

AFFIDAVIT
CERTIFICATE OF A PARTY UNREPRESENTED BY COUNSEL

My name is Kiran Sharma (K. Sharma). I am 65 years old of sound mind and body. I make the following declaration to be true and correct under the penalty of perjury pursuant to 28 USC 1746.

I proceed to file the petition for rehearing on my petition pursuant to Rule 44 of the Supreme Court of the United States. I certify that this Pro Se petition for re-hearing is being submitted "in good faith and not for delay" in any matter and in any manner.

Additionally, K. Sharma makes further declaration that her Petition for the Rehearing is "restricted to the grounds specified in the Rule 44 of the Supreme Court of the United States in the matter of 'Rehearing', in paragraph 2 ", "the Petition for Rehearing is restricted to the grounds as specified to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented."

kiran sharma

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I am a pro se petitioner for the Supreme Court Petition Number 18-6647 for the Writ of Certiorari. The supplementary brief was also submitted to support the Main Brief on December 22, 2018. K. Sharma was granted the permission to file her main Supreme Court Petition for Certiorari 'in forma pauperis' and she continues to hold the same financial constraints and circumstances to be eligible to file this Petition for Rehearing in 'in forma pauperis'.



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APPENDIX A.

To: The Honorable Justices

Supreme Court of the United States, Washington D.C. 20543

Ref: Petition for rehearing, case #18- 6647

Date: 01/28/2019

My name is Kiran Sharma (K. Sharma) and I am submitting my petition for the "Rehearing". My petition for Certiorari was denied on January 7, 2019.

I was a physician. My practice was not indicted but my name was included by the government with my husband's practice. My Specialty was "Allergy and Asthma" and my husband's (Arun Sharma) practice was "Rheumatology and Pain Management". We both were Board Certified. I was managing this medical practice "Allergy, Asthma, Arthritis and Pain Center". Since I was a president of this medical Practice, I was indicted for conspiracy. I did not go on trial because I was afraid for my husband's outcome of the trial, however, to avoid the trial's risks we both plead guilty on the day of the trial on 04/26/2010. Our Attorneys asked us to sign the Plea Agreement giving the "two assurances": (1) My Son receives full corpus of \$1.5 million in an 'Irrevocable' Trust for his Undergraduate, Medical School Education tuition and living expenses. (2) Sharmas receive credit for the legitimate necessary services they have been providing to their patients. However, none of the assurances came to fruition. The Trust was part of the Plea Agreement; however the district court reduced the benefit to \$2300/per month for 4 years and forfeited the remainder of the trust money over \$1.2 million to satisfy the restitution for the victims of crime. Sharmas lost every penny in this case and I am on government assistance for my financial need.

We signed the Plea in good faith on two Counts: (1) Conspiracy to Commit Health Care Fraud and Mail Fraud 18 USCS 371 and (2) Health Care Fraud 18 USCS 1347 (2). Nowhere in the plea, had indictment or any proceedings stated that Sharmas provided 'medically unnecessary services'

Since my "Allergy practice" was not indicted and only my husband's practice was, I received the credit for my legitimate practice. Nonetheless, the government forfeited the whole life time earnings of both the practices to pay for the Joint and Several restitution of over \$37 million. At the district court, I did not have any hearing on 'medical necessity' or 'medically unnecessary services', this was the issue raised for the 1st time by the government on Sharma's appeal. The indictment, plea, Plea-colloquy, PSR, Pretrial hearings, Sentencing Hearings all lacked such an allegation. The issues in the indictment and the plea and at the sentencing were that (1) How many bills were fraudulently billed and (2) How many procedures was 'up-coded', meaning billed for more expensive procedures services but provided less expensive procedures "Trigger point Injections".

The district court at the sentencing ordered 8 year incarceration for Kiran Sharma and 15 year for Arun Sharma, and over \$ 43 million in restitution forfeiting over \$31 million in Sharmas' assets "believing in a 'Fiction' that every single penny billed was fraudulent. This could only be true if Sharmas were running 'sham' clinics and did not provide even a 'penny worth' of services over the 11 years of period.

However, the district court neither received any evidence on the 'medically unnecessary services' nor the government directly raised any such allegation, rather the government emphatically denied 'medical necessity' question. District Court believed the PSR, which was based on Government's 'forged' 'Victim Impact Statements' (VIS) and self-serving data, in which the insurance companies were asked by the Government to indicate "the total amount reimbursed to Sharmas over the 11 years of period". It was NOT based on the facts in the Plea Agreement and what the parties had agreed to. Probation Office on remand conceded that that the "report was not based on their own independent investigation and rather it was tainted with the Government's findings.

Sharmas, therefore, appealed and now the government for the first time raised the new issue on 'medically unnecessary services'. The Fifth Circuit despite Sharmas' objections and against its own precedent, that 'no party is allowed to raise a new issue for the first time on appeal', allowed the government to raise the new issue and reviewed under the 'Harmless Error' in favor of the government, but not under the 'Plain Error' to Sharmas' prejudice. Additionally, the appellate court shifted the burden on Sharmas to show the 'credit' for the legitimate services pursuant to 18 USCS 3664(e), although the law requires that the burden is allocated at the district level and not at the appellate level.

Since Sharmas had no hearing on 'medically unnecessary services' at the district court, the appellate court should have barred the government on this issue or remanded the case to the district court for the 'de novo' hearing on the disputed 'medically unnecessary services'. Rather, the appellate court opined, absent any 'Medical Experts Opinion' from either party, that "Sharmas failed to show that "not even one injection to even one patient was medically necessary"". It was again a 'Fiction', because Sharmas were the preferred providers in over 166 insurance companies and had very large referral base from all the Primary Care physicians and specialists. Sharmas had provided over 25 letters from the 'peer physicians' and the patients in support to show that Sharmas' procedures were 'medically necessary' that helped their patients' medical condition. Additionally, the government had the statements of 60 patients who were interviewed by them provided in Brady Disclosure, who acknowledged the same. However, the appellate court rejected those "peers and patients' statements and opined that "patients are not the victims"!

There are several problems in my case: (1) Medical necessity issue was raised directly for the 1st time on appeal; (2) In violation of Sharma's Constitutional Rights there has been no 'due-process' on the question of 'medical necessity', no 'medical expert testimony' to assess the 'medical necessity' pursuant to 42 USCS 1320c-(3)(a) which dictates that "the dispute of medical necessity must be resolved by the 'peer-review' and testimony". (3) Additionally, government and the district court denied the 'discovery' of the patients' medical files for unknown reasons to avoid having Sharmas retain medical experts and provide testimony. (4) 'Circuits Split': Fifth Circuit's adopts the Minority Circuits' Rule of remanding the cases to the district court 'Cabinet' or 'Limited', and NOT for 'De Novo' hearing that is adopted by the 'Majority Circuits'. 'Case of The Law barred Sharmas from having the full hearing on the 'medical necessity' on remand. Fifth Circuit Ruled that, because at the first district court hearing, Sharmas "failed to provide that the 'services provided by them were 'medically necessary', therefore, they forfeit their Rights, although the fact is contrary, that there was No hearing, whatsoever, on this issue at the district court. Because of the Law of the Case, the Circuit remanded the case just for the "recalculation of the

restitution on the basis of the evidence already in the records" without full hearing on the 'medical necessity'.

Sharma's Problem: Counsels failed to apprise Sharma that medical necessity could be a factor at some point in this case, or Sharmas would not have accepted the plea. Counsels conceded at the resentencing in 'open court' that they were "ineffective". The Counsels retained a 'forensic accountant despite Sharmas' objections who had advised them to retain a 'medical expert or a medical billing expert', however, the government even failed to retain any of those. It's bizarre that the appellate court accepted the government's attorney's unfounded statements as 'true evidence' which do not rise to the level of credible evidence in the court of law. Additionally, the court incorrectly opined in its false belief that "Since Sharmas failed to rebut the government's allegations, so they must be true". Although the fact is, Sharmas had already rebutted those accusations in their PSR objections, 'Sentencing Memorandum in Defense' and at the Sentencing Hearing, however, the appellate court turned a 'blind eye' on those rebuttals. **Its unprecedented, that a complex Health care Fraud case worth over \$37 million in restitution, is decided without even one medical expert testimony to opine that "not even one injection to even one patient was medically necessary" [in over 11 years period]!**

False accusations which convinced the appellate court judges that the services provided by Sharmas were 'medically unnecessary', are not evidence such as (1) Arun Sharma at his debriefing hearing accepted that he intentionally misdiagnosed all his patients with Rheumatoid Arthritis so that he could perform injection procedures on all his patients. (This is so absurd, and could be proved false by looking at the "insurance claims data" in an evidentiary hearing. (2) Arun Sharma performed all his procedures in an assembly line fashion without proper sanitary precautions. (This could be proved false by simply finding if Sharmas' clinic had any citations from OSHA (Occupational Services Health Agency), District Health Services, from Insurance and Medical Malpractice Insurance, or the Medical Board, the allegation is simply false.);(3)Sharma hired Foreign Medical Graduates to falsify the patients files enmass(this is contradicted by the government's own Sentencing Memorandum statement that "most of the patients were seen by the two Foreign Medical Graduates who were NOT busy in falsifying the patients' files).(4) Patients who left Sharma's practice, their new doctors discontinued the injection therapy calling them 'medically unnecessary', (it is also believed by the patients' and physicians' letters which highly commended the injection therapy as beneficial that their new physicians also continued). None of the government attorney's accusations were credible and none raise to the level of the evidence on the question of 'medical necessity' allegations. All the allegations were simply false on which the appellate court relied and further remanded the case 'cabined' with limited opinion to Sharma's prejudice.

At the rehearing Sharma's attorneys asked the court to hold evidentiary hearing by 'medical expert testimony' and release of 'discovery' of patients' medical files, however, it was denied due to the 'Law of the Case Doctrine', although the Law is not inviolate in the special circumstances.

Therefore, K. Sharma Prays the Justices to Grant Certiorari in this case and disallow a Wrong Precedent. Sharma Prays for (1) her 'Due Process' Right under her Fifth Amendment of the Constitution; (2) for the 'de novo' hearing in her case to resolve the "Circuits Split" in this case because if Sharmas were in the 'Majority Circuits', such as the Eleventh Circuit who have adopted the remand procedure for 'de novo'

hearing, instead of 'Cabinet or Limited' hearing adopted by the 'Minority Circuits' such as the Fifth Circuit, Sharma would have had the full 'de novo' hearing and with the full 'discovery' of the patients' files and Sharma would have shown that she did not provide 'medically unnecessary services' and that allegations were simply false.

A Citizen of the "One Sovereign State" should not have a different outcome just by mere reason that an individual resides under the jurisdiction of a Circuit which adopts a different procedure on remand to the district court. Founder of this Country did not expect to Split the Country on the basis of 'Circuits Split' in Federal Rules. One Sovereign State should have one Federal Rule in Federal Courts.

Sharma has lost her "Life Time Earnings, Liberty and Property" just because of the Circuits Split". K. Sharma has been slapped with \$37 million in restitution with \$16 million of 'wind-fall' on the insurance companies. Also K. Sharma has forfeited over \$31 million without a Due Process including the 3rd party's, her son's 'Irrevocable Trust which is illegally taken to pay for the restitution of Sharmas in violation of 18 USCS 3663A and 21 USCS 853(a)(1) 'untainted asset of the third party. Counsels have provided "ineffective assistance of Counsels" in violation of Sharma's Sixth Amendment Rights of the Constitution. Under Sharma's Fifth Amendment 'Due-Process' Right and 18 USCS 3663A(a)(2), the restitution should be decided by determining the 'Scope of the Plea Agreement' of the parties, which lacked the allegation of 'medically unnecessary services'. See Hughey v. United States and all its progeny.

The bottom line of the case is that to begin with, there has been no hearing on 'medical necessity' or 'medically unnecessary services' simply because such an allegation does not exist 'ab initio' in this case from an Indictment to the defendants sentencing. It is prejudicial to K. Sharma that appellate court even entertained such an allegation at the appellate level.

For the foregoing reasons Sharma Prays to allow Certiorari and kind review in this case.

Respectfully,

Kiran Sharma

Date: 01/28/2019

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