

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

MARTIN J. WALSH, SECRETARY OF	:	
LABOR, UNITED STATES	:	
DEPARTMENT OF LABOR,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.
	:	
JAVAID A. PERWAIZ, JAVAID A.	:	
PERWAIZ, M.D., P.C., THE JAVAID A.	:	
PERWAIZ, M.D., P.C. PROFIT SHARING	:	
PLAN,	:	
	:	
Defendants.	:	
	:	

COMPLAINT

Martin J. Walsh, Secretary of Labor, United States Department of Labor, hereby alleges:

JURISDICTION AND VENUE

1. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, *et seq.*, and is brought by the Secretary under Sections 409 and 502(a)(2) and (5) of ERISA, 29 U.S.C. §§ 1109, 1132(a)(2) and (5), to obtain equitable remedies that will redress violations, obtain appropriate equitable relief for breaches of fiduciary duty under ERISA Section 409, 29 U.S.C. § 1109, and obtain such further equitable relief as may be appropriate to enforce the provisions of Title I of ERISA. Under 29 U.S.C. § 1132(a)(2) and (5), the Secretary has the authority to enforce Title I of ERISA by filing civil actions to obtain remedies for violations of the statute.

2. This Court has subject matter jurisdiction over this action under Section 502(e)(1) of ERISA, 29 U.S.C. § 1132(e)(1).

3. The Javaid A. Perwaiz, M.D., P.C. Profit Sharing Plan (“Plan”) is an employee

benefit plan within the meaning of Section 3(3) of ERISA, 29 U.S.C. § 1002(3), that offers retirement benefits to its participants, who are employees of Javaid A. Perwaiz, M.D., P.C. (“Company”), the Plan’s sponsor. As such, the Plan is subject to the coverage of the Act, under Section 4(a) of ERISA, 29 U.S.C. § 1003(a). The Plan is joined as a party defendant under Rule 19(a) of the Federal Rules of Civil Procedure solely to assure that complete relief can be granted.

4. The Company’s and Plan’s last known address is 3003 Churchland Blvd., Chesapeake, VA 23321. Because the Plan is administered in Chesapeake, VA, venue with respect to this action lies in the Eastern District of Virginia under Section 502(e)(2) of ERISA, 29 U.S.C. § 1132(e)(2), and 28 U.S.C. § 127.

ALLEGATIONS

5. Javaid A. Perwaiz (“Perwaiz”), president and owner of the Company, controlled and operated the Company to practice as a licensed physician, with a specialty in Obstetrics and Gynecology.

6. The Company established the Plan on or around September 1, 1982. It was principally funded through discretionary Company contributions and rollover contributions from participants.

7. The Company was, at all relevant times, the Plan Administrator. Perwaiz carried out the Plan Administrator role on behalf of the Company and was also named in the Plan documents as an Individual Trustee. Until January 6, 2020, the Plan retained Penact, a division of Old Point Trust (“Old Point Trust”), as a third-party administrator to the Plan.

8. Perwaiz and the Company, by virtue of being named fiduciaries and being vested with or exercising discretionary authority and control over the assets of the Plan and the

management and disposition of those assets, as well as discretionary authority or responsibility in the administration of the Plan, were fiduciaries to the Plan under ERISA Sections 402(a) and 3(21)(A) of ERISA, 29 U.S.C. §§ 1102(a) and 1002(21)(A). Perwaiz, by virtue of his fiduciary status and his ownership of the Company, and the Company, by virtue of its fiduciary status and sponsorship of the Plan, were also parties in interest to the Plan under ERISA Section 3(14)(A), (C), and (E), 29 U.S.C. § 1002(14)(A) and (E).

9. On information and belief, the Company, Perwaiz, and Old Point Trust were the only fiduciaries to the Plan with responsibilities for its administration, distribution of assets, and day-to-day management.

10. On June 19, 2020, the United States filed a 62-count superseding indictment against Perwaiz, charging him with 26 counts of Health Care Fraud, 33 counts of False Statements Related to Healthcare Matters, and 3 counts of Aggravated Identity Theft. *See United States v. Perwaiz*, No. 2:19-cr-00189-RBS-DEM, Dkt. 50 (E.D. Va. June 19, 2020). On November 9, 2020, following a jury trial, Perwaiz was found guilty on 53 counts. The United States subsequently moved for an emergency restraining order against Perwaiz's assets, which the Court granted on January 26, 2021. *Id.* at Dkt. 184.

11. On May 18, 2021, the Court entered judgment against Perwaiz, which included an order of imprisonment for 708 months (59 years). *Id.* at Dkt. 203. The Court's judgment also included, *inter alia*, an order that Perwaiz pay \$18,563,323.18 in restitution. *Id.*

12. Because of these felony convictions, Perwaiz is prohibited under ERISA Section 411, 29 U.S.C. § 1111, from serving, *inter alia*, as an administrator, fiduciary, or trustee of any employee benefit plan. On May 24, 2021, the Employee Benefits Security Administration issued a letter to Perwaiz informing him of this debarment.

13. The Plan has not been formally terminated. Prior to the judgment of conviction, Perwaiz and the Company did not, on information and belief, ensure the appointment of a new fiduciary to manage the Plan or oversee the distribution of the Plan's assets. No individuals or entities have come forward to assume fiduciary responsibility for the Plan or to distribute its assets to Plan participants, and there is no fiduciary actively functioning on behalf of the Plan. As such, the Plan currently exists without oversight or control by responsible fiduciaries with the authority to operate and manage the Plan. Thus, the Plan is truly "abandoned" in every sense of the word and in violation of ERISA.

14. As of January 29, 2021, the Plan has \$253,438.12 in assets. The custodian of these assets is Raymond James Financial Services, Inc., located at 5806 Harbour View Blvd., Suite 202, Suffolk, VA 23435.

15. Records from Old Point Trust, the Plan's former third-party administrator, indicate that there are still participants—Perwaiz and other Company employees—with balances in the Plan.

16. Under the terms of the Plan, Plan participants are entitled to distribution of their account balances. However, because Perwaiz and the Company did not initiate termination of the Plan and distribution of the assets, or secure the appointment of an independent fiduciary, Plan participants and beneficiaries have been denied access to their vested account balances and have no way to transfer or otherwise gain control of their promised benefits. Without a fiduciary in place with the authority to direct the Plan's custodian, it will not process any requests made to it by any participants until it receives proper direction from a bona fide court-appointed Plan fiduciary.

VIOLATIONS

17. By the conduct and circumstances alleged in paragraphs 1 through 16, the Plan exists without a named fiduciary and without its assets being held in trust by a trustee, in violation of ERISA Sections 402 and 403, 29 U.S.C. §§ 1102 and 1103.

18. By the actions and conduct described above, Perwaiz and the Company, as fiduciaries of the Plan:

- a. maintained the Plan without a named fiduciary with the authority to control and manage the operation and administration of the Plan, and without a basis for payments to be made from the Plan, in violation of Section 402(a) and (b)(4) of ERISA, 29 U.S.C. § 1102(a) and (b)(4);
- b. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the Plan, in violation of Section 404(a)(1)(A) of ERISA, 29 U.S.C. § 1104(a)(1)(A); and
- c. failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of Section 404(a)(1)(B) of ERISA, 29 U.S.C. § 1104(a)(1)(B).

PRAYER FOR RELIEF

WHEREFORE, the Secretary prays for judgment:

1. Permanently removing Perwaiz and the Company as fiduciaries of the Plan and from any positions having discretion, authority, or control with respect to the Plan;
2. Appointing an independent fiduciary to administer the Plan, distribute the assets held by the Plan's custodian to the proper participants and beneficiaries, and terminate the Plan, with the costs of the independent fiduciary borne by Perwaiz or the Company;
3. Requiring that Perwaiz, the Company, and their agents make available to the Court-appointed independent fiduciary all books and records of the Plan and to cooperate with the independent fiduciary when carrying out its responsibilities to the Plan; and
4. Ordering such further relief as is appropriate and just.

Dated: July 15, 2021

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Respectfully Submitted,

UNITED STATES DEPARTMENT OF LABOR

Elena S. Goldstein
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/s/ Angela H. France
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Martin J. Walsh, Secretary of Labor, U.S. Department of Labor

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Angela H. France, Office of the Regional Solicitor, U.S. Department of Labor, 201 12th Street South, Suite 401 Arlington, VA 22202-5450: 202.693.9359

DEFENDANTS

Javid A. Perwaiz, Javid A. Perwaiz, M.D., P.C., The Javid A. Perwaiz, M.D., PC. Profit Sharing Plan

County of Residence of First Listed Defendant Allegany, MD (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various case codes like 110 Insurance, 210 Land Condemnation, 440 Other Civil Rights, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): ERISA, 29 U.S.C. § 1001, et seq. Brief description of cause: Violation of ERISA, including fiduciary duties.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Rebecca Beach Smith DOCKET NUMBER 2:19-cr-00189-RBS-DEM

DATE July 15, 2021 SIGNATURE OF ATTORNEY OF RECORD /s/ Angela H. France

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.