvania.

The use of such language clearly violated the Justice Manual Policy on Confidentiality and Media Contacts. The characterization of the language used in the press release published on 11/14/2022 and its modified version on 10/28/2024 as inappropriate and false is derived from the Supreme Court of The United States of America utilizing the Dictionaries more than 600 times in its decisions to define language and what it means. It would be up to an independent factfinder to opine whether the use of this language in this press release clearly violates articulated policies in the Justice Manual and other pertinent laws and statutes in the United States and the Commonwealth of Pennsylvania.

Certainly, these facts support the removal of the Press Release in its entirety as the only available remedy to stop the defamatory injury and harm created by the press release since it was made public on November 14, 2022 and its revision on October 28, 2024.

- 4) The United States Attorney Office of the Eastern District of Pennsylvania egregiously and blatantly violated Justice Manual section 1-7.310 causing continuous harmful and irreparable injury to the reputation of Muhamad Aly Rifai and Blue Mountain Psychiatry.**

Section 1-7.610 of The Justice Manual clearly states:

1-7.400 - Disclosure of Information Concerning Ongoing Criminal, Civil, or Administrative Investigations

**Any communication by DOJ personnel with a member of the media relating to a pending investigation or case must be approved in advance by the appropriate United States Attorney or**

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Assistant Attorney General, or their designee, except in emergency circumstances. For administrative investigations not overseen by a United States Attorney or Assistant Attorney General, approval must be obtained from the Assistant Attorney General for Administration, or their designee. Where the investigation is being handled by the Office of the Inspector General, approval must come from the Inspector General, or their designee. Obtaining information from or related to the news media is covered by the Department's news media policy, 28 C.F.R. § 50.10.

DOJ generally will not confirm the existence of or otherwise comment about ongoing investigations. Except as provided in subparagraph C of this section, DOJ personnel shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress before charges are publicly filed.

When the community needs to be reassured that the appropriate law enforcement agency is investigating a matter, or where release of information is necessary to protect the public safety, comments about or confirmation of an ongoing investigation may be permissible, subject to the approval requirement in subparagraph A.

An investigating agency may not disclose to a member of the news media or general public its recommended charging decision in a criminal case without the approval of the appropriate United States Attorney or Assistant Attorney General overseeing the prosecution of the case, or their designee.

The press release published by the Office of the United States Attorney for the Eastern District of Pennsylvania on 11/14/2022 and its modified version on 10/28/2024 states "If the public has any information regarding Blue Mountain Psychiatry or any other health care fraud allegation, individuals should contact the HHS-OIG hotline at 800-HHS-TIPS". The press release in its original and updated form creates an eternal investigation status of Muhamad Aly Rifai, MD and Blue Mountain Psychiatry. These statements, not only violate the Regulations in the Justice Manual, but also contradict the public Statement by the United States Department of Justice on "Transparency in Criminal Division Prosecutions" <https://www.justice.gov/opa/blog/transparency-criminal-division-enforcement>

It therefore, serves the principles of Justice that the removal of the Press Release in its entirety is the only available remedy to stop the defamatory injury and harm created by the press release since it was made public on November 14, 2022 and its revision on October 28, 2024.

- 5) **The United States Attorney Office of the Eastern District of Pennsylvania egregiously and blatantly violated Justice Manual section 1-7.710 causing continuous harmful and irreparable injury to the reputation of Muhamad Aly Rifai and Blue Mountain Psychiatry.**

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1-7.710 - Assisting the News Media

DOJ personnel shall not prevent lawful efforts by the news media to record or report about a matter, unless by reason of a court order. DOJ personnel may enforce access restrictions that apply to all persons, such as a crime scene perimeter.

In order to promote the aims of law enforcement, including the deterrence of criminal conduct and the enhancement of public confidence, DOJ personnel, with the prior approval of the appropriate United States Attorney or Assistant Attorney General, may assist the news media in recording or reporting on a law enforcement activity. The United States Attorney or Assistant Attorney General shall consider, among other things, whether such assistance would:

1. Unreasonably endanger any individual;
2. Prejudice the rights of any person; or
3. Be otherwise proscribed by law.

Here again the office of the United States Attorney for the Eastern District of Pennsylvania in its press on 11/14/2022 and its modified version on 10/28/2024 violates The United States Department of Justice Manual "Justice Manual" sections 1-7.400, 1-7.500, 1-7.610, 1-7.310 as well as 1-7.710. The statements in the press release are inaccurate, defamatory and impugned the character of Muhamad Aly Rifai, MD and implied an opinion about his guilt in violation of the Department of Justice Policies 1-7.610 and 1-7.710 about the Concerns of Prejudice. This causes significant harm to the reputation of Muhamad Aly Rifai as an exemplary physician with an international reputation. [https://en.wikipedia.org/wiki/Muhamad\\_Aly\\_Rifai](https://en.wikipedia.org/wiki/Muhamad_Aly_Rifai)

**Requestor contact information:**

Muhamad Aly Rifai, MD  
Blue Mountain Psychiatry  
241 North 13<sup>th</sup> Street Easton PA 18042  
Phone: 540-819-0313, Fax 888-972-2853  
Email: Dr.Rifai@bluepsychiatry.org

**Specific description of information to Remove:**

Website publication dated November 14, 2022

<https://www.justice.gov/usao-edpa/pr/lehigh-valley-psychiatrist-charged-stealing-medicare-through-improper-billing-scheme>

**Explanation of noncompliance with DOJ Policies;**

The publication on the website of the DOJ USAO EDPA is incorrect or fails to meet either the OMB or the DOJ information quality guidelines. Furthermore this publication violates the Department of Justice Policies as outlined in the Justice Manual sections 1-7.400, 1-7.500, 1-7.610, 1-7.310 as well as 1-7.710

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**Explanation of the impact of the error.**

On May 9, 2024, a jury trial found that the allegations by DOJ and OIG-HHS were unfounded, and a jury found the Lehigh Valley Psychiatrist Muhamad Aly Rifai, MD NOT GUILTY of all charges making the allegation in this information release false. The information of the release is therefore not correct

<https://www.justice.gov/usao-edpa/pr/lehigh-valley-psychiatrist-charged-stealing-medicare-through-improper-billing-scheme>

These statements caused a significant loss in reputation and income for Muhamad Aly Rifai, MD and Blue Mountain Psychiatry

**Recommendation and justification for how the information will be corrected –**

The release is incorrect and therefore needs to be removed in compliance with OMB Memorandum M-19-15

**Supporting documentary evidence**

Recorded court order and Jury Decision on May 9, 2024, from the Eastern District of Pennsylvania attached. This information can also be verified through the Public Court case Docket at pacer. Comparative Press Release Versions

I request the information be removed and the unfounded allegations that were proven incorrect in a jury trial be corrected in a Public Press Release.

*M. Aly Rifai*

Muhamad Aly Rifai, MD, FACP, FAPA, FACLP  
Board Certified in Internal Medicine, Psychiatry, Consultation Psychiatry and Addiction Medicine  
President 2018-2020 Lehigh Valley Psychiatric Society  
President CEO, Chief Psychiatrist; Blue Mountain Psychiatry

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :  
 :  
 v. : NO. 22-CR-390  
 :  
 MUHAMAD ALY RIFAI :

**ORDER**

AND NOW this 9th day of May, 2024, the Verdict of the jury is hereby  
recorded as NOT GUILTY on Counts 1 through 4.

**BY THE COURT:**

/s/ Jeffrey L. Schmehl  
JEFFREY L. SCHMEHL, J.



**PRESS RELEASE**

# Lehigh Valley Psychiatrist Charged With Stealing From Medicare Through Improper Billing Scheme

Monday, November 14, 2022

**For Immediate Release**

U.S. Attorney's Office, Eastern District of Pennsylvania

PHILADELPHIA – United States Attorney Jacqueline C. Romero announced that Muhamad Aly Rifai, 49, of Easton, PA, was charged by Indictment with four counts of healthcare fraud stemming from his alleged scheme to improperly and fraudulently bill the federal Medicare program for services not provided, or not provided at the level which was claimed.

According to the Indictment, the defendant was a licensed psychiatrist who was the sole owner of Blue Mountain Psychiatry, a psychiatry practice with offices located in Easton, Palmerton, and Stroudsburg, Pennsylvania. The Indictment alleges that for several years, Rifai routinely and improperly billed Medicare for services which he did not provide to Medicare beneficiaries and nursing home patients, including billing for treating dead beneficiaries; billing for treating the same patient at the same time at different nursing homes; and billing for providing more than 24 hours' worth of services to patients on a single day.

The Indictment further alleges that the defendant routinely billed for higher levels of care than he or his staff provided to nursing home patients. According to the Indictment, despite not having actually seen the patient, Rifai added a pre-printed stamp to medical progress notes to support billing for psychological and add-on services which were not provided by his staff. From about January 2015 until October 2022, Rifai, through Blue Mountain, obtained Medicare payments of at least approximately \$1.36 million based on fraudulent claims.

The defendant made an initial appearance in federal court on these charges before U.S. Magistrate Judge Richard Lloret.

If the public has any information regarding Blue Mountain Psychiatry or any other health care fraud allegation, individuals should contact the HHS-OIG hotline at 800-HHS-TIPS.

If convicted, the defendant faces a maximum possible sentence of 40 years in prison, and a fine of up to \$1 million.

The case was investigated by the Office of Inspector General, U.S. Department of Health and Human Services, and is being prosecuted by Assistant United States Attorney Joan E. Burnes.

**Contact**

UNITED STATES ATTORNEY'S OFFICE  
EASTERN DISTRICT OF PENNSYLVANIA  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106

JENNIFER CRANDALL  
Media Contact  
215-861-8300

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*Updated November 14, 2022*

**Topic**

**HEALTH CARE FRAUD**



PRESS RELEASE

# UPDATED//Lehigh Valley Psychiatrist Charged With Stealing From Medicare Through Improper Billing Scheme

Monday, November 14, 2022

For Immediate Release

U.S. Attorney's Office, Eastern District of Pennsylvania

## UPDATE

On May 9, 2024, a federal jury acquitted Dr. Muhamad Aly Rifai of the charges alleged in the indictment described in the press release below.

PHILADELPHIA – United States Attorney Jacqueline C. Romero announced that Muhamad Aly Rifai, 49, of Easton, PA, was charged by Indictment with four counts of healthcare fraud stemming from his alleged scheme to improperly and fraudulently bill the federal Medicare program for services not provided, or not provided at the level which was claimed.

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### Contact

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JENNIFER CRANDALL  
Media Contact  
215-861-8300



PRESS RELEASE

# Philadelphia Man Indicted for Stalking and Nearly Blinding Ex-Girlfriend in Broad Daylight Attack

Friday, November 4, 2022

For Immediate Release

U.S. Attorney's Office, Eastern District of Pennsylvania

PHILADELPHIA – United States Attorney Jacqueline C. Romero announced that Victor Ortiz, 45, of Philadelphia, PA, was arrested and charged by Indictment for stalking and assaulting a woman with whom he had a previous relationship.

According to the Indictment, on the morning of May 4, 2022, the defendant pursued the victim, who is his ex-girlfriend and a federal employee, as she walked to her office in Philadelphia. Before reaching her office, the defendant allegedly threw a caustic substance on victim's face and torso. His attack temporarily blinded the victim in her left eye and caused severe pain and scarring on her body. Additionally, the defendant attached a GPS device to the victim's vehicle so that he could monitor her location and stalk her. After law enforcement officials discovered and removed the device, the defendant was caught on camera allegedly attempting to install a second GPS device on the victim's vehicle in July 2022.

"The charges against Victor Ortiz allege behavior that is dangerous, terrorizing and abhorrent," said U.S. Attorney Romero. "Everyone deserves to feel safe as they go about their daily lives: at home, while at work, and in transit; and intimate partner violence can sometimes be the most terrifying kind because someone who knows you well can strike any part of your routine. Thank you to our partners with Homeland Security Investigations for their dedicated work on this case."

"Threats and violence against federal employees will never be tolerated," said William S. Walker, Special Agent in Charge of HSI's Philadelphia office. "HSI Philadelphia is committed to utilizing our investigative expertise, technical capabilities and partnerships to investigate and pursue the prosecution of those who threaten, harm or intimidate government officers or employees."

If convicted, the defendant faces a maximum possible sentence of 40 years in prison.

The case was investigated by Homeland Security Investigations, and is being prosecuted by Assistant United States Attorneys Michael R. Miller and Angella Middleton.

An indictment, information, or criminal complaint is an accusation. A defendant is presumed innocent unless and until proven guilty.

#### Contact

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Updated November 4, 2022

#### Topic

VIOLENT CRIME

12/22/24, 8:24 AM

Eastern District of Pennsylvania | SEPTA Video Surveillance Manager, Equipment Vendor Indicted for Extensive Bribery and Extor...



## PRESS RELEASE

# SEPTA Video Surveillance Manager, Equipment Vendor Indicted for Extensive Bribery and Extortion Scheme

Friday, November 4, 2022

For Immediate Release

U.S. Attorney's Office, Eastern District of Pennsylvania

PHILADELPHIA – United States Attorney Jacqueline C. Romero announced that James Stevens, 69, of Somerdale, NJ, and Robert Welsh, 59, now living in Arizona, were charged by Indictment with conspiracy, bribery, extortion, and fraud charges related to a scheme to pay off Stevens in exchange for Stevens helping grow the businesses of Welsh. Welsh's business installed, maintained, and supplied video surveillance equipment to the Southeastern Regional Transportation Authority (SEPTA), and Stevens was a SEPTA official responsible for video surveillance operations at SEPTA.

According to the Indictment, from about March 2014 until about July 2018, the defendants allegedly engaged in a bribery and extortion scheme in which Stevens, who was the Director of the Video Evidence Unit with SEPTA during the time period of the charged conduct, demanded from Welsh, owner and operator of Spector Logistics, Inc., a stream of financial and other benefits in exchange for Stevens' role in helping maintain and grow Spector's business with SEPTA. The benefits Welsh provided to Stevens included, most significantly, tens of thousands of dollars in cash payments, as well as donations to an alleged charity that Stevens pocketed, lodging and meals during the 2015 Papal Visit, frequent meals and drinks, tickets to a 2016 Barbra Streisand concert, and funds for SEPTA annual holiday parties. As Stevens demanded, Welsh also offered Stevens future employment with Spector when Stevens retired from SEPTA. During the time of this corrupt relationship, Spector maintained and obtained millions of dollars in contracts with SEPTA. Stevens played a significant role in facilitating and approving contracts for Spector and Blue Zebra, a second company Welsh owned and established with Stevens' assistance, and helped Spector win bids by giving Welsh inside information about SEPTA's financial analyses and otherwise collaborating with Welsh in the contracting process. In doing so, Stevens allegedly provided an unfair advantage to Welsh and a disadvantage to other potential vendors.

"Philadelphians deserve public employees who do their jobs honestly, without corrupting the system to line their own pockets," said U.S. Attorney Romero. "As alleged in the Indictment, the defendants' participation in this scheme was extensive: using millions of dollars in public contracts to fraudulently benefit themselves."

"SEPTA exists to transport people where they want to go – not to move crooked insiders up a tax bracket," said Jacqueline Maguire, Special Agent in Charge of the FBI's Philadelphia Division. "Stealing public money through back-door deals is reprehensible and the FBI will hold accountable anyone foolish enough to engage in this kind of fraud."

The case was investigated by the Federal Bureau of Investigation, and is being prosecuted by Assistant United States Attorney Louis D. Lappen.

An indictment, information, or criminal complaint is an accusation. A defendant is presumed innocent unless and until proven guilty.

**Contact**

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<https://www.justice.gov/usao-edpa/pr/septa-video-surveillance-manager-equipment-vendor-indicted-extensive-bribery-and>

## Exhibit 5:

OIG Report Agent Yeager Lead.

**Department of Health and Human Services**

**OFFICE OF  
INSPECTOR GENERAL**

**UPDATE: MEDICARE  
PAYMENTS FOR END STAGE  
RENAL DISEASE DRUGS**



**Daniel R. Levinson  
Inspector General**

**March 2014  
OEI-03-12-00550**

**APPENDIX D****Agency Comments**

DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Centers for Medicare &amp; Medicaid Services

*Administrator*  
Washington, DC 20201

**DATE:** JAN - 8 2014**TO:** Daniel R. Levinson  
Inspector General**FROM:** Marilyn Tavinier */SI/*  
Administrator**SUBJECT:** Office of Inspector General Draft Report: "Update: Medicare Payments for End Stage Renal Disease Drugs," (OEI-03-12-00550)

The Centers for Medicare & Medicaid Services (CMS) appreciates the opportunity to review and comment on the above subject report. The objectives of this review were to: 1) compare first-quarter-2012 facility acquisition costs for selected End Stage Renal Disease (ESRD) drugs to the amounts that Medicare Part B paid for these drugs under the new ESRD bundled rate; 2) determine how facility acquisition costs for selected ESRD drugs have changed in relation to inflation, from the first quarter of 2009 to the first quarter of 2012 and; 3) compare the average sale price (ASP) based reimbursement amounts for selected ESRD drugs to the amounts paid under the new ESRD bundled rate.

Our response to each recommendation follows.

**Recommendation:**

Rebase the ESRD base rate to reflect current trends in drug acquisition costs, as required by law.

**Response:**

The CMS implemented section 632(a) of the American Taxpayer Relief Act of 2012 (ATRA), which requires the Secretary to reduce the single payment amount for renal dialysis services to reflect the Secretary's estimate of the change in the utilization of ESRD-related drugs and biologicals (other than oral-only ESRD-related drugs) between 2007 and 2012. As the law requires, CMS took into account the most recently available data on ASP and changes in prices for drugs and biologicals reflected in the ESRD market basket percentage increase factor in determining the reduction amount. The statute did not specify to take into account drug acquisition costs.

The final regulation was issued on November 22, 2013 (See 78 FR 72156) and included a reduction amount which will be phased in over three to four years by offsetting the reduction against the market basket minus productivity adjustment and other payment impacts to create an overall zero percent impact for all ESRD facilities from the previous year's payments for calendar

Page 2- Daniel R. Levinson

years (CYs) 2014 and 2015. For CY 2016, CMS will evaluate how to apply the balance of the reduction when we conduct an analysis of the case-mix adjustments, required by section 632(c) of ATRA, and implement the inclusion of oral-only ESRD-related drugs and biologicals, after 2016 as required by section 632(b) of ATRA. At that time, this evaluation will assist us in determining if we should apply the balance of the reduction in CY 2016 or provide one additional transition year so that the entire amount is applied to the base rate no later than CY 2017. Consistent with the law, the final rule will achieve savings for the Medicare program while ensuring greater accuracy under the ESRD payment system.

**Recommendation:**

Distinguish payment in the ESRD base rate between independent and hospital-based dialysis facilities.

**Response:**

The CMS does not concur with this recommendation. Section 1881(b)(14)(A)(i) of the Act requires that CMS implement a payment system under which a single payment is made to a provider of services or a renal dialysis facility for renal dialysis services. As a result, the ESRD PPS applies a single base rate that reflects the average cost of a dialysis treatment across all ESRD facility types.

The ESRD PPS includes several patient-level payment adjusters for those patients who are more expensive to treat, including case-mix adjusters and an outlier policy. In addition, the ESRD PPS includes several facility-level adjusters, including one to enhance payment for those facilities that are at a disadvantage because of size, such as the low volume payment adjustment.

It is important to note that section 632 of ATRA requires that no later than January 1, 2016, CMS bundle in the cost of oral only ESRD related drugs, conduct an analysis of the case-mix payment adjustments, and make appropriate revisions to such case mix payment adjustments. This statutory authority gives us the opportunity and flexibility to review the appropriateness of all of the payment adjusters as a whole. At that time, CMS will consider appropriate modifications to the payment system to improve the accuracy of Medicare's payment for renal dialysis services, including drugs and biologicals included in the payment bundle.

**Recommendation:**

Consider updating the ESRD bundled rate using a factor that takes into account drug acquisition costs.

**Response:**

The CMS concurs with the recommendation. We are appreciative of the work of OIG in reviewing the acquisition costs related to the drugs used in furnishing ESRD services. OIG found a range of price changes in the average facility acquisition costs from 2009 to 2012 (first quarter), with the majority of drugs under review experiencing a decrease while Epoetin Alfa, the drug that accounted for over 70 percent of the per-treatment payment in 2011, increased between

Page 3 - Daniel R. Levinson

17 to 19 percent. By comparison, OIG reported that the Producer Price Index (PPI) drug index, used in the ESRD bundled market basket, increased by about 25 percent.

We will consider these findings in our continual evaluation of the ESRD market basket, particularly during the next rebasing and revising of the market basket index. As we have done for all of the market baskets developed by CMS, we will base the decision on which price proxy is used on four criteria: reliability, timeliness, availability, and relevance. Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Widely accepted statistical methods ensure that the data are collected and aggregated in a way that can be replicated. Low sampling variability is desirable because it indicates that the sample reflects the typical members of the population. Timeliness implies that the proxy is published regularly, preferably at least once a quarter. The market baskets are updated quarterly, and therefore, it is important for the underlying price proxies to be up-to-date, reflecting the most recent data available. Availability means that the proxy is publicly available. We prefer that our proxies are publicly available because this will help ensure that our market basket updates are as transparent to the public as possible. In addition, this enables the public to be able to obtain the price proxy data on a regular basis. Finally, relevance means that the proxy is applicable and representative of the cost category weight to which it is applied.

At the time the PPI for prescription drugs was chosen for use in the ESRD market basket, we believed that it adequately met these criteria. While we still believe that it is a reliable, timely, and available proxy, the OIG work has raised important questions about its relevance. We will be evaluating alternative data sources and methods to determine if we can improve the relevance of the ESRD drug price proxy while maintaining the other three criteria. For instance, the data used in the OIG analysis is based on acquisition cost data, which is not data that is readily available in a public or timely manner. Additionally, the ESRD annual market basket updates are based on a projection and any price proxy ultimately will need to be forecasted. The more restrictive or specific a price series, the more difficult it can be to accurately forecast future price movements. Finally, the price proxy should also reflect price trends associated with an efficient market; therefore, to the extent market inefficiencies exist, there would be concerns with using direct cost or price data.

The CMS thanks the OIG for the opportunity to review and comment on this draft report.

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## **ACKNOWLEDGMENTS**

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Stephanie Yeager served as the team leader for this study, and Stefanie Vance served as the lead analyst. Central office staff who provided support include Clarence Arnold, Meghan Kearns, and Christine Moritz.

# Office of Inspector General

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