

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : **CRIMINAL NO. 10 -**

 v. : **DATE FILED: June 9, 2010**

JOSEPH J. LERNER : **VIOLATIONS:**
 18 U.S.C. § 1347 (health care fraud - 1
 count)
 18 U.S.C. § 1341 (mail fraud - 1 count)
 Notice of forfeiture

INFORMATION

COUNT ONE

(Health Care Fraud)

THE UNITED STATES ATTORNEY CHARGES THAT:

Background

At all times material to this information:

1. Defendant JOSEPH J. LERNER was a licensed chiropractor and the owner of the Horsham 24-Hour Fitness and Wellness Center (“Horsham Fitness”), located at 217 Witmer Road, in Horsham, Pennsylvania.

2. Defendant JOSEPH J. LERNER, as the owner of Horsham Fitness, employed a number of unlicensed personnel, including personal trainers and massage therapists, at Horsham Fitness, who were supposed to work under the supervision and at the direction of defendant LERNER.

3. Independence Blue Cross (“IBC”), Aetna Health Management, LLC (“Aetna”), Aetna Life Insurance Company (“Aetna Life”), Highmark Blue Shield (“Highmark”), United

HealthCare Insurance Company (“United”), AmeriHealth Administrators (“AmeriHealth”), Cigna-Connecticut General Life Insurance Company (“Cigna”), Humana Health Insurance Company (“Humana”) and the Trustmark Insurance Companies (“Trustmark”) were “health care benefits programs” as defined by Title 18, United States Code, Section 24(b).

4. IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana and Trustmark provided reimbursement to health care providers who were parties to a Professional Provider Agreement and who submitted claim forms that included several items of information, including the provider or supplier’s Provider Identification Number (“PIN”), the beneficiary's name, and the procedure code for the type of services rendered. Each procedure code corresponded to a specific medical procedure and the codes were defined in the American Medical Association Physician's Current Procedure Terminology (“CPT”) Guidebook and the Blue Shield Blue Cross Procedure Terminology Manual (“PTM”).

5. If IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana or Trustmark approved a claim, the amount of reimbursement to the provider was determined based on the procedure code.

6. IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana and Trustmark reimbursed health care providers, including chiropractors, for certain physical therapy procedure codes, but only if the chiropractor engaged in direct one-on-one contact with a patient for the following procedures:

- a. 97110 - Therapeutic procedure involving exercises to develop strength and endurance, range of motion, and flexibility;
- b. 97124 - Therapeutic procedure involving massage;

- c. 97140 - Manual therapy techniques, including mobilization/manipulation and manual traction; and
- d. 97530 - Therapeutic activities to improve functional performance.

7. IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana and Trustmark reimbursed health care providers identified as chiropractics for certain chiropractic manipulation procedure codes, but only if the chiropractor physically performed the manipulation on the patient, for the following procedures:

- a. 98942 - Chiropractic manipulative treatment, spinal, 5 regions.
- b. 98943 - Chiropractic manipulative treatment, extra-spinal, 1 or more regions.

8. IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana and Trustmark did not reimburse for services that were performed by a health care provider that were not medically necessary and for maintenance or wellness purposes. IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana and Trustmark also did not reimburse health care providers for services provided by a massage therapist or a personal trainer, whether employed by or under the supervision of a provider.

9. Horsham Fitness was a party to Professional Provider Agreements with IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana and Trustmark.

10. Defendant JOSEPH J. LERNER was responsible for the preparation of the claims that were submitted to IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana and Trustmark. Defendant LERNER was required to certify that all of the information on the claims was accurate.

The Health Care Fraud Scheme

11. Defendant JOSEPH J. LERNER hired masseuses and personal trainers to work at Horsham Fitness, to provide massages and personal training sessions to gym members whose health insurance defendant LERNER would bill fraudulently for chiropractic services that defendant LERNER would not and did not provide.

12. Defendant JOSEPH J. LERNER suggested to persons seeking to join Horsham Fitness that they could obtain massages and personal training sessions for the very low price of only a co-payment, usually \$10, by having their health insurance pay for those massages and personal training sessions.

13. Defendant JOSEPH J. LERNER directed the masseuses and personal trainers to provide massages and personal training to Horsham Fitness gym members, knowing that these services were neither medically necessary nor reimbursable under the terms of the gym members' health insurance policies.

14. Defendant JOSEPH J. LERNER directed employees of Horsham Fitness to provide receipts to gym members who had received massages and personal training sessions and paid a \$10 co-payment, which receipts stated that chiropractic services had been provided.

15. Defendant JOSEPH J. LERNER fraudulently represented on claims that he had provided chiropractic services, when he had not; and that all of the services provided were medically necessary, when those services were neither medically necessary nor reimbursable under the terms of the gym members' health insurance policies.

16. Defendant JOSEPH J. LERNER caused the submission of billings to IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana and Trustmark which falsely

represented that he (a) performed procedures upon patients that were medically necessary; and (b) performed all of the procedures billed, when, in fact, as defendant LERNER knew, the services had not been provided by defendant LERNER but had instead been provided by his Horsham Fitness unlicensed personnel.

17. Defendant JOSEPH J. LERNER caused the submission of fraudulent medical bills to IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana and Trustmark totaling approximately \$3,004,962, resulting in payments from IBC, Aetna, Aetna Life, Highmark, United, AmeriHealth, Cigna, Humana and Trustmark totaling approximately \$1,941,010.43.

18. From in or about January, 2007 through on or about March 23, 2010, in the Eastern District of Pennsylvania, defendant

JOSEPH J. LERNER

knowingly and willfully executed a scheme and artifice to defraud health care benefit programs, that is, Independence Blue Cross, Aetna Health Management, LLC, Aetna Life Insurance Company, Highmark Blue Shield, United HealthCare Insurance Company, AmeriHealth Administrators, Cigna-Connecticut General Life Insurance Company, Humana Health Insurance Company and the Trustmark Insurance Companies, and to obtain money and property owned by and under the custody and control of those health care benefit programs, by means of false and fraudulent pretenses, representations, and promises, in connection with the delivery of and payment for health care benefits, items and services, by submitting and causing to be submitted fraudulent health care insurance claims for services that were not medically necessary, that were purportedly provided directly by defendant LERNER when the defendant knew that neither he

nor any other licensed medical professional had provided the services, and for services that the defendant knew were not reimbursable.

All in violation of Title 18, United States Code, Section 1347.

COUNT TWO

(Mail Fraud)

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

Introduction

1. The allegations of paragraphs 1 through 10 of Count One are realleged here.

The Scheme to Defraud

2. From in or about January, 2007 to on or about March 23, 2010, in the Eastern District of Pennsylvania, defendant

JOSEPH J. LERNER

devised and intended to devise a scheme to defraud Independence Blue Cross, Aetna Health Management, LLC, Aetna Life Insurance Company, Highmark Blue Shield, United HealthCare Insurance Company, AmeriHealth Administrators, Cigna-Connecticut General Life Insurance Company, Humana Health Insurance Company and the Trustmark Insurance Companies, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

3. It was the object of the scheme described in paragraph 2 for defendant JOSEPH J. LERNER to submit and cause to be submitted fraudulent health care insurance claims for services that were not medically necessary, that were purportedly provided directly by defendant LERNER when the defendant knew that neither her nor any other licensed medical professional had provided the services, and for services that the defendant knew were not reimbursable.

Manner and Means

4. It was part of the scheme to defraud that defendant JOSEPH LERNER engaged in the manner and means described in paragraphs 11-17 of Count 1 of this information.

5. On or about March 12, 2009, in the Eastern District of Pennsylvania, defendant

JOSEPH J. LERNER

for the purpose of executing the scheme described above, and attempting to do so, and aiding and abetting its execution, knowingly caused to be delivered by the United States Postal Service, according to the directions thereon, check number 3104294487 in the amount of \$38,453.00, which was a payment made by Independence Blue Cross based on fraudulent claims submitted by defendant LERNER for services that were not medically necessary, that were purportedly provided directly by defendant LERNER when defendant LERNER knew that neither he nor any other licensed medical professional had provided the services, and for services that the defendant knew were not reimbursable.

All in violation of Title 18, United States Code, Section 1341.

NOTICE OF FORFEITURE

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. As a result of the violation of Title 18, United States Code, Section 1347, set forth in this information, defendant

JOSEPH J. LERNER

shall forfeit to the United States of America any property that constitutes or is derived from gross proceeds traceable to the commission of such offense, as charged in this information, including, but not limited to, the sum of \$432,834.12.

2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- (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 divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982(b), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other

property of the defendant up to the value of the property subject to forfeiture.

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

ZANE DAVID MEMEGER
UNITED STATES ATTORNEY