



# Michigan v. Xun Wang, 2020 WL 2479717 (Mich. S. Ct. 2020)

Topics Covered: False Claims Act

## Outcome: Favorable

### Issue

The issue in this case was whether an employee who did not participate in the billing process of her employer's medical clinic can be liable for Medicaid fraud under the Michigan Medicaid False Claims Act.

### AMA interest

The AMA supports efforts to clearly define health care fraud and pursue enactment of laws that ensure the equal application of due process rights to physicians in health care fraud prosecution. H-175.987, All-Payer Health Care Fraud and Abuse Enforcement Program. Fraud and abuse should focus on intentional acts of misconduct. The AMA should work to restrict the use of the False Claims Act. H-175.984, Health Care Fraud and Abuse Update.

### Case summary

Xun Wang, a Chinese immigrant, was employed at a medical clinic owned by Dr. Murtaza Hussain. Although she had received a medical degree in China, she was not licensed as a physician in the United States. Wang's job was to meet with patients at the medical clinic, gather each patient's medical history, and document her observations. Wang would report to Dr. Hussain the patient's history, along with the medication and dosage she recommended. Dr. Hussain would then determine whether to write the patient a prescription.

Wang was aware that some of the medical clinic patients were Medicaid patients. She was not personally involved in the clinic's Medicaid billing process.

The Michigan Attorney General sent two undercover agents to the clinic, posing as patients with Medicaid benefits. They reported that Wang had falsely represented herself as a physician and had been at least indirectly responsible for false billing to Medicaid. The amount billed was \$260.

Based largely on the investigation of the undercover agents, Wang was sued for and then convicted of the unlawful practice of medicine and defrauding Medicaid. The trial court found that she had "made, presented, or caused to be made or presented a claim to the state or its agent" for Medicaid, that the claim was false, and that she knew that it was false. The court explained the Medicaid fraud finding as follows:

“At least twice Medicaid was billed and should not have been billed, so defendant caused Medicaid to be billed; that was false and defendant knew or should have known that this was a wrongful act.”

Beyond those conclusions, the court did not make detailed findings regarding the Medicaid fraud conviction.

Wang, who did not have any previous criminal record, was ordered to pay \$106,454.00 in costs and fines. She was also sentenced to 60 months’ probation and to 365 days in jail, with credit for one day served. The remaining jail time and probation would effectively be avoided if and when she paid the monetary penalty.

Wang appealed. On appeal, Wang challenged the finding that she knowingly caused the false claims to be submitted. She argued that she not only had not submitted a false claim but was even unaware of the clinic’s billing practices.

The Court of Appeals disagreed. It held that she knew the clinic saw Medicaid patients and that she was aware that the patients she saw were billed for her services as though they had been seen by a licensed physician. Thus, the trial court could reasonably infer that she was substantially certain that her conduct would cause the false payment of a Medicaid claim.

The Court of Appeals affirmed the convictions, although it did remand for reconsideration of whether the sentence was appropriate.

Wang appealed to the Michigan Supreme Court. The Supreme Court invited various organizations, specifically including the Michigan State Medical Society (MSMS), to file briefs *amicus curiae*.

In a split decision, the Supreme Court reversed the Medicaid fraud conviction, holding that the evidence on that count had been insufficient to establish that the defendant was aware or should have been aware that the patients at issue were Medicaid beneficiaries and that their treatment was substantially certain to cause the payment of a Medicaid benefit. The court did, though, hold her guilty of practicing medicine unlawfully.

### **Litigation Center involvement**

MSMS and the Litigation Center filed an *amicus* brief to support Wang. The brief argued that there was insufficient evidence to support the Medicaid fraud conviction.

Michigan Supreme Court brief