

Amid Opioid Crisis, Pain Doc Settles Overtesting Probe

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- Claims of unnecessary urine testing bring \$1.7 million settlement
- Doctor says testing was to prevent drug abuse
- Billing through physician-owned anesthesia practice seen as improper

A Florida pain doctor whose former partner faced criminal and civil allegations for kickback schemes reached his own civil settlement and will repay \$1.7 million.

Jonathan Daitch, a partner at Advanced Pain Management & Spine Specialists in Fort Myers, Fla., reached the agreement to resolve allegations that he improperly billed Medicare and TRICARE for excessive urine drug testing conducted at an in-house lab, the Justice Department said Dec. 20.

The government also alleged Daitch triggered overpayments by billing anesthesia services through a clinic he owned, when in fact the work was performed by independent nurse-anesthetists earning contracted rates.

The case highlights a tension between trying to provide patient care while also helping curb the nation's opioid-abuse crisis, said Scott R. Grubman, a health-care attorney at Chilivis, Cochran, Larkins, & Bever LLP in Atlanta. Grubman, a former assistant U.S. attorney, isn't involved in the Daitch case.

Pain doctors attempting to detect patients who abuse drugs "are understandably surprised at, and frustrated with, the government's focus on alleged overutilization of urine drug tests," Grubman told Bloomberg Law by email Dec. 21. The tests are "widely recognized as one of the best tools to detect abuse and misuse of opioids and other dangerous drugs."

Defendant: Tests Were to Prevent Drug Abuse

Daitch, in a written statement emailed to Bloomberg Law on Dec. 21, largely echoed Grubman's assessment—saying routine urine testing is important "to ensure that patients are taking their medicines correctly, and not taking other medications, sedatives, or illicit substances." He also cited his "personal goal" of helping resolve Florida's opioid crisis.

Daitch denied any wrongdoing and said he settled to end a time-consuming federal investigation. After he cooperated for three years and provided 75,000 pages of documents, the government continued to investigate but still hadn't brought a case in court, he said.

Daitch and his medical practices also entered a corporate integrity agreement with the HHS Office of Inspector General. The CIA will require them to hire an independent review organization to monitor claims and financial arrangements. That and other information will be reviewed by the OIG.

U.S. Attorney Chapa Lopez of the Middle District Florida described Daitch's conduct as "abuse of federal programs," including conducting tests that weren't medically necessary between 2013 and 2016.

On top of the False Claims Act, doctors and labs also now have to ensure they comply with the [Eliminating Kickbacks in Recovery Act of 2018](#), part of a package of opioid legislation Congress passed in October.

Former Partner's Guilty Plea

Michael Frey, Daitch's former partner at Advanced Pain and Anesthesia Partners, reached a [guilty plea on criminal charges](#) in June along with a \$2.8 million settlement of civil allegations for various kickback schemes.

The allegations against Frey touched several businesses beyond his partnerships with Daitch. Among them, Frey was accused of accepting bogus speaking fees from Insys Therapeutics to prescribe its fentanyl painkiller Subsys. Insys has been the subject of a federal investigation that included the arrest of its founder in 2017, related to allegations of bribing doctors to prescribe Subsys.

Daitch previously told Bloomberg Law he had no knowledge of Frey's criminal conduct.

The Justice Department didn't immediately respond to requests for comment or provide a copy of Daitch's settlement agreement.

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