

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN, Supreme Court No. 158013

Plaintiff-Appellee,

Court of Appeals No. 336673

v

Ingham County Circuit Court
No. 15-754-FH

XUN WANG,

Defendant-Appellant,

**PLAINTIFF-APPELLEE'S BRIEF IN OPPOSITION TO
DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL**

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Dated: July 24, 2018

TABLE OF CONTENTS

	<u>Page</u>
Index of Authorities	ii
Counter-Statement of Jurisdiction	iv
Counter-Statement of Questions Presented.....	v
Introduction	1
Counter-Statement of Facts and Proceedings	2
Argument	20
I. Appellant's Application for Leave to Appeal does not establish grounds for review by the Supreme Court of Michigan, pursuant to MCR 7.305(B)(5).	20
A. Standard of Review	20
B. Analysis	21
II. The People’s evidence was sufficient to convict Appellant of Medicaid Fraud-False Claim in Counts I and II.	22
A. Standard of Review	22
B. Analysis	22
III. The People’s evidence was sufficient to convict Appellant of Health Profession-Unauthorized Practice in Count III.	26
A. Standard of Review	26
B. Analysis	26
IV. The trial court complied with MCR 6.403.....	34
A. Standard of Review	34
B. Analysis	34
Conclusion and Relief Requested.....	39

INDEX OF AUTHORITIES

Cases	Page
<i>People v Jackson</i> , 390 Mich 621; 212 NW2d 918 (1973).....	35
<i>People v Lacalamita</i> , 286 Mich App 467 (2009)	34
<i>People v Legg</i> , 197 Mich App 131 (1992)	34, 38
<i>People v Ramsey</i> , 89 Mich App 468 (1979)	34, 38
 Statutes	
MCL 333.16109	29, 30, 32
MCL 333.16109(2).....	29
MCL 333.16215	29, 32
MCL 333.16215(1).....	31
MCL 333.16294	26, 27
MCL 333.17001	28, 36
MCL 400.602.....	22
MCL 400.602(f)	25, 26
MCL 400.607(1)	22, 26
 Rules	
MCR 2.517(A)(1)	35
MCR 6.403.....	34, 35, 38
MCR 7.303(B)(1)	20
MCR 7.305(B).....	1, 20, 21
MCR 7.305(B)(1)	21

MCR 7.305(B)(5)(a)..... 22

COUNTER-STATEMENT OF JURISDICTION

Plaintiff-Appellee, the People of the State of Michigan, agrees that this Honorable Court has the discretionary option to review Defendant-Appellant Xun Wang's application for leave to appeal pursuant to MCR 7.303(B). However, pursuant to MCR 7.305(B)(5), this Court should decline to do so, as the evidence amply supported Ms. Wang's convictions, and she therefore cannot show a material injustice or clear error by the trial court or Court of Appeals.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Has the Defendant presented an issue meriting this Court’s review pursuant to Michigan Court Rule 7.305(B)(5)?

Appellant’s answer: Yes.

Appellee’s answer: No.

2. Was the People’s evidence sufficient to convict Appellant of Medicaid Fraud-False Claim in Counts I and II?

Appellant’s answer: No.

Appellee’s answer: Yes.

Trial court’s answer: Yes.

Court of Appeals’ answer: Yes.

3. Was the People’s evidence sufficient to convict Appellant of Health Profession-Unauthorized Practice in Count III?

Appellant’s answer: No.

Appellee’s answer: Yes.

Trial court’s answer: Yes.

Court of Appeals’ answer: Yes.

4. When the trial court correctly listed the elements of the charged offenses and cited the evidence and facts it found in support of the elements in rendering its verdict, did the trial court comply with MCR 6.403?

Appellant’s answer: No.

Appellee’s answer: Yes.

Court of Appeals’ answer: Yes.

INTRODUCTION

The evidence presented in the trial court amply supported Defendant-Appellant Xun Wang's convictions, and she has given this Court no reason to exercise its discretionary review pursuant to MCR 7.305(B).

Ms. Wang was charged with, tried for, and convicted of two counts of Medicaid Fraud-False Claim, and one count of Health Profession-Unauthorized Practice, based in part on video evidence of her committing the latter crime, and her own testimony all but admitting to the former. The Court of Appeals agreed with the People that the evidence supported Ms. Wang's convictions, and she now seeks leave to appeal to this Court. In challenging the lower courts' decisions, Ms. Wang continues to fail to acknowledge and address rules of law and undisputed facts that are fatal to her arguments. Regarding Medicaid Fraud, in arguing lack of knowledge of the fraudulent scheme in which she participated, Ms. Wang fails to address the broad definitions of "knowing" and "knowingly" applicable to Medicaid Fraud. With respect to her conviction for Health Profession-Unauthorized Practice conviction, Ms. Wang declines to address the fact that despite her lack of a license to do so, or proper supervision, she wrote a patient a prescription for a controlled substance. She has filed her application for leave to appeal in hope that this Court will overlook the clear evidence of her culpability, which both the trial court and Court of Appeals recognized and agreed upon.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Ms. Wang was charged by Information as follows: Counts I and II—Medicaid Fraud-False Claim; and Count III—Health Profession-Unauthorized Practice.

Although this case originally was scheduled for a jury trial, Ms. Wang elected to proceed with a bench trial, which commenced on October 31, 2016, and ended on November 4, 2016, when the court found Ms. Wang guilty on all counts. (TI at 4-8; TIV at 44, 50.)¹

When the trial began, before calling witnesses, the parties entered several stipulations into the record: 1) that Ms. Wang had no health profession license in 2014 and 2015; 2) that Dr. Murtaza Hussain was not present in the offices of Livernois Family Medical Center on May 6, 2014; August 12, 2014; August 14, 2014; and December 29, 2014; and 3) that the People's proposed exhibits would be admitted. (TI at 8-9.)

The People's first witness was Attorney General Special Agent Drew Macon. Agent Macon testified that his job duties included investigating Medicaid fraud. Agent Macon became involved with an investigation of Dr. Hussain and Livernois Family Medical Center, a Detroit primary care clinic, but not a free clinic, in 2014. (TI at 33-34.)

As part of his investigation, Agent Macon conducted an undercover visit at the clinic on August 12, 2014, posing as a patient and Medicaid beneficiary named

¹ For uniformity, Appellee will use the same transcript references used by Appellant in her brief, as set forth in Appellant's footnote 1.

Christopher Anderson. After checking in and presenting a Medicaid insurance card for payment, Agent Macon remained in the waiting area until Ms. Wang called him back to a patient room. Ms. Wang weighed him, took his blood pressure, and solicited information about the reason for his visit and his medical history. (TI at 36-39.)

Agent Macon presented as a new patient and requested prescription medications. Ms. Wang provided him with prescriptions for Vitamin D, an inhaler, and Klonopin, a controlled substance. Ms. Wang further indicated she would provide a prescription for Adderall (also a controlled substance) when Agent Macon provided information about his previously prescribed dosage. *Id.* He later provided that information and received a prescription for Adderall. (TI at 41.) Of note, Agent Macon had all the prescriptions except the Adderall filled at the on-site pharmacy at Livernois Family Medical Center on the same day as his undercover visit. (TI at 39, 45-46, 56.) Agent Macon captured audio recording, but not video, of his interactions with Ms. Wang during his undercover visit with a hidden camera. That recording has been filed as Attachment A.

In the patient chart for Christopher Anderson (People's Exhibit 9), Agent Macon's alias, Ms. Wang documented a medical history of asthma, attention deficit disorder, and sleep disorder and the prescriptions provided. The documentation further states that Ms. Wang and Dr. Hussain saw "Christopher Anderson," although Dr. Hussain was not in the office that day, per stipulation. (TI at 52-54.)

When Agent Macon and others executed a search warrant at Livernois Family Medical Center, they found prescription pads pre-signed by Dr. Hussain. (TI at 58.)

Attorney General Special Agent Lorrie Bates was the People's second witness, and also conducted an undercover visit to Livernois Family Medical Center posing as a new patient, and received medical treatment from Ms. Wang. Agent Bates presented to the clinic as "Krystal Jackson," a Medicaid patient, on December 29, 2014. (TI at 91-92.) As noted above, the parties also stipulated that Dr. Hussain was not present in the clinic that day.

After waiting for about an hour, Agent Bates was brought to an exam room by another female employee of the clinic who obtained Agent Bates' weight and blood pressure and the reason for her visit, which she stated as headaches. *Id.* The female employee then told Agent Bates that "the doctor" would "be in shortly." (TI at 92.)

Agent Bates captured most of the events in the exam room on video, by means of a hidden camera, which is included in Attachment A.

The video shows that Ms. Wang entered the room wearing a long, white lab coat and had a stethoscope around her neck. (TI at 93, 97.) Ms. Wang asked Agent Bates about her medical history, including whether she smoked or drank, when she had her last physical, and her last pap smear. (TI at 93.) Ms. Wang also asked about blood pressure, blood sugar, prior surgical history, and recreational drug use. Ms. Wang then asked for more detailed information about Agent Bates' reported

headaches, including how long she had been experiencing the headaches, whether they were aggravated by light, and how she had attempted to treat the headaches. (TI at 94.) Ms. Wang suggested she could provide prescription medication to treat the headaches, and advised Agent Bates to avoid caffeine. After asking the witness which pharmacy she preferred to use, Ms. Wang again asked about a pap smear, and then left the room for about five minutes. Upon inquiry by the Court, Agent Bates said it was her understanding that Ms. Wang was acting as the treating physician and would perform the Pap smear if she agreed. (TI at 95-96.)

When Ms. Wang returned after being out of the room for about five minutes, she again asked Agent Bates which pharmacy she wanted to use. Ms. Wang then asked Agent Bates if she had any other medical issues, and Agent Bates told Ms. Wang that she was having trouble sleeping. Ms. Wang then performed a physical exam, which Dr. Catherine Reid, an expert witness for the People, subsequently explained was a neurological exam. (TI at 98; TII-B at 54.) Ms. Wang initially recommended that Agent Bates take over-the-counter melatonin for trouble sleeping. Ms. Wang also discussed possible causes of the problem, as well as sleep hygiene. Significantly, during that conversation, Ms. Wang produced a prescription pad and wrote Agent Bates a prescription for 10 pills of Ambien, a controlled substance. (TI at 99-101.) As documented by the video, Ms. Wang did so during the course of her conversation with Agent Bates, without communicating with anyone else.

When Agent Bates asked Ms. Wang how long she had been a doctor, she replied, “about a year.” (TI at 100.)

The video recording of Agent Bates’ undercover visit to Livernois Family Medical Center, including her interactions with Ms. Wang, was entered into evidence as People’s Exhibit 15 and shown to the Court. Due to the camera angle, Exhibit 15 does not depict the entirety of Agent Bates’ encounter with Ms. Wang. The video does not show the physical exam Ms. Wang performed, but it does show her writing a prescription for Ambien. The prescription itself was admitted into evidence as People’s Exhibit 20. (TII-A at 57-58.)

Agent Bates further testified that later, on January 15, 2015, when she presented herself as a law enforcement official to Ms. Wang and interviewed her, Ms. Wang stated that while working at the clinic, she saw patients in Dr. Hussain’s absence, although she did not have a license to practice medicine, or a license to write prescriptions. (TI at 108-109, 111.)

People’s Exhibit 10, the patient chart for “Krystal Jackson,” documents much of Agent Bates’ undercover encounter with Ms. Wang, including the prescriptions provided by Ms. Wang and the physical exam she performed. The patient chart also contains a copy of the Medicaid card issued to Krystal Jackson that Agent Bates presented upon her arrival and check-in at the clinic. (TI at 111-116.)

The People’s next witness was Trina Guy, a data specialist with the Michigan Attorney General’s Health Care Fraud Division. Ms. Guy testified that her job duties include obtaining Medicaid claims data from state databases, and that

Medicaid claims were submitted by Livernois Family Medical Center and Dr. Hussain for the undercover visits by Agents Macon and Bates. Those claims were paid to Dr. Hussain in the amounts of \$71.70 and \$110.59, respectively. (TII-B at 11-13.) Medicaid also paid for the prescriptions provided to Agent Macon. (TII-B at 19-20.)

Michele Warstler of the Michigan Department of Health and Human Services' Office of Inspector General (OIG) testified next for the People. Ms. Warstler explained that part of the OIG's mission is to "prevent, detect, refer, and address Medicaid fraud." (TII-B at 28.) She further explained that the Medicaid program assists indigent people in obtaining medical care. In order to participate in the program, health care providers must be licensed, and must obtain approval to participate. If a provider is approved to participate, the provider may submit claims and receive reimbursement for providing medical services to Medicaid beneficiaries. Provider enrollment, participation, and reimbursement are contingent upon compliance with federal and state laws, rules, and policies, which are set forth in the Medicaid Provider Manual, a public document that is available online. (TII-B at 28-31.)

Ms. Warstler testified that under Medicaid rules, a participating provider may not claim reimbursement for care delegated to and provided by an unlicensed person unless a participating physician was physically present and supervising the unlicensed person when the care was provided. (TII-B at 32.) The witness further testified that claims submitted for reimbursement for care that was not actually

provided, or that was provided by an unlicensed person who was not supervised in compliance with Medicaid rules, would be considered false claims and not payable. If paid, Medicaid rules would require that the payment be returned. Specifically, Medicaid will not pay for unlicensed persons to provide or write prescriptions. (TII-B at 33-35.) Relevant portions of the Medicaid Provider Manual were admitted as People's Exhibits 16 and 17.

The People next called Dr. Catherine Reid, a consulting physician employed by the Michigan Department of Health and Human Services' Office of Medical Affairs in the Medicaid Service Administration. Dr. Reid has been a licensed physician in Michigan since 2004. She graduated from the School of Medicine at Texas Tech University, completed residencies in anesthesiology and internal medicine, and subsequently worked at a primary care clinic in Battle Creek. Dr. Reid's curriculum vitae was admitted into evidence as People's Exhibit 28. Ms. Wang did not object to Dr. Reid testifying as an expert. (TII-B at 39-41.) She provided her expertise regarding the practice of medicine in an outpatient clinic, including delegation and supervision, prescribing, and billing.

Dr. Reid's job duties include reviewing cases involving suspected Medicaid fraud, as well as formulating Medicaid policy. She is familiar with the Michigan Medicaid Provider Manual. Her review of the instant case included review of relevant portions of the manual, particularly the chapter pertaining to practitioners, as well as portions of the Public Health Code. Dr. Reid also reviewed the undercover videos obtained by Agents Macon and Bates, medical records

obtained from Livernois Family Medical Center pertaining to the Special Agents' visits, and records pertaining to other patients of the clinic. (TII-B at 43.)

Significantly, after reviewing the above, and following objections from Ms. Wang's counsel that the trial court overruled, Dr. Reid testified and opined that Ms. Wang had engaged in the practice of medicine. With reference to the undercover patient visit by Agent Bates posing as Krystal Jackson and the video of Agent Bates' interactions with Ms. Wang, Dr. Reid described the factual basis for her opinion in detail. (TII-B at 51-55) The People's expert then summarized the factual basis for her opinion:

[Ms. Wang] did a specific[,] oriented history, discussing the specific symptoms, going into the past medical history of that patient, the family history, the social history. This was a new patient, so she covered all of those.

She then did a physical exam, concentrating on the symptoms you would look for with somebody coming in complaining of a headache. And then she went on to counsel the patient about, you know, headache, avoidance, and sleep hygiene and how to, you know, get better sleep. And she offered her two products. One the over-the-counter Melatonin that she said she could take with milk, and the prescription Ambien.

(TII-B at 55-56.)

Dr. Reid further noted that Ms. Wang offered "Krystal Jackson" medications for her headaches. Ms. Wang also performed a neurological exam that "a physician would do . . . not necessarily what a neurologist would do, but . . . what a primary care specialist would do" to assess possible causes of headache. (TII-B at 54-55.)

Dr. Reid also focused on the fact that in the video, after discussing "Krystal Jackson's" reported difficulty sleeping, and without leaving the exam room, making

any phone calls, or otherwise consulting with any other person, Ms. Wang wrote a prescription for Ambien, a controlled substance. “And she did that in the video. You could see her writing the prescription in the video.” (TII-B at 55.)

Significantly, the video shows that between the times that Agent Bates first mentioned insomnia to Ms. Wang and the time Ms. Wang wrote the Ambien prescription, Ms. Wang did not leave the exam room or communicate with anyone else. She made the decision to prescribe a controlled substance, and did so entirely independently.

The People’s expert witness confirmed that to legally write prescriptions for controlled substances in Michigan, one must be licensed as a health care professional, and also possess an appropriate certification from the Federal Drug Enforcement Agency. (TII-B at 66.)

Dr. Reid also noted that during her encounter with Agent Bates, Ms. Wang wore a long, white lab coat, like a physician, and had a stethoscope around her neck, like a physician. (TII-B at 52.) When asked how long she had been a doctor, Ms. Wang replied, “a year.” (TII-B at 56.)

The prosecutor then asked Dr. Reid about the contents of the progress note from Livernois Family Medical Center pertaining to Agent Bates’ presentation as Krystal Jackson. Dr. Reid confirmed that the progress note indicated that Ms. Wang had prepared it, and that much of the information in the note was consistent with the information provided to Ms. Wang by Agent Bates, and/or consistent with the actions taken by Ms. Wang, indicating that Ms. Wang had documented and/or

provided the information for inclusion in the note. (TII-B at 60-68.) Dr. Reid explained that the information in progress notes is used for both subsequent treatment and for billing purposes. (TII-B at 69.) Dr. Reid pointed out that in the video, Ms. Wang had a billing sheet in her hand. *Id.*

Dr. Reid next testified regarding Agent Macon's presentation to Ms. Wang as Christopher Anderson. The expert noted that although the video did not visually depict the interaction between Agent Macon and Ms. Wang, the audio recording captured their conversation. Agent Macon presented as a new patient to Livernois Family Medical Center, reportedly having recently moved to Detroit from New York, and Ms. Wang provided him with multiple medication "refills," including prescriptions for Vitamin D, an inhaler to treat asthma, Klonopin, and Adderall. The latter are both controlled substances. (TII-B at 71, 82.) After Dr. Reid noted that Ms. Wang requested "Christopher Anderson's" previous medical records, the following exchange occurred between the prosecutor and the expert witness:

Q. What was the reason that she asked for his records to be sent to that practice?

A. As I just stated in my previous testimony a few minutes ago, she specifically asked the agent if he was a new patient, and he said yes. And he said he had moved from New York. And then she responded, you know, you moved here from New York? So it was in the video she specifically asked him if he was a new patient, and he said yes, he was a new patient.

Q. Okay. Is there anything about the fact that a patient is new that would make a difference in whether you simply filled, refilled a prescription or wrote a new prescription?

A. It would be bad medicine to just accept a new patient and refill medications without a very detailed history and physical exam during the—you know, during the visit. And certain medications, for

instance, Adderall, which are subject to abuse, then it would be best that you got the previous medications or some record that that had been the medication the patient was on before. That he did, in fact, have diagnosis of ADD before you refilled something like that. The same could be said of Klonopin. So if you did a detailed history and physical examination, you might even be able to see if you could get some of the records faxed right then, you might have been able to get some pharmacy records before you refilled controlled substances that were subject to abuse.

Q. Does the decision then to give a prescription for something that somebody comes in asking for, does that involve the practice of medicine?

A. Yes.

(TII-B at 72-73.)

In further testimony, Dr. Reid explained why any person who has a meaningful interaction with a patient for the purpose of providing treatment inevitably is engaged in the independent practice of medicine:

The person who is actually in the office seeing the patient is the one asking the questions, seeing the results of the physical exam, hearing the results of the answer. They are actually making the diagnosis themselves. **And even if they were to then call the licensed physician, who is nowhere around physically, they are still presenting the diagnosis that they've already made to that person who is not there and has not seen that patient.**

(TII-B at 75; emphasis added.)

Significantly, Dr. Reid also made clear in her testimony that under Medicaid rules, a licensed health care provider must “be physically present to directly supervise” an unlicensed individual, such as Ms. Wang, in providing care to a patient. (TII-B at 73-74; 87-88.)

The expert further testified that an individual, such as Ms. Wang, who worked in a primary care clinic that was not a free clinic, could be expected to be

aware of the American health care model. Under that model, providers must be licensed, and patients pay for the care they receive either with cash or through insurance. (TII-B at 85-86.) Ms. Wang had not only worked at Livernois Family Medical Center; she had worked through AmeriClerkships, a program for foreign medical graduates, and had done three other clerkships at other health care facilities—one in pediatrics, and two in internal medicine.

Following Dr. Reid's testimony, the People rested their case-in-chief, and the Court denied Ms. Wang's motions for acquittal as to the two counts of Medicaid fraud against her. Ms. Wang's counsel did not move for acquittal on the count of unauthorized practice of medicine. (TIII at 39-48.)

Ms. Wang first called Dr. Murtaza Hussain, the former owner and operator of Livernois Family Medical Center, and her former employer. Dr. Hussain confirmed that Ms. Wang first came to his clinic as a clerk through AmeriClerkships. (TIII at 50.)

Dr. Hussain agreed that his clinic "did not shut down" when he was not there. (TIII at 73.) Individuals such as Ms. Wang, who was not licensed, continued to see patients in his absence, although Dr. Hussain was available by phone. He testified:

Q. And what would be your reasoning for providing your phone number to Ms. Wang? Why would you do that?

A. There are two reason [sic], one is that *if* they need to discuss any case about patient findings or *treatment* or *if* they run into any problem.

Q. Okay. How about as relates to if a patient [sic] presents and they need a prescription of some kind?

A. Well, the prescriptions, if I'm not in the clinic, I have some prescription pads that I sign and give it to my office manager and they call me that they can give it to the patient if I'm not there.

Q. If I can clarify, when you say they, who would they be?

A. Whoever is seeing the patient. **They tell my office manager and then my office manager call me and I approve or disapprove.**

(TIII at 74-75; emphasis added.) In further testimony, Dr. Hussain reiterated that he only permitted his employees to provide prescriptions to patients "after consulting with me." (TIII at 76.) When asked whether Ms. Wang was permitted to write prescriptions without consulting with him, Dr. Hussain again said, "No, they were supposed to consult with me," and added in response to further inquiry that he was not aware of Ms. Wang writing prescriptions without consulting with him.

(TIII at 78-79.)

As noted above, Ms. Wang did write a prescription for Ambien to "Krystal Jackson" without consulting Dr. Hussain.

On cross-examination, Dr. Hussain acknowledged that he pled guilty to one count of health care fraud and one count of Medicaid fraud, in a case related to the instant case.

Dr. Hussain testified that when he was not present in the clinic and Ms. Wang was seeing patients, he would talk with her by telephone "one or two times" per day. (TIII at 102.)

Ms. Wang called Darius Baty to testify. Mr. Baty said that he worked as a nursing assistant and an "operations manager" at Livernois Family Medical Center, and was involved in processing Medicaid billing. (TIII at 113, 129.) Mr. Baty

testified that “a good 50 percent” of the clinic’s patients were Medicaid patients. (TIII at 132.) The witness agreed that “the bulk” of the clinic’s income was from Medicaid, Medicare, and private insurance. (TIII at 138.) With Medicaid patients, a paper copy of their Medicaid card was placed in their patient chart, and anyone who looked at the chart could see the copy of the card. (TIII at 133.)

Mr. Baty further agreed that “everybody [who worked in the clinic] that had contact with the patient was involved with completing the paperwork that was used for billing purposes.” (TIII at 141.) Moreover, “everybody who had contact with the patient knew that a bill was going to be generated and sent to somebody so that the clinic could be paid for that patient visit.” *Id.* Ms. Wang was among those who were generally aware of the billing process as it related to patient care. *Id.*

Ms. Wang testified on her own behalf. She said that she received a medical degree in China and practiced medicine there before moving to the United States in 2001 to complete a Ph.D. program in basic medical studies at Purdue University. Thereafter, she held medical research positions at the University of Michigan, for five years, and then at William Beaumont Hospital in Royal Oak, Michigan before starting student rotations through AmeriClerkships. As a student, she rotated through four clinics before going to Livernois Family Medical Center in September 2013. (TIII at 146-152.) After a one-month rotation there, Ms. Wang said she began working at the clinic as a volunteer, which she did for three to four months before becoming a paid, part-time employee, earning \$20 to \$30 per hour. (TIII at 154, 212.)

Ms. Wang testified that during interactions with patients, she made notes on a form that had “billing code[s]” on the other side. She clarified that “the other side of the encounter form was for billing.” (TIII at 156-157.) In her testimony, Ms. Wang alleged that when she saw patients when Dr. Hussain was not present in the clinic, as when she saw Agents Macon and Bates when they presented undercover as patients, she telephoned Dr. Hussain to “report everything I wrote . . . to gather his opinion” about providing prescriptions. (TIII at 160.) Ms. Wang further testified that although she entered information she obtained from patients into computers at the clinic, she was not involved with “third-party billing.” (TIII at 161-163.)

On cross-examination, Ms. Wang acknowledged that in the United States, she has been a patient, currently had health insurance, and had health insurance in the past. Her children were born in this country. (TIII at 180-181.) She agreed that as a rotating student with Livernois Family Medical Center and four other clinics, she was learning about the American medical system. She ultimately acknowledged she was aware of the Medicaid program and that some of the clinic’s patients were Medicaid beneficiaries:

Q. Okay. So you did know that some of the patients received Medicaid, you just didn’t necessarily know which ones, right?

A. Yeah.

(TIII at 182-183.)

Ms. Wang said that after she entered information into the clinic's computers, Dr. Hussain reviewed that information, and Dr. Hussain was responsible for billing. (TIV at 184.)

Ms. Wang agreed that based upon her experiences in China, she is familiar with the practice of medicine. She admitted that she treated Agent Bates as Krystal Jackson, for headaches and insomnia. (TIV at 196-199.)

In further examination, Ms. Wang admitted that when Dr. Hussain was not present in the clinic, she spent 8 to 9 hours seeing 10 to 15 patients per day. She spent 30 to 45 minutes with each patient. (TIV at 204-205.) She said she communicated with Dr. Hussain by phone and text message regarding each patient. However, Ms. Wang acknowledged that she wrote Agent Bates a prescription for Ambien after she left the room, allegedly to consult Dr. Hussain, and then returned. Per the video, after Ms. Wang returned to the room, Agent Bates told her that she was having a problem with insomnia. Without again leaving the room or using her phone or any other communication device, Ms. Wang then handwrote a prescription for Ambien for Agent Bates.

On November 4, 2016, the court convened for the final day of trial. No evidence was presented, and the parties made their closing arguments. Thereafter, the court took a recess, and then returned to state its findings of fact and conclusions of law on the record. In doing so, the trial judge stated the elements of each of the charged offenses and also her factual findings as to each element. (TIV at 43-50.)

As to unauthorized practice of a health profession, in addressing Ms. Wang and finding her guilty, the court cited “ample evidence” that was “both direct and circumstantial” that Ms. Wang caused patients “to believe that you were the doctor.” The court further commented to Ms. Wang that “Even when you said you were not a doctor, you still gave them medical advice, information that really is in the realm of a doctor. . . .” (TIV at 45.) The court found that Ms. Wang “did practice or hold herself out as practicing medicine.” *Id.* The trial judge further noted that in Michigan, medicine is a regulated health profession for which a license to practice is required, and Ms. Wang did not hold such a license. (TIV at 44-45.)

As to Medicaid Fraud-False Claim, the court noted that the elements of the crime are: 1) that the defendant made or caused a claim to be made to the state; 2) that the claim was made to Medicaid, which is part of the Social Welfare Act; 3) the claim was false; and 4) the defendant knew the claim was false. The court noted that the crime is one of general intent, although the People still must meet the burden of proving the culpable *mens rea* of knowledge, which can be proved circumstantially. (TIV at 46.)

As to the evidence of Medicaid fraud, the court noted that Livernois Family Medical Center received a significant portion of its income from billing insurance, including Medicaid, and found that in light of the fact that Ms. Wang in her patient encounters was recording information on a document that had a billing form on the opposite side, “defendant clearly knew that there was billing going to insurance,” and “there are multiple forms of insurance.” (TIV at 47.) The court further found:

This was not [Ms. Wang's] only job. She had multiple experiences. She testified to that. And she clearly knew that her paycheck was derived from insurance, that insurance was going to be billed, and that's what her paycheck was coming from, at least in part—at least in part from Medicaid.

Id.

The court held the sentencing hearing on January 11, 2017, and sentenced Ms. Wang to five years' probation and imposed fines totaling \$105,000 (\$50,000 on each of Counts I and II, and \$5,000 on Count III), as well as costs. The court further sentenced Ms. Wang to 365 days in jail, held in abeyance, and stated that she could be discharged from probation upon payment in full of fines and costs. (TS at 14-17.)

ARGUMENT

I. **Appellant's Application for Leave to Appeal does not establish grounds for review by the Supreme Court of Michigan, pursuant to MCR 7.305(B)(5).**

A. **Standard of Review**

The Supreme Court of Michigan has jurisdiction to exercise discretionary “review by appeal [of] a case pending in the Court of Appeals or after decision by the Court of Appeals.” MCR 7.303(B)(1).

Pursuant to MCR 7.305(B), an application for leave to appeal to this Court must show that:

- (1) the issue involves a substantial question about the validity of a legislative act;
- (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer’s official capacity;
- (3) the issue involves a legal principle of major significance to the state’s jurisprudence;
- (4) in an appeal before a decision of the Court of Appeals,
 - (a) delay in final adjudication is likely to cause substantial harm, or
 - (b) the appeal is from a ruling that a provision of the Michigan Constitution, a Michigan statute, a rule or regulation included in the Michigan Administrative Code, or any other action of the legislative or executive branches of state government is invalid;
- (5) in an appeal of a decision of the Court of Appeals,
 - (a) the decision is clearly erroneous and will cause material injustice, or

(b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals; or

(6) in an appeal from the Attorney Discipline Board, the decision is clearly erroneous and will cause material injustice.

Id.

B. Analysis

Ms. Wang has failed to meet MCR 7.305(B)'s threshold requirement of establishing grounds for her appeal to this Court. The provisions of MCR 7.305(B)(1) through (4), (5)(b), and (6) do not apply; only the provisions of subparagraph (5)(a) potentially apply. As to the application of subparagraph (5)(a), as will be discussed in greater detail below, the evidence in this case was sufficient to prove Ms. Wang guilty beyond a reasonable doubt on all counts in the trial court, and more than sufficient for her convictions to be affirmed on appeal. In her application for leave to appeal, Ms. Wang's evidence-based, fact-specific argument essentially asserts that viewed in a light most favorable to her defense, the evidence does not support her convictions. Obviously, that is not the standard of review. As noted above and fully discussed below, Ms. Wang in her brief ignores critical portions of the applicable statutes and undisputed facts that are fatal to her position. Ms. Wang has failed to show clear error by the trial court or the Court of Appeals, and she has not shown that a material injustice would result from allowing her convictions to stand. The Court of Appeals affirmed Ms. Wang's convictions based upon the applicable statutes and appropriate standards of review as applied to the specific evidence in this case. The above facts establish that there was an ample basis for those convictions.

II. The People’s evidence was sufficient to convict Appellant of Medicaid Fraud-False Claim in Counts I and II.

A. Standard of Review

In deciding whether to grant an application for leave to appeal from a decision of the Court of Appeals, this Court reviews for clear error and material injustice. MCR 7.305(B)(5)(a).

B. Analysis

The evidence was more than sufficient to convict Ms. Wang of two counts of Medicaid Fraud-False Claim. Ms. Wang was charged in Counts I and II with violating MCL 400.607(1), which provides:

(1) A person shall not make or present or **cause to be made** or presented to an employee or officer of this state a claim under the social welfare act, 1939 PA 280, MCL 400.1 to 400.119b, upon or against the state, **knowing** the claim to be false.

Id. (emphasis added).

As to the definition of “knowing” in the above statute, MCL 400.602 provides:

(f) “Knowing” and “knowingly” means that a person is in possession of facts under which he or she is aware or **should be aware** of the nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a medicaid benefit. Knowing or knowingly includes acting in **deliberate ignorance** of the truth or falsity of facts or acting in **reckless disregard** of the truth or falsity of facts. **Proof of specific intent to defraud is not required.**

Id. (emphasis added).

Applying the standard of review above to the evidence introduced by the People, there is ample basis to affirm Ms. Wang’s convictions for violating MCL 400.607(1). Of note, at trial, Ms. Wang only contested the *mens rea* element of

“knowing” on those charges; she did not dispute that her actions in fact caused claims to be made to the State of Michigan under the social welfare act—i.e., Medicaid—and that those claims were paid. The People’s evidence proved the latter elements and was uncontroverted. That evidence included testimony that claims submitted for reimbursement for care provided by an unlicensed person who was not supervised in compliance with Medicaid rules would be considered false claims and not payable. When Ms. Wang treated Agents Macon and Bates without Dr. Hussain present, she was not licensed, and the Medicaid claims based on those encounters therefore were “false.”

As to the knowledge element of Medicaid fraud, with reference to but without reiterating in detail all the pertinent facts and evidence set forth above, Ms. Wang has a working familiarity with the American medical system. She has been a patient, a student, a researcher, and also a provider, albeit unlawfully. She has lived in the United States since 2001. She completed a Ph.D. in basic medical science, did research at two hospitals, and then rotated through five clinics learning about the practice of medicine in this country. Her children were born in the United States, and she herself has health insurance.

Dr. Catherine Reid, the People’s expert witness, testified that an individual such as Ms. Wang, who worked in a primary care clinic that was not a free clinic, could be expected to be aware of the American health care model. Under that model, patients pay for the care they receive either with cash or through insurance.

Ms. Wang admitted when she testified that she is aware of the Medicaid program as a government health insurance program. She was aware that some of the patients she was treating at Livernois Family Medical Center were Medicaid beneficiaries, and knew that the clinic derived income from patients' insurance, while she was an employee earning \$20 to \$30 per hour. The evidence showed that copies of patients' Medicaid cards were placed in their paper charts, including those of "Christopher Anderson" and "Krystal Jackson," the undercover Agents whose presentations as patients to Ms. Wang were the basis of Counts I and II. During those presentations, Ms. Wang recorded information on a document that had a billing form on the other side.

Defense witness Darius Baty testified that "a good 50 percent" of the clinic's patients were Medicaid patients. (TIII at 132.) He agreed that "the bulk" of the clinic's income was from Medicaid, Medicare, and private insurance. (TIII at 138.) Mr. Baty further agreed that "everybody [who worked in the clinic] that had contact with the patient was involved with completing the paperwork that was used for billing purposes." Moreover, according to Mr. Baty, "everybody who had contact with the patient knew that a bill was going to be generated and sent to somebody so that the clinic could be paid for that patient visit." The witness said that Ms. Wang was among those who were generally aware of the billing process as it related to patient care. (TIII at 141.)

The People introduced abundant evidence of Ms. Wang's knowledge that any patient she treated at the clinic could be a Medicaid patient and could result in a

Medicaid claim. Viewed in the light most favorable to the prosecution, and resolving all conflicts in favor of the prosecution, the evidence showed that Ms. Wang either had actual knowledge that “Christopher Anderson” and “Krystal Jackson” were Medicaid patients, as copies of their Medicaid cards were in their charts, which Ms. Wang accessed, or, at a minimum, showed that she should have been aware of the nature of her conduct and that her conduct was substantially certain to cause the payment of a Medicaid benefit, as contemplated by the definition of “knowing” in MCL 400.602(f).

Further, the fact that Ms. Wang was working to enter a residency program demonstrates that she knew she needed additional experience and credentials to become a licensed physician, and she either knew or should have known that to lawfully provide services for which insurance, particularly Medicaid, would be billed, she needed to be a lawful medical practitioner. By purposely seeing and treating patients in the absence of a licensed health care provider, contrary to Medicaid rules as reflected in the Provider Manual, she acted in deliberate ignorance or reckless disregard of the truth or falsity of the claims that would be submitted to insurance based upon her actions.

Notably, although Ms. Wang reproduces the definition of “knowing” in MCL 400.602(f) in her brief, she does not address its application here. Instead, contrary to the statute, she essentially argues that the People were required to prove that she had actual knowledge that her actions would result in a false Medicaid claim, rather than constructive knowledge, as provided by MCL 400.602(f).

Likewise, Ms. Wang's argument regarding the causation element of MCL 400.607(1) lacks merit. As set forth above, the statute applies where a person "cause[s a false claim] to be made." The evidence that Ms. Wang's interactions with Agents Macon and Bates resulted in Medicaid claims was not disputed.

In light of her general knowledge and all the surrounding circumstances, Ms. Wang knew or should have known that her actions would result in the submission to the state of false Medicaid claims, as "knowing" and "knowingly" are defined in MCL 400.602(f). At best, she acted in deliberate ignorance or with reckless disregard. Ms. Wang's conviction on the Medicaid Fraud charges in Counts I and II were not clearly erroneous.

III. The People's evidence was sufficient to convict Appellant of Health Profession-Unauthorized Practice in Count III.

A. Standard of Review

See Section I.A, above.

B. Analysis

The trial evidence was also more than sufficient to convict Ms. Wang of one count of Health Profession-Unauthorized Practice.

With limited exceptions not applicable here, as discussed below, "an individual who practices or holds himself or herself out as practicing a health profession regulated by this article without a license . . . is guilty of a felony." MCL 333.16294.

As to the elements of that offense, medicine is a regulated health profession under the Public Health Code, and the parties stipulated that Ms. Wang held no license to practice medicine. The dispute at trial concerned whether Ms. Wang practiced or held herself out as practicing medicine.

Ms. Wang violated MCL 333.16294 when she wrote a prescription for a controlled substance, Ambien, for Agent Bates, and could have been convicted on that basis alone. As set forth above, during her undercover encounter with Ms. Wang as a patient, Agent Bates informed Ms. Wang that she was having trouble sleeping. Ms. Wang then recommended that Agent Bates take over-the-counter melatonin for her insomnia. Ms. Wang also discussed possible causes of the problem, as well as sleep hygiene. Significantly, during that conversation, Ms. Wang produced a prescription pad and wrote Agent Bates a prescription for 10 pills of Ambien, a controlled substance. As documented by the video, Ms. Wang did so without leaving the patient room or communicating with anyone else. Per the testimony of the People's expert, Dr. Reid, as recounted above, all of those acts, among many others committed by Ms. Wang, constituted the practice of medicine.

In her brief, Ms. Wang conspicuously ignores the undisputed fact that she prescribed a controlled substance without consulting anyone. Ms. Wang alternatively argues either that her actions did not constitute the practice of medicine, and/or that to the extent she did practice medicine, her employer, Dr. Hussain, lawfully delegated the practice of medicine to her. Both of those

arguments fail based upon that single act by Ms. Wang of independently prescribing a controlled substance.

Beyond that act, Ms. Wang's actions constituted the practice of medicine, and she held herself out as practicing medicine. The video of Agent Bates' encounter with Ms. Wang clearly depicts her holding herself out as a physician. She entered the room in a long, white coat with a stethoscope around her neck. She solicited a detailed medical history from Agent Bates, as well as a detailed history about her presenting complaints. Ms. Wang performed a neurological exam, gave medical advice, and prescribed medications. She told Agent Bates that she had been a doctor for "about a year." These actions are consistent with the practice of medicine, as defined by statute. MCL 333.17001 ("Practice of medicine means the diagnosis, treatment, prevention, cure, or relieving of a human disease, ailment, defect, complaint, or other physical or mental condition, by attendance, advice, device, diagnostic test, or other means, or offering, undertaking, attempting to do, or holding oneself out as able to do, any of these acts."). In addition, Dr. Reid, the People's expert witness, unequivocally opined that those actions constitute the practice of medicine. Dr. Reid further testified that to legally write prescriptions for controlled substances in Michigan, one also must possess a certification from the Federal Drug Enforcement Agency, which Ms. Wang did not have.

Likewise, Ms. Wang provided medical treatment to Agent Macon by soliciting medical history and prescribing medications. Although Ms. Wang has tried to minimize the significance of the treatment she provided to "Christopher Anderson"

as merely providing prescription “refills,” Dr. Reid made clear that because Agent Macon was posing as a new patient who had not previously received prescriptions from Livernois Family Medical Center, Ms. Wang’s decision to provide him with prescriptions, including for controlled substances, necessarily involved medical decision-making and constituted the independent practice of medicine.

Again, without reiterating in detail all of the facts and evidence set forth above, the evidence that Ms. Wang acted as a physician was substantial, and viewed in the light most favorable to the prosecution and resolving all conflicts in favor of the prosecution, was more than sufficient to support a conviction on the charge of Health Profession-Unauthorized Practice.

Ms. Wang protests that her trial counsel failed to cite, and the trial court thus failed to consider, whether her actions fell under MCL 333.16215 and MCL 333.16109(2) as the lawfully delegated and properly supervised practice of medicine by her employer, Dr. Hussain. Ms. Wang’s argument ignores the evidence of her actions and is inconsistent with the evidence and arguments she presented at trial.

MCL 333.16215 permits licensed providers to delegate to “unlicensed providers” who are “otherwise qualified by education, training or experience the performance of **selected acts, tasks, or functions** where the acts, tasks, or functions fall within the scope of practice of the licensee’s profession and will be performed **under the licensee’s supervision.**” *Id.* (emphasis added). Under MCL 333.16109, “supervision” means “the **overseeing of or participation in the**

work of another individual by a health professional licensed under this article . . .

where **at least all of the following conditions exist:**

(a) The **continuous availability of direct communication** in person or by radio, telephone, or telecommunication between the supervised individual and a licensed health professional.

* * *

(c) The provision by the licensed supervising health professional of **predetermined procedures and drug protocol.**

Id. (emphasis added).

Ms. Wang's argument that the above statutes excuse her actions fails for multiple reasons.

First, at trial, Ms. Wang's counsel did not argue that at the relevant times, Ms. Wang was acting pursuant to a lawful delegation, apparently because they did not believe the evidence supported that position. Ms. Wang stated in the videos obtained by the agents, and her attorneys argued at trial, that she was a "medical assistant." (TI at 28-29; TIV at 25, 30.) Ms. Wang's counsel argued that as a "medical assistant," she was not practicing medicine, and to the extent that she might have done so, she was "duped" by her employer into doing so, and she was his "victim," rather than his delegate. (TI at 22.) On cross-examination, Ms. Wang said she followed Dr. Hussain's instructions (TIII at 86), and although she admitted to and was shown in the video evidence performing many actions that constituted the practice of medicine, she (inconsistently) denied independent medical decision-making. (TIII at 207, 210.) In sum, in the view of Ms. Wang and her counsel, the evidence showed that she was not practicing medicine, as opposed to doing so

pursuant to a lawful delegation, and her actions were at the behest of Dr. Hussain who, rather than delegating to her, “told her” to break the law (TIV at 31, 32, 35) and “exploit[ed]” her and other “medical assistants” (TIV at 32), and “subjected” them “to potential criminal exposure” (TIV at 36) because he was “a bad egg” and “a scorpion.” (TIV at 36, 37.) It was not until she filed her brief with the Court of Appeals that Ms. Wang retrospectively claimed that to the extent that she was practicing medicine, she did so pursuant to lawful delegation, although the evidence at trial did not support that contention.

Second, Ms. Wang was not “otherwise qualified by education, training, or experience” to perform acts allegedly delegated by Dr. Hussain, as required for a delegation to be lawful under MCL 333.16215(1). Ms. Wang had obtained her medical education in China approximately 15 years earlier, and then spent 11 to 12 years away from the practice of medicine. She never completed a residency program, and apparently did not qualify for admission to a residency, or had not been able to obtain admission. She testified that she did volunteer student rotations at clinics such as Livernois Family Medical Center beginning in 2012 in order to qualify to be admitted into a residency program. In light of the staleness and remoteness in time of her medical education and prior clinical practice, she simply was not qualified to perform the tasks that she now, retrospectively, claims on appeal that she was delegated, inconsistently with and counter to her arguments at trial.

Finally, and most tellingly, even assuming *arguendo* that the delegation statutes apply, which the People deny, Ms. Wang committed the offense of Health Profession-Unauthorized Practice when she prescribed Ambien to Agent Bates. As set forth above, the definition of “supervision” under MCL 333.16109, as required by the delegation statute, MCL 333.16215, provides that the licensed, delegating practitioner, as part of the requisite supervision, must provide “predetermined procedures and drug protocols.” Also as set forth above, Dr. Hussain testified and reiterated multiple times that it was his policy or protocol that his employees were not to provide prescriptions without consulting with him first, and further that his employees, including Ms. Wang, were aware of that policy or protocol. As mentioned and discussed throughout this brief, the evidence, including but not limited to the video, proves that Ms. Wang prescribed Ambien without a license and without consulting or communicating with Dr. Hussain. Significantly, Ms. Wang never disputed Dr. Hussain’s testimony that he required his employees, including Ms. Wang, to obtain approval from him before providing prescriptions, and that the employees were aware of that policy. Therefore, even if the delegation statutes somehow apply here to some of Ms. Wang’s actions, which the People dispute for the reasons stated above, those statutes and Dr. Hussain’s drug protocol did not authorize her to prescribe controlled substances, and therefore do not insulate her from responsibility for that action.

Rather than address those facts, Ms. Wang in her brief to this Court focuses on the Court of Appeals’ interpretation of the delegation statute, specifically taking

issues with that court's statement that "[t]he 'delegation exception' does not allow for the delegation of acts, tasks and functions that one must be a licensed doctor to perform, regardless of supervision," followed by the court's statement that "Defendant's actions were consistent with the practice of medicine and therefore could not be delegated under the statute." Ms. Wang goes on to argue that physicians have broad statutory authority to delegate under appropriate supervision, and that the acts she performed were permissibly delegated.

Ms. Wang's argument misreads the Court of Appeals' unpublished opinion and fails to address the evidence introduced against her. Consistent with the trial evidence, the Court of Appeals found that Ms. Wang engaged in the full-scale practice of medicine, with little to no supervision, and declined to interpret the applicable statutes so broadly as to effectively obviate the physician licensure requirement and create an exception so large that it swallows the unauthorized practice statute, MCL 333.16294. In other words, the Court of Appeals was not willing to interpret the delegation exception so that it authorizes licensed physicians to confer the ability to fully practice medicine on unlicensed persons.

In sum, the People's evidence, viewed in a light most favorable to the prosecution, amply showed that Ms. Wang engaged in the unauthorized practice of a health profession. Ms. Wang's application for leave to appeal should be denied by this Court, because the Court of Appeals appropriately affirmed her conviction.

IV. The trial court complied with MCR 6.403.

A. Standard of Review

Under MCR 6.403, “[t]he court need not make specific findings of fact regarding each element of the crime.” *People v Legg*, 197 Mich App 131, 134 (1992). The trial court’s factual findings should demonstrate how it “resolved credibility issues and conflicts in evidence” and “reveal the law applied by the trial court.” *People v Ramsey*, 89 Mich App 468, 477 (1979). “Factual findings are sufficient as long as it appears that the trial court was aware of the issues in the case and correctly applied the law.” 197 Mich App at 134. “A court’s failure to find the facts does not require remand where it is manifest that the court was aware of the factual issue, that it resolved the issue, and that further explication would not facilitate appellate review.” *Id.* at 134-135.

“The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.” *People v Lacalamita*, 286 Mich App 467, 469 (2009).

B. Analysis

The trial court appropriately made findings of fact and conclusions of law, consistent with MCR 6.403. That rule provides:

When trial by jury has been waived, the court with jurisdiction must proceed with the trial. The court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its finding and conclusions on the record or in a written opinion made a part of the record.

The rule was derived from MCR 2.517(A)(1), which was made applicable to criminal cases by *People v Jackson*, 390 Mich 621; 212 NW2d 918 (1973).

In this case, applying the above standards of review, Ms. Wang's claim that the trial court did not meet the requirements of MCR 6.403 has no merit. As discussed above, ample evidence supported the court's verdict.

The trial court verbally stated extensive findings of fact and conclusions of law from the bench at the conclusion of the trial, and its remarks fill seven pages of the transcript. (TIV at 43-50.) It addressed each of the counts by listing the elements of the charged offenses and making specific findings of fact that focused on the elements of the offenses that Ms. Wang contested.

The court first addressed Count III, Health Profession-Unauthorized Practice. As discussed above with reference to the elements of that offense, medicine is a regulated health profession under the Public Health Code, and the parties stipulated that Ms. Wang held no license to practice medicine. As those elements were established, the dispute at trial concerned whether Ms. Wang practiced or held herself out as practicing medicine.

The trial judge recognized that key issue and addressed it. Speaking to Ms. Wang, the judge stated that:

There is ample evidence that you were practicing medicine without a license in Michigan. It is very clear as to count three that you did practice or hold yourself out as a practicing person who was licensed to practice medicine, a health profession that is regulated by article 15 of the Public Health Code.

(TIV at 44.)

The trial judge noted “both direct and circumstantial evidence of this.” *Id.* The court noted that Agents Bates and Macon “believed or had reason to believe that you were the doctor.” Further, “[e]ven when you said you were not a doctor, you still gave [the agents] medical advice, information that really is in the realm of a doctor. . . .” (TIV at 45.) The court then explicitly reviewed the elements of the offense and cited the definition of “practice of medicine,” per statute:

Practice of medicine means the diagnosis, treatment, prevention, cure, or relieving (sic) of a human disease, ailment, defect, complaint, or other physical or mental condition by attendance, advice, device, diagnostic test, or other means or offer, undertaking, attempting to do so, or holding one’s self out as able to do any of these acts.

Id.; MCL 333.17001.

The clear import of the trial court’s recitation of the statute is that its language is broad, and Ms. Wang’s actions during her encounters with Agents Bates and Macon fell squarely within its ambit.

As to Counts I and II—Medicaid Fraud-False Claim, the trial court addressed those counts at length. (TIV at 46-50.) As noted above, at trial Ms. Wang only contested the *mens rea* element of “knowing” on those charges; she did not dispute that her actions in fact caused false claims to be made to the State of Michigan under the social welfare act—i.e., Medicaid—and that those claims were paid. The People’s evidence as to all the latter elements was clear and uncontroverted.

Regarding the “knowing” element, the court noted that Livernois Family Medical Center received a significant portion of its income from billing insurance, including Medicaid, and found that in light of the fact that Ms. Wang in her patient encounters was recording information on a document that had a billing form on the

opposite side, “defendant clearly knew that there was billing going to insurance,” and “there are multiple forms of insurance.” (TIV at 47.) The court further found:

This was not [Ms. Wang’s] only job. She had multiple experiences. She testified to that. And she clearly knew that her paycheck was derived from insurance, that insurance was going to be billed, and that’s what her paycheck was coming from, at least in part—at least in part from Medicaid.

Id.

The court further stated that:

[T]he evidence, circumstantial evidence and the direct evidence, as to counts one and two, and the elements that I have to look at, and in doing so and in looking at the definition, too, of knowing—and knowingly and how it’s defined means that a person is in possession of facts under which he or she is aware or should be aware of the nature of her conduct and that her conduct is substantially certain to cause the payment of a Medicaid benefit. Knowingly includes acting in deliberate ignorance of the truth or falsity of facts or acting reckless disregard of the truth or falsity of facts. I find [on] count one and two, defendant is guilty beyond a reasonable doubt.

(TIV at 49-50.)

In sum, the trial court’s statement of its findings of fact and conclusions of law demonstrate that the court was aware of the applicable law and the issues in dispute, and further demonstrate that the court correctly applied the law. As noted, the court cited the elements of the charged offenses and then focused its analysis on the disputed elements. It cited facts that supported its findings as to those elements. Beyond the elements, the court further cited the definition of “knowing” applicable to the Medicaid fraud statute, and cited the definition of “practice of medicine” applicable to Count III.

MCR 6.403 does not require an exhaustive analysis, and certainly does not require the trial court to anticipate and address every issue that a defendant might retrospectively identify and raise on appeal. *Legg and Ramsey, supra*. The trial court clearly was aware of the issues in play during the trial and the relevant law, and its analysis of the evidence and facts within that framework resulted in a verdict that comports with justice. Therefore, the Court of Appeals did not clearly err in affirming the trial court's conviction.

CONCLUSION AND RELIEF REQUESTED

The People's evidence proved that Appellant Xun Wang practiced medicine without a license at a clinic where she knew the patients were covered by health insurance, including Medicaid, and knew that her illegal conduct would result in the submission and payment of Medicaid claims. Video evidence showed Ms. Wang presenting herself to a putative patient as a physician and acting in that capacity, including providing medical advice and treatment and independently writing a prescription for a controlled substance. The trial court heard the evidence and applied the correct law, focusing on the disputed elements of the charged offenses, and was convinced of Ms. Wang's guilt beyond a reasonable doubt. Ample evidence supported the verdicts on all counts.

The Court of Appeals applied the proper appellate standards of review and upheld Ms. Wang's convictions. There is no clear error or manifest injustice, and this Honorable Court should deny Appellant's application for leave to appeal.

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Dated: July 24, 2018

CASES/13-0053917/LGL BRF.OPP.180724