

# “Twisted” Path to New Trial for Dr. Paulus

“A 2018 Sixth Circuit panel upheld a jury verdict convicting Dr. Richard Paulus of submitting fraudulent medical claims. That same panel, with 2020 hindsight(!), reversed that conviction. It held that the trial court’s order unconstitutionally blocked exculpatory evidence,” reports Thomas Zeno in Squire Patton Boggs *case updates*.

“The ‘twisted’ history of the verdict began when a jury deadlocked twice and needed an *Allen* charge in order to convict Dr. Paulus of billing angiograms that were unnecessary. The trial court rejected the jury’s verdict and set aside the conviction: a doctor’s decision about the degree of blockage of an artery was a matter of subjective medical opinion that ‘could be neither be false nor fraudulent.’ The government disagreed and appealed. (Double jeopardy does not prevent appeal of a judgment of acquittal after verdict.)”

“In the first appeal, the panel (McKeague, Batchelder, Griffin) recognized the difficulty of distinguishing a fraudulent medical opinion from mere expert disagreement. Relying on the *U.S. v. Persaud*, however, the panel reaffirmed that fraud occurs when a doctor deliberately inflates artery blockage in order to bill for unnecessary procedures. The panel emphasized that “it is up to the jury – not the court – to decide whether the government’s proof is worthy of belief.” Deferring to the jury, the panel reversed, reinstated the conviction, and remanded the case for sentencing.”

***Read the article.***