

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

1:14CR276

UNITED STATES OF AMERICA,

Plaintiff,

v.

HAROLD PERSAUD, aka HARRY
PERSAUD,

Defendant.

INDICTMENT

CASE NO.

JUDGE GAUGHAN

Title 18, United States Code, Sections 2,
1035, 1347, and 1957

The Grand Jury charges:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

A. The Defendant and His Medical Practice

1. HAROLD PERSAUD, aka HARRY PERSAUD, was a licensed cardiologist in the State of Ohio and a resident of Westlake, Ohio.

2. PERSAUD's private medical practice was known as Harry Persaud, M.D. and was located at 29099 Health Campus Drive, Suite 110, Westlake, Ohio. PERSAUD had hospital

privileges at Fairview Hospital, St. John's Medical Center, and Southwest General Hospital ("the hospitals").

B. Medicare and Private Insurance

3. The Medicare Program was enacted by Congress on July 30, 1965, under Title XVIII of the Social Security Act. Medicare provided medical insurance benefits to any person age 65 or older, to certain disabled persons and to those with chronic renal disease who elect coverage. Medicare was a health care benefit program within the meaning of Title 18, United States Code, Sections 24(b) and 1347; it was a public or private plan or contract, affecting commerce, under which medical benefits, items and services were provided to individuals.

4. Medicare Part A (Hospital Insurance) helped cover inpatient care in hospitals, including critical access hospitals, and skilled nursing facilities (not custodial or long-term care). Beneficiaries were required to meet certain conditions to receive these benefits.

5. Medicare Part B (Medical Insurance) helped cover doctors' services, outpatient care, and supplies, when they were ordered by a doctor and medically necessary.

6. The Centers for Medicare & Medicaid Services ("CMS") was a federal agency within the United States Department of Health and Human Services and was responsible for administering the Medicare and Medicaid programs. CMS had the authority to make coverage and medical necessity determinations.

7. Anthem Blue Cross and Blue Shield, Medical Mutual of Ohio, United Health Care and Aetna (collectively "the private insurers") were health care benefit programs under Title 18, United States Code, Section 24(b). Often these private insurers provided secondary or supplementary coverage to individuals who were also covered under Medicare.

C. Reasonable and Necessary Services

8. Medicare and private insurers prohibited payment for items and services that were not "reasonable and necessary" to diagnose and treat an illness or injury. Medicare claim forms, for example, required the provider who made a claim for services to certify that the services were "medically indicated and necessary for the health of the patient." The private insurers similarly required providers to certify that services were medically necessary. In the area of cardiac disease diagnosis and treatment, a doctor, and the hospital where the doctor performs cardiac procedures, could submit claims for reimbursement to Medicare and private insurers, but they were required by law to accurately report the medical condition underlying the claim and only claims that were medically necessary were entitled to reimbursement.

D. Cardiac Disease, Diagnosis and Treatment

9. Coronary arterial circulation of blood is fundamental to the functioning of the human heart. The following acronyms are used to describe the arteries that supply blood to the heart: LMCA (left main coronary artery); LCX (left circumflex artery); LAD (left anterior descending artery); and RCA (right coronary artery).

10. Coronary artery disease is the narrowing or blockage of the above described coronary arteries, usually caused by atherosclerosis. Atherosclerosis (or "hardening" or "clogging" of the arteries) is the buildup of cholesterol and fatty deposits (called plaques) on the inner walls of the arteries. These plaques can restrict blood flow to the heart muscle by physically clogging the artery or by causing abnormal artery tone and function. Significant Coronary Artery Disease ("CAD") was defined by the American College of Cardiology Foundation as angiographically as CAD with greater than or equal to 70% diameter stenosis of at

least one major epicardial artery segment, or greater than or equal to 50% diameter stenosis of the left main coronary artery.

11. A nuclear stress test measured blood flow to the heart muscle both at rest and during stress on the heart. It was performed similarly to a routine exercise stress test, but through the use of an injected radionuclide such as thallium, it provided images that showed areas of low blood flow through the heart and areas of damaged or at risk heart muscle. Nuclear Stress Tests were performed by a technician at a doctor's office and were reimbursable by Medicare and private insurers when ordered by a doctor and medically necessary.

12. An echocardiogram ("ECHO") was a diagnostic ultrasound study of the heart that used Doppler ultrasound to measure the speed of blood flow at a fixed point within the heart. An ECHO was used to assess the function of the cardiac valves, the flow of blood between the heart's chambers and to calculate the ejection fraction, or the amount of blood pumped from each chamber per heartbeat. An ECHO could be performed by a technician at a doctor's office and was reimbursable by Medicare and private insurers when ordered by a doctor and medically necessary.

13. An electrocardiogram ("ECG" or "EKG") was a diagnostic medical test that measured the electrical activity of the heart. An ECG gave two major kinds of information. First, by measuring time intervals on the ECG, a doctor could determine how long the electrical wave took to pass through the heart. This determined if the electrical activity was normal or slow, fast or irregular. Second, by evaluating the course of electrical activity passing through the heart muscle, a cardiologist could learn if parts of the heart were electrically normal or showed signs of disease. An ECG could be performed by a technician at a doctor's office and was

reimbursable by Medicare and private insurers when ordered by a doctor and medically necessary.

14. Cardiac catheterization was an invasive imaging procedure used by a doctor to evaluate, among other things, the presence of coronary artery disease, and to determine the need for further treatment. During a cardiac catheterization, a long, narrow tube called a catheter was inserted into a blood vessel in the arm or leg. The catheter was guided through the blood vessel to the coronary arteries with the aid of an x-ray machine. Contrast material was injected through the catheter and x-ray movies were created as the contrast material moved through the heart's chambers, valves and major vessels. The part of the procedure in which x-ray movies were made of a coronary artery was called a coronary angiogram.

15. An additional imaging procedure, called intra-vascular ultrasound ("IVUS"), could be performed together with cardiac catheterization to obtain detailed images of the walls of the blood vessels. IVUS used sound waves to enable the physician to see inside the coronary arteries. During an IVUS procedure, an ultrasound wand was attached to the top of a catheter. This ultrasound catheter was inserted into an artery in a patient's groin area and moved up to the heart. A computer measured how the sound waves reflected off the blood vessels and changed the sound waves into pictures. IVUS's primary role was in determining the size (diameter/length) of the diseased artery segment, composition of the disease, and to check the adequacy of stent results. IVUS was capable of making two measurements in relation to determining whether to insert a stent in an artery. It could measure and calculate the area percent stenosis and diameter percent stenosis. To correctly derive an area percent stenosis, one needed to have a reference area from an angiographically appearing normal segment either immediately

above or below the diseased segment (or both) that formed the denominator of the percentage calculation; an isolated cross-section of a coronary artery was not used as it could not assess whether it was a diffusely diseased artery (which was not amenable to intervention) or whether it was a focally diseased artery that could be amenable to intervention. PERSAUD sometimes used IVUS.

16. Fractional Flow Reserve ("FFR") was another procedure that could be performed together with cardiac catheterization. Unlike IVUS, which assessed anatomy, FFR demonstrated the functional performance of the artery. FFR measured blood pressure and flow through a specific part of the coronary artery and thereby assisted in determining whether or not to perform angioplasty or stenting on intermediate blockages. FFR was available to PERSAUD but he did not use FFR.

17. A cardiac stent was a device placed in a coronary artery to treat coronary artery disease as part of a procedure called percutaneous coronary intervention ("PCI"). As a general principle, cardiac stents were used depending on certain features of the artery blockage, such as the size of the artery and the location of the blockage. Cardiologists and other medical professionals sometimes referred to the blockage as a "lesion" or "stenosis." When the blockage was severe enough, coronary bypass surgery was another procedure that could be performed. A surgeon could perform a coronary artery bypass graft ("CABG") that restored blood flow to the heart muscle by diverting the flow of blood around a section of a blocked artery in the heart.

18. Medicare and private insurers would not pay for a coronary stent that was not "medically necessary." It was generally accepted within the cardiac community that a coronary stent was not "medically necessary" absent a diagnosis of at least a 70 percent lesion and

symptoms of blockage. Medicare and private insurers likewise would not pay for a CABG that was not "medically necessary."

19. Following placement of cardiac stents, patients were required to take certain medication regularly and they had a higher risk for additional and adverse medical conditions when undergoing certain other medical tests and procedures.

20. Aortograms involved placing a catheter in the aorta and injection of contrast material while taking x-rays of the aorta. Renal angiograms involved placing a catheter and an injection of contrast material while taking x-rays of the arteries feeding the kidneys.

Renal angiography was a tool used to define disease in renal arteries and was medically necessary only when non-invasive testing suggested disease or the patient was at increased risk for disease and non-invasive testing was not available. Aortograms and renal angiograms subjected patients to increased health risks associated with the use of contrast material, including risks of kidney failure, cancer, and the formation of clots and debris that could cause strokes or loss of circulation. Aortograms and renal angiograms were separately reimbursable by Medicare and private insurers.

E. Billing

21. The American Medical Association assigned and published five digit codes, known as the Current Procedural Terminology (CPT) and Level I Healthcare Common Procedure Coding System (HCPCS) codes. The codes were a systematic listing of procedures and services performed or ordered by health care providers. The purpose of the terminology was to provide uniform language that accurately described medical, surgical, and diagnostic services and supplies, thereby providing an effective means for reliable nationwide communication

among physicians, patients and third parties. The procedures and services represented by CPT and HCPCS codes were health care benefits, items, and services within the meaning of Title 18, United States Code, Section 24(b).

THE SCHEME AND ARTIFICE TO DEFRAUD

22. From on or about February 16, 2006, through on or about June 28, 2012, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, did devise and intend to devise a scheme and artifice to defraud and to obtain money from federal health care benefit programs by means of false and fraudulent pretenses, representations and promises.

It was part of the scheme to defraud that at various times:

23. PERSAUD submitted billings to Medicare and the private insurers for office evaluation and management of patients. PERSAUD selected the billing code for each customer, and PERSAUD's staff then submitted that billing code to Medicare and the private insurers on PERSAUD's behalf. PERSAUD used codes that reflected a service that was more costly than that which was actually performed. PERSAUD received payment from the patients' insurance companies based on the submission of claims with these inflated billing codes. PERSAUD billed most office visits with CPT Code 99215, the highest code level and reimbursement rate, without medical necessity documented for that code.

24. PERSAUD performed Nuclear Stress Tests on patients that were not medically necessary.

25. PERSAUD knowingly recorded false results of patients' Nuclear Stress Tests to justify cardiac catheterization procedures that were not medically necessary.

26. PERSAUD performed cardiac catheterizations on patients at the hospitals and

falsely recorded the existence and extent of lesions observed during the procedures in medical records required to be kept by health care benefit programs.

27. PERSAUD recorded false symptoms in patient records to justify testing and procedures on patients.

28. PERSAUD inserted cardiac stents in patients who did not have 70 percent or more blockage in the vessel that he stented and who did not have symptoms of blockage.

29. PERSAUD used IVUS to evaluate the level of stenosis in an artery when it was medically unnecessary to use IVUS.

30. When using IVUS, PERSAUD knowingly and improperly recorded the area percent stenosis in order to obtain a high enough number – which was then falsely represented as a diameter stenosis measurement – to justify insertion of a stent. PERSAUD initiated an area percent stenosis calculation by measuring the angiographically appearing abnormal segment but did not obtain a proper reference point to complete the calculation by obtaining measurement(s) at an angiographically appearing normal segment(s).

31. PERSAUD placed a stent in a stenosed artery that already had a functioning bypass, thus providing no medical benefit and increasing the risk of harm to the patient.

32. PERSAUD improperly referred patients for coronary artery bypass surgery when there was no medical necessity for such surgery, which benefitted PERSAUD by increasing the amount of follow-up testing he could perform and bill to Medicare and the private insurers.

33. PERSAUD performed medically unnecessary cardiac stent procedures on his patients.

34. PERSAUD performed medically unnecessary aortograms on his patients.

35. PERSAUD performed medically unnecessary renal angiograms on his patients.

36. PERSAUD performed medically unnecessary procedures on his patients and ordered medically unnecessary testing for his patients.

37. PERSAUD caused false and fraudulent claims to be submitted to health care benefit programs.

38. PERSAUD understood that patients who underwent cardiac stent procedures were more likely to become regular patients of his practice and would provide opportunities for frequent follow up visits and testing.

39. PERSAUD ordered that his cardiac patients have unnecessary routine follow up visits and undergo unnecessary diagnostic testing such as Nuclear Stress Tests, ECHOs, and ECG or EKG procedures.

40. PERSAUD caused claims for medically unnecessary procedures, services and testing to be submitted to health care benefit programs.

41. As a result of the scheme, PERSAUD overbilled and caused the overbilling of Medicare and private insurers in the amount of approximately \$7.2 million, upon which claims Medicare and the private insurers paid approximately \$1.5 million.

COUNT 1

(Health Care Fraud – 18 U.S.C. § 1347)

42. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41 of the Indictment as if fully set forth herein.

43. From on or about February 16, 2006, through on or about June 28, 2012, in the Northern District of Ohio, Eastern Division, and elsewhere, Defendant HAROLD PERSAUD,

aka HARRY PERSAUD, knowingly and willfully executed, and attempted to execute, a scheme and artifice to defraud health care benefit programs affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is Medicare and the private insurers, and to obtain by means of false and fraudulent pretenses and representations described herein, money and property owned by, and under the custody and control of Medicare and private insurers, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Sections 1347 and 2.

The Grand Jury further charges:

COUNT 2

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

44. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41 of the Indictment as if fully set forth herein.

45. When a medical provider performed a cardiac catheterization and inserted a stent, the provider was required to accurately document and maintain a medical record of his findings for treating the patient, any intervention and subsequent reimbursement. In the cardiac catheterization labs at the hospitals, PERSAUD documented his findings in medical records such as the "Cardiology Catheterization Report," "Cardiology Procedure," "Cardiac Catheterization" and "Cardiac Catheterization Report" (collectively the "Catheterization Report").

46. Medicare and private insurers had the authority to conduct reviews of claims for medical necessity and to require the provider of services to produce medical records to support any claim made. A review of medical records enabled Medicare and private insurers to confirm that the services furnished were reflected on the claim as well as the medical necessity of the

service provided.

47. On or about March 23, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient CB to state that the lesion in Patient CB's RCA was 60 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 60 percent and, in fact, was less than 70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 3

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

48. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

49. On or about July 7, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a

materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient MG to state that the lesion in Patient MG's LAD was 80-90 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 80-90 percent and, in fact, was less than 70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 4

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

50. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

51. On or about August 25, 2010, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient MG to state that the lesion in Patient MG's RCA was 75 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent

statement and entry, in that the lesion was substantially less than 75 percent and, in fact, was less than 70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 5

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

52. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

53. On or about June 2, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient GG to state that the lesion in Patient GG's LAD was 72 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 72 percent and, in fact, was less than 70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 6

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

54. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

55. On or about May 18, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient SH to state that the lesion in Patient SH's RCA was 70 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 7

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

56. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

57. On or about March 24, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false,

fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient AK to state that the lesion in Patient AK's LAD was 71 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 71 percent and, in fact, was less than 70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 8

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

58. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

59. On or about February 28, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient JR to state that the lesion in Patient JR's RCA was 71 percent, then well

knowing that the Catheterization Report contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 71 percent and, in fact, was less than 70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 9

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

60. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

61. On or about February 26, 2010, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient JR to state that the lesion in Patient JR's LAD was 70 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 10

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

62. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

63. On or about February 26, 2010, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient JR to state that the lesion in Patient JR's Circumflex was 60-70 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 60-70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 11

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

64. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

65. On or about August 31, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false,

fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient DS to state that the lesion in Patient DS's RCA was 60-70 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 60-70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 12

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

66. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

67. On or about August 31, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient DS to state that the lesion in Patient DS's Left Main was 60 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent

statement and entry, in that the lesion was substantially less than 60 percent and, in fact, was substantially less than 50 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 13

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

68. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

69. On or about December 29, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry in the Catheterization Report of Patient JS to state that the lesion in Patient JS's LAD was 60-65 percent, then well knowing that the Catheterization Report contained a materially false, fictitious and fraudulent statement and entry, in that the lesion was substantially less than 60-65 percent and, in fact, less than 70 percent.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 14

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

70. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

71. On or about May 25, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry on the billing sheet for Patient GG to state that GG was suffering from chest pain and angina, then well knowing that the billing sheet contained a materially fictitious, and fraudulent statement and entry, in that GG did not then suffer from chest pain and angina.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 15

(False Statement Relating to Health Care Matters – 18 U.S.C. § 1035)

72. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

73. On or about December 14, 2011, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, in a matter involving a health care benefit program, did knowingly and willfully make, and cause to be made, a

materially false, fictitious, and fraudulent statement and representation, and made, caused to be made, and used a materially false writing and document knowing the same contained a materially false, fictitious, and fraudulent statement and entry, in connection with the delivery of and payment for health care benefits, items and services; that is, PERSAUD caused an entry on the medical record for Patient JS to state that JS was suffering from chest pain and dyspnea, then well knowing that the medical record contained a materially fictitious, and fraudulent statement and entry, in that JS did not then suffer from chest pain and dyspnea.

All in violation of Title 18, United States Code, Sections 1035 and 2.

The Grand Jury further charges:

COUNT 16

(Engaging in Monetary Transactions in Property Derived from
Criminal Activity – 18 U.S.C. 1957)

74. The Grand Jury realleges and incorporates by reference the allegations set forth in paragraphs 1 through 41, 45 and 46 of the Indictment as if fully set forth herein.

75. On or about August 31, 2012, in the Northern District of Ohio, Eastern Division, Defendant HAROLD PERSAUD, aka HARRY PERSAUD, did knowingly engage and attempt to engage in a monetary transaction by, through, and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than \$10,000, that is Defendant HAROLD PERSAUD, aka HARRY PERSAUD, made a transfer of \$250,000, via check number 3776, from PERSAUD's business bank account at Key Bank, identified by account number XXXXXXXX246, to a certificate of deposit (CD) at Ohio Savings Bank in the name of PERSAUD's wife, identified by account number XXXXXXXXXXX442, such property having been derived from a specified unlawful activity, that is, health care fraud, as alleged in

Count 1 of this Indictment.

All in violation of Title 18, United States Code, Section 1957.

The Grand Jury further charges:

FORFEITURE

76. For the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 982, the allegation of Counts 1 through 16 are incorporated herein by reference. As a result of the foregoing offenses, defendant HAROLD PERSAUD, aka HARRY PERSAUD, shall forfeit to the United States any property involved in charges set forth herein, or any property traceable to such property and/or any property that constitutes or is derived, directly or indirectly, from the gross proceeds traceable to the commission of the charges set forth herein; including, but not limited to, the following:

- a. Money Judgment in the amount equal to the proceeds Defendant HAROLD PERSAUD, aka HARRY PERSAUD, obtained as a result of such violations;
- b. \$93,446.25 in U.S. Currency, seized from Key Bank Account #XXXXXX6246 in the name of Harold Persaud; and,
- c. \$250,188.42 in U.S. Currency, seized from Ohio Savings Bank Account #XXXXXXXX8442 in the name of Roberta Persaud.

A TRUE BILL.

Original document -- Signatures on file with the Clerk of Courts, pursuant to the E-Government Act of 2002.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CRIMINAL ACTION
)	
Plaintiff,)	Judge Donald C. Nugent
)	
vs.)	
)	CASE NUMBER 1:14 CR 276
HAROLD PERSAUD, aka)	
HARRY PERSAUD,)	JUDGMENT
)	
Defendant.)	

The above-captioned case came before this Court for a trial by jury. At the conclusion of the trial, the Jury returned unanimous Verdicts as follows: Verdicts of guilty against Defendant Harold Persaud on Counts 1, 2, 3, 4, 5, 7, 8, 9, 19, 11, 12, 13, 14, 15, and 16 of the Indictment and one count of not guilty on Count 6.

The Defendant was charged in Count 1 with Health Care Fraud or Aiding and Abetting Health Care Fraud, in violation of Title 18, United States Code, Section 1347 or 2; fifteen counts (Counts 2-15) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code, Section 1035 or 2; and one count (Count 16) of Money Laundering in violation of Title 18, United States Code, Section 1957.

The trial commenced on August 31, 2015. A Jury of twelve and six alternates were selected and duly empaneled and sworn. Opening statements of the United States and the Defendant were made. Court was adjourned until September 1, 2015 at 8:00 a.m.

The trial continued on September 1, 2015. Jurors number 1 and 4 were excused for

health issues and were replaced by Alternates number 1 and 2. The United States called the following witness(es): (1) Richard C. Elsasser; and (2) Dr. John Coletta. Court was adjourned until September 2, 2015 at 8:00 a.m.

The trial continued on September 2, 2015. The United States called the following witness(es): (2) Dr. John Coletta, continued; and (3) Kathy Joe Parsh. Court was adjourned until September 3, 2015 at 8:00 a.m.

The trial continued on September 3, 2015. The United States called the following witness(es): (3) Kathy Joe Parsh, continued; (4) Dr. Michael Doprovic; and (5) Dr. Hiram Bezerra. Court was adjourned until September 4, 2015 at 8:00 a.m.

The trial continued on September 4, 2015. The United States called the following witness(es): (6) Dr. Barry George; and (7) Anne Kistemaker. Court was adjourned until September 8, 2015 at 8:00 a.m.

The trial continued on September 8, 2015. Juror number 4 excused due to work emergency. Alternate juror number 3 (Juror number 45) seated. The United States called the following witness(es): (8) Dr. John Letcher; (9) Dr. Joseph Cacchione; (10) Nancy A. Bowman; and (11) Joanie Mihalic. Court was adjourned until September 9, 2015 at 8:00 a.m.

The trial continued on September 9, 2015. The United States called the following witness(es): (12) Elizabeth Stojs; and (13) Deborah Costanzo. Court was adjourned until September 10, 2015 at 8:00 a.m.

The trial continued on September 10, 2015. The United States called the following witness(es): (13) Deborah Costanzo, continued; (14) Marilyn Hlad; (15) Jeremy Tolaro; and (16) Sonda Kunzi. Court was adjourned until September 14, 2015 at 8:00 a.m.

The trial continued on September 14, 2015. The United States called the following witness(es): (16) Sonda Kunz, continued; and (17) Kimberly Long. Court was adjourned until September 15, 2015 at 8:00 a.m.

The trial continued on September 15, 2015. The United States called the following witness(es): (17) Kimberly Long, continued; (18) Sharri Sedlak; (19) Jacqueline Rambert; (20) Timothy Shular; and (21) Kimberly Shular. Court was adjourned until September 16, 2015 at 8:00 a.m.

The trial continued on September 16, 2015. The United States called the following witness(es): (22) James D. Sustersic; (23) Roberta Sustersic; (24) Gregory A. Glenn; (25) Dr. Lavinia Cozmin; and (26) Dr. Seamus Walsh. Court was adjourned until September 17, 2015 at 8:00 a.m.

The trial continued on September 17, 2015. The United States called the following witness(es): (27) Robert Martin; (28) Suzy Hartman; (29) Donna Jean Steinc; and (30) Special Agent Thomas Edward Corrigan. Court was adjourned until September 18, 2015 at 8:00 a.m.

The trial continued on September 18, 2015. The United States called the following witness(es): (30) Special Agent Thomas Edward Corrigan, continued; (31) Matthew Beckwith; and (32) Dr. Joseph Lahorra. Court was adjourned until September 21, 2015 at 8:00 a.m.

The trial continued on September 21, 2015. Alternate Juror number 6 (Juror number 48) was excused without objection. The United States called the following witness(es): (33) Dr. Robert Biederman; and (34) Dr. Ian Gilchrist. Court was adjourned until September 22, 2015 at 8:00 a.m.

The trial continued on September 22, 2015. The United States called the following

witness(es): (34) Dr. Ian Gilchrist, continued. The United States rested. Defendant reserves right to make motions pursuant to Fed. R. Crim. P. 29 and called the following witness(es): (1) Dr. Raymond Magorian; and (2) Special Agent Matthew Beckwith. Court was adjourned until September 23, 2015 at 8:00 a.m.

The trial continued on September 23, 2015. The Defense called the following witness(es): (3) Dr. Timothy Fetterman; (4) Christine Marie Miller; and (5) Dr. Jeffery Visconi. Defendant rested. Defendant's Motion pursuant to Fed. R. Crim. P. 29 was denied as to Counts one (1) through fifteen (15) and reserved as to Count 16. The Court gave preliminary instructions of law to the Jury. The United States made its preliminary closing argument to the jury. Court was adjourned until September 24, 2015 at 8:00 a.m.

The trial continued on September 24, 2015. Closing Arguments of counsel completed. The Court gave final instructions of law to the jury. The two remaining Alternate Jurors were excused and the Jury thereafter retired to deliberate. Defendant's Motion pursuant to Fed. R. Crim. P. 29 is denied as to each count. Court was adjourned until September 25, 2015 at 8:00 a.m.

The trial continued on September 25, 2015. Jury deliberation continued. The Jury, in open court, returned the following unanimous Verdicts:

VERDICT FORM
COUNT 1
Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink guilty or not guilty) of Health Care Fraud, or Aiding and Abetting Health Care Fraud, in violation of Title 18, United States Code

Section 1347 or 2 as charged in Count 1 of the Indictment.

VERDICT FORM

COUNT 2

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, Guilty (insert in ink **guilty or not guilty**) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 2 of the Indictment.

VERDICT FORM

COUNT 3

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink **guilty or not guilty**) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 3 of the Indictment.

VERDICT FORM

COUNT 4

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink **guilty or not guilty**) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 4 of the Indictment.

VERDICT FORM

COUNT 5

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink

guilty or not guilty) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 5 of the Indictment.

VERDICT FORM

COUNT 6

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, NOT GUILTY (insert in ink **guilty or not guilty**) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 6 of the Indictment.

VERDICT FORM

COUNT 7

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink **guilty or not guilty**) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 7 of the Indictment.

VERDICT FORM

COUNT 8

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink **guilty or not guilty**) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 8 of the Indictment.

VERDICT FORM

COUNT 9

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink guilty or not guilty) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 9 of the Indictment.

VERDICT FORM

COUNT 10

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink guilty or not guilty) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 10 of the Indictment.

VERDICT FORM

COUNT 11

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink guilty or not guilty) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 11 of the Indictment.

VERDICT FORM

COUNT 12

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink guilty or not guilty) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 12 of the Indictment.

VERDICT FORM

COUNT 13

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink guilty or not guilty) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 13 of the Indictment.

VERDICT FORM

COUNT 14

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink guilty or not guilty) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 14 of the Indictment.

VERDICT FORM

COUNT 15

False Statement Relating to Health Care Fraud

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink guilty or not guilty) of False Statement Relating to Health Care Matters or Aiding and Abetting False Statement Relating to Health Care Matters, in violation of Title 18, United States Code Section 1035 or 2 as charged in Count 15 of the Indictment.

VERDICT FORM

COUNT 16

Money Laundering

We the Jury, being duly impaneled and sworn, find the Defendant HAROLD PERSAUD, GUILTY (insert in ink guilty or not guilty) of Money Laundering, in violation of Title 18, United States Code Section 1957 as charged in Count 16 of the Indictment.

The Court read the Verdicts in open court, and thereafter, the Court polled the Jury as to the correctness of its Verdicts pursuant to Rule 31(d) of the Federal Rules of Criminal Procedure. Each Juror affirmatively responded to the correctness of the Verdicts. The Court accepted the Jury's Verdicts. The Defendant is referred to Probation for a Pre-Sentence Report and sentencing is set for December 18, 2015 at 10:00 a.m. By Agreement of all Parties, a forfeiture hearing is set with this Jury on October 9, 2015 at 8:00 a.m. Court adjourned.

IT IS SO ORDERED.



DONALD C. NUGENT
UNITED STATES DISTRICT JUDGE

DATE: October 2, 2015

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 ALICE W. WONG
Deputy Attorney General
4 State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5597
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against,

12 **HARRY PERSAUD, M.D.**

13 **29099 Health Campus Drive, Suite 110**
14 **Westlake, OH 44145**

15 **Physician's and Surgeon's Certificate No. C-**
16 **51114**

17 Respondent

OAH Case No. 2017030687

MBC Case No. 800-2016-022179

DEFAULT DECISION
AND ORDER

[Gov. Code §11520]

18 On or about February 8, 2017, an employee of the Medical Board of California (Board),
19 sent by certified mail a copy of Accusation No. 800-2016-022179, Statement to Respondent,
20 Notice of Defense in blank, Request for Discovery, and Government Code sections 11507.5,
21 11507.6, and 11507.7 to Harry Persaud, M.D. (Respondent) at his address of record with the
22 Board, which was and is 29099 Health Campus Drive, Suite 110, Westlake, OH 44145. On or
23 about February 27, 2017, Deputy Attorney General Alice W. Wong received a Notice of Defense.
24 (Exhibit Package, Exhibit 1¹: Accusation, the related documents, Declaration of Service,
25 certified mail receipt card, Notice of Defense.)
26
27

28 ¹ The evidence in support of this Default Decision and Order is contained in the "Exhibit Package."

1 On March 7, 2017, a letter was mailed to Respondent at the location where he is
2 incarcerated at the Federal Correctional Institution Elkhorn, P.O. Box 10, Liston, OH 44432,
3 informing him a hearing would be scheduled for June 1, 2017 at 9:00 a.m. at the Office of
4 Administrative Hearings at 1515 Clay Street, Suite 206, Oakland, California. On March 13,
5 2017, Respondent mailed a letter to Deputy Attorney General Alice W. Wong, acknowledging
6 receipt of the March 7, 2017 letter and the hearing date of June 1, 2017. On April 18, 2017, a
7 letter and discovery of exhibits to be offered at the June 1, 2017 hearing was mailed to
8 Respondent at the Federal Correctional Institution Elkhorn if Respondent availed himself to the
9 opportunity to appear at the hearing by telephone. (Exhibit Package, Exhibit 2: March 7, 2017
10 letter to Respondent; March 13, 2017 letter from Respondent; and April 18, 2017 letter to
11 Respondent.)

12 On or about March 15, 2017, via regular mail, a Notice of Hearing was served on
13 Respondent at his address of record and at Federal Correctional Institution Elkton, P.O. Box 10,
14 Lisbon, OH 44432, informing him that a hearing would be held on June 1, 2017 at 9:00 a.m. at
15 the Office of Administrative Hearings at 1515 Clay Street, Suite 206, Oakland, California.
16 (Exhibit Package, Exhibit 3: Notice of Hearing and proof of service.)

17 The matter was called for hearing at the date, time and location as set forth in the Notice of
18 Hearing. Deputy Attorney Alice W. Wong of the Attorney General's Office appeared on behalf
19 of the Complainant Medical Board of California. There was no appearance by or on behalf of
20 Respondent. Respondent was aware of the hearing date and provided with the opportunity to
21 appear by telephone since he is incarcerated. At 9:15 a.m., Administrative Law Judge Mary
22 Margaret Anderson declared the matter a default, and at the request of Complainant's counsel, the
23 matter was remanded to the agency for action under Government Code section 11520. (Exhibit
24 Package, Exhibit 4: Findings and Declaration of Default; Order of Remand.)

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1 **FINDINGS OF FACT**

2 I.

3 Complainant Kimberly Kirchmeyer is the Executive Director of the Board. The charges
4 and allegations in Accusation No. 800-2016-022179 were at all times brought and made solely in
5 the official capacity of the Board's Executive Director.

6 II.

7 On or about March 12, 2003, the Board issued Physician's and Surgeon's Certificate No.
8 C51114 to Respondent. The Physician's and Surgeon's Certificate was in full force and effect at
9 all times relevant to the charges brought herein and expired on February 28, 2017. (Exhibit
10 Package, Exhibit 5: Certificate of License.)

11 III.

12 Business and Professions Code section 118 states, in pertinent part:

13 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
14 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
15 order of a court of law, or its surrender without the written consent of the board, shall not, during
16 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
17 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
18 provided by law or to enter an order suspending or revoking the license or otherwise taking
19 disciplinary action against the license on any such ground."

20 California Government Code section 11520 states, in pertinent part:

21 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
22 agency may take action based upon the respondent's express admissions or upon other evidence
23 and affidavits may be used as evidence without any notice to respondent."

24
25 IV.

26 On or about February 8, 2017, Respondent was served with an Accusation, alleging causes
27 for discipline against Respondent. The Accusation and accompanying documents were duly
28 served on Respondent. Respondent filed a Notice of Defense. Respondent was served with a

1 Notice of Hearing scheduled for June 1, 2017 at the Office of Administrative Hearings. There
2 was no appearance by or on behalf of Respondent. The matter was remanded to the agency for
3 action under Government Code section 11520.

4 V.

5 The allegations of the Accusation are true as follows:

6 On or about April 25, 2016, the New York State Board for Professional Medical Conduct
7 issued a Commissioner's Order of Summary Action wherein Respondent was ordered not to
8 practice medicine in the State of New York. On August 15, 2016, the New York Board issued a
9 Surrender Order wherein Respondent's license was surrendered. The New York Board made
10 factual allegations that on September 25, 2015, in the United States District Court, Northern
11 District of Ohio (Eastern Division), Respondent was found guilty of Health Care Fraud in
12 violation of 18 U.S.C. Section 1347, thirteen felony counts of Making a False Statement Relating
13 to Health Care Matters in violation of 18 U.S.C. section 1957, and one felony count of Money
14 Laundering in violation of 18 U.S.C. section 1957. (Exhibit 1, Exhibit A: Commissioner's Order
15 of Summary Action and Surrender Order of Respondent's license.)

16 On or about July 13, 2016, the State Medical Board of Ohio issued an Entry of Order
17 wherein Respondent's license was permanently revoked. This action was based on Respondent's
18 convictions in the United States District Court, Northern District of Ohio (Eastern District) of
19 Health Care Fraud in violation of 18 U.S.C. Section 1347, thirteen felony counts of Making a
20 False Statement Relating to Health Care Matters in violation of 18 U.S.C. section 1957, and one
21 felony count of Money Laundering in violation of 18 U.S.C. section 1957. (Exhibit 1, Exhibit B:
22 Entry of Order permanently revoking Respondent's license.)

23 On September 25, 2015, in the United States District Court, Northern district of Ohio
24 (Eastern Division), Respondent was found guilty following a jury trial, of one count of Health
25 Care Fraud in violation of 18 U.S.C. section 1347, thirteen felony counts of Making False
26 Statement Relating to Health Care Matters in violation of 18 U.S.C. section 1957, and one felony
27 count of Money Laundering in violation of 18 U.S.C. section 1957. (Exhibit Package, Exhibit 6:
28 September 25, 2015 Minutes of Jury Verdict and Jury Verdict on Counts 1 to 16.)

1 Respondent's criminal convictions constitute unprofessional conduct and the convictions of
2 crimes substantially related to the qualifications, functions or duties of a physician and surgeon,
3 and are cause for discipline pursuant to Business and Professions Code sections 2234 and/or
4 2236.

5 Respondent's failure to report either the filing of the criminal charges or the criminal
6 convictions in violation of section 802.1 constitutes unprofessional conduct and is cause for
7 discipline pursuant to section 2234. (Exhibit Package, Exhibit 7: Declaration of Christina Delp In
8 Support of Default Decision.)

9
10 DETERMINATION OF ISSUES

11 Pursuant to the foregoing Findings of Fact, Respondent is subject to discipline under Code
12 sections 2305 and/or 141 (Discipline, Restriction, or Limitation imposed by another State) in that
13 Respondent's conduct would have been grounds for discipline in California and the actions of the
14 New York State Board for Professional Medical Conduct and the State Medical Board of Ohio as
15 set forth above, constitute cause for discipline. Respondent's criminal convictions constitute
16 unprofessional conduct and the conviction of crimes substantially related to the qualifications,
17 functions or duties of a physician and surgeon, and cause for discipline pursuant to Business and
18 Professions Code sections 2234 and/or 2236. Moreover, Respondent's failure to report either the
19 filing of the criminal charges or the criminal convictions in violation of section 802.1 constitutes
20 unprofessional conduct and is cause for discipline pursuant to section 2234.

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1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
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Attorneys for Complainant

7
8 BEFORE THE
9 MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2016-022179

12 Harry Persaud, M.D.
29099 Health Campus Drive, Suite 110
Westlake, OH 44145

ACCUSATION

13 Physician's and Surgeon's Certificate
14 No. C 51114,

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Director of the Medical Board of California, Department of Consumer
21 Affairs (Board).

22 2. On or about March 12, 2003, the Medical Board issued Physician's and Surgeon's
23 Certificate Number C 51114 to Harry Persaud, M.D. (Respondent). The certificate is renewed
24 and current with an expiration date of February 28, 2017.

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1 JURISDICTION

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 4. Section 2227 of the Code provides that a licensee who is found guilty under the
5 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
6 one year, placed on probation and required to pay the costs of probation monitoring, or such other
7 action taken in relation to discipline as the Board deems proper..

8 5. Section 2305 of the Code states:

9 The revocation, suspension, or other discipline, restriction or limitation imposed by
10 another state upon a license or certificate to practice medicine issued by that state, or the
11 revocation, suspension, or restriction of the authority to practice medicine by any agency of the
12 federal government, that would have been grounds for discipline in California of a licensee under
13 this chapter shall constitute grounds for disciplinary action for unprofessional conduct against the
14 licensee in this state.

15 6. Section 141 of the Code states:

16 "(a) For any licensee holding a license issued by a board under the jurisdiction of the
17 department, a disciplinary action taken by another state, by any agency of the federal government,
18 or by another country for any act substantially related to the practice regulated by the California
19 license, may be a ground for disciplinary action by the respective state licensing board. A
20 certified copy of the record of the disciplinary action taken against the licensee by another state,
21 an agency of the federal government, or another country shall be conclusive evidence of the
22 events related therein.

23 "(b) Nothing in this section shall preclude a board from applying a specific statutory
24 provision in the licensing act administered by that board that provides for discipline based upon a
25 disciplinary action taken against the licensee by another state, an agency of the federal
26 government, or another country."

27 7. Section 2234 of the Code provides that the Board shall take action against a licensee
28 who is charged with unprofessional conduct.

1 Health Care Fraud in violation of 18 U.S.C. Section 1347, thirteen felony counts of Making a
2 False Statement Relating to Health Care Matters in violation of 18 U.S.C. section 1957, and one
3 felony count of Money Laundering in violation of 18 U.S.C. section 1957.

4 A copy of the Entry of Order permanently revoking Respondent's license is attached as
5 Exhibit B.

6 13. Respondent's conduct and the action of the State Board of Ohio as set forth in
7 paragraph 12, above, constitutes cause for discipline pursuant to sections 2305 and/or 141 of the
8 Code.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Criminal Conviction)**

11 14. On September 25, 2015, in the United States District Court, Northern district of Ohio
12 (Eastern Division), Respondent was found guilty following a jury trial, of one count of Health
13 Care Fraud in violation of 18 U.S.C. section 1347, thirteen felony counts of Making a False
14 Statement Relating to Health Care Matters in violation of 18 U.S.C. section 1957, and one felony
15 count of Money Laundering in violation of 18 U.S.C. section 1957.

16 15. Respondent's criminal convictions constitute unprofessional conduct and the
17 convictions of crimes substantially related to the qualifications, functions or duties of a physician
18 and surgeon, are cause for discipline pursuant to Business and Professions Code sections 2234
19 and/or 2236.

20 16. Respondent's failure to report either the filing of the criminal charges or the criminal
21 convictions in violation of section 802.1 constitutes unprofessional conduct and is cause for
22 discipline pursuant to section 2234.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
25 and that following the hearing, the Medical Board of California issue a decision:

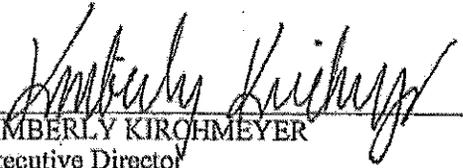
26 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 51114,
27 issued to Harry Persaud, M.D.;

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- 2. Revoking, suspending or denying approval of Harry Persaud, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;
- 3. Ordering Harry Persaud, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and
- 4. Taking such other and further action as deemed necessary and proper.

DATED: February 8, 2017


KIMBERLY KIROHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

SF2016202316

Exhibit A

Accusation No. 800-2016-022179



Department of Health

ANDREW M. CUOMO Governor

HOWARD A. ZUCKER, M.D., J.D. Commissioner

SALLY DRESLIN, M.S., R.N. Executive Deputy

CERTIFICATION

STATE OF NEW YORK)
SS:
COUNTY OF RENSSELAER)

Douglas P. Mackey, being duly sworn, deposes and says:

I am with the Office of Professional Medical Conduct, New York State Department of Health. I am an officer having legal custody of the records of the Office of Professional Medical Conduct. I, hereby, certify that the enclosed documents are true copies of documents from the files of the Office of Professional Medical Conduct in the case of :

Harold/Harry Persaud, MD
NYS medical license # 172341

[Handwritten signature of Douglas P. Mackey]

Douglas P. Mackey
Program Director
Office of Professional Medical Conduct

Sworn to before me this 13th day of September, 2016

[Handwritten signature of Kathleen S. Roy]

Kathleen S. Roy
Notary Public, State of New York
Qualified in Rensselaer County
Commission expires August 31, 2018
No. 4765175

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
HAROLD PERSAUD, M.D.

COMMISSIONER'S
ORDER OF
SUMMARY
ACTION

TO: Harold Persaud, M.D.
#60376-060
FCI Elkton
8730 Scroggs Road
Lisbon, OH 44432

The undersigned, Howard A. Zucker, M.D., J.D., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that Harold Persaud, M.D., Respondent, New York license number 172341, has pleaded or been found guilty or convicted of committing an act constituting a felony under New York State law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York State law, as is more fully set forth in the Statement of Charges attached to the Notice of Referral Proceeding or Notice of Hearing and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law §230(12)(b), that effective immediately, Respondent shall not practice medicine in the State of New York, or practice in any setting under the authority of Respondent's New York license.

Any practice of medicine in violation of this Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29) and may constitute unauthorized medical practice, a Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within ninety days of the service of this order and shall end within ninety days

thereafter. The hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Hearing or Notice of Referral Proceeding provided to the Respondent contemporaneously with this Order.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
April 25, 2016



Howard A. Zucker M.D., J.D.
Commissioner of Health
New York State Department of Health

Inquiries should be directed to:

Paul Tsui
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

BPMC No. 16-284

IN THE MATTER

OF

HAROLD (aka HARRY) PERSAUD, M.D.

SURRENDER

ORDER

Upon the application of (Respondent) Harold Persaud, M.D. to surrender his license as a physician in the State of New York, which is made a part of this Surrender Order, it is

ORDERED, that the Surrender, and its terms, are adopted and it is further

ORDERED, that Respondent's name be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Surrender Order, either by first class mail to Respondent at the address in the attached Surrender of License application or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney.

Whichever is first,

SO ORDERED.

DATE: 8/15/2016


Carmela Torrelli
Vice Chair
State Board for Professional Medical Conduct

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NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
HAROLD (aka HARRY) PERSAUD, M.D.

SURRENDER
OF
LICENSE
AND
ORDER

Harold Persaud, M.D., represents that all of the following statements are true:

That on or about September 14, 1987, I was licensed to practice as a physician in the State of New York, and issued License No. 172341 by the New York State Education Department.

My current address is [REDACTED]

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", which is attached to and part of this Surrender of License.

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York on the grounds that I do not contest the charges against me.

I ask the Board to accept my Surrender of License, and I agree to be bound by all of the terms set forth in attached Exhibit "B".

I understand that, if the Board does not accept my Surrender of License, none of its terms shall bind me or constitute an admission of any of the acts of misconduct alleged; this application shall not be used against me in any way and shall be kept in strict

confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board accepts my Surrender of License, the Chair of the Board shall issue a Surrender Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Surrender Order, this agreement, and all attached exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website(s). OPMC shall report this action to the National Practitioner Data Bank, the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I ask the Board to accept this Surrender of License, which I submit of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Order, based upon my application, or to decline to do so. I further

understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 7/29/16


HAROLD PERSAUD, M.D.
RESPONDENT

The undersigned agrees to Respondent's attached Surrender of License and Order and to its proposed penalty, terms and conditions.

DATE: 8/3/16


HENRY HILOW, ESQ.
Attorney for Respondent

DATE: 8/3/16


PAUL TSUI
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 8/4/16


KEITH W. SERVIS
Director
Office of Professional Medical Conduct