

FILED IN CHAMBERS
U.S.D.C. Atlanta

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEB 20 2007

JAMES N. HATTEN, Clerk
By: *JNH* Deputy Clerk

ORIGINAL

UNITED STATES OF AMERICA

v.

HOWARD BERKOWITZ;
ARTHUR HARGRAVES;
DANIEL PUFFENBERGER

CRIMINAL INDICTMENT

NO. **1: 07 - CR - 063**

THE GRAND JURY CHARGES THAT:

COUNTS ONE THROUGH FIVE
(Health Care Fraud Scheme)

1. From in or about September 2001 through in or about April 2005, in the Northern District of Georgia and elsewhere, defendants HOWARD BERKOWITZ, ARTHUR HARGRAVES and DANIEL PUFFENBERGER, aided and abetted by others known and unknown to the grand jury, knowingly and willfully executed and attempted to execute a scheme and artifice to defraud Blue Cross and Blue Shield of Georgia, Inc. (hereinafter "BCBS-Ga"), a health care benefit program as defined in Title 18, United States Code, Section 24(b), and to obtain, by means of false and fraudulent pretenses and representations, monies and property owned by and under the custody and control of BCBS-Ga, in connection with the delivery of and payment for health care benefits, items and services, to wit, a procedure known as Vertebral Axial Decompression ("VAX-D"), as set forth below.

BACKGROUND OF THE SCHEME

2. At all times relevant to this Indictment:

a. Defendant HOWARD BERKOWITZ was a medical doctor trained and qualified as an orthopedic surgeon in the State of Georgia. Defendants ARTHUR HARGRAVES and DANIEL PUFFENBERGER were doctors of chiropractic medicine.

b. Since in or about February 2001, the Defendants co-owned and operated a company known as the Associated Spinal Care Network ("ASCN"). Among other things, ASCN operated a series of back pain specialty clinics, including West Georgia Medical Services, in Douglasville, Georgia, the Back Pain Institute of Macon, in Macon, Georgia, and the Back Pain Institute of Chattanooga, in Chattanooga, Tennessee. Defendant BERKOWITZ was the medical director of ASCN.

c. VAX-D is a non-invasive, non-surgical procedure used in the treatment of lower back pain. The VAX-D procedure was administered to patients with the use of a motorized therapeutic table, which alternates periods of traction with periods of rest.

d. The VAX-D procedure was the primary treatment procedure administered to patients at the ASCN clinics. ASCN did not perform any surgical procedures.

f. BCBS-Ga is a private insurance company providing medical insurance for various persons residing in the state of Georgia and elsewhere.

g. BCBS-Ga entered into contractual agreements, known as Preferred Physician Provider Agreements (hereinafter "provider agreements"); with providers of medical services who wished to register as participating physicians with BCBS-Ga. Pursuant to the terms of the provider agreement, participating physicians were reimbursed by BCBS-Ga for covered services administered to patients who were BCBS-Ga subscribers, i.e, who had health insurance policies with BCBS-Ga. Also pursuant to the terms of the provider agreement, participating physicians agreed to submit to BCBS-Ga, on standard claim forms, all information required to properly process and adjudicate claims, including complete and accurate descriptions of the health care services performed.

h. Defendant BERKOWITZ signed a provider agreement with BCBS-Ga. ASCN submitted bills to BCBS-Ga during the time period of this indictment pursuant to the provider agreement.

i. BCBS-Ga did not provide coverage or reimburse participating physicians for procedures that it deemed "investigational/not medically necessary." BCBS-Ga medical policy 2.07.05, made available to medical providers and the public via an internet website, stated that BCBS-Ga considered VAX-D investigational/not medically necessary. This policy has been in place and has been publicized by BCBS-Ga throughout the period of time relevant to this indictment.

j. Medical providers such as the medical director and other

medical doctors billed insurance companies for services using a standard form known as a HCFA 1500. These forms can be submitted either electronically or through the mail in hard copy form. Among other things, the HCFA 1500 required the medical provider to identify the dates on which services were rendered, the specific services provided, identified by a Current Procedural Terminology (CPT) code or a Healthcare Common Procedure Coding System (HCPCS) code, and the identity of the medical provider performing the services.

k. The *Physicians' Current Procedural Terminology Manual* (the "CPT Manual"), a publication of the American Medical Association, contained a listing of descriptive terms and identifying codes for reporting and billing medical services and procedures, which had to be included in each claim to designate the particular service provided to a patient on a particular date. The CPT Manual provided a uniform language of medical services to allow reliable nationwide communication among medical providers, patients and insurers. It assigned numeric codes, commonly known as CPT codes, for virtually all medical, surgical and diagnostic services, to be used in identifying for the insurance company the nature and level of the service being performed.

l. HCPCS is a standardized coding system that includes the CPT codes, and also includes additional codes to identify products, supplies, and services not included in the CPT codes. These

additional codes were developed because insurers cover a variety of services, supplies and equipment that are not identified by CPT codes. These additional codes consist of a single alphabetical letter followed by four numeric digits. The HCPCS codes with the alphabetical letter "S" are used by private insurers to report drugs, services, and supplies for which there are no national codes, but for which codes are needed by the private sector to implement policies, programs, or claims processing. HCPCS codes, like CPT codes, identify for the insurance company the nature and level of the service being performed.

m. It is the responsibility of the medical provider submitting a HCFA 1500 to select the CPT code or HCPCS code that describes the procedure performed to the highest level of specificity.

n. In order to obtain reimbursement for medical services provided at ASCN clinics, employees placed CPT codes for each service provided on a HCFA 1500, which was then submitted to health care benefit programs such as BCBS-Ga, which relied on those CPT codes when paying the claims. The HCFA 1500 was submitted to BCBS-Ga under Defendant BERKOWITZ's name, as Medical Director. The defendants contracted with an entity known as Two The Penny, based in Longmont, Colorado, to process and submit ASCN's bills.

o. BCBS-Ga contracted with Dependable Mail Service ("DMS"), which handled the bulk mailing of all checks for payment of claims

submitted by medical providers to BCBS-Ga. All BCBS-Ga checks for payment of claims were issued in Columbus, Georgia and transported by DMS to Atlanta, Georgia, and were mailed by DMS from its Atlanta, Georgia mail distribution center to the medical providers. Hence, all checks for claims based on HCFA 1500 forms submitted by ASCN to BCBS-Ga were mailed to ASCN from Atlanta, Georgia.

q. The HCPCS code assigned to the VAX-D procedure was S9090 - Vertebral Axial Decompression, Per Session. BCBS-Ga did not reimburse participating physicians on the basis of HCFA 1500 forms that identified S9090 as the procedure that was performed.

r. CPT code 64722 is a surgical code, found in the "Surgery/Nervous system" section of the CPT Manual, and applies to decompression of unspecified nerves. BCBS-Ga reimbursed participating physicians on the basis of HCFA 1500 forms that identified 64722 as the procedure that was performed.

DESCRIPTION OF THE SCHEME

4. It was part of the conspiracy that defendants HOWARD BERKOWITZ, ARTHUR HARGRAVES, and DANIEL PUFFENBERGER, would seek and obtain reimbursement from BCBS-Ga for VAX-D services, knowing that BCBS-Ga does not cover VAX-D, by submitting false and misleading bills, and by otherwise concealing that the services being billed-for were in fact VAX-D, as follows:

a. The Defendants HOWARD BERKOWITZ, ARTHUR HARGRAVES, and DANIEL PUFFENBERGER caused Two The Penny to submit numerous HCFA

1500 forms to BCBS-Ga on behalf of ASCN seeking reimbursement for performing VAX-D procedures. The Defendants used CPT code 64722 to identify the procedure being billed-for. The Defendants submitted these bills knowing that 64722 was not the appropriate code for VAX-D. ASCN did not perform any surgical or invasive decompression procedures.

b. The Defendants took steps to attempt to conceal from BCBS-Ga that the procedure being billed for using the 64722 code was in fact VAX-D, including by instructing employees to refer to the procedure by different names when speaking to insurance companies.

c. In total, the Defendants billed BCBS-Ga for over \$3 million and received over \$2 million for services identified using the CPT code 64722.

EXECUTION OF THE SCHEME

5. Beginning in or about September 2001 and continuing until in or about April 2005, in the Northern District of Georgia and elsewhere, defendants HOWARD BERKOWITZ, ARTHUR HARGRAVES, and DANIEL PUFFENBERGER, aided and abetted by others known and unknown to the grand jury, knowingly and willfully executed and attempted to execute a scheme and artifice to defraud BCBS-Ga, a health care benefit program as defined in Title 18, United States Code, Section 24(b), and to obtain, by means of false and fraudulent pretenses and representations, monies and property owned by and under the custody and control of BCBS-Ga, in connection with the delivery of

and payment for health care benefits, items and services, as set forth below.

6. Counts One through Five, each of which consists of a fraudulent claim for reimbursement that the Defendants knowingly submitted to BCBS-Ga in furtherance of the scheme to defraud are as follows:

COUNT	CLAIM SUBMITTED	PATIENT INITIALS	DATE PAID	AMOUNT BILLED	AMOUNT PAID
1	8/4/03	R. A.	8/22/03	\$440	\$425
2	11/19/03	M. F.	12/19/03	\$440	\$396
3	3/2/04	J. T.	3/12/04	\$440	\$29.60
4	3/22/04	B. A.	4/2/04	\$440	\$396
5	7/27/04	C.B.	8/20/04	\$440	\$396

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

Asset Forfeiture

1. The allegations of Count One of this Criminal Information are realleged and incorporated by reference for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18, United States Code, Section 982.

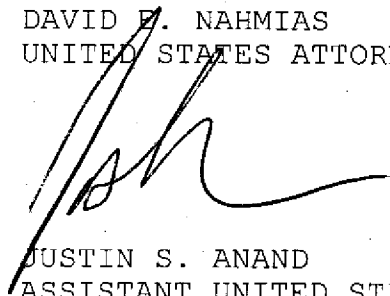
2. Upon conviction of the offenses alleged in Counts One through Five, Defendants HOWARD BERKOWITZ, ARTHUR HARGRAVES, and DANIEL PUFFENBERGER shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 982(a)(1)&(7), all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the Federal health care offenses set forth above in violation of Title 18, United States Code, Section 1347, as defined in Title 18, United States Code, Section 24.

3. The types of property which may be forfeited to satisfy the claim include, but are not limited to, the foregoing property, any property, real or personal, traceable to the foregoing property and any "substitute" property, as defined in Title 18, United States Code, Section 982(b), of a value equal to any and all assets identified specifically, which a) has or have been transferred, sold or deposited with a third party; b) which

cannot be located by due diligence; c) which has or have been placed beyond the jurisdiction of this court; d) which has or have been substantially diminished in value; or e) which has or have been co-mingled with other property and cannot be divided without difficulty.

A *true* BILL
 WOL
FOREPERSON

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