

Part B Insider (Multispecialty) Coding Alert

Fraud & Abuse: Supremes Stay Mum On Limits For False Billing Penalties

The lack of a word from the Supreme court sends a message loud and clear to providers charged under the False Claims Act: There's no penalty too large for wayward billers.

That's not the answer **Peter Mackby** was hoping for. The former Larkspur, CA physical therapy clinic operator filed a petition with the high court March 22 seeking relief from an exorbitant FCA fine imposed on him for allegedly using his physician-father's provider identification number to bill Medicare for therapy services -- even though the father was never involved with the clinic's patients. Mackby was subsequently slammed with a \$5,000 fine for each of 111 false Medicare claims, plus triple damages -- a whopping \$729,000 penalty on \$58,151.64 worth of overpayments.

The former clinic owner cried foul, arguing that the penalty called into play the excessive fines clause of the 8th Amendment to the U.S. Constitution. However, in U.S. v. Mackby (No. 99-15605), the **9th U.S. Circuit Court of Appeals** upheld the penalty, citing the necessary "punitive purpose" of the law (see MDA, March 22, 2001).