

# Outline of Dr. Memar's Conviction

1. Before we start: Blue Cross and Blue Shield (BS/BC) wields great power over how medicine is to be practiced. They managed to disagree with a physician on January 2013 over the diagnosis and treatment method of pre-cancers in a 52-year-old proven cancer patient. Instead of requesting the funds back, they turned to the Department of Justice, which led to a criminal conviction without proof of intent. Therefore, the record is devoid of any evidence to show Dr. Memar had the "intent" to commit healthcare fraud or "willfully" made false statements, yet he was convicted! 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 since it functions by heating red or brown targets and this heat is destructive. I did not do anything wrong and I cared for my patients and prevented them from getting skin cancer.
2. The government presented 8 patients out of 600 actinic keratosis patents in my practice, 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:
3. 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. The government needs to prove beyond a reasonable doubt that I had intent to commit fraud. This was never proven in this case.
  - c. In this outline, it will be shown how the government failed to honestly prove this, and only with
  - d. "misstatements" managed to get the jury to convict Dr. Memar and denied Dr Memar a fair trial.
4. 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 based on testimony of Dr. E. Victor Ross and the fact that Dr. Robinson does not treat AKs with IPL alone.
    1. 5 scientific 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.
    4. More importantly, an act of the U.S. Congress was disregarded in this case. The government's witness disagreed with the effectiveness of the tool Dr. Memar used to treat precancers. The government presented this as a sign of Dr.

Memar's guilt. Dr. Memar presented five scientific publications supporting his claim that the tool has been shown effective in treating precancers. The government attempted to use the differing opinion of physicians to prove guilt. This cuts directly against the underlying purpose of The United States Congress' 18 U.S.C. § 1347. The U.S. Congress states that it was never its intent with 18 U.S.C. § 1347 "to penalize the exercise of medical judgment of healthcare treatment choices made in good faith and which are supported by significant evidence or held by a respectable minority of those providers who customarily provide similar methods of treatment." H.R. Conf. Rep. No. 104-736, at 255 (July 31, 1996).

- 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.

## 5. 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
- e. 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.
  - i. 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
  - ii. 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.
  - iii. With all her experience treating AK, Ms. Guttierrez was clear that if she had AK, she would choose IPL alone as her treatment method.
  - iv. Testified without contradiction that Ms. Gordon's (patient 8) AK's were so pervasive that she thought that some were actual skin cancer.
6. The Patients in the Indictment (8 patients, each with 2 counts of fraud, totaling 16 counts of Fraud.
  - a. Pt 1 (Kontos) **counts 4 and 12**
    - i. 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.
  - b. 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."
  - c. (Kontos Tr. 711)

- d. Pt 2 (Siegel) **counts 7 and 15**
  - i. The very patient I was called into BC/BS to discuss
  - ii. 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).
  - iii. 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.
  - iv. when the lesions returned in 2014, Ms. Siegel was treated with Solaraze gel (Siegel Tr. 501), an indisputable treatment for AK
- e. pt 3 (Combs) **counts 1 and 9**
  - i. She insisted that she received IPL treatments for medical, not cosmetic purposes.
  - ii. 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.
  - iii. Thus, Dr. Memar gave her IPL for her "sun damage"—which actinic keratosis is, (Dr. Robinson Tr. 67)—before it "turned into something worse."
- f. pt 4 (McMullen) **Counts 2 and 10**
  - i. 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
- g. "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).
  - i. by her own description, redness, scarring, and sun spots, all of which Dr. Memar told her had to be addressed
  - ii. 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
- h. pt 5 (Robinson) **count 5 and 13**
  - i. Memar diagnosed him with both Rosacea and actinic keratosis, which Dr. Goldberg testified without contradiction can mimic each other and which commonly co-exist.
  - ii. said that Dr. Memar may have mentioned "AK"—it "sounds familiar."
- i. pt 6 (Laurent) **counts 6 and 14**
  - i. Laurent had been referred by Dr. Fabros to Dr. Memar for "spots on her face." (Laurent Tr. 609).
- j. 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).
  - i. She denied having scaly skin but a biopsy of her skin revealed lichenoid keratosis, which proved that she had scaly skin. "Keratosis,"
  - ii. 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.

- k. pt 7 (Jaroch) **counts 3 and 11**
  - i. Jaroch remembered virtually nothing Dr. Memar told her 10 years ago, although he may have mentioned “AK.”
  - ii. Was unable to identify Dr. Memar in court.
  - iii. 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.
- l. pt 8 (Gordon) **counts 8 and 16**
  - i. 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”
  - ii. 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.
  - iii. This patient denied having scaly skin (one presentation of actinic keratosis), however the other dermatologist described her as having “dry, scaly” skin.
  - iv. The patient admitted that she could not recall everything Dr. Memar had told her.
  - v. 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.
  - vi. 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.
7. Ex-FBI agent present at meeting Dr. Memar had with Blue Cross and Blue Shield in January 2013
  - a. 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).
    - i. 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.
8. Dermatologists called in by the government
  - a. Dr. Robinson (she saw patient 7 and 8 around the time Dr. Memar was treating them)
    - i. 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.
    - ii. 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
    - iii. She conceded that these two patients indisputably had several other skin conditions that she had neglected to note.
    - iv. 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
    - v. Robinson conceded that her charts for these patients included all of the symptoms of actinic keratosis

- vi. 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
- vii. 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.

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

- i. 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.
- ii. 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)
- iii. he conceded that a doctor who administered IPL alone for AK in the good faith belief of its effectiveness has not done “anything wrong.”
- iv. 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.
- v. Ross stressed that not seeing AK’s “happens a lot” when the dermatologist is focused on other skin conditions

9. Summary from what the government showed against Dr. Memar

- i. The government accused Dr. Memar that the 8 patients did not have actinic keratosis. However,
- ii. 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.
  - 1. 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.
  - 2. 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.
  - 3. 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.
  - 4. I was not doing it for photorejuvenation
    - a. 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.

10. Dr. Memar's witnesses

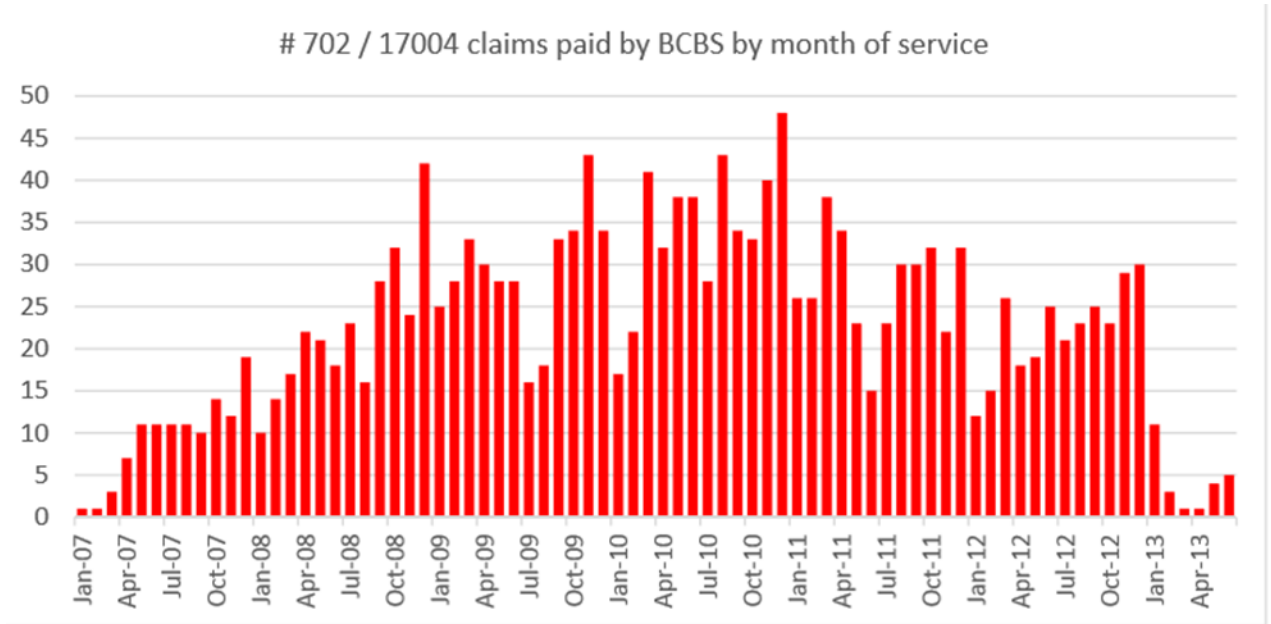
- a. Eight patients called by the defense, who included two retired police officers, business executives, an engineer, and a priest, placed beyond doubt Dr. Memar's faith in IPL and the chronic nature of that condition.
  - i. Their actinic keratosis for which each received IPL year after year was biopsy-confirmed 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
  - iv. He testified that more dermatologists are using IPL for AKs.

11. 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.

12. 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?

13. Mistatements by the government:



a.

Government states: “Ladies and gentlemen, this is Government Exhibit 92, and this graph shows you when the defendant's scheme began in 2007, January of 2007, and how it rose through the years throughout 2007, through 2008, through 2009, through 2010, peaking in January of 2011, and then continuing on until January of 2013. And the most important thing about this graph, ladies and gentlemen, besides the surge in actinic keratosis, it's when it stopped. It stops suddenly in January of 2013. That's when it supposedly ended. It all just stops, and it crashes to the bottom. Ladies and gentlemen, this crash was not due to the idea that patients were no longer getting actinic keratosis. This is because the defendant was confronted by Blue Cross, and he gets caught.” (tr. 1170)

Dr. Memar’s explanation: Options a dermatologist clinically has for addressing 15+ actinic keratosis:

1. Destruction
  - a.17004
2. Photo Dynamic Therapy (PDT)
  - a.Codes used: 702.0, J7308, 96567
3. Topical therapy—Solaraze gel, Imiquimod, Picato, 5-FU, Retinoids
  - a.Only code needed here would be 702.0
4. Shaving lesion off
  - a.Codes are determined by size. (CPT codes 11300 to 11313)
5. Excising lesion
  - a.Codes determined by size. (CPT codes 11400 to 11646)
6. Monitoring lesions, since only .1-15% become malignant

This graph only captures part of 1a patients. It totally ignores the AK patients in Dr. Memar’s practice who might have been treated by other methods like 2a, 3a, 4a, 5a or 6. It also ignores the 1a patients that BC/BS rejected or the money went towards their



deductible. This bar graph clearly does not show number of patients getting AK. This graph shows payment made by BC/BS for 17004. 17004 is the destruction of 15+ AKs. It in no way reflects what the government states as "...patients were no longer getting actinic keratosis..." This graph further does not capture patients with 15+ AK treated that payments went to deductibles or simply the claims were rejected, even though the procedure was done. Remember, this is the height of Obamacare deductible increases, so more was going to deductibles than years past. Furthermore, not included is the number of patients treated with other methods like PDT, topical creams, shaving off of the lesions. It also does not include the patients who had less than 15 AKs treated. This graph represents a conflict of interest, since BC/BS, who brought this case to the government in Jan 2013 also decided what claims it would reject). Secondly, if the doctor is told not to use IPL, which was his main method of billing 17004, it is logical that number would drop, as it did. However, the patients with AK remained in the practice. My lawyer and the gov, chose not to show the number of 15+ AK patients in my practice to my detriment. The conclusion the gov is reaching is illogical. The graph does not represent an outbreak of actinic keratoses. It represents a choice to use one of many options available to treat multiple actinic keratoses. The gov is knowingly misstating. This misstatement and misrepresentation of facts continued all the way to the 7<sup>th</sup> circuit court of appeal. How is this legal?

- b. Gov. States: Mr Lee: So if he had been doing creams and gels and all the treatment methods that were still available to him, we would not have seen anything different in that graph. (tr. 1271)
  - i. Dr. Memar's Response; Not true, when prescribing creams, the 17000 codes are not used and only ICD-9 code 702.0 would be used. The gov never showed total 702.0 alone before and after Jan 2013. Mr. Lee either does not understand basic dermatologic billing practices, excel, or the truth.
- c. Judge States: Similarly, Dr. Memar's diagnoses of AK seemed to plummet after this meeting. (Judge opinion, Document#: 73, page 16)
  - i. Dr. Memar's Response: The judge only presents patient PK as an example. That does not constitute a plummet. That is one patient. Secondly, the graph above does not represent AK diagnosis.
    - 1. To conclude a plummet, you need to know the total 702.0 before and after Jan 2013. The gov omitted that crucial data.
- d. Government states: The way that he responded when he talked to Blue Cross shows you that he committed fraud. They ask him why he uses IPL, and he tells them the truth. He tells them, photorejuvenation. (tr. 1170)
  - i. Dr. Memar's Response: Gov admitted this is a misstatement.
- e. Gov. States: **Mr Raman states** in closing....Most importantly, though, ladies and gentlemen, one of the things to consider here is that the defendant told Blue Cross Blue Shield that the IPL treatments in connection with Kellie Siegel, these were for photorejuvenation (tr 1187)
  - i. Dr. Memar's Response: No objection from defendant, but weeks later the gov admits this was a misstatement, but the jury did not know that. The jury was never told that this was not true when they came to a verdict.
- f. Gov. States: Photorejuvenation as form after form said and as he himself admitted to Blue Cross Blue Shield when confronted and caught by surprise. (tr. 1269)
  - i. Dr. Memar's Response: This was not objected to and the judge never instructed the jury that the defendant never admitted to BC/BS

- g. Gov. States again: he has this clinical discussion with Blue Cross Blue Shield. And it's at that time that he tells them the truth. He says, "I use the IPL for photorejuvenation." (TR. 1203)
  - i. Dr. Memar's response: This was not objected to by defendant's council, but the government admitted that it was a misstatement weeks after the ruling.
- h. The Government states: The witnesses testified that they left his office without ever hearing or without ever knowing that they had a very serious precancerous skin condition (tr. 1171)..... Mr Raman states...."none of them said that they were told they had a precancerous condition." (tr 1184-1185)
  - i. Dr. Memar's Response:
    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).
    2. Siegel: 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. Combs: She insisted that she received IPL treatments for medical, not cosmetic purposes. Thus, Dr. Memar gave her IPL for her "sun damage"—which actinic keratosis is, (Dr. Robinson Tr. 67)—before it "turned into something worse." (tr. 402)
    4. McMullen: by her own description, redness, scarring, and sun spots, all of which Dr. Memar told her had to be addressed.
    5. Robinson: said that Dr. Memar may have mentioned "AK"—it "sounds familiar."
    6. Laurent: Dr. Memar said the spots could be "precancerous" and recommended IPL treatment (Laurent Tr. 609-610, 631). Memar wrote a letter to Dr. Fabros, the referring physician, 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. If Memar feared fraud, why would he put in writing his diagnosis and treatment to a colleague?
    7. Jaroch: Jaroch remembered virtually nothing Dr. Memar told her 10 years ago, although he may have mentioned "AK."
  - i. How many times was Dr. Memar addressed by terms like, fraudulent, lied, "knew the patients did not have pre-cancers", falsified records, and other slanderous words? Easily hundreds of times. How many times does an untruth need to be repeated before its accepted as truth? All were slanderous conjecture without an ounce of hard evidence.
  - j. Gov. States: And by the way, ladies and gentlemen, the 17004 code, that's the code that garners the highest amount of reimbursement from insurance (tr. 1181)
    - i. Dr. Memar's Response: Not true, PDT (Codes used: 702.0, J7308, 96567) garners the highest amount of reimbursement from insurance for AKx15. My mediocre lawyer did not state this and the gov misstated the truth.
- k. Gov. States: In closing, Mr Raman describes Dr. Ross... He told you that he's a dermatologist from San Diego. He told you that he tested – that he is familiar with AK because he treats 85 to

95 percent of his – he spends 85 to 95 percent of his time treating patients at the Scripps Clinic. He says it's one of the most common conditions that he treats (tr 1188)

- i. Dr. Memar's Response: Mr. Raman implies that Dr. Ross spends most of his time treating actinic keratosis, when that is not true. Dr. Ross said he sees patients 85-95% of his time (tr 1188) and 80% of his patient care is cosmetic (tr 597), which leaves only 5-15% of his time for medical patient care, like treating precancers and other skin conditions. Remember that Acne is the most common skin condition and not AKs. When is Dr. Ross treating medical conditions like actinic keratosis? If the only dermatologic medical condition he treats is actinic keratosis, the answer is a fraction of 5-15% of his time. Since he is not the skin cancer or actinic keratosis specialist at the Scripps Clinic, it is hard to believe that he gets all the AK patients. Therefore, logic would state that he sees very few AK patients compared to the average medical or Mohs dermatologist.
- l. Gov. States: that's why there is more AK in San Diego than there would be in Chicago (tr.1188)
  - i. Dr. Memar's Response: The Government provided no proof to this statement. Chicago is a much, much larger city than San Diego. In this day, people travel, and we have a concept of winter birds. Mr. Raman is assuming and misleading and in reality misstating.
- m. Gov. States: And he tells the FBI that he uses it for a specific purpose to try and make it seem like he's fitting it into a legitimate use. (tr. 1203)
  - i. Dr. Memar's Response: This is not true. It was never objected to by defendant's counsel, and the source is FBI Special Agent Ashley Davis, who lied under oath to the grand jury. This statement is false and should be thrown out, but the jury heard this and ruled based on it.
    1. Dr. Memar tells Ms Davis, per her notes, the tools Dr. Memar uses to destroy AKs on 7/11/13: Q:.. You say that Dr. Memar discussed the treatment methods or you asked him about that for AKs isn't that right? A. Yes. q. And, of course, you talked about the IPL, right? A. Yes. q. And he talked about with you electrocautery? A. We didn't really discuss it, but he mentioned it was a treatment method. q. He told you that? A. Yes. q. It's in your memo. He also talked about something called trichloroacetic acid? A. Yes. q. And you mentioned creams a few minutes ago? A. Yes. q. And then there was also Levulan that was mentioned, right. A. Yes. I asked him if he had Levulan.(tr. 664-665)Ms. Davis tells the Grand Jury under oath on 2015: q. When you talked to the grand jury about this case, you told them that other than the IPL that he had, he didn't have anything to treat AK patients, didn't you? A. I don't recall. q. Would it help for you to take a look at your grand jury testimony? A. Yes.(Pause.) Yes. I said he really had no method to destroy actinic keratosis. (tr. 666)
      - a. Electrocautery and trichloroacetic acid are methods to destroy actinic keratosis, as defined by the code 17004. Ms. Davis forgot what she had written and perjured herself under oath. Are we expected to believe her account of how Dr. Memar diagnosed AKs? Is there any accountability? Can an FBI agent lie under oath and still be quoted by the assistant attorney general?
  - n. Gov. states: And the case is about what he did with several hundred cosmetic patients that he saw between 2007 and 2013 (tr. 1205)
    - i. Dr. Memar's Response: The gov presented 8 patients, not several hundred, out of my 30,000 patients. Of the 8, they showed no solid proof, but repeated the same falsehood, until it became believable. None of the government's experts/competent witnesses reviewed any of the patient records at issue. This is similar to the recent cardiologist case. (tr 1096).

- o. The Gov. states: Lee in Rebuttal... there really was a massive breakout of a chronic condition among his patient population that just happened to go away when Blue Cross Blue Shield simply told him that they would stop paying him for one treatment method. (tr 1262)
  - i. Dr. Memar's Reply: False statement. No proof was shown that patients with 15+AK diminished in Dr. Memar's practice. In fact, he chose other methods to treat those patients, but those numbers are conveniently omitted by the gov and my mediocre attorney never gathered them. The Gov only showed that BC/BS paid less (excluding denied claims and money that went towards deductibles) for one option out of six treatment options. The Gov. conveniently excluded data on the other options available to Dr. Memar.
- p. Gov. States: Lee in rebuttal... And trust him even though he has over time given different stories to Blue Cross Blue Shield, to the FBI, and even here in court. Ladies and gentlemen, after this trial, you know not to trust Omeed Memar (tr. 1262)
  - i. Dr. Memar's Response: The false stories stem from Ashley Davis, FBI; Mr Raman, Gov; Mr. Lee, Gov, and ultimately BC/BS who thinks a skin cancer patient cannot have precancers. Whom should we trust?
- q. Gov. States: First, you know that the treatments are inappropriate because the patients did not have actinic keratosis (tr. 1269)
  - i. Dr. Memar's Response: The only definitive way to determine this is a skin biopsy at the time of diagnosis. No such evidence was provided, and a claim that the patients did not have AK is false and slanderous against Dr. Memar.
- r. The Gov. States: You also know that these treatments were not destroying actinic keratosis lesions because the defendant himself did not really believe this. (tr. 1270)
  - i. Dr. Memar's Response: No proof that Dr. Memar did not believe IPL destroys AKs. He had evidence-based publications showing IPL cleared AKs, while the gov did not have any proof IPL did not destroy.
- s. The Gov. States: And you know the treatments were not really destroying actinic keratosis lesions because when Blue Cross stopped paying for the IPLs, his practices and his billings would not have changed if he really had believed he had been treating patients for actinic keratosis lesions. (tr 1271)
  - i. Dr. Memar's Response: This is an illogical statement. What does BC/BS payment have to do with the physics of IPL generating heat to destroy red and brown targets? There are other codes to use to treat or destroy 15+ AKs, but the gov conveniently did not show those.
- t. Gov. States: He billed the Tazorac and Solaraze using the 1700 series (tr. 1271)
  - i. Dr. Memar's Response: These are creams that need to be used daily. Is he implying that I used the 17000 destruction codes when the patients used these creams daily at home? This is simply false. Solaraze is used twice daily. Was I billing 17000 codes twice daily? By this argument, I was getting paid every time the patient used their cream at home. There simply is no evidence of this.
- u. Gov. States: Mr Lee in rebuttal: All Blue Cross told him was, "IPLs, we don't think -we think they're cosmetic." He didn't fight back. He didn't advocate for his position
  - i. Dr. Memar's Response: Not true, I defended my use of IPL for AK destruction. This is Mr. Lee questioning Mr. Krupkowski (ex-FBI agent), who was present at the BC/BS meeting in Jan 2013: Question by Gov: Now, after Dr. Barnes told Dr. Memar about the peer reviewer's findings, what, if anything, did Dr. Memar say in response? Answer by Mr. Krupkowski: Well, Dr. Memar disagreed with the peer reviewer's findings. He said that, you know, his records could have been better, he could have done diagrams, but that doesn't mean that he didn't do the services that he had billed. And he questioned the bias

- of the peer reviewer because Blue Cross was paying for the peer review and had requested the peer review. (tr 366)
- v. The Judge writes: Then Dr. Goldberg was directed to a 2011 article, which noted that "IPL can be effective and safe for the treatment of non-aesthetic facial and neck vascular lesions, " a broad term that in Dr. Goldberg' s opinion encapsulates AK lesions. (I d. at 924-25. ) However, that study noted that "IPL used for actinic keratosis is not the best tool for treating these lesions as it improves erythema but not "epidermal dysplasia" - effectively confirming what Dr. Ross said in his rebuttal article and trial testimony. (Judge opinion, Document#: 73, page 18)
    - i. The only way to determine epidermal dysplasia is a biopsy, which was not done, so this is not a scientifically founded statement.
  - w. The Judge writes: Dr. Memar's 2016 presentation never mentioned his own nearly decade-long experience purportedly treating AK patients with IPL alone, concluding that further study was necessary to say whether it was effective. (Judge opinion, Document#: 73, page 30)
    - i. Dr. Memar's Response: After showing controlled peer reviewed studies that proved IPL alone cleared 53-55% of AKs, Dr. Memar understood that IPL is effective because it goes after red and brown lesions, which AKs are. However, further studies on effectiveness can also mean optimization of settings and patient selection to increase the already proven number of 53-55% efficacy. The total discussion slide was:
      - 1. IPL is a device that targets red or brown lesions
      - 2. Actinic keratoses initially present with redness and some with pigmentation
      - 3. IPL alone should be studied further for effectiveness in treating actinic keratosis
  - x. The Gov. States: records regarding one patient (Patient KS) and that she believed that defendant's use of IPL for this patient had been cosmetic. Tr. 363-64.
    - i. Dr. Memar's Response: Tr 363-364 in no way reflects Patient KS's beliefs. This is a misleading statement and false statement. Refer to
      - 1. Patient Siegel stated: 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).

The government continued a PR campaign against Dr. Memar, and indicating that he stood to be given 120 years behind bars. The honorable Judge reduced that to 3 years community service in the field of skin cancer education and research. The case went up for appeal before the 7th U.S. Circuit of Appeal on May 23, 2018. Results are pending.

The new standard of care has been established by the U.S. Government:

1. Before treatment, a biopsy is needed for every premalignant lesion, including actinic keratosis (58 million Americans have actinic keratosis and currently physicians diagnose this visually; a biopsy would add an extra \$29 billion dollars to AK treatments alone). Any diagnosis that is not backed up by secondary independent evidence (like a biopsy or CT scan) can be questioned as a criminal misdiagnosis. Therefore the clinical diagnosis of a physician is not good enough.
2. Any delegated procedure needs physician examination before and after treatment to avoid criminality. A patient being treated for a brain tumor with radiation will need a visual examination of the tumor, most likely in the form of an MRI or CT scan, before and after each session; so if a patient is receiving 30 sessions of radiation, that would be an extra 60 scans with physician reading every time. This will create immense cost and unnecessary exposure to the

patient, i.e., the worst of defensive medicine. Otherwise, a criminal act might have been committed.

3. If an insurance company does not agree with a doctor's diagnosis or treatment, no longer will they need to request reimbursement. They can go straight to the Department of Justice, and have the doctor investigated for criminal conduct. Then the government may charge the practitioner with a crime without ever having the patient examined by another physician. This will create an immense cost burden on an already stressed health care system. This is exactly what happened to Dr. Memar.

4. Providers (like surgeons, radiation oncologists, etc) that use devices that destroy tissue (like tumors or blood vessels, etc) need verification of destruction (like scans, biopsies, etc), otherwise the destruction code used is a criminal offense.

This is an attack on medicine and affects multiple specialties in medicine that deal with insurance companies. We need to act now.