

United States Courts
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JUL 22 2009

Clerk of Court

H-09-419

CRIMINAL NO.

UNDER SEAL

Sealed
Public and unofficial staff access
to this instrument are
prohibited by court order.

UNITED STATES OF AMERICA §

v. §

KATE OSE OLEAR and §
JOHN EDWARD PERRY III, §
Defendants. §

INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times material to this Indictment, unless otherwise specified:

1. The Medicare Program ("Medicare") was a federal health care program providing benefits to individuals who were over the age of 65 or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services. Medicare was a "health care benefit program" as defined by Title 18, United States Code, Section 24(b).

2. Medicare was subdivided into multiple Parts. Medicare Part B covered physician's services and outpatient care, including an individual's access to durable medical equipment ("DME"), such as orthotic devices, and wheelchairs.

3. Orthotic devices were a type of DME that included rigid and semi-rigid devices such as foot braces, ankle-foot braces, knee braces, leg braces, cervical braces,

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Clerk of Court
By [Signature]
Deputy Clerk

back braces, shoulder braces, elbow braces, hand braces, neck braces, head-neck braces, and quad canes (collectively “orthotics”). Durable medical equipment providers marketed these items in a kit called an “Arthritis Kit” or “Artho Kit.” The “Arthritis Kit” or “Artho Kit” contained any number of these orthotic devices collectively which were billed to Medicare on the same date for the same Medicare beneficiary.

4. Individuals who qualified for Medicare benefits were commonly referred to as Medicare “beneficiaries.” Each beneficiary was given a Medicare identification number.

5. DME companies, pharmacies, physicians, and other health care providers that provided services to Medicare beneficiaries were referred to as Medicare “providers.” In order to participate in Medicare, providers were required to submit an application in which the providers agreed to comply with all Medicare-related laws and regulations. If Medicare approved a provider’s application, Medicare assigned the provider a Medicare “provider number.” A health care provider with a Medicare provider number could file claims with Medicare to obtain reimbursement for services rendered to beneficiaries.

6. Medicare reimbursed DME companies and other health care providers for services rendered to beneficiaries. Medicare would generally pay reimbursement for DME and related medications only if they were prescribed by the beneficiary’s physician and were medically necessary to the treatment of the beneficiary’s illness or injury.

7. To receive reimbursement from Medicare, providers submitted or caused the submission of claims to Medicare for payment of services to beneficiaries, either directly or through a billing company.

8. CMS contracted with Durable Medical Equipment Regional Carriers (“DMERCs”) to provide Medicare benefits and process claims for reimbursement. The DMERCs that processed and paid Medicare DME claims in Texas was Cigna Government Services (“Cigna”).

9. In order to bill Medicare for services rendered, a provider submitted a claim form (Form 1500) to Cigna. When a Form 1500 was submitted, usually in electronic form, the provider certified: (1) that the contents of the form were true, correct, and complete; (2) that the form was prepared in compliance with the laws and regulations governing Medicare; and (3) that the contents of the claim were medically necessary.

10. A Medicare claim for DME reimbursement was required to set forth, among other things, the beneficiary’s name and unique Medicare identification number, the equipment or medicine provided to the beneficiary, the date that the equipment or medicine was provided, the cost of the equipment or medicine, and the name and unique physician identification number (“UPIN”) and/or National Provider Identifier (“NPI”) of the physician who prescribed or ordered the equipment or medicine.

11. Sefan Health Care Services, Inc. (“Sefan”) was a Texas business entity, purportedly doing business at 9894 Bissonnet, Suite 770, Houston, Harris County, Texas.

Among other things, Sefan provided Orthotics and other DME to Medicare beneficiaries.

12. Defendant, **KATE OSE OLEAR**, resident of Fort Bend County, Texas, held positions as owner, director and manager of Sefan.

13. Defendant, **JOHN EDWARD PERRY III**, resident of Montgomery County, Texas, was a physician licensed by the State of Texas who signed purported prescriptions ordering DME that served as the basis of Sefan's claims to Medicare.

COUNT 1
Conspiracy to Commit Health Care Fraud
(Violation of 18 U.S.C. § 1349)

1. Paragraphs 1 through 13 of the General Allegations section of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. From a time beginning in or around December of 2005 continuing until and including the date of this indictment, the exact dates being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, the defendants,

KATE OSE OLEAR and
JOHN EDWARD PERRY III,

did knowingly and willfully combine, conspire, confederate and agree with each other and with others known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1347, that is, to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the

custody and control of, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services.

Purpose of the Conspiracy

3. It was the purpose of the conspiracy for the defendants, **KATE OSE OLEAR** and **JOHN EDWARD PERRY, III**, to unlawfully enrich themselves, and others by (a) submitting false and fraudulent claims to Medicare, (b) concealing the submission of false and fraudulent claims to Medicare and the receipt and transfer of the proceeds from the fraud; and (c) diverting proceeds of the fraud for the personal use and benefit of the defendants and their co-conspirators.

Manner and Means

4. The manner and means by which the defendants and their co-conspirators sought to accomplish the purpose and object of the conspiracy included, among others, the following:

5. Defendant **KATE OSE OLEAR** would maintain a valid Medicare group provider number for Sefan in order to submit Medicare claims for the cost of DME that was medically unnecessary and in many cases was not the items provided.

6. Defendant **KATE OSE OLEAR** would control the day-to-day operations of Sefan.

7. Defendant **JOHN EDWARD PERRY III** would seek issuance of a valid NPI to file claims to Medicare.

8. Defendant **KATE OSE OLEAR** would use Medicare beneficiaries' information, including names, addresses, and Medicare numbers to file false claims.

9. Defendant **KATE OSE OLEAR** would obtain a doctor's prescription from defendant **JOHN EDWARD PERRY III** for the Medicare beneficiaries, some of whom were deceased.

10. Defendant **JOHN EDWARD PERRY III** would provide prescriptions for DME even though the DME was not medically necessary.

11. Once beneficiary numbers and bogus prescriptions were obtained by defendant **KATE OSE OLEAR**, Sefan would submit claims, or cause claims to be submitted to Medicare for DME including orthotic devices. Many of the orthotic devices were components of what was referred to as an "Arthritis Kit" or "Artho Kit" and purported to be for the treatment of arthritis-related conditions, although they were not medically appropriate for such conditions. The Arthritis Kit would generally contain a number of orthotic devices including braces for both sides of the body and related accessories such as heat pads.

12. Defendants **KATE OSE OLEAR** and **JOHN EDWARD PERRY III** and their conspirators would cause the submission of approximately \$2,750,000 in claims to the Medicare program for DME purportedly provided by Sefan, when in fact, such DME was not medically necessary, nor in some cases provided.

13. After payments from Medicare were deposited into Sefan bank accounts,

defendant **KATE OSE OLEAR** would cause the transfer of the fraudulent proceeds to herself, defendant **JOHN EDWARD PERRY III** and other conspirators.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2-8
Health Care Fraud
(Violation of 18 U.S.C. §§ 1347 and 2)

1. Paragraphs 1 through 13 of the General Allegations Section of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. From a time beginning in or around December of 2005 continuing until and including the date of this indictment, the exact date being unknown to the Grand Jury, in the Houston Division of the Southern District of Texas, and elsewhere, the defendants,

KATE OSE OLEAR and
JOHN EDWARD PERRY III,

aiding and abetting one another and others known and unknown to the Grand Jury, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of Medicare, in connection with the delivery of and payment for health care benefits, items and services.

Purpose of the Scheme and Artifice

3. It was a purpose of the scheme and artifice for the defendants and their co-conspirators to unlawfully enrich themselves through the submission of false and fraudulent Medicare claims for medically unnecessary durable medical equipment.

The Scheme and Artifice

4. The allegations in Paragraphs 4 through 13 of Count 1 of this Indictment are realleged and incorporated as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution of the Scheme and Artifice

5. On or about the dates specified as to each count below, in the Houston Division of the Southern District of Texas, and elsewhere, the defendants, **KATE OSE OLEAR and JOHN EDWARD PERRY III**, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud a health care benefit program affecting commerce, that is Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of said health care benefit program:

Count	Medicare Beneficiary	Approximate Date of Claim	Description of Item Billed	Approximate Amount Claimed
2	A.S.	January 12, 2007	Arthritis Kit Components	\$9,300
3	D.D.	January 5, 2007	Arthritis Kit Components	\$6,450
4	S.R.	October 22, 2007	Arthritis Kit Components	\$11,880
5	W.S.	October 24, 2007	Arthritis Kit Components	\$3,710
6	W.V.	November 19, 2007	Arthritis Kit Components	\$12,165
7	S.S.	November 27, 2007	Arthritis Kit Components	\$3,710
8	R.D.	August 6, 2008	Arthritis Kit Components	\$11,470

All in violation of Title 18, United States Code, Sections 1347 and 2.

CRIMINAL FORFEITURE
(18 U.S.C. § 982)

1. The allegations contained in Counts 1 through 8 of this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendants have an interest.

2. Upon conviction of any violation of Title 18, United States Code, Section 1347 or a conspiracy to commit same under Title 18, United States Code, Section 1349, the defendants shall forfeit to the United States all property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense of conviction, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property which is subject to forfeiture includes but is not limited to a money judgment of approximately \$2,750,000 which represents the gross proceeds of the fraud.

4. Pursuant to Title 21 United States Code, Section 853(p), as incorporated by reference by Title 18, United States Code, Section 982(b), if any of the forfeitable property, or any portion thereof, as a result of any act or omission of the defendants:

- (A) cannot be located upon the exercise of due diligence;
- (B) has been transferred, or sold to, or deposited with a third party;

- (C) has been placed beyond the jurisdiction of the Court;
- (D) has been substantially diminished in value; or
- (E) has been commingled with other property which cannot be subdivided without difficulty;

6. It is the intent of the United States to seek the forfeiture of other property of the defendants up to the value of the above-described forfeitable properties, including, but not limited, any identifiable property in the name of defendants **KATE OSE OLEAR and JOHN EDWARD PERRY III.**

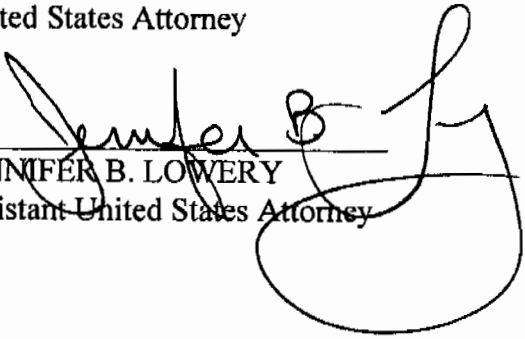
All pursuant to Title 18, United States Code, Sections 982 (a)(7), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

Original Signature on File

FOREPERSON ✓

TIM JOHNSON
United States Attorney



JENNIFER B. LOWERY
Assistant United States Attorney