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## Doctor pleads guilty to taking kickback He also is to pay \$1.5 million in civil suit

**BY LINDA SATTER**

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LITTLE ROCK — Less than two weeks before he was to face a federal jury, Searcy neurosurgeon Patrick Chan pleaded guilty Thursday to one of four charges accusing him of taking kickbacks for agreeing to use specific products during spinal surgeries.

Chan, 43, faces up to five years in prison and a fine of up to \$25,000 under federal statutes. No sentencing date has been set.

Chan also agreed Thursday to pay \$1.5 million to settle a civil lawsuit filed by a whistle-blower - a former medical-device sales representative - on behalf of himself and the government.

The lawsuit sought recovery of funds paid by Medicare and Medicaid, the federal and state health-care programs for the elderly, poor and disabled, after Chan filed reimbursement claims for the surgical products he bought.

The settlement money was expected to have been "secured" by Thursday afternoon, U.S. Attorney Jane Duke said later. The federal government was to receive the most - \$1,049,000 - while \$101,000 was due to the state, and \$350,000 was to be set aside for the whistleblower, John Thomas of Little Rock, who was represented by attorney David Ivers.

A third lawsuit, which alleges that Chan committed medical malpractice by performing unnecessary surgeries so that he could receive the kickbacks, is still pending in White County Circuit Court, attorney John Ogles of Jacksonville said Thursday.

Ogles' clients, White County residents Scotty Foster and his wife, Linda, claim that an unnecessary surgery Chan performed on Scotty Foster in February 2006 left him "totally disabled, in a constant state of pain, immobile and incapable of performing his duties as a husband, father or productive citizen."

"I'm just glad we can get on with our case now," Ogles said Thursday, after Chan pleaded guilty in the criminal case. The Fosters' case had been on hold, awaiting the outcome of the criminal matter.

In the criminal case, Assistant U.S. Attorney Karen Whatley told U.S. District Judge Susan Webber Wright that on three dates in 2006 - July 31, Sept. 5 and Sept. 13 - Chan accepted kickbacks from a medical-devices sales representative who, unbeknownst to Chan, was cooperating with federal agents who were surreptitiously watching and recording the meetings.

Whatley said the medical sales representative had revealed to agents in early July 2006 that she had been paying part of her commission to Chan, at his suggestion, whenever he bought or leased equipment from her. She represented four companies that made equipment used during and after spinal surgeries.

"The deliveries were videotaped and audiotaped, and Dr. Chan is seen taking the money and putting it in his desk drawer without any questions," Whatley told the judge.

She said Chan was arrested after the last "controlled delivery" and that during a subsequent search of his vehicle, \$8,000 in cash that had been supplied by the FBI and given to him by the confidential informant was found under the driver's seat.

The total paid to Chan during the sting operation was \$31,000, only \$8,000 of which was recovered, Whatley said.

Chan, represented by attorney James Wyatt of Little Rock, sat quietly at the defense table as Whatley described the charges against him. Asked how he wanted to plead to the charge involving the Sept. 13 meeting, he said, "Guilty," but otherwise said nothing during the hearing.

At Whatley's request, Wright agreed to drop the other charges, which each stemmed from one of the secretly recorded meetings.

The woman who delivered the cash wasn't identified by name. Duke said later that she has since died.

She sold medical equipment manufactured by Osteotech, Orthofix, Alphatec and Signus.

Ivers said later in a news release that the settlement with Chan doesn't end the whistleblower case against 10 other defendants who were competitors of the company for which Thomas sold devices.

"The allegations extend far beyond Dr. Chan," Ivers said.

Thomas' lawsuit alleges that Chan, medical-device manufacturers and others participated in kickback schemes involving the sale and use of devices such as "pedicle screws" and other "hardware" used to repair the spine. The suit alleges, among other things, that the defendants used sham physician consulting contracts, bogus research "studies" and expensive gifts to entice physicians to select their products.

"Dr. Chan is only one piece of a big scheme that has been going on across the United States," Ivers said. "This is by no means confined to Arkansas."

The other defendants, who have denied the allegations, are medical-device manufacturers Blackstone Medical Inc. and Synthes Inc., Blackstone sales representative Michael M. Bailey of Little Rock, and "other entities connected to the defendants," including Bailey Management Group Inc., Foundation for Orthopedic and Spine Education and Research, Innovative Health Solutions Inc., Motiontek Inc., Omni360 LLC, Omni360 Management Inc., and Orthofix International, N.V.

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