



## Md. Case: An Issue of Medical Judgment or Criminal Fraud?

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On September 1, 2010, John R. McLean, a former cardiologist based in Salisbury, Md., was indicted by a federal grand jury for health care fraud and for making false statements to Medicare and Medicaid.

McLean is charged with performing operations to insert stents – devices to treat coronary disease – in the arteries of patients who did not need them according to accepted medical practice, and then falsifying their medical records to make it appear that they did need them. He lost his hospital privileges in 2007 after a hospital probe of his practices involving stents.

Medicare, Medicaid, and private insurance won't pay for a stent unless the patient has been diagnosed with a 70 percent or greater blockage of the artery. The indictment alleges that McLean inserted stents in patients with significantly less blockage but falsely stated that they were at the 70 percent level or above. Stents and the follow-up appointments and tests can be lucrative for a cardiologist, and the indictment says that McLean benefited from unnecessary stents to the tune of \$519,000.

Prosecutors say it's all about McLean receiving cash that he wasn't entitled to.

The indictment says McLean engaged in a "scheme and artifice to defraud" Medicare, Medicaid and private insurers – specifically, by obtaining money based on "false and fraudulent pretenses."



“We do not bring federal prosecutions for discretionary judgments about which reasonable medical professionals might disagree,” Rod Rosenstein, the U.S. attorney for Maryland, said in announcing the indictment.

We don’t condone falsifying medical records. But many doctors seem to think that stents can be helpful to patients even well below the 70 percent level of blockage, and no one has said that McLean’s patients died at higher rates or tended to have worse medical outcomes.

In our view, hospitals themselves are the best equipped to police doctors who aren’t following the rules, and prosecutors should be careful that they don’t make a disagreement over medical procedures into a federal criminal case.

*Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

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