IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 06-CR-30098-DRH
	)	
AJIT TRIKHA, M.D.	)	
	)	
Defendant.	)	

DEFENDANT'S MOTION TO SUPPRESS EVIDENCE

Comes now Defendant, by his attorney, John D. Stobbs II and respectfully moves for an Order suppressing all physical evidence, whether tangible or intangible, and any other tangible or intangible evidence obtained directly or indirectly from search of a business located at 6915 West Main in Belleville, Illinois, in which Defendant had a reasonable expectation of privacy or about August 25, 2005.

The searches and seizures on August 25, 2005 involved in this case were conducted pursuant to a search warrant and supporting affidavit, copies of which are attached. The crux of Defendant's argument is that the offending affidavits in support of the Search Warrant are invalid in that they failed to set out the proper showing of probable cause pursuant to the Fourth Amendment of the United States Constitution.

The Supreme Court has clearly delineated the standard which an issuing judge must follow in determining whether probably cause supports a warrant, as well as the duty of the reviewing court.

> The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and the "basis of knowledge" of the person supplying hearsay information, there is a fair probability that the contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate has a "substantial basis. . . concluding" that probable cause existed.

Illinois v. Gates, 462 U.S. 213, 2380239 (1983); *U.S.A. v. Macklin*, 902 F.2d 1320 (8th Cir. 1990); *U.S.A. v. Martin*, 866 F.2d 972 (8th Cir. 1989)(probable cause is said to exist when an affidavit sets forth sufficient facts to justify a prudent person in the belief that contraband will be found in a particular place).

In the present case, however, there are insufficient facts in the affidavit to support the Search Warrant. The affidavit relies in great detail on amounts billed by Defendant herein and makes the leap that due to these amounts greater investigation was required. A search warrant affidavit establishes probable cause when it sets forth sufficient to induce a reasonably prudent person to believe that a search thereof will uncover evidence of a crime. *United States v. Riedesel*, 987 F.2d 1383 (8th Cir. 1993). Probable cause is to be determined from a "totality of the circumstances." *id*. The Supreme Court has refused to define probable cause, saying that whether it has been established varies with the facts of each case. *See Ornelas v. United States*, 517 U.S. 690, 696 (1996).

Here, the affiant's leap from amounts of billing to criminal conduct were necessary to the determination of probable cause because he relied heavily on protocol and procedure to induce a federal magistrate to believe that Defendant was involved in a scheme to falsely bill and defraud the Medicare program.

The affidavit also relies on calculations made by the affiant regarding hours worked in a day. At a *Frank* Hearing it will be shown that the affiant disregarded the fact that it is possible for Defendant to have billed the hours submitted in excess of 24 hours a day. "The *Franks* decision did not define 'reckless disregard for the truth,' other than to suggest that the standard required more than mere negligence on the part of the affiant." *United States v. Whitley*, 249 F.3d 614, 621 (7th 2001). "Reckless disregard for the truth," as used in the context of a *Frank* hearing, has been defined as follows: [T]o prove reckless disregard for the truth, the defendant has to prove that the affiant "in fact entertained serious doubts as to the truth of his allegations." *United States v. Schmitz*, 181 F.3d. 981, 987 (8th Cir. 1999). Because states of mind must be proved circumstantially, a fact finder may infer reckless

disregard from circumstances evincing "obvious reasons to doubt the veracity" of the allegations. *United States v. Williams*, 737 F.2d 594, 602 (7th Cir. 1984). Later decisions have slightly expanded the *Franks* principle to include "the state of mind not only of the affiant, but also of those governmental agents from whom the affiant received false information incorporated into the affidavit." *Whitley*, 249 F.3d. at 621. "In other words, the validity of the search is not saved if the government officer swearing to the affidavit has incorporated an intentional or reckless falsehood told to him by another governmental agent." *Id.*

WHEREFORE, Defendant request that an Order be entered suppressing all physical evidence, whether tangible or intangible, and any other tangible or intangible evidence obtained directly or indirectly from search of a business located at 6915 West Main in Belleville, Illinois, in which Defendant had a reasonable expectation of privacy or about August 25, 2001.

AJIT TRIKHA

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BY:

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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2006 a copy of the attached ***DEFENDANT'S MOTION TO SUPPRESS EVIDENCE*** was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Mr. Michael Quinley
Assistant U.S. Attorney
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