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## [Supreme Court hears appeal from abortion doctor accused of Medicaid fraud](#)

Posted by [Daniel Beauregard](#) on February 13, 2013 in [DeKalb News](#), [Government 1 comment](#)



The Georgia Supreme Court heard an appeal of a pre-trial ruling involving a DeKalb County doctor who was accused of illegally using Medicaid funds to perform services associated with elective abortions.

Dr. Tyrone Malloy was indicted in 2011 by a DeKalb County grand jury for two counts of Medicaid fraud in violation of state law. The indictment alleges that from 2007-2010, Malloy accepted \$131,615 in Medicaid payments to which

he wasn't entitled "because such services were associated with the performance of elective abortions."

The second count alleges that in the same period, Malloy then fraudulently accepted \$255,024 in Medicaid payments for "detailed" ultrasounds which had not been performed.

According to court documents, Malloy filed for dismissal three times, claiming that the state law under which he was being charged was unconstitutional and that the indictment's language was "prejudicial."

A DeKalb Superior Court judge denied all three motions, Malloy then requested a certificate from the trial court allowing him to file an appeal with the state Supreme Court, which was also denied. Malloy then appealed directly to the Supreme Court Feb. 4.

In 2010, the Georgia Department of Community Health's Program Integrity Unit conducted a review of Malloy's Old National Gynecology clinic looking for violations of the Hyde Amendment, which prohibits the use of federal funds to pay for elective abortions.

After its review, the department instituted a "withhold of Medicaid number," suspending Medicaid reimbursements to Malloy. However, Malloy later requested an administrative review of the department's findings and an administrative law judge concluded that Malloy had not done anything wrong and the Medicaid funds that were withheld from him were released.

The Georgia attorney general then filed criminal charges against Malloy for the money he had allegedly billed the Medicaid program and the additional funds that he collected after they were released to him.

During the Feb. 4 appeal, Malloy's attorneys argued that the state was using its influence to further a political agenda. His attorneys also said that the trial court failed to protect Malloy from double jeopardy because the state was allowed to appeal the administrative law judge's ruling, which it chose not to.

"Three witnesses testified before the administrative law judge that his procedures were proper," attorney Katherine Durant testified. "The state also indicted Malloy for accepting the very funds that were released to him."

Durant also said that the statute that Malloy was being charged with violating was deliberately vague.

The state contends that Malloy illegally applied for payment for procedures that were "associated" with elective abortions and are therefore not eligible for Medicaid reimbursement.

"Nowhere in the statute or policy manual is there a distinction made between reimbursement for these diagnostic services for patients who elect to terminate pregnancy and those who do not," state attorneys argued.

Supreme Court Justice David Nahmias said that a "very heavy majority of courts nationwide" hold that an administrative ruling is not double jeopardy.

Malloy has practiced medicine in Georgia since 1981. He received his medical degree from The Johns Hopkins University School of Medicine and is medical director of the Atlanta SurgiCenter, where he has been providing abortion services for 20 years.

Additionally, Malloy is on the faculty of Emory University's School of Medicine. His primary practice, Metropolitan Atlanta ObGyn, is located in Decatur. He has another clinic, Old National Gynecology, in College Park.

If convicted, Malloy could be sentenced to a \$10,000 fine or up to 10 years in prison.

A ruling on Malloy's appeal to the state Supreme Court is expected in the next several months.

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