

COPY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA :
:
- v - :
:
JAMES SPINA, :
JEFFREY SPINA, :
ANDREA GROSSMAN, and :
KIMBERLY SPINA, :
:
Defendants. :
:
----- X

INDICTMENT
18 Cr. 625

COUNT ONE
(Conspiracy to Commit Health Care Fraud)

The Grand Jury charges:

OVERVIEW OF THE SCHEME

1. From in or about 2011 through in or about September 2017, JAMES SPINA, JEFFREY SPINA, ANDREA GROSSMAN, and KIMBERLY SPINA, the defendants, together with others known and unknown, participated in a widespread scheme to defraud Medicare and other health care benefit programs, as defined by Title 18, United States Code, Section 24(b) (collectively the "Insurance Providers").

2. Specifically, during the relevant time period, Dolson Avenue Medical ("DAM" or the "Practice"), was a registered medical service corporation in New York State that purported to provide a variety of pain management and rehabilitation services including physical medicine and rehabilitation, chiropractic

services, physical therapy, diagnostic testing, and acupuncture. The Practice primarily provided treatment services from its clinic located at 201 Dolson Avenue, Middletown, New York ("201 Dolson Avenue" or "the clinic"). The Practice's billing office operated out of 41-45 Dolson Avenue, Middletown, New York.

3. In addition to DAM, multiple other corporations billed Medicare and other Insurance Providers from the 201 Dolson Avenue location during the relevant time period. Those other corporations included, among others: Catskill Medical Care PC, d/b/a "Middletown Physical Therapy and Pain Management," a registered medical corporation; Middletown Physical Medicine & Rehabilitation, PC, a registered medical corporation; Physical Medicine and Diagnostic, a registered medical corporation; Orange County Neurology, PC, a registered medical corporation; Middletown Chiropractic, d/b/a "ChiroCare"; Hudson Valley Chiropractic; Physical Therapy of Orange County; and Mid-Hudson Acupuncture, PC (collectively referred to the "Associated Businesses.")¹

4. Although, on paper, DAM and the Associated Businesses appeared to be separate entities owned by multiple different qualified individuals, in reality, JAMES SPINA and JEFFREY SPINA,

¹ The different corporations used variations of the 201 Dolson Avenue address, by, for example, adding a suite number, or, in some instances, an adjacent address, such as 203 Dolson Avenue. Each of the above listed corporations, however, provided treatment from 201 Dolson Avenue.

the defendants, who are doctors of chiropractic - not medical doctors - were the true owners and operators of the different medical service corporations. In operating the multiple businesses, JAMES SPINA and JEFFREY SPINA routinely showed little, if any, regard for which medical services or treatments were medically necessary, or even whether the services were actually provided to patients, and instead operated the Practice and billed Insurance Providers to maximize the Practice's reimbursements and ultimately, their own profits.

5. In particular, JAMES SPINA and JEFFREY SPINA, the defendants, with assistance from ANDREA GROSSMAN, the bookkeeper for DAM and its Associated Businesses, and KIMBERLY SPINA, an administrator at the Practice: (a) fraudulently incorporated and operated numerous medical service corporations; (b) submitted and caused to be submitted claims to Insurance Providers for medically unnecessary services and procedures; (c) submitted and caused to be submitted claims to Insurance Providers for medical services that were not rendered; (d) double billed, *i.e.*, submitted and caused to be submitted multiple claims for the same service to two different Insurance Providers; (e) altered and fabricated medical records; and (f) obstructed and impeded audits by Medicare and other Insurance Providers to conceal their fraud.

BACKGROUND

Health Care Insurance Providers

The Medicare Program

6. The Medicare program ("Medicare") is a federal health care benefit program, as defined by Title 18, United States Code, Section 24(b), which provides medical services, medical equipment, and supplies to persons who are least 65 years of age or disabled. Medicare is administered by the Centers for Medicare & Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services.

7. In order to bill Medicare, a health care provider must complete an enrollment application and be approved to participate in the program.

8. A claim submitted by a provider is known as a CMS-1500. This form requires a provider to state a diagnosis of the patient's condition and provide a procedure code (which codes are established and published by the American Medical Association, known as a CPT codes) identifying the service or services rendered. Providers participating in Medicare must agree in writing that they will be responsible for the accuracy of all claims submitted by themselves, their employees or their agents, and that all claims submitted under their provider numbers will be accurate, complete, and truthful.

Other Health Care Insurance Providers

9. The policies and guidelines of other health care benefit programs, such as No-Fault insurance, Worker's Compensation insurance, and other private health insurance programs, have similar requirements regarding documentation of diagnosis and procedure codes. In addition, other health care benefit programs also require that claims submitted by health care professionals be truthful.

Medical Service Providers

10. At all times relevant to this Indictment, New York State law required that medical service corporations in New York State be owned and operated by licensed physicians.

11. Moreover, at all times relevant to this Indictment, federal and New York State law generally prohibited medical service providers from: a) making referrals to any healthcare entity in which the medical provider had a financial interest; and b) from paying or accepting any remuneration to induce referrals, *i.e.*, kickbacks.

The Defendants and Relevant Entities

12. At all times relevant to this Indictment, JAMES SPINA, the defendant, was a licensed chiropractor, and the registered owner of Effective Marketing, a purported marketing consulting company. JAMES SPINA also had an ownership interest in JJMJ Realty, a purported real estate company.

13. At all times relevant to this Indictment, JEFFREY SPINA, the defendant, was a licensed chiropractor and the registered owner of ChiroCare, one of the Associated Businesses. JEFFREY SPINA also had ownership interests in JJMJ Realty and Roswell Realty.

14. At all times relevant to this Indictment, ANDREA GROSSMAN, the defendant, was the bookkeeper for the Practice and the Associated Businesses.

15. At all times relevant to this Indictment, KIMBERLY SPINA, the defendant, was an administrator at the Practice. Among other responsibilities, KIMBERLY SPINA oversaw submissions to Worker's Compensation and prepared the doctors, chiropractors, and other medical professionals for depositions and other testimony.

MEANS AND METHODS OF THE CONSPIRACY

Fraudulent Incorporation of DAM and the Associated Businesses

16. At all times relevant to this Indictment, JAMES SPINA and JEFFREY SPINA, the defendants, together with ANDREA GROSSMAN, the defendant, made all corporate decisions for DAM and the Associated Businesses. In particular, JAMES SPINA and JEFFREY SPINA ran the day-to-day operations of the businesses. They controlled payroll, the hiring and firing of employees, corporate expenses, like employee compensation and rent, and billing to

Insurance Providers. Further, JAMES SPINA and JEFFREY SPINA were the financial beneficiaries of DAM and its Associated Businesses.

17. JAMES SPINA and JEFFREY SPINA, the defendants, however, went to great lengths to conceal their control and ownership of DAM and the Associated Businesses. In particular, JAMES SPINA and JEFFREY SPINA recruited medical doctors and other professionals to serve as the nominee owners of DAM and the Associated Businesses, when in reality, JAMES SPINA and JEFFREY SPINA, both doctors of chiropractic, were the true owners and operators of DAM and the Associated Businesses. For example:

a. In or about June 2017, a medical doctor whom JAMES SPINA and JEFFREY SPINA, the defendants, had used as a nominee owner of DAM and one of the Associated Businesses ("Doctor 1"), died. To continue billing Insurance Providers after Doctor 1's death, JAMES SPINA, JEFFREY SPINA, and ANDREA GROSSMAN, the defendants, concocted a scheme to fraudulently transfer the businesses in Doctor 1's name to another medical doctor who acted as a nominee. Specifically, they used blank stock transfer forms, backdated to sometime in late 2016, when Doctor 1 had reduced his/her hours and became ill, and forged Doctor 1's signature onto the forms as the seller, to give the false appearance that Doctor 1 had previously transferred the stock to another medical doctor at the Practice ("Doctor 2") before Doctor 1 died.

b. On or about July 13, 2017, ANDREA GROSSMAN, the

defendant, described the defendants' fraudulent plan to a co-worker who, unbeknownst to GROSSMAN, secretly recorded the conversation. During that conversation, GROSSMAN said, in substance and in part, "You've got to be able to think like a fucking crook . . . maybe I'll make my six figures this year because this maybe just saved [JAMES SPINA] a whole bunch."

18. JAMES SPINA and JEFFREY SPINA, the defendants, further concealed their ownership of DAM and the Associated Businesses by transferring revenues of these companies into other companies they owned. To further disguise these transfers, JAMES SPINA and JEFFREY SPINA drafted fake lease and marketing agreements between DAM and the Associated Businesses and purported real estate and marketing companies they owned and referred to the payments as "rent" or "marketing fees."

19. JAMES SPINA and JEFFREY SPINA, the defendants, also used phony and non-existent addresses for the corporations to conceal their ownership of DAM and the Associated Businesses so that it would appear that DAM and the Associated Businesses were operating out of separate locations. .

20. JAMES SPINA and JEFFREY SPINA, the defendants, with assistance from KIMBERLY SPINA, the defendant, also prepared scripts for the nominal owners of DAM and the Associated Businesses, so that when the supposed owners were questioned by the Insurance Providers, they would know basic information about

the corporations, such as the amount of rent paid or the number of people employed by the corporation.

Billing for Unnecessary Medical Treatment and Services

21. Among other fraudulent billing practices used to increase profits, JAMES SPINA and JEFFREY SPINA, the defendants, encouraged doctors and other medical providers to prescribe or recommend services that were not medically necessary including: Magnetic Resonance Imaging ("MRIs"); durable medical equipment ("DME"), such as back braces; osteopathic manipulative therapy ("OMT"), a specific type of therapy usually performed by doctors of osteopathy or medical doctors; electromyograms ("EMGs"), tests performed by physicians to record the electrical activity of muscles; and facet injections, injections into or near facet joints performed by medical doctors.

22. JAMES SPINA and JEFFREY SPINA, the defendants, outsourced some of these services, like the MRIs and DME, to third-party providers. JAMES SPINA and JEFFREY SPINA, still profited from these services, however, because they had financial arrangements with the third-party providers whereby they received a negotiated sum depending on how many MRIs or DME the Practice and the Associated Businesses referred or prescribed to the third-party. To conceal these kickbacks, the third-party providers typically referred to the money as "rent" or "marketing fees" and paid the money to JJMJ Realty or Effective Marketing.

23. Other services, such as OMT, EMGs, and facet injections, were performed at the clinic by its own providers. JAMES SPINA and JEFFREY SPINA, the defendants, made money on these unnecessary services because of the high rate at which Insurance Providers reimbursed the services.

24. In prescribing and recommending these and other services, JAMES SPINA and JEFFREY SPINA, the defendants, focused exclusively on how lucrative the services and treatments were for the Practice, and ultimately themselves. Because financial considerations dictated treatment, JAMES SPINA and JEFFREY SPINA caused numerous claims to be submitted to Insurance Providers for treatments and services that were not medically necessary. For example:

a. JAMES SPINA and JEFFREY SPINA, the defendants, directed employees to lie to Insurance Providers about patients' diagnoses, pain level, and prior treatments so that Insurance Providers would authorize MRIs.

b. JAMES SPINA and JEFFREY SPINA, the defendants, and those working under them, routinely prescribed back braces to patients, without regard to whether such persons had any medical need for the braces.

c. JAMES SPINA and JEFFREY SPINA, the defendants - both chiropractors with no qualifications to prescribe or administer facet injections - decided which of the Practice's patients should

receive facet injections based on the patient's Insurance Provider and the rate at which the Insurance Provider reimbursed the injections, not medical necessity.

Billing for Services Not Provided

25. JAMES SPINA and JEFFREY SPINA, the defendants, also submitted or caused to be submitted claims for procedures and services not rendered. They did this in two ways. In some instances, they billed Insurance Providers for services when, in fact, no services were rendered. For example:

a. In or about Fall 2016 and Winter 2017, several law enforcement officers acting in an undercover capacity sought treatment at the Practice. On or about November 8, 2016, one of the undercover law enforcement officers who was supposedly seeking treatment for injuries after a car accident ("UC-1"), spent a total of approximately four minutes at the clinic (in the bathroom) and received no treatment or services. JAMES SPINA and JEFFREY SPINA, the defendants, however, submitted or caused to be submitted claims to UC-1's No-Fault insurance provider for at least two different services or procedures supposedly rendered on November 8, 2016.

b. Similarly, JAMES SPINA and JEFFREY SPINA, the defendants, caused a claim to be submitted to an Insurance Provider for treatment of another undercover law enforcement officer ("UC-2") on January 18, 2017. The CPT code listed on the claim was for an office visit and the diagnosis was low back pain. UC-2 was not

at the clinic on January 18, 2017 and he/she never complained of low back pain, but instead reported that he/she was not able to run as fast as he/she used to run.

26. In other instances, JAMES SPINA and JEFFREY SPINA, the defendants, billed Insurance Providers for services when, in fact, different services were rendered. For example, on April 6, 2017, UC-1 was seen by one of the Practice's physician assistants. Although UC-1 was with the physician assistant for only seven minutes, JAMES SPINA and JEFFREY SPINA submitted or caused to be submitted a claim to the Insurance Provider for an established patient level 4 exam - one of the highest level office visits, typically lasting 25 minutes.

Double Billing

27. Another fraudulent practice engaged in by JAMES SPINA and JEFFREY SPINA, the defendants, was "double billing," *i.e.*, billing two Insurance Providers for the same service. In particular, during the relevant time period, the defendants routinely submitted claims to Medicare and private Insurance Providers for services which they simultaneously billed to Worker's Compensation and No-Fault insurance.

28. If a patient is injured in an automobile accident, his or her injury is likely covered by No-Fault insurance. Similarly, if a patient's illness or injury is directly caused by his or her employment, the patient's injury is likely covered by Workers'

Compensation insurance. Although in some rare instances, a medical provider may bill both a private insurer or Medicare in conjunction with No-fault or Workers' Compensation insurance, both Insurance Providers should not be billed for the total cost of the same procedure or treatment. The defendants, however, routinely billed No-Fault or Workers' Compensation insurance, and Medicare or private insurance providers, for the total cost of the same procedure or treatment, collecting twice for a single procedure or treatment.

29. To avoid detection for this double billing, which JAMES SPINA and JEFFREY SPINA, the defendants, referred to as "congruent care," the defendants simply changed patient diagnosis codes. Specifically, JAMES SPINA, the defendant, had employees run a query for patients who had two different claims to two different Insurance Providers on the same day with the same diagnosis code. JAMES SPINA then directed employees to change the diagnosis code for one of the claims, so that it falsely appeared as if each claim was for a different injury.

Altering Medical Records

30. In addition to altering medical records to conceal double billing, JAMES SPINA, JEFFREY SPINA, and KIMBERLY SPINA, the defendants, routinely altered and fabricated medical records for other fraudulent purposes as well. For example, the defendants

regularly altered medical records to establish medical necessity and/or to justify continued medical treatment:

a. In an October 27, 2014 e-mail from JAMES SPINA, the defendant, to KIMBERLY SPINA, the defendant, JAMES SPINA wrote, in substance and in part:

I have 3 reports . . . to be typed up . . . They are for [a particular Insurance Provider] and the medical necessity for continued acupuncture care . . . I will go over them with you tomorrow and we can make some reports for this . . . There is no template for this right now as he did not see the patient and a re-exam was not done. But he did go through the chart and write up a report. It just needs to be typed in some format.

31. JAMES SPINA, JEFFREY SPINA, and KIMBERLY SPINA, the defendants, also fabricated medical notes to match what was previously billed to Insurance Providers, regardless of whether the billed service was actually rendered.

32. In addition, KIMBERLY SPINA, the defendant, arbitrarily changed patients' disability percentages for Worker's Compensation.

Obstructing and Impeding Audits by Insurance Providers

33. In a further effort to conceal their fraud, JAMES SPINA and JEFFREY SPINA, the defendants, obstructed and impeded audits by Medicare and other Insurance Providers.

34. DAM and the Associated Businesses were audited multiple times by different Insurance Providers, including by Medicare in

2015. To prepare for the audits, JAMES SPINA, the defendant, assembled an "audit team." The audit team was tasked with, among other assignments, identifying which reports and/or documentation were missing from the patient files requested by the Insurance Provider. JAMES SPINA, JEFFREY SPINA, and KIMBERLY SPINA, the defendants, then fabricated the missing reports, including medical reports and X-ray reports, without regard to whether the medical exams or X-rays were actually performed.

35. In addition to fabricating records and reports for the audits, JAMES SPINA and JEFFREY SPINA, the defendants, hid relevant patient records and documents at, among other locations, JEFFREY SPINA's house and in a local storage facility.

36. As a consequence of the above-described scheme, the majority of the claims submitted by DAM and the Associated Businesses to Medicare and other Insurance Providers were false and fraudulent. The submitted claims during the relevant time period totaled more than \$80,000,000, resulting in losses of tens of millions of dollars.

STATUTORY ALLEGATION

37. From in or about 2011 through in or about September 2017, in the Southern District of New York and elsewhere, JAMES SPINA, JEFFREY SPINA, ANDREA GROSSMAN, and KIMBERLY SPINA, the defendants, together with others known and unknown, conspired to violate Title 18, United States Code, Section 1347.

38. It was a part and object of the conspiracy that JAMES SPINA, JEFFREY SPINA, ANDREA GROSSMAN, and KIMBERLY SPINA, the defendants, and others known and unknown, would and did knowingly and willfully execute a scheme and artifice to defraud a health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, a health care benefit program in connection with delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

(Title 18, United States Code, Section 1349.)

COUNT TWO
(Health Care Fraud)

The Grand Jury further charges:

39. The allegations contained in paragraphs 1 through 36 are realleged and incorporated as if fully set forth in this paragraph.

40. From in or about 2011 through in or about September 2017, in the Southern District of New York and elsewhere, JAMES SPINA, JEFFREY SPINA, ANDREA GROSSMAN, and KIMBERLY SPINA, the defendants, knowingly and willfully did execute a scheme and artifice to defraud a health care benefit program and to obtain by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, a health care benefit program, namely Medicare and

other Insurance Providers, in connection with the delivery of and payment for health care benefits, items, and services, to wit, JAMES SPINA, JEFFREY SPINA, ANDREA GROSSMAN, and KIMBERLY SPINA, in order to fraudulently obtain payments from Medicare and other Insurance Providers to which they were not entitled, submitted and caused to be submitted to Medicare and other Insurance Providers numerous claims that falsely represented, among other things, the ownership of the medical corporation that provided the service, the medical necessity of the service or treatment, and that the service or treatment was actually provided to patients.

(Title 18, United States Code, Section 1347.)

COUNT THREE
(Obstruction of a Federal Audit)

The Grand Jury further charges:

41. The allegations contained in paragraphs 1 through 36 are realleged and incorporated as if fully set forth in this paragraph.

42. In or about 2015, in the Southern District of New York and elsewhere, JAMES SPINA and JEFFREY SPINA, the defendants, with the intent to deceive and defraud the United States, endeavored to influence, obstruct and impede a Federal auditor in the performance of official duties relating to an audit of Dolson Avenue Medical, an entity receiving in excess of \$100,000, directly and indirectly, from the United States in a one year period, pursuant to Medicare.

(Title 18, United States Code, Section 1516.)

FOREFEITURE ALLEGATIONS AS TO COUNTS ONE AND TWO

43. As a result of committing the federal health care fraud offenses charged in Count One and Two of this Indictment, in violation of 18, United States Codes, Section 1349 and 1347, JAMES SPINA, JEFFREY SPINA, ANDREA GROSSMAN, and KIMBERLY SPINA, the defendants, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982 (a) (7), any and all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses charged in Counts One and Two of this Indictment.

Substitute Assets Provision


44. If any of the above described forfeitable property, 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;
- (e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b), Title 21, United States Code, Section 853 (p), and Title 28, United States Code, Section 2461, to seek

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b), Title 21, United States Code, Section 853 (p), and Title 28, United States Code, Section 2461, to seek forfeiture of any other property of the defendants up to the value of the forfeitable property.

(Title 18, United States Code, Section 982; Title 21, United States Code, Section 853; and Title 28, United States Code, Section 2461.)


FOREPERSON

Geoffrey S. Berman
GEOFFREY S. BERMAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

JAMES SPINA,
JEFFREY SPINA,
ANDREA GROSSMAN, and
KIMBERLY SPINA,

Defendants.


INDICTMENT

18 Cr. _____ ()

(18 U.S.C. § 1347, 18 U.S.C. § 1349, 18
U.S.C. § 1516)

GEOFFREY S. BERMAN
United States Attorney.

A TRUE BILL

 8/29/19

Foreperson.
