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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
June 2011 Grand Jury

12 CR 2599 H

~~12 CR 2599 BEN~~

UNITED STATES OF AMERICA,

Case No.

Plaintiff,

INDICTMENT

v.

IRVING SCHWARTZ (1),
~~_____~~,

Title 18, U.S.C., Sec. 371 -
Conspiracy; Title 18, U.S.C.,
Sec. 1347 - Health Care Fraud;
Title 18, U.S.C., Sec. 1512 -
Attempt to Tamper with a Witness;
Title 18, U.S.C., Sec. 2 - Aiding
and Abetting; Title 18, U.S.C.,
Sec. 982(a)(7) - Criminal
Forfeiture

Defendants.

The grand jury charges:

INTRODUCTORY ALLEGATIONS

At all times pertinent to this Indictment:

THE DEFENDANTS AND OTHER PARTICIPANTS

1. Defendant IRVING SCHWARTZ ("SCHWARTZ") was a medical doctor who prescribed power wheelchairs and accessories to Medicare beneficiaries who lived in Imperial County, which is located within the Southern District of California.

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2. [REDACTED]

3. Co-conspirator Gloria Hernandez (charged elsewhere) was a patient recruiter who located Medicare beneficiaries whose unique identification numbers could be used to file claims with Medicare for DME.

4. Co-conspirators Aristeo and Laura Tavares (charged elsewhere) were the joint owners and operators of A&L Medical Supply ("A&L"), a California business entity doing business at 3711 North Harbor Drive #B, Fullerton, California 92835. Aristeo and Laura Tavares, through A&L, were engaged in the business of selling DME, including power wheelchairs and accessories, to Medicare beneficiaries.

THE MEDICARE PROGRAM

5. The Medicare Program ("Medicare") was a federal health care program, affecting commerce, that provided 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 ("HHS"). Medicare was a "health care benefit program" as defined by Title 18, United States Code, Section 24(b), and a "Federal health care program," as defined by Title 42, United States Code, Section 1320a-7b(f).

1 6. Medicare was subdivided into multiple Parts. Medicare Part
2 B covered, among other things, medically necessary physician services
3 and outpatient care, including an individual's access to DME, such as
4 power wheelchairs and accessories.

5 7. CMS contracted with private insurance carriers to process
6 and pay Medicare claims. DME claims in Southern California were
7 processed and paid by the Durable Medical Equipment Regional Carrier
8 for Region D, which covers the Western United States.

9 8. Patients who qualified for Medicare benefits were commonly
10 referred to as "beneficiaries." Each beneficiary was given a Health
11 Identification Card ("HIC") containing a unique identification number.

12 9. DME companies, physicians and other healthcare providers
13 that provided services to Medicare beneficiaries were referred to as
14 Medicare "providers." To become eligible to participate in Medicare,
15 a provider was required to submit an application in which he/she
16 agreed to comply with all governing laws and regulations. . Once
17 approved by Medicare, a provider was assigned a "provider number."
18 A health care provider with a provider number could file claims with
19 Medicare to obtain reimbursement for services rendered to
20 beneficiaries. Payments under the Medicare program were often made
21 directly to providers, rather than to the beneficiaries.

22 10. Defendant IRVING SCHWARTZ first became a Medicare provider
23 on or about January 1, 1988, and was issued a Medicare provider
24 number.

25 11. [REDACTED]
26 [REDACTED]

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1 12. Co-conspirator Aristeo Tavares became a Medicare provider
2 on or about September 6, 2007, and was issued a Medicare provider
3 number.

4 13. Medicare reimbursed DME companies and other health care
5 providers for equipment and services rendered to beneficiaries.
6 Medicare would only reimburse providers for DME and related items if
7 the DME was prescribed by the beneficiary's physician and was
8 medically necessary for the treatment of the beneficiary's illness or
9 injury.

10 14. Under Medicare regulations, a power wheelchair was only
11 considered medically necessary if: (1) the beneficiary had a mobility
12 limitation that significantly impaired the beneficiary's ability to
13 walk, feed, dress, or bathe; and (2) the beneficiary had so little
14 upper body strength that he or she could not accomplish these
15 activities by using a manual wheelchair, walker or cane.

16 15. To ensure that each beneficiary met these criteria, Medicare
17 required a physician to conduct a face-to-face examination and provide
18 a written evaluation about the beneficiary's mobility and his/her need
19 for a power wheelchair. Only after conducting this face-to-face
20 examination could a physician write a prescription for a power
21 wheelchair. Medicare regulations required the records of the face-to-
22 face examination and the power wheelchair prescription to be forwarded
23 to the DME company within 45 days of completion of the face-to-face
24 examination.

25 16. If a DME company filled a valid prescription and supplied
26 a power wheelchair to a Medicare beneficiary, the DME company could
27 submit a claim to Medicare for reimbursement. A Medicare claim for
28 DME reimbursement was required to set forth, among other things, the

1 beneficiary's name and unique Medicare identification number, the
2 equipment provided to the beneficiary, the date that the equipment was
3 provided, the cost of the equipment, and the name and unique physician
4 identification number of the physician who prescribed the equipment.

5 17. To receive reimbursement from Medicare, DME companies
6 submitted or caused the submission of claims for payment for services
7 to beneficiaries, either directly or through a billing company.
8 Approved Medicare providers could submit claims on paper or
9 electronically. When submitting a claim, the provider was required
10 to certify: (1) that the contents of the claim were true, correct,
11 and complete; (2) that the claim was prepared in compliance with the
12 laws and regulations governing Medicare; and (3) that the equipment
13 referred to in the claim was medically necessary.

14 18. To protect the integrity of Medicare, federal law prohibited
15 doctors and DME companies from paying or receiving illegal
16 remuneration, including kickbacks and bribes, in exchange for power
17 wheelchair prescriptions that were billed to Medicare.

18 Count 1

19 CONSPIRACY TO PAY AND RECEIVE HEALTH CARE KICKBACKS
20 AND DEFRAUD MEDICARE

21 [18 U.S.C. § 371]

22 19. Paragraphs 1 through 18 of the Introductory Allegations of
23 this Indictment are realleged and incorporated by reference.

24 20. Beginning no later than in or about July 2007, and
25 continuing until in or about September 2008, within the Southern
26 District of California, and elsewhere, Defendants IRVING SCHWARTZ
27 [REDACTED], together with Co-conspirators Hernandez, Aristeo
28 Tavares and Laura Tavares (all charged elsewhere), and others known

1 and unknown to the Grand Jury, did knowingly and intentionally
2 conspire together and with each other and with other persons known and
3 unknown to the grand jury, to commit offenses against the United
4 States as set forth below:

5 a. To execute a material scheme to defraud a health care
6 benefit program, that is, Medicare, and to obtain, by means of
7 materially false and fraudulent pretenses, representations, promises,
8 and omission and concealment of material facts, money and property
9 owned by, and under the custody and control of, Medicare, in
10 connection with the delivery of and payment for health care benefits,
11 items and services, in violation of 18 U.S.C. § 1347; and

12 b. To knowingly and wilfully solicit, pay, offer and
13 receive remuneration, specifically kickbacks and bribes, directly and
14 indirectly, overtly and covertly, in return for referring
15 beneficiaries for the furnishing and arranging for the furnishing for
16 any item and service for which payment may be made in whole or in part
17 by a Federal health care program, in violation of 42 U.S.C. § 1320a-
18 7b.

19 **PURPOSE OF THE CONSPIRACY**

20 21. It was the purpose of the conspiracy for the Defendants and
21 their Co-conspirators to unlawfully enrich themselves by, among other
22 things, submitting and causing the submission of false and fraudulent
23 claims to Medicare.

24 **THE MANNER AND MEANS OF THE CONSPIRACY**

25 22. The manner and means by which the Defendants and their Co-
26 conspirators sought to accomplish the objects of the conspiracy were,
27 in substance, as follows:

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1 a. Co-conspirator Hernandez would travel to the Southern
2 District of California to recruit Medicare beneficiaries by offering
3 free DME, including power wheelchairs, to beneficiaries who had no
4 medical need for such equipment.

5 b. Defendant SCHWARTZ would travel with Co-conspirator
6 Hernandez to the homes of Medicare beneficiaries in the Southern
7 District of California, and would write false and fraudulent
8 prescriptions for power wheelchairs and other DME ("power wheelchair
9 prescriptions"), even though the DME was not medically necessary.

10 c. ██████████ Co-conspirator Hernandez would
11 pay bribes and kickbacks to Defendant SCHWARTZ in exchange for the
12 fraudulent power wheelchair prescriptions written by Defendant
13 SCHWARTZ.

14 d. ██████████ would sell some of the fraudulent
15 power wheelchair prescriptions written by Defendant SCHWARTZ to Co-
16 conspirators Aristeo and Laura Tavares.

17 e. ██████████ and Co-conspirators Aristeo and
18 Laura Tavares would submit the fraudulent power wheelchair
19 prescriptions to Medicare and claim reimbursement for approximately
20 \$1,355,764 in false and fraudulent claims.

21 OVERT ACTS

22 23. In furtherance of the conspiracy, and to accomplish its
23 purpose, the following overt acts were committed, among others:

24 a. In or about October 2007, Defendant SCHWARTZ wrote a
25 false and fraudulent prescription for a power wheelchair and
26 accessories ("power wheelchair prescription") for Medicare beneficiary
27 J.R.

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1 b. In or about October 2007, Defendant SCHWARTZ sold the
2 false and fraudulent power wheelchair prescription for J.R. to Co-
3 conspirator Hernandez in exchange for a \$300 cash kickback.

4 c. In or about October 2007, ██████████ purchased
5 J.R.'s false and fraudulent power wheelchair prescription from Co-
6 conspirator Hernandez in exchange for a kickback of approximately
7 \$1,000.

8 d. On or about October 31, 2007, ██████████,
9 knowing J.R.'s prescription to be false and fraudulent, submitted a
10 false claim to Medicare for reimbursement of the power wheelchair and
11 accessories.

12 e. In or about November 2007, Defendant SCHWARTZ wrote a
13 false and fraudulent power wheelchair prescription for Medicare
14 beneficiary E.L.

15 f. In or about November 2007, Defendant SCHWARTZ sold the
16 false and fraudulent power wheelchair prescription for E.L. to Co-
17 conspirator Hernandez in exchange for a \$300 cash kickback.

18 g. In or about November 2007, ██████████ purchased
19 E.L.'s false and fraudulent power wheelchair prescription from Co-
20 conspirator Hernandez in exchange for a kickback of approximately
21 \$1,000.

22 h. On or about November 28, 2007, ██████████,
23 knowing E.L.'s prescription to be false and fraudulent, submitted a
24 false claim to Medicare for reimbursement of the power wheelchair and
25 accessories.

26 i. In or about December 2007, Defendant SCHWARTZ wrote a
27 false and fraudulent power wheelchair prescription for Medicare
28 beneficiary L.L.

1 j. In or about December 2007, Defendant SCHWARTZ sold the
2 false and fraudulent power wheelchair prescription for L.L. to Co-
3 conspirator Hernandez in exchange for a \$300 cash kickback.

4 k. In or about December 2007, ██████████ purchased
5 L.L.'s false and fraudulent power wheelchair prescription from Co-
6 conspirator Hernandez in exchange for a kickback of approximately
7 \$1,000.

8 l. On or about December 7, 2007, ██████████,
9 knowing L.L.'s prescription to be false and fraudulent, submitted a
10 false claim to Medicare for reimbursement of the power wheelchair and
11 accessories.

12 m. In or about December 2007, Defendant SCHWARTZ wrote a
13 false and fraudulent power wheelchair prescription for Medicare
14 beneficiary H.U.

15 n. In or about December 2007, Defendant SCHWARTZ sold the
16 false and fraudulent power wheelchair prescription for H.U. to Co-
17 conspirator Hernandez in exchange for a \$300 cash kickback.

18 o. In or about December 2007, ██████████ purchased
19 H.U.'s false and fraudulent power wheelchair prescription from Co-
20 conspirator Hernandez in exchange for a kickback of approximately
21 \$1,000.

22 p. On or about December 7, 2007, ██████████,
23 knowing H.U.'s prescription to be false and fraudulent, submitted a
24 false claim to Medicare for reimbursement of the power wheelchair and
25 accessories.

26 q. In or about December 2007, Defendant SCHWARTZ wrote a
27 false and fraudulent power wheelchair prescription for Medicare
28 beneficiary M.R.

1 r. In or about December 2007, Defendant SCHWARTZ sold the
2 false and fraudulent power wheelchair prescription for M.R. to Co-
3 conspirator Hernandez in exchange for a \$300 cash kickback.

4 s. In or about December 2007, [REDACTED] purchased
5 M.R.'s false and fraudulent power wheelchair prescription from Co-
6 conspirator Hernandez in exchange for a kickback of approximately
7 \$1,000.

8 t. On or about December 12, 2007, [REDACTED],
9 knowing M.R.'s prescription to be false and fraudulent, submitted a
10 false claim to Medicare for reimbursement of the power wheelchair and
11 accessories.

12 u. In or about January 2008, Defendant SCHWARTZ wrote a
13 false and fraudulent power wheelchair prescription for Medicare
14 beneficiary J.C.

15 v. In or about January 2008, Defendant SCHWARTZ sold the
16 false and fraudulent power wheelchair prescription for J.C. to Co-
17 conspirator Hernandez in exchange for a \$300 cash kickback.

18 w. In or about January 2008, [REDACTED] purchased
19 J.C.'s false and fraudulent power wheelchair prescription from Co-
20 conspirator Hernandez in exchange for a kickback of approximately
21 \$1,000.

22 x. In or about January 2008, [REDACTED] sold
23 J.C.'s false and fraudulent power wheelchair prescription to Co-
24 conspirators Aristeo and Laura Tavares.

25 y. On or about January 5, 2008, Co-conspirators Aristeo
26 and Laura Tavares, knowing J.C.'s prescription to be false and
27 fraudulent, submitted a false claim to Medicare for reimbursement of
28 the power wheelchair and accessories.

1 z. In or about January 2008, Defendant SCHWARTZ wrote a
2 false and fraudulent power wheelchair prescription for Medicare
3 beneficiary S.R.

4 aa. In or about January 2008, Defendant SCHWARTZ sold the
5 false and fraudulent power wheelchair prescription for S.R. to Co-
6 conspirator Hernandez in exchange for a \$300 cash kickback.

7 bb. In or about January 2008, [REDACTED] purchased
8 S.R.'s false and fraudulent power wheelchair prescription from Co-
9 conspirator Hernandez in exchange for a kickback of approximately
10 \$1,000.

11 cc. On or about January 10, 2008, [REDACTED],
12 knowing S.R.'s prescription to be false and fraudulent, submitted a
13 false claim to Medicare for reimbursement of the power wheelchair and
14 accessories.

15 dd. In or about January 2008, Defendant SCHWARTZ wrote a
16 false and fraudulent power wheelchair prescription for Medicare
17 beneficiary A.R.

18 ee. In or about January 2008, Defendant SCHWARTZ sold the
19 false and fraudulent power wheelchair prescription for A.R. to Co-
20 conspirator Hernandez in exchange for a \$300 cash kickback.

21 ff. In or about January 2008, [REDACTED] purchased
22 A.R.'s false and fraudulent power wheelchair prescription from Co-
23 conspirator Hernandez in exchange for a kickback of approximately
24 \$1,000.

25 gg. On or about January 10, 2008, [REDACTED],
26 knowing A.R.'s prescription to be false and fraudulent, submitted a
27 claim to Medicare for reimbursement of the power wheelchair and
28 accessories.

1 hh. In or about January 2008, Defendant SCHWARTZ wrote a
2 false and fraudulent power wheelchair prescription for Medicare
3 beneficiary A.R.

4 ii. In or about January 2008, Defendant SCHWARTZ sold the
5 false and fraudulent power wheelchair prescription for A.R. to Co-
6 conspirator Hernandez in exchange for a \$300 cash kickback.

7 jj. In or about January 2008, ██████████ purchased
8 A.R.'s false and fraudulent power wheelchair prescription from Co-
9 Conspirator Hernandez in exchange for a kickback of approximately
10 \$1,000.

11 kk. On or about January 10, 2008, ██████████,
12 knowing A.R.'s prescription to be false and fraudulent, submitted a
13 claim to Medicare for reimbursement of the power wheelchair and
14 accessories.

15 ll. In or about April 2008, Defendant SCHWARTZ wrote a
16 false and fraudulent power wheelchair prescription for Medicare
17 beneficiary M.A.

18 mm. In or about April 2008, Defendant SCHWARTZ sold the
19 false and fraudulent power wheelchair prescription for M.A. to Co-
20 conspirator Hernandez in exchange for a \$300 cash kickback.

21 nn. In or about April 2008, ██████████ purchased
22 M.A.'s false and fraudulent power wheelchair prescription from Co-
23 conspirator Hernandez in exchange for a kickback of approximately
24 \$1,000.

25 oo. In or about April 2008, ██████████ sold M.A.'s
26 false and fraudulent prescription to Co-conspirators Aristeo and Laura
27 Tavares.

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1 pp. On or about April 3, 2008, Co-conspirators Aristeo and
2 Laura Tavares, knowing M.A.'s prescription to be false and fraudulent,
3 submitted a claim to Medicare for reimbursement of the power
4 wheelchair and accessories.

5 All in violation of Title 18, United States Code, Section 371.

6 Counts 2-11

7 HEALTH CARE FRAUD

8 [18 U.S.C. §§ 1347 and 2]

9 24. Paragraphs 1 through 18 of the Introductory Allegations of
10 this Indictment are realleged and incorporated by reference.

11 25. Beginning no later than in or about July 2007, and
12 continuing until in or about September 2008, within the Southern
13 District of California, and elsewhere, [REDACTED], and
14 others known and unknown to the Grand Jury, in connection with the
15 delivery of and payment for health care benefits, items, and services,
16 devised and intended to devise a material scheme and artifice to
17 defraud a healthcare benefit program, namely Medicare, and to obtain
18 money from Medicare by means of materially false and fraudulent
19 pretenses, representations, promises, and omission and concealment of
20 material facts.

21 THE SCHEME AND ARTIFICE

22 26. The fraudulent scheme operated, in substance, in the manner
23 described in Paragraph 22 of this Indictment, which is realleged and
24 incorporated by reference as though fully set forth herein.

25 ACTS IN EXECUTION OF THE SCHEME AND ARTIFICE

26 27. On or about the dates set forth below, within the Southern
27 District of California and elsewhere, [REDACTED] and others
28 known and unknown to the grand jury, knowingly and willfully executed

1 the scheme to defraud described above, by submitting and causing to
 2 be submitted to Medicare the following false and fraudulent claims for
 3 power wheelchairs and accessories:

Count	Date Claim Submitted	Medicare Beneficiary	Description of Items Billed	Amount Billed	Claim Number
2.	10/31/2007	J.R.	Power Wheelchair and Accessories	\$5,865	107306822482000
3.	11/28/2007	E.L.	Power Wheelchair and Accessories	\$5,865	107338889471000
4.	12/07/2007	L.L.	Power Wheelchair and Accessories	\$5,865	107344825119000
5.	12/07/2007	H.U.	Power Wheelchair and Accessories	\$5,865	107344825118000
6.	12/12/2007	M.R.	Power Wheelchair and Accessories	\$5,865	107348822035000
7.	01/05/2008	J.C.	Power Wheelchair and Accessories	\$5,865	108029817604000
8.	1/10/2008	S.R.	Power Wheelchair and Accessories	\$5,865	108011822601000
9.	1/10/2008	A.R.	Power Wheelchair and Accessories	\$5,865	108011822599000
10.	01/10/2008	A.R.	Power Wheelchair and Accessories	\$5,865	108011822595000
11.	04/03/2008	M.A.	Power Wheelchair and Accessories	\$5,865	108095818312000

25 All in violation of Title 18, United States Code, Section 1347.
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1 Count 12

2 ATTEMPT TO TAMPER WITH A WITNESS

3 [18 U.S.C. § 1512]

4 28. Paragraphs 1 through 4 of the Introductory Allegations of
5 this Indictment are realleged and incorporated by reference.

6 29. On or about January 11, 2012, ██████████ did
7 knowingly and corruptly attempt to persuade another person, namely Co-
8 conspirator Aristeo Tavares, to provide false and misleading
9 information to the Federal Bureau of Investigation, with the intent
10 to hinder, delay and prevent communication to a law enforcement
11 officer of the United States of information relating to the commission
12 of a federal offense; in violation of Title 18, United States Code,
13 Section 1512(b)(3).

14 CRIMINAL FORFEITURE ALLEGATIONS

15 [18 U.S.C. § 982(a)(7)]

16 30. Paragraphs 1 through 27 of this Indictment are realleged and
17 incorporated as if fully set forth herein for the purpose of alleging
18 forfeiture pursuant to Title 18, United States Code, Section
19 982(a)(7).

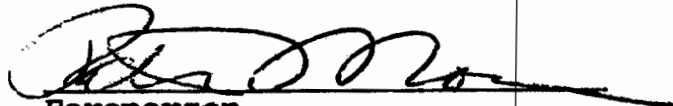
20 31. Upon conviction of the offenses of Conspiracy to Pay and
21 Receive Kickbacks and Defraud Medicare, and Health Care Fraud as
22 alleged in Counts 1-11, Defendants SCHWARTZ and ██████████ shall,
23 pursuant to Title 18, United States Code, Section 982(a)(7), forfeit
24 to the United States: (a) all right, title, and interest in any
25 property, real or personal, that constitutes or is derived, directly
26 or indirectly, from gross proceeds traceable to the commission of such
27 offenses; and (b) a sum of money equal to the total amount of gross
28 proceeds derived, directly or indirectly, from such offenses.

1 32. If any of the above-described forfeitable property, as a
2 result of any act or omission of Defendants SCHWARTZ and ██████████: (a)
3 cannot be located upon the exercise of due diligence; (b) has been
4 transferred or sold to, or deposited with, a third party; (c) has been
5 placed beyond the jurisdiction of the Court; (d) has been
6 substantially diminished in value; or (e) has been commingled with
7 other property which cannot be divided without difficulty; it is the
8 intent of the United States, pursuant to Title 21, United States Code,
9 Section 853(p) and Title 18, United States Code, Section 982(b), to
10 seek forfeiture of any other property of Defendants SCHWARTZ and
11 ██████████ up to the value of the forfeitable property described above;

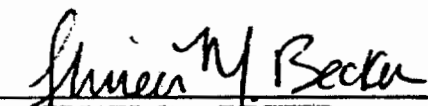
12 All pursuant to Title 18, United States Code, Section 982(a)(7).

13 DATED: June 27, 2012.

14 A TRUE BILL:

15 
16 Foreperson

17 LAURA E. DUFFY
18 United States Attorney

19 By: 
20 SHIREEN M. BECKER
21 Assistant U.S. Attorney

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