

# BakerHostetler

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April 5, 2023

### CONFIDENTIAL

### VIA CERTIFIED MAIL

Hearing Request  
Administrative Director  
Division of Workers' Compensation  
1515 Clay Street, Suite 1700  
Oakland, CA 94612

*Re: Bhupinder Bhandari, MD, Response to Notice of Provider Suspension – Workers' Compensation, Request for Hearing*

To Whom it May Concern:

This correspondence is sent on behalf of our client, Bhupinder Bhandari, MD, in response to the letter from Administrative Director George Parisotto dated March 21, 2023 (enclosed as Attachment A, and hereinafter the "Suspension Letter").

#### **A. Background**

Dr. Bhandari is well-regarded gastroenterologist who has dedicated his life's work to serving his patients. For over thirty years, Dr. Bhandari has provided unparalleled medical services to those in need all across the Bay Area, serving on the medical staff of over eight Bay Area hospitals, and working tirelessly throughout the COVID-19 pandemic, at a great risk to himself and his family. Today, Dr. Bhandari treats patients at Mission Primary Healthcare in Fremont and Hayward, California and has privileges at St. Rose Hospital where he remains the only on-call gastroenterologist.

In June 2017, as part of an FBI investigation into potential Medicare fraud at Amity Home Health Care Inc., another physician—who was seeking cooperation credit and attempting to avoid criminal exposure unrelated to Dr. Bhandari—identified Dr. Bhandari as someone who could be convinced to accept kickbacks. Accordingly, Dr. Bhandari soon after agreed to meet with an undercover federal agent to discuss a potential business opportunity. The undercover agent offered Dr. Bhandari a \$1,000 monthly payment in exchange for patient referrals. Dr. Bhandari originally

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accepted the \$1,000 cash that day. However, Dr. Bhandari soon returned the \$1,000 at his next meeting with the undercover agent because he was concerned it was an illegal kickback. Months later, the cooperating physician who initially caused Dr. Bhandari to meet with the undercover agent, persuaded Dr. Bhandari that the arrangement was not problematic or illegal. Accordingly, the cooperating physician informed the undercover agent to reach back out to Dr. Bhandari. On November 30, 2017, Dr. Bhandari again agreed to meet with the undercover agent and accepted a \$1,000 cash payment knowing that the undercover agent may have a hope or expectation of a referral of a Medicare patient to Amity Home Health Care. After this encounter, Dr. Bhandari ***did not make any referrals*** related to the undercover agent's scheme, but he has nonetheless accepted responsibility for illegally accepting a kickback because he knows that accepting any amount of money was wrong under the circumstances. Although Dr. Bhandari is deeply regretful for his conduct, it is imperative to note that no patients were referred, harmed, or otherwise impacted.

On October 6, 2020, a two-count Indictment was filed in the Northern District of California, charging Dr. Bhandari with a violation of 42 U.S.C. § 1320a-7b(b) (i.e., the Anti-Kickback Statute, hereinafter the "AKS"). A forfeiture allegation was included, pursuant to 18 U.S.C. §§ 981 and 982, and 28 U.S.C. § 2461(c).

On March 9, 2021, an eight-count Superseding Indictment was filed, charging Dr. Bhandari with violations of 18 U.S.C. § 371 – Conspiracy to Pay and Receive Health Care Kickbacks (Count One); 42 U.S.C. § 1320a-7b(b)(1)(A) and 18 U.S.C. § 2 – Solicitation and Receipt of Kickbacks in Connection with a Federal Health Care Program (Counts Two through Five); 42 U.S.C. § 1320a-7b(b)(1)(A) and 18 U.S.C. § 2 – Solicitation and Receipt of Kickbacks in Connection with a Federal Health Care Program (Counts Six and Seven); and 18 U.S.C. §§ 1014 and 2 – False Statement to a Financial Institution (Count Eight). A forfeiture allegation was included, pursuant to 18 U.S.C. §§ 981 and 982, and 28 U.S.C. § 2461(c).

On May 3, 2022, Dr. Bhandari signed a written Plea Agreement in which he agreed to plead guilty to a single count of violating the AKS. The Court held a Change of Plea Hearing for Dr. Bhandari on June 6, 2022. On January 27, 2023, the Court sentenced Dr. Bhandari (*see* the judgement of conviction and sentence documentation from *U.S. v. Bhandari*, Case No. 3:20-cr-00374-JD, DE 87 (Jan. 27, 2023), enclosed as Attachment B).

Notably, the Court did not sentence Dr. Bhandari to any custodial sentence likely due to the unusual facts of the case, namely, the conduct at issue only involved the modest amount of \$1,000, no patients received Medicare services in exchange for the \$1,000, and the Government suffered no loss. Furthermore, Dr. Bhandari took ownership of his wrongdoing, expressed deep remorse, met with the Government to provide information relevant to other ongoing matters, and the Government even credited Dr. Bhandari's "willingness to provide information voluntarily" as being "commendable and consistent with his acceptance of responsibility in the case." *U.S. v. Bhandari*, Case No. 3:20-cr-00374-JD, DE 84 at 2:7-9 (Jan. 18, 2023).

**B. California Labor Code Sections 139.21(a)(1)(A) and 139.21(a)(1)(B) Do Not Apply to Dr. Bhandari.**

On behalf of Dr. Bhandari, we respectfully disagree with the Suspension Letter and the Administrative Director's determination that Dr. Bhandari's conviction falls under California Labor Code Sections 139.21(a)(1)(A) or 139.21(a)(1)(B), and he must be suspended.

Under Section 139.21(a)(1)(A)(i), Dr. Bhandari's conviction does not involve fraud or abuse of the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system, or fraud or abuse of any patient. Dr. Bhandari signed a written Plea Agreement in which he agreed to plead guilty to a single count of violating the AKS. In doing so, he accepted responsibility for illegally accepting a kickback, even though he never made any referrals of patients. Dr. Bhandari was not convicted of deceiving or improperly taking resources from the above-mentioned programs, and his conviction therefore does not constitute fraud or abuse. Moreover, no court, whether state or federal, has found such fraud or abuse occurred.

Under (A)(ii), Dr. Bhandari's conviction does not relate to the conduct of his medical practice as it pertains to patient care. No patients were referred, harmed, or otherwise impacted by Dr. Bhandari's actions or subsequent conviction.

Under (A)(iii), Dr. Bhandari's conviction is not a financial crime that relates to the federal Medicare or Medicaid programs, the Medi-Cal program, or the workers' compensation system. Dr. Bhandari has accepted responsibility for illegally accepting a kickback, even though he never referred any patients, and he never improperly billed any program following acceptance of the kickback. Dr. Bhandari was not convicted of stealing or mishandling money, nor did he deprive any victims of money. He was also not convicted of improperly taking resources from any of the above-mentioned programs. Dr. Bhandari's conviction therefore does not qualify as a financial crime under this subsection.

Under (A)(iv), Dr. Bhandari's conviction does not substantially relate to the qualifications, functions, or duties of a provider of service to the California workers' compensation system. Dr. Bhandari's actions did not involve workers' compensation patients. In fact, no court or government, whether state or federal, has ever found that Dr. Bhandari abused the California workers' compensation system or any patient of the system.

Finally, under Section 139.21(a)(1)(B), Dr. Bhandari has requested hearings to lift his suspensions under Medicare and Medi-Cal because these suspensions are neither mandatory nor warranted, and they would not be in the best interest of either Medicare or Medi-Cal.

For these reasons, Dr. Bhandari's conviction does not fall under California Labor Code Sections 139.21(a)(1)(A) or 139.21(a)(1)(B). Thus, Dr. Bhandari's suspension is not required. Instead, the Administrative Director of the Division of Workers' Compensation has the discretion to enforce suspension. Accordingly, and for the reasons that follow, we humbly request that the Director exercise discretion by not suspending Dr. Bhandari, as his suspension would not be in the best interest of the California workers' compensation system.

**C. Suspending Dr. Bhandari Will Adversely Impact Patients Who Will Lose Access to an Essential Specialized Service.**

The Division of Workers' Compensation should not suspend Dr. Bhandari because of his longstanding commitment to serving patients (including Medicare and Medi-Cal beneficiaries, and patients without insurance). Enclosed as Attachment C are multiple testimonial letters from Dr. Bhandari's colleagues who agree that he is an excellent physician who desires to provide exceptional care to patients that benefits his community. Reports of the physician shortage nationwide, and especially in California, are on the rise, and Dr. Bhandari's skills are needed more than ever.

Of specific note, for the last three years, Dr. Bhandari has been the *only* gastroenterologist who has provided essential on-call services to St. Rose Hospital in Hayward, California. While other gastroenterologists stopped serving St. Rose's patients during the COVID-19 Public Health Emergency, Dr. Bhandari continued providing care to patients needing specialized gastroenterology services throughout the hospital, including consults for patients presenting to the Emergency Department, despite having his own comorbidity risks. Nonetheless, Dr. Bhandari continued providing necessary procedures (e.g., endoscopies) with a very high risk for COVID-19 transmission. Dr. Bhandari has been so vital to St. Rose that one of the hospitalists has written, "***I do not know what we would do without him for our patients in need of GI services.***" See Letter from Steve Verbinski, M.D. in Attachment C at 4. Moreover, another of his colleagues writes that, as the only on-call gastroenterologist at St. Rose, Dr. Bhandari provides critical and essential services to Medicare, Medi-Cal, uninsured, and underinsured patients who would otherwise need to delay care while seeking transfer to facilities many miles away. See Letter from Lex Reddy, CEO of St. Rose Hospital, in Attachment C at 1-2. While gastroenterologist specialists are also scarcely available to meet the needs of workers' compensation patients throughout California, Dr. Bhandari serves them in far-flung locations, including Stockton, Sacramento, Eureka, and Monterey.

Furthermore, Dr. Bhandari provides an unparalleled level of care to his patients—many of whom are indigent and underserved—and suspension would only serve to harm these individuals and future patients. For instance, Dr. Bhandari has been indispensable in providing care to COVID-19 afflicted patients in the Bay Area. He is still the only gastroenterology specialist at St. Rose Hospital to continue his services throughout the pandemic, including performing procedures with a high transmission risk, putting his patients' health above that of his own. Dr. Bhandari also treated dozens of COVID-infected patients at Parkview HealthCare Center, a skilled nursing facility in Hayward, which specialized in treating COVID-19 infected patients, as well as at St. Francis Urgent Care. Dr. Bhandari's unwavering devotion towards his patients—regardless of their ability to pay, personal background, or transmission risk—is palpable. See Letter from Rishi Kapila, Hospitalist Medical Director, in Attachment C at 8; Letter from Li Kuo Kong, President of St. Rose Hospital Medical Staff, in Attachment C at 9.

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Any sanction that would prevent Dr. Bhandari from providing this level of care would only result in harm to this patient population, especially by removing the St. Rose Hospital's community's access to essential on-call GI services. *See* Letter from Lex Reddy, CEO of St. Rose Hospital, in Attachment C at 2.

### **Conclusion**

Dr. Bhandari desires to fully resolve his past shortcoming, and we believe the best way for him to make amends is to continue practicing medicine for the better of his community. The proposed suspension would go too far and is exceedingly harsh considering the nature of the underlying offense. The sentence imposed by the Court thoroughly suffices on its own without any additional administrative consequences. Dr. Bhandari has shown remorse, taken accountability for his conduct, and suffered significant repercussion to date. If permitted to continue providing quality care to his patients, we can guarantee Dr. Bhandari will be among the most compliant and responsible physicians in the country.

To the extent the Division of Workers' Compensation intends to maintain the suspension of Dr. Bhandari, we respectfully request the opportunity to be heard more fulsomely at a hearing addressing the suspension and the reasons why California Labor Code Sections 139.21(a)(1)(A) and 139.21(a)(1)(B) are inapplicable to his conviction.

Should you have any questions, please contact me directly.

Regards,

/s/ Brian F. McEvoy

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