More Cases Emerge From FBI’s California “Spinal Cap” Investigation

Walter Eisner • Mon, July 21st, 2014

The 2002 California law that required workers' compensation carriers to pay 100% of a hospital's documented cost of spinal hardware set in motion a number of schemes to try to maximize the amount of money being collected for spine surgery. As a result, the U.S. Attorney's office announced a new round of cases complete with lurid allegations of bribes, inflated billing practices, unapproved devices and lethal pain cream compounds to alleviate back pain—all under an FBI investigation called “Spinal Cap.”

Spinal Cap

"Spinal Cap" netted its first big fish when Michael Drobot, the former owner and operator of Pacific Hospital of Long Beach and various distribution and pharmaceutical companies, admitted to compensating physicians to refer patients to his hospital and bribing a state senator to keep the workers' comp law on the books.

The investigation uncovered one of the largest workers' comp fraud cases in California's history, involving more than 150 insurance companies. The investigation also resulted in the law being wiped off the books.

When Drobot pled guilty to criminal fraud charges in February 2014, Eric Weirich, deputy commissioner of the enforcement branch of the California Department of Insurance, said in a joint press conference with the U.S. Attorney's Office, “I assure you, this is the first in many cases to come.”

Those cases are now landing in the laps of numerous grand juries, triggering civil lawsuits, more criminal prosecutions and petitions and complaints to the California Medical Board.

Unapproved Devices

Citing the Drobot case, Arthur Golia filed suit on June 13, 2014, in the Superior Court of California County of Los Angeles, accusing, Jack Akmakjian, M.D., a spine surgeon, a distributor and a mom-and-pop machine shop of putting seven non-FDA approved devices into his spine.

Golia is suing Akmakjian, the Parkview Community Hospital Medical Center in Riverside, California, and Spinal Solutions, LLC et al. for engaging in a "systematic pattern of fraud and deceit, fueled by the payment of illegal kickbacks, designed to illegally profit from grossly inflating the charges for implantable medical hardware used in connection with spinal fusion surgeries."

Golia claims he is only one of thousands of patients in Southern California who received such, non-FDA approved hardware.

Dr. Akmakjian, Spinal Solutions et al.

Akmakjian performed lumbar fusion surgery on Golia in January 2010 at the Parkview Medical Center. Golia claims
that Akmakjian knew that Spinal Solutions and other defendants, including Roger Williams, Jeff Fields and Mary Sisler Williams, were producing "knock-off" implants, consisting of screws, rods and cages. Akmakjian also allegedly knew the hardware was being distributed by Michael McGrath through Comprehensive Intra-Operative Services, Inc. McGrath allegedly entered into agreements with hospitals, like Parkview to sell the devices produced by Spinal Solutions and William Crowder, the owner and operator of Crowder Machine & Tool Shop in Temecula, California.

Crowder served as a contractor for Spinal Solution. An attorney for the machine shop’s owner reportedly denied the allegations, saying it is impossible that the elderly machinist mass-produced the hardware.

Golia further claims that Akmakjian was paid by Spinal Solutions in the form of cash, plane travel and other perks to use the unapproved implants. He accuses Akmakjian of participating in a wider fraud scheme involving kickbacks paid by hospitals and vendors and overbilling payers including insurance companies.

According to a report by the Center for Investigative Reporting on July 3, 2014, a woman identifying herself as Akmakjian's office manager said there would be no comment. Parkview Community Hospital did not respond to questions.

**Workers' Comp Free-For-All**

The lawsuit outlines how the now changed California law, which reimbursed 100% of the documented costs of implantable hardware, had rewarded hospitals for entering into contracts with third-party "marketers" who would, in turn, refer or steer spinal fusion candidates to their facility. The marketers, including McGrath, were allegedly paid "referral fees" by the hospitals. The hospitals also allegedly paid "referral fees" to chiropractors and physicians.

After the passage of the law in 2002, hardware distributors allegedly began to dramatically increase the cost of spinal hardware, knowing that workers’ compensation carriers were required to pay 100% of the hospital's documented cost, plus $250. By 2009, claims Golia, a pedicle screw that could be purchased for between $300 and $500 wholesale would end up on a hospital bill at approximately $12, 500. Profits soared.

The defendants in this case, allegedly, started to produce the implants in 2007.

Parkview, claims Golia, paid Akmakjian rebates, refunds, commissions, or other compensation to perform surgeries at
Parkview. He said Parkview knew that Akmakjian was prescribing unapproved hardware, but turned a blind-eye as part of the consideration paid to the surgeon.

In a similar lawsuit filed in January 2014, David Solomon, a Los Angeles man who had implants from the Crowder machine shop put in his back in 2011, claims one of the screws broke, requiring him to undergo a second surgery in 2013. He has ongoing pain and loss of movement, his lawsuit says.

In January 2012, the FDA sent Spinal Solutions a Warning Letter citing a variety of quality control violations. On April 22, 2013, the agency announced that the company was recalling spinal implants because problems with the products "could cause patient harm due to implant breakage, movement, or inadequate sterilization."

An FDA spokeswoman told the Center for Investigative Reporting that the agency could not comment on ongoing litigation or confirm the agency is investigating.

**Akmakjian’s Medical Board Pain**

In addition to his patient, Arthur Golia, Akmakjian has other problem.

On April 14, 2014, the Attorney General for the State of California, on behalf of the executive director of the Medical Board of California, filed a motion accusing Akmakjian of gross negligence, prescribing dangerous drugs without an appropriate prior examination or medical indication; excessive prescribing and failure to maintain adequate and accurate records. The state wants Akmakjian’s license revoked or suspended.

**Tragedy Strikes**

The Golia lawsuit against Akmakjian isn’t the only link to the Spinal Cap investigation.

On June 14, 2014, AP reported that 15 doctors, pharmacists and other medical professionals in Southern California were charged in a $25 million workers’ compensation scheme that prosecutors said was linked to the death of a baby.

One of the pharma professionals charged was, you guessed it, Michael Drobit, the managing partner of Industrial Pharmacy Management.

Drobot, Andrew Jarminski, M.D., Healthcare Pharmacy, Allied Medical Group and Industry are also all being sued by Priscilla Lujan, the mother of a five-month-old child who died after coming in contact with a transdermal cream prescribed by Jarminski for Lujan’s back and knee pain.

**Dangerous Compound**

According to the lawsuit, Lujan went to Jarminski’s Long Beach office in February 2012 for treatment of injuries she suffered while working at Goodwill Industries. Medical records reportedly showed Jarminski prescribed Lujan a compound transdermal cream comprised of the antidepressant amitriptyline, the pain reliever tramadol and the cough suppressant dextromethorphan.

Lujan went home and applied the cream to her knee and back. After using the medication, she took care of her baby, including preparing a bottle for him and bouncing him on her knee and holding him over her shoulders, according to her attorney.

She put the baby to sleep in her bed and awoke in the morning to find him unresponsive. He died an hour later "as a result of multiple drug intoxication," according to the autopsy report. The report also stated that the baby had high levels of three drugs in his system—the same drugs in the compound cream prescribed by Jarminks. Tramadol and dextromethorphan were present at lethal levels, the coroner found.

**Involuntary Manslaughter**
The death was ruled a homicide by the coroner, who said medication residue was found on one of the baby's bottles. Lujan was arrested for her son's death, but the Los Angeles District Attorney declined to file charges because of insufficient evidence, according to spokeswoman Jane Robison.

Jarminski is being charged with involuntary manslaughter by the Orange County grand jury.

The cream Jarminski prescribed for Lujan was costly. Workers' compensation records show Jarminski’s office billed $1,700 for the initial 25-day supply of the cream.

According to Lujan’s attorney, when she was informed the cream was linked to her son’s death, she said she didn’t want any more of the cream. But, according to the lawyer, Jarminski continued to send her more cream by mail and bill workers' comp for it.

"Compounds and the prices charged for them by compounding pharmacies are a growing problem for the health care system," said Riddhi Trivedi-St. Clair, a senior manager with Express Scripts Inc., which manages prescription benefits for thousands of employers, including Los Angeles County.

According to data provided by Express Scripts, the number of injured California workers filing a prescription for at least one compounded medicine increased by 157% last year, compared with 2012.

Jarminski is reportedly associated with Allied Medical Group, as is Daniel Capen, M.D., who was also indicted by the grand jury on fraud charges.

**More to Come**

We have likely not seen the last of the California Spinal Cap investigations. The State Compensation Insurance Fund, which oversees workers' comp claims for the state, wants to recoup some of the $160 million it paid over the past dozen years. Other public and private payers are no doubt examining potential false claims. Then there are the possible kick-back violations if any physicians are found guilty of taking money to refer patients to hospitals.