

JUL 22 2009

Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

SUNNY ROBINSON,
MANUEL DELUNA,
LISA JONES and
SHIRLEY A. CHAVIS

Defendants.

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Criminal **H-09-422**

UNDER SEAL

INDICTMENT

The Grand Jury charges:

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

General Allegations

At all times material to this Indictment:

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.

TRUE COPY I CERTIFY
ATTEST: JUL 24 2009
Clerk of Court
By [Signature]
Deputy Clerk

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, back braces, shoulder braces, elbow braces, hand braces, neck braces, head-neck braces, and quad canes (collectively “orthotics”).

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”). Prior to Cigna, Palmetto GBA processed and paid Medicare DME claims in Texas.

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 and the national provider identifier of the physician who prescribed or ordered the equipment or medicine.

11. Defendant **SUNNY ROBINSON**, resident of Harris County, Texas, formed, owned, and controlled Memorial Medical Supply.

12. Defendant **MANUEL DELUNA**, resident of Harris County, Texas, was a managing employee of Memorial Medical Supply responsible for marketing and inventory.

13. Defendant **LISA JONES**, resident of Harris County, Texas, obtained and provided Medicare beneficiary information to **SUNNY ROBINSON**.

14. Defendant **SHIRLEY A. CHAVIS**, resident of Harris County, Texas, obtained and provided Medicare beneficiary information to **SUNNY ROBINSON**.

15. Memorial Medical Supply (“Memorial”) began as a sole proprietorship and later a Texas corporation, purportedly doing business at 1009B Dairy Ashford, Houston, Texas and 1441 West Sam Houston Parkway North, Houston, TX. In addition to the physical locations, Memorial operated and maintained an internet website. Memorial purported to be a DME company that, among other things, provided durable medical equipment to Medicare beneficiaries.

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

1. Paragraphs 1 through 15 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

2. From in and around March 2005, through in and around January 2009, the exact dates being unknown to the Grand Jury, in the Southern District of Texas and elsewhere, defendants,

**SUNNY ROBINSON,
MANUEL DELUNA,
LISA JONES
and
SHIRLEY A. CHAVIS**

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 a purpose of the conspiracy for defendants **SUNNY ROBINSON, MANUEL DELUNA, LISA JONES and SHIRLEY A. CHIVAS**, and others, to unlawfully enrich themselves 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 personal use and benefit of the defendants and their co-conspirators.

Manner and Means of the Conspiracy

4. The manner and means by which the defendants sought to accomplish the purpose of the conspiracy included, among other things:

5. Defendant **SUNNY ROBINSON** would apply for and obtain a Medicare provider number under the name "Sunny Robinson," which would be used to submit claims to Medicare on behalf of Memorial.

6. Defendant **SUNNY ROBINSON** and **MANUEL DELUNA** would submit and cause to be submitted claims to Medicare for DME that, when delivered, had not been ordered, was not medically necessary and would not be used by the Medicare beneficiary.

7. Defendant **SUNNY ROBINSON** and **MANUEL DELUNA** would submit and cause to be submitted claims to Medicare for DME that were not delivered to the Medicare beneficiaries.

8. Defendant **SUNNY ROBINSON** and **MANUEL DELUNA** would submit and cause to be submitted claims 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 braces for both sides of the body and related accessories such as heat pads.

9. Defendant **SUNNY ROBINSON** and **MANUEL DELUNA** would

submit and cause to be submitted claims to Medicare for DME, including "Arthritis Kits," even after notification by the Medicare beneficiaries that they did not need or want the equipment.

10. Defendant **SUNNY ROBINSON** would pay kickbacks, bribes and monies to defendants, **MANUEL DELUNA**, **LISA JONES** and **SHIRLEY A. CHAVIS** and other individuals, for Medicare beneficiary information, including names, addresses and Medicare numbers, which he would then use to submit and cause the submission of false claims to Medicare.

11. Defendants **MANUEL DELUNA**, **LISA JONES** and **SHIRLEY A. CHAVIS**, received kickbacks, bribes and monies for providing Medicare beneficiary information, including names, addresses and Medicare numbers to defendant **SUNNY ROBINSON**.

12. In addition to providing and being paid for Medicare beneficiary information, defendant **MANUEL DELUNA** managed the inventory and delivery of DME for **SUNNY ROBINSON** and Memorial, and failed to deliver the DME.

13. Defendant **SUNNY ROBINSON** and **MANUEL DELUNA** would submit and cause to be submitted claims to Medicare for DME allegedly provided to approximately 34 deceased Medicare beneficiaries.

14. Between in or about March 2006, and in or about January 2009, defendant **SUNNY ROBINSON** would submit and caused to be submitted claims with Medicare totaling approximately \$4,302,349. Defendant **SUNNY**

ROBINSON received payments for those claims totaling approximately \$1,391,260.

Overt Acts

15. In furtherance of the conspiracy, and to effect the objects thereof, the defendant performed and caused to be performed, among others, the overt acts set forth in Counts 2 through 15 of this Indictment, hereby re-alleged and incorporated as if fully set forth in this Count of the Indictment.

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

COUNTS 2 -15
Health Care Fraud
(18 U.S.C. §§ 1347 and 2)

1. Paragraphs 1 through 15 of the General Allegations section of this Indictment are alleged and incorporated by reference as though fully set forth herein.

2. Beginning in or about March 2006, and continuing thereafter until at least January 2009, at Harris County, in the Southern District of Texas, and elsewhere, the defendants,

SUNNY ROBINSON
and
MANUEL DELUNA

each aiding and abetting each other 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 the purpose of the scheme and artifice for the defendants and their 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. Paragraphs 4 through 14 of Count 1 of this Indictment are re-alleged and incorporated by reference 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 Southern District of Texas and elsewhere, the defendants **SUNNY ROBINSON** and **MANUEL DELUNA**, 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:

<u>Count</u>	<u>Medicare Beneficiary</u>	<u>Approx. Date of Claim</u>	<u>Description of Items Billed</u>	<u>Approx. Amount of Claim</u>
2	M.K.	02/11/08	"Arthritis Kit"	\$1,601.26
3	M.K.	03/04/08	"Arthritis Kit"	\$1,053.68
4	M.K.	12/10/08	"Arthritis Kit"	\$1,457.59
5	W.K.	03/14/08	"Arthritis Kit"	\$1,487.20
6	W.K.	03/14/08	"Arthritis Kit"	\$1,166.47
7	W.K.	12/10/08	"Arthritis Kit"	\$1,166.42
8	M.B.	03/17/08	"Arthritis Kit"	\$1,524.45
9	M.B.	03/17/08	"Arthritis Kit"	\$984.27
10	M.B.	11/26/08	"Arthritis Kit"	\$1,249.99
11	G.C.	08/25/08	"Arthritis Kit"	\$1,053.68
12	G.C.	08/25/08	"Arthritis Kit"	\$1,601.26
13	B.V.	04/28/08	"Arthritis Kit"	\$1,524.45
14	B.V.	04/28/08	"Arthritis Kit"	\$984.27
15	B.V.	12/15/08	"Arthritis Kit"	\$1,311.37

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 15 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the

purposes 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 1349 or Title 18, United States Code, section 1347, the defendants shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, 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 in the amount of approximately \$1,391,260 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;

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 **SUNNY ROBINSON, MANUEL DELUNA, LISA JONES** and **SHIRLEY A. CHAVIS**.

All pursuant to Title 18, United States Code, Section 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



JUSTIN S. BLAU
SPECIAL ASSISTANT U.S. ATTORNEY
U.S. ATTORNEY'S OFFICE