

Outline of trial against Dr. Memar

Quick facts of what the government says I had done to 8 patients between 2007 and 2013:

Before we start: I, Dr. Memar, diagnosed 8 of the government's patient witnesses with actinic keratosis (pre-cancers). I believed and continue to believe my diagnosis was correct. I treated them with a machine called IPL because numerous publications proved that IPL alone treats actinic keratosis. I never used cosmetic treatments. I used IPL as a destructive tool. I did not do anything wrong and I cared for my patients and prevented them from getting skin cancer. The governments accusations are wrong.

The government presented 8 patients each with 2 counts of fraud (medical and information). They accused me of knowingly misdiagnosing these patients with actinic keratosis and treating them with a machine called Intense Pulsed Light (IPL). The 2 counts for 8 patients came to 16 counts. This case was a result of Blue Cross and Blue Shield (BCBS) complaining about me. Remember that BCBS is the fourth largest lobbyist to the United States government. Their word and what they want gets listened to. **In this case, no physician ever examined any of these 8 patients and confirmed that they did not have actinic keratosis.** The 8 government-presented patients themselves do not remember the word actinic keratosis. What follows is the case outline:

- 1) How is the jury to decide this case?
 - a) For Dr. Memar to be innocent:
 - i) Dr. Memar needs to show that the evidence cannot support a finding of guilt beyond a reasonable doubt.
 - b) For Dr. Memar to be found guilty:
 - i) The government needs to prove beyond a reasonable doubt that Dr Memar knew his patients did not have pre-cancers (actinic keratosis) but diagnosed and treated them anyway.
 - c) In this outline, it will be shown how the government failed to honestly prove this, and only with "misstatements" managed to get the jury to convict Dr. Memar, and denied Dr Memar a fair trial.
- 2) The government's case against Dr. Memar had 3 (three) prongs:
 - i) First was the thesis that Intense Pulsed Light (IPL) alone is not a viable treatment for actinic keratosis
 - (1) 5 papers support this method
 - (2) Dr David Goldberg said the international medical community had unanimously recognized the efficacy of IPL for treating actinic keratosis during the period of the treatments in question
 - (3) The government's expert, Dr. Ross, had actually lauded the "excellent" results of treating AK with IPL alone in a 2006 publication in Dermatologic Surgery
 - ii) Second, because IPL is ineffectual for AK, Dr. Memar could not have believed he was actually treating that condition.
 - (1) Dr. Memar's belief in IPL for treating AK—the evidence was clear that he even treated biopsy-confirmed AK patients in this way, one of whom had actual skin cancer.
 - (2) Patients actually got better and some preferred the IPL to other techniques when they knew very clearly that they had actinic keratosis.
 - (3) Five publications show the usefulness of IPL alone for actinic keratosis. Don't come after me for facts already established.
 - (a) This is like prosecuting someone for believing the world is round....to that I say prosecute Galileo.
 - iii) Third, the patients did not actually have actinic keratosis. This implied that Dr Memar over diagnosed actinic keratosis.
 - (1) Evidence showed that Dr. Memar's patients had the classic symptoms of actinic keratosis, no matter the inability of some of them to recall hearing those precise words in a conversation 5 – 10 years earlier.

- (2) How do dermatologists normally inform their patients that they have actinic keratosis?
 - (a) Telling the patient they had spots that needed to be treated or removed sufficed. (Dr. Ross Tr. 566-67; Dr. Goldberg Tr. 894-95; Dr. Memar Tr. 1022)
- (3) Dr. Memar's office was decidedly modest in its diagnosis and treatment of actinic keratosis—the opposite of what would be expected if there was a scheme to falsely diagnose and treat it.
 - (a) The evidence shows that from 2007 – 2013 (the time period of the indictment), Dr. Memar had approximately 600 actinic keratosis patients and approximately 1,800 actual skin cancer patients. (Dr. Memar Tr. 1088, 1091). Equally undisputed was Dr. Goldberg's testimony that you would expect between 10 and 30 times as many AK patients as actual skin cancer patients, and hence that Dr. Memar had a very low number of AK patients. Indeed, Dr. Goldberg would have expected there to have been 20,000 AK patients as opposed to his mere 600. (Dr. Goldberg Tr. 894). (Dr. Memar has as many as 30,000 patients at a time. (Dr. Memar Tr. 1096)).
 - (b) Therefore Dr. Memar had much fewer actinic keratosis patients as would be expected. This implies that great discretion was used By Dr. Memar in diagnosing actinic keratosis. He had so few that when he diagnosed a person with actinic keratosis he was very confident in the diagnosis.

3) The Governments witnesses

- a) Ashley Davis, FBI agent (agent who interrogated me and misspoke at the grand jury)
 - i) This is the agent who made the misstatement in the grand jury. When she was presented with that documented fact, she became silent and from my point of view, looked upset.
 - ii) Upon leaving the court, my mom said Ms Davis looked rather distraught and grabbed her purse in a rapid jerking motion, as if she was upset, and stormed out of the court room.
- b) Medical assistant 1
 - i) Former medical assistants Michelle Kline and Jennifer Gecas provided no competent evidence whatsoever for the proposition that Dr. Memar's IPL patients did not actually have actinic keratosis. Neither recalled a single patient they had treated, their skin condition, or anything else. (Kline Tr. 240-42, 245-46; Gecas Tr. 324-26, 333). All they offered was hopelessly unparticularized testimony, thereby disqualifying themselves as competent
 - (1) Ms. Gecas likewise professed her total ignorance of actinic keratosis to FBI Case Agent Ashley Davis.
- c) Medical assistant 2
 - i) Michelle Kline admitted not knowing what actinic keratosis and scaly plaques were, such that even if she had remembered particular patients, her testimony as to whether they had either condition would have been meaningless.
 - ii) Michelle Klein had praised Dr. Memar on a television show after leaving Dr. Memar's office. Dr. Memar's lawyer asked Ms Klein under oath : when did you determine that Dr. Memar was acting fraudulently? She answered: when the FBI showed up. Therefore, just the presence of the FBI and their bully pulpit changed her opinion of Dr. Memar.
- d) Medical assistant 3
 - i) 14 years with Memar
 - ii) She was adamant that each patient called by the government had it, which she knew from seeing the AK's on their faces from 12 inches away as she administered IPL and before that when the patients were initially examined in her presence.
 - iii) She was equally insistent that Dr. Memar had never falsified medical records or done anything improper and never asked her to as to these or any other patients
 - iv) Had he done so, she would have found employment elsewhere and without difficulty given the offers she received and rejected while working for Dr. Memar.
 - v) With all her experience treating AK, Ms. Gutierrez was clear that if she had AK, she would choose IPL alone as her treatment method.
 - vi) Testified without contradiction that Ms. Gordon's (patient 8) AK's were so pervasive that she thought that some were actual skin cancer.

- e) The Patients in the Indictment (8 patients, each with 2 counts of fraud, totaling 16 counts of Fraud.
- i) Pt 1 (Kontos) **counts 4 and 12**
- (1) Kontos not only had acne, but additionally “red, scaly bumps” “all over” (Kontos Tr. 698, 711) that “itched” (at 711) and that were “different” from and not acne. (Kontos Tr. 709). As Dr. Ross testified for the government, this was the classic presentation of actinic keratosis. (Dr. Ross Tr. 514). Dr. Memar prescribed a series of IPL treatments to avoid this “sun damage” (which actinic keratosis is) turning into cancer. (Kontos Tr. 699-700, 711). The IPL’s worked, the AK’s disappeared, and Ms. Kontos stopped getting the IPL treatments. (Kontos Tr. 705-708). When the AK’s recurred, she got more IPL’s with the same successful results. (Kontos Tr. 711). She described Dr. Memar as a “fantastic doctor” who “absolutely” “did everything on the up and up.” (Kontos Tr. 711)
- ii) Pt 2 (Siegel) **counts 7 and 15**
- (1) The very patient I was called into BC/BS to discuss
- (2) Memar focused on the surrounding area and saw lesions that shouldn’t be there for which he ordered IPL treatments. (Siegel Tr. 475, 502). He told Ms. Siegel that left untreated, the lesions could turn into squamous cell carcinoma. (Siegel Tr. 488).
- (3) Siegel believed that Dr. Memar had saved her face, if not her life, and that he had done nothing wrong in any of this, no matter what the government had told her.
- (4) when the lesions returned in 2014, Ms. Siegel was treated with Solareez gel (Siegel Tr. 501), an indisputable treatment for AK
- iii) pt 3 (Combs) **counts 1 and 9**
- (1) She insisted that she received IPL treatments for medical, not cosmetic purposes.
- (2) She was worried about a significant sunburn she sustained on vacation and had a history of sun damage and sun exposure naturally and through tanning salons that made her a prime candidate for actinic keratosis.
- (3) Thus, Dr. Memar gave her IPL for her “sun damage”—which actinic keratosis is, (Dr. Robinson Tr. 67)—before it “turned into something worse.”
- iv) pt 4 (McMullen) **Counts 2 and 10**
- (1) The government’s chief evidence that Ms. McMullen did not have AK in March, 2009 was (1) photographs of her with make-up on (McMullen Tr. 269-71, 277-78); (2) her current inability to “remember one way or the other” being told a decade earlier that she had “AK” or “actinic keratosis” (McMullen Tr. 271-72, 280), (3) and her inability to remember if she had scaly plaques back then—a memory that could never have existed anyway since she didn’t know what either actinic keratosis or scaly plaques are. (McMullen Tr. 279, 281). In fact, she did not remember Dr. Memar himself and thus could not point him out in court. (McMullen Tr. 263).
- (2) by her own description, redness, scarring , and sun spots, all of which Dr. Memar told her had to be addressed
- (3) She thought Dr. Memar was a good doctor (McMullen Tr. 281). And she would have trusted him to get IPLs back in 2005 when she started with him, long before 2009 when he first ordered them. He had thus refrained from giving her needless treatment for four years from which he would have profited—a forbearance starkly at odds with the charged fraud
- v) pt 5 (Robinson) **count 5 and 13**
- (1) Memar diagnosed him with both Rosacea and actinic keratosis, which Dr. Goldberg testified without contradiction can mimic each other and which commonly co-exist.
- (2) said that Dr. Memar may have mentioned “AK”—it “sounds familiar.”
- vi) pt 6 (Laurent) **counts 6 and 14**
- (1) Laurent had been referred by Dr. Fabros to Dr. Memar for “spots on her face.” (Laurent Tr. 609). She likewise had the prototypical history of AK, namely countless sunburns when she was young in addition to buying tanning bed packages by the dozen. (Laurent Tr. 631). Dr. Memar said the spots could be “precancerous” and recommended IPL treatment (Laurent Tr. 609-610, 631). The treatment worked, and the spots sloughed off. (Laurent Tr. 633-34). Ms. Laurent believed Dr. Memar to be a good doctor and was fond of him. (Laurent Tr. 630).

- (2) She denied having scaly skin but a biopsy of her skin revealed lichenoid keratosis, which proved that she had scaly skin. “Keratosis,”
 - (3) Memar’s letter to Dr. Fabros immediately after the referral, conveying his diagnosis of actinic keratosis and intended IPL treatment further supported Dr. Memar and cut against the government’s version.
- vii) pt 7 (Jaroch) **counts 3 and 11**
- (1) Jaroch remembered virtually nothing Dr. Memar told her 10 years ago, although he may have mentioned “AK.”
 - (2) Was unable to identify Dr. Memar in court.
 - (3) Indeed, whatever “illicit” profit Dr. Memar made on the 10 or so IPL treatments was nullified by the steep Botox discounts he gave her—a wash that wholly defeated the purpose of any alleged crime.
- viii) pt 8 (Gordon) **counts 8 and 16**
- (1) Another dermatologist who examined this patient and testified said that this patient had a “a history of blistering sunburns and tanning, “ making her a “classic candidate for actinic keratosis”
 - (2) The patient denied having “lesions,” but my office sent her three bills explicitly referring to “destruction of lesions” and the other dermatologist who examined her said that the patient had lesions associated with pink bumps.
 - (3) This patient denied having scaly skin (one presentation of actinic keratosis), however the other dermatologist described her as having “dry, scaly” skin.
 - (4) The patient admitted that she could not recall everything Dr. Memar had told her.
 - (5) What little was left of Ms. Gordon’s credibility—generally and as to her memory— disappeared with her testimony that “after I saw Dr. Robinson, I decided I was no longer going to see Dr. Memar for any of my more important dermatological needs.” (Gordon Tr. 736). Conveniently forgotten was that after fourteen months of treatment at Dr. Robinson’s office, Ms. Gordon went to Memar when faced with the prospect of melanoma. In fact a pre cancerous mole was removed by Dr. Memar at that time and confirmed by biopsy.
 - (6) Finally, Tina Gutierrez, the government’s own witness who administered Ms. Gordon’s IPL treatments, testified without contradiction that Ms. Gordon’s AK’s were so pervasive that she thought that some were actual skin cancer.
- f) Ex-FBI agent present at meeting Dr. Memar had with Blue Cross and Blue Shield in January 2013
- i) In this meeting, Dr. Memar was told that his treatment of patient 2 was fraudulent. The agent was asked what Dr. Memar’s reaction was. The agent said that Dr. Memar got angry and denied the charges (paraphrase).
 - (1) Mr Lee in his closing argument said made a “misstatement” and said that I confessed. The travesty is that both I and this ex-agent contradicted Mr. Lee’s repeated and loud “misstatement.” This “misstatement” was the last word heard by the jury. **YOU BE THE JUDGE AS TO THE FAIRNESS OF THIS TRIAL.**
- g) Dermatologists called in by the government
- i) Dr. Robinson (she saw patient 7 and 8 around the time Dr. Memar was treating them)
 - (1) Robinson, who was clear that there is no single treatment for AK and certainly no standard of care that precludes treatment of AK with IPL alone.
 - (2) Robinson also rejected the significance of the indictment patients’ inability to remember whether they were told they had AK years ago, since even her current patients commonly do not recall what she has told them
 - (3) She conceded that these two patients indisputably had several other skin conditions that she had neglected to note.
 - (4) She said that she would not have noted actinic keratosis lesions if she was not looking for them or was instead focusing on other skin conditions
 - (5) Robinson conceded that her charts for these patients included all of the symptoms of actinic keratosis

- (6) Robinson would never have said that Ms. Gordon never had AK, especially since Ms. Gordon had a “history of blistering sunburns”—making her a classic candidate for AK
- (7) Robinson’s testimony actually buttressed Dr. Memar’s diagnosis of AK, and most assuredly did not support the absence of AK beyond a reasonable doubt, especially since all of the doctors admitted that dermatologists can reach differing diagnoses concerning AK.

ii) Dr. Ross (government’s expert witness)

- (1) Ross never viewed a single patient file and thus offered no testimony whatsoever on the critical issue of whether any of them had actinic keratosis.
- (2) He conceded, however, that there is no standard of care that prohibits treatment of actinic keratosis with IPL alone, just as he admitted that it involved low side-effects (downtime and discomfort)
- (3) he conceded that a doctor who administered IPL alone for AK in the good faith belief of its effectiveness has not done “anything wrong.”
- (4) There can be no doubt as to Dr. Memar’s belief in the efficacy of IPL without Levulan for treating actinic keratosis given his use of that treatment for the eight biopsy-confirmed AK patients called by the defense.
- (5) Ross stressed that not seeing AK’s “happens a lot” when the dermatologist is focused on other skin conditions

h) Summary from what the government showed against Dr. Memar

- (1) The government accused Dr. Memar that the 8 patients did not have actinic keratosis. However, no doctor examined the patients and definitively said that they did not have actinic keratosis. So where does the government get off making such statements? In fact, each of the patients presented the classic symptoms of actinic keratosis by their own admission, two of which were corroborated by the charts of another doctor. No doctor, including the government’s primary expert, Dr. Ross, even opined that these patients did not have actinic keratosis. And each patient was treated with an internationally recognized modality for that condition.
- (2) The government accuses Dr. Memar of fraud since the patients were treated for so long, but this is normal, as Goldberg had AK patients whose treatments spanned 30 years. Also peer reviewed publications were presented showing the use of IPL for actinic keratosis over a period of 2 years.
- (3) The government disputed the effectiveness of IPL for actinic keratosis, however, we presented published data from around the world showing world-wide recognition of IPL alone as effective for treating actinic keratosis.
- (4) The government accused Dr. Memar of confessing at his meeting with Blue Cross in January 2013 to doing photorejuvenation on patient 2. This implied a cosmetic rather than a medical use of IPL.
 - (a) Dr Memar’s response on the stand:
 - (i) I never... said photorejuvenation. That is a, I hate to use the word, fib. That is not correct. I was not doing it for photorejuvenation
 - (b) To be sure, had Dr. Memar confessed, Blue Cross would have issued an immediate demand refund letter in response to the alleged confession to the assemblage. However, no refund was demanded.
 - (i) BCBS had merely asked Dr. Memar to thereafter provide additional support for his position that the IPL treatments were medical rather than cosmetic—a request it never would have made had he just confessed that they were cosmetic
 - (5) Finally, the government cannot brush its misstatements aside as harmless missteps. As it repeatedly told the jury, Dr. Memar’s purported confession was its “most important” evidence.

4) Dr. Memar’s witnesses

- a) Eight patients called by the defense, who included two retired police officers, business executives, an engineer, and a priest, placed beyond doubt Dr. Memar’s faith in IPL and the chronic nature of that condition.
 - i) Their actinic keratosis for which each received IPL year after year was biopsy-confirmed and hence indisputable.

- b) Dr. David Goldberg, dermatologist
 - i) Reviewed the actual patient charts, unlike the government's expert witness. He did not see any irregularities in the charts
 - ii) He treated his own wife's actinic keratosis with IPL
 - iii) He called IPL an elegant treatment for actinic keratosis
- 5) Dr Memar took the stand
 - a) Mr. Lee asked Dr. Memar if he had confessed in the January 2013 meeting with BCBS that he performed photorejuvenation.
 - i) Dr. Memar responded with "No, I did not; where is your evidence?"
 - ii) Mr. Lee ignored Dr. Memar at this point and returned to his podium.
 - iii) However, what happened next changed the course of the trial. In his closing argument, Mr. Lee repeatedly misstated that I had confessed at that meeting even though I told him less than an hour earlier that I denied it and the ex-FBI agent present in the meeting confirmed my statement in his testimony.

In short, Mr Stephen C. Lee ended his final statement with loud and repetitive "he admitted it," and this was the last word the jury heard. After a few hours of deliberation, I was found guilty of medical fraud and giving fraudulent information for all 8 patients that the government listed. That means the jury determined beyond a reasonable doubt that Dr. Memar knew all 8 patients did not have actinic keratosis but treated them anyway. As shown above, no evidence presented by the government proved beyond a reasonable doubt that Dr. Memar knew these patients did not have pre-cancers and treated them anyway. Remember patient number ii from above, she had a biopsy proven skin cancer; she was prescribed Solaraze® gel, which is only FDA approved for actinic keratosis and Dr. Memar diagnosed her with actinic keratosis. How can it be believable that a person with a skin cancer is devoid of pre-cancers beyond a reasonable doubt. She even in court stated that Dr. Memar said something about pre-cancers, but Mr. Stephen C. Lee extended his neck and asked if Dr. Memar had told her she has actinic keratosis, to which she said no. Why this game of semantics?

With all this overwhelming evidence in support of Dr. Memar and the misstatement of Mr. Lee, why was Dr. Memar found guilty?

Dr. Memar did not get a fair trial. The evidence is clearly shown above.