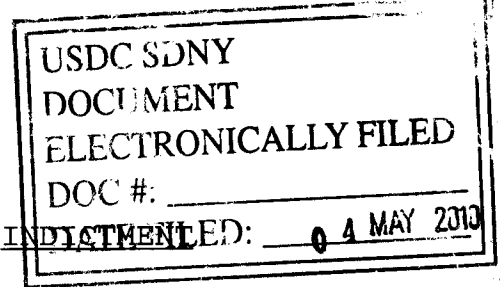


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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UNITED STATES OF AMERICA, :
:
- v. - :
:
AUGUSTO GUZMAN, :
ASMED BARRERA, :
ROBERTO AYMAT, and :
JORGE RIVERO, :
:
Defendants. :
:
----- -x

INDICTMENTED: 04 MAY 2010
10 Cr.

10 CRIM 389

COUNT ONE
(Conspiracy to Commit Health Care Fraud and
Mail Fraud)

The Grand Jury charges:

Background

1. At all times relevant to this Indictment, the Medicare Program ("Medicare") was a federal health care program providing benefits to persons who were over the age of sixty-five 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").

2. At all times relevant to this Indictment, Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b). Individuals who received benefits under Medicare are referred to as "Medicare beneficiaries."

3. At all times relevant to this Indictment, Part B of Medicare ("Medicare Part B") was a program that covered a limited set of medications, including medications that were administered via injection or infusion and that were furnished as part of a physician service. Injection treatments involved the administration of medication by inserting a syringe directly into a vein, muscle or the fatty tissue beneath the skin. Infusion treatments involved the administration of medication through a catheter into the bloodstream. Health care providers who met certain criteria could obtain Medicare provider numbers, which allowed them to submit claims directly to Medicare for reimbursement for the cost of injection and infusion treatments provided to eligible Medicare beneficiaries.

4. At all times relevant to this Indictment, Medicare Plan B covered the pharmaceutical drugs Neupogen, Procrit, Rituxin, and Corticotropin (collectively, the "Drugs"). Neupogen was typically used to treat low white blood cell counts. Procrit was typically used to treat anemia. Rituxin was typically used to treat non-Hodgkin's lymphoma. Corticotropin was typically used to treat infantile spasm chematologic disorders. Each injection or infusion of the Drugs cost hundreds of dollars.

5. At all times relevant to this Indictment, in order to receive a payment from Medicare, a health care provider was required to submit a health insurance claim form in hard copy or

electronically to Medicare. A health care provider could contract with a billing company to transmit claims to Medicare on its behalf.

6. At all times relevant to this Indictment, Medicare Part B reimbursed health care providers directly for the cost of injection and infusion treatments administered to eligible Medicare beneficiaries, provided that those treatments were ordered by a licensed physician who certified that the treatments were medically necessary for the beneficiaries.

The Relevant Individuals and Entities

7. At all times relevant to this Indictment, ROBERTO AYMAT, the defendant, was a physician licensed to practice medicine in New York State and had a provider number assigned to him by Medicare. AYMAT was the principal of Roberto Aymat, M.D. P.C. ("Aymat M.D. P.C."), a New York corporation that had a medical clinic at 160 Wadsworth Avenue, Suite 105, New York, New York (the "Wadsworth Clinic"), and a medical clinic at 305 Second Avenue, New York, New York (the "Second Avenue Clinic"). Aymat M.D. P.C. maintained a bank account at Citibank in New York, New York (the "Aymat-Citibank Account"), on which AYMAT and an individual not named as a defendant herein ("Individual-1") were the sole signatories.

8. At all times relevant to this Indictment, a co-conspirator not named as a defendant herein ("CC-1") was the

vice-president of Premier Management Group, Inc. ("Premier Management"), which was incorporated in New York State in or about March 2007. Premier Management managed the Wadsworth Clinic from at least in or about March 2007 to in or about May 2008, and paid a portion of the Wadsworth Clinic's operating expenses, including its purchase of a portion of the Drugs, payroll and rent. Premier Management maintained a bank account at Wachovia Bank (the "Premier Management-Wachovia Account") on which CC-1 and another individual not named as a defendant herein ("Individual-2") were the sole signatories.

9. At all times relevant to this Indictment, ASMED BARRERA, the defendant, was the president and manager of Aozzyval Nursing Medical Consultant Corp. ("Aozzyval Nursing"), a New Jersey corporation, purportedly doing business at 6001 Kennedy Boulevard, Apartment B5, West New York, New Jersey. Aozzyval Nursing also managed the Wadsworth Clinic from in or about October 2007 to in or about May 2008, and paid some of its operating expenses. Aozzyval Nursing maintained an account at Wachovia Bank (the "Aozzyval Nursing-Wachovia Account") on which BARRERA was the sole signatory.

10. At all times relevant to this Indictment, AUGUSTO GUZMAN, the defendant, was a resident of Florida and was not licensed to practice medicine or nursing in New York State. GUZMAN participated in the operations of the Wadsworth Clinic and

the Second Avenue Clinic by, among other things, administering medication to Medicare beneficiaries, as explained below.

11. At all times relevant to this Indictment, JORGE RIVERO, the defendant, was a physician licensed to practice medicine in New York State and had a Medicare provider number. RIVERO treated certain patients at the Second Avenue Clinic and operated a medical clinic in Brooklyn, New York (the "Brooklyn Clinic"). (The Wadsworth Clinic, Second Avenue Clinic, and Brooklyn Clinic are collectively referred to hereinafter as the "Clinics." Medicare beneficiaries treated at the Clinics are collectively referred to hereinafter as the "Patients.")

The Scheme to Defraud

12. Beginning at least in or about January 2007, through in or about April 2009, AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT, and JORGE RIVERO, the defendants, and others known and unknown, engaged in a scheme to defraud Medicare. Specifically, as set forth below, the defendants: (1) recruited the Patients and paid them kickbacks, in exchange for which the defendants administered treatments of the Drugs to the Patients even though the Drugs were not medically necessary but which were billed to Medicare; and (2) used the Patients' Medicare information to submit wholly fraudulent claims in the name of the Patients to Medicare, reflecting treatments that were not, in fact, administered.

13. As a part of the fraudulent scheme, AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT and JORGE RIVERO, the defendants, and others known and unknown, recruited or caused others to recruit the Patients, who were infected with the human immunodeficiency virus ("HIV") or who had the acquired immune deficiency syndrome ("AIDS"). GUZMAN and BARRERA, with the knowledge and consent of AYMAT and RIVERO, typically instructed the Patients to visit one of the Clinics two to three times a week, where they purportedly received injections of one or a combination of the Drugs during each visit. In order to induce the Patients to attend the Clinics for the purported treatments, GUZMAN and BARRERA paid the Patients a kickback of between \$50 and \$100 for each visit.

14. AUGUSTO GUZMAN and ASMED BARRERA, the defendants, administered or purported to administer the Drugs to the Patients, even though neither was licensed to practice medicine or nursing in New York State. ROBERTO AYMAT and JORGE RIVERO, the defendants, who were licensed to practice medicine in New York and had Medicare provider numbers, authorized the Patients' treatment with the Drugs.

15. From in or about January 2007 through in or about April 2009, AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT and JORGE RIVERO, the defendants, fraudulently billed and received reimbursement from Medicare Part B for the Clinics' purported

expenditures on approximately 476,100 units of the Drugs that were supposedly administered to the Patients. In truth and in fact, the Clinics had purchased a total of only approximately 44,000 units of the Drugs from pharmaceutical vendors, or one-tenth of the quantity billed to Medicare Part B. As a result of the fraudulent claims, Medicare Part B reimbursed the defendants for approximately 430,000 units of the Drugs that the Clinics had not purchased and therefore could not have administered to the Patients.

16. As a further part of the fraudulent scheme, AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT and JORGE RIVERO, the defendants, either did not provide the Drugs the Clinics did purchase to the Patients, or provided the Drugs even though they were medically unnecessary. GUZMAN, BARRERA, AYMAT and RIVERO then submitted or caused to be submitted to Medicare fraudulent claims for medically unnecessary treatment or treatment that was never provided to the Patients.

17. As a result of their scheme to defraud Medicare, AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT and JORGE RIVERO, the defendants, submitted an aggregate of approximately \$10 million in fraudulent claims to Medicare for reimbursement of the costs of the Drugs and caused Medicare to pay an aggregate of approximately \$8 million in reimbursements on those fraudulent claims. The fraudulent claims were signed by and submitted under

the Medicare provider numbers of either AYMAT or RIVERO, the defendants.

18. As a result of the fraudulent scheme, Medicare transmitted an aggregate of over \$7,300,000 to the Aymat-Citibank Account, representing payments on the fraudulent claims submitted under the provider number of ROBERTO AYMAT, the defendant. Of that aggregate amount:

a. Approximately \$1,190,000 was subsequently disbursed to AUGUSTO GUZMAN, the defendant;

b. At least \$300,000 was subsequently disbursed to ROBERTO AYMAT, the defendant;

c. Approximately \$2.2 million was subsequently disbursed to the Aozzyval Nursing-Wachovia Account, on which ASMED BARRERA, the defendant, was the sole signatory; and

d. Approximately \$210,000 was subsequently disbursed to BARRERA.

19. As a result of the fraudulent scheme, Medicare also transmitted an aggregate of approximately \$1,100,000 to the Rivero/Barrera-Wachovia Account, representing payments on the fraudulent claims submitted under the Medicare provider number of JORGE RIVERO, the defendant. Of that aggregate amount:

a. Approximately \$350,000 was subsequently disbursed to AUGUSTO GUZMAN, the defendant;

b. Approximately \$245,000 was subsequently disbursed to the Aozzyval Nursing-Wachovia Account, on which ASMED BARRERA, the defendant, was the sole signatory;

c. Approximately \$70,000 was subsequently disbursed to BARRERA; and

d. Approximately \$120,000 was subsequently disbursed to JORGE RIVERO, the defendant.

Statutory Allegation

20. From at least in or about January 2007, up to and including in or about April 2009, in the Southern District of New York and elsewhere, AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT and JORGE RIVERO, the defendants, and others known and unknown, unlawfully, willfully, and knowingly combined, conspired, confederated and agreed together and with each other to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 1347 and 1341.

Objects of the Conspiracy

21. It was a part and an object of the conspiracy that AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT and JORGE RIVERO, the defendants, and others known and unknown, would and did execute and attempt to 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 the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

22. It was a further part and an object of the conspiracy that AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT and JORGE RIVERO, the defendants, and others known and unknown, would and did devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting so to do, would and did place in a post office and authorized depository for mail matter, a matter and thing to be sent and delivered by the Postal Service, and would and did deposit and cause to be deposited a matter and thing to be sent and delivered by a private and commercial interstate carrier, and would and did take and receive therefrom, a matter and thing, and would and did knowingly cause to be delivered by mail and such carrier according to the direction thereon, and at the place at which it was directed to be delivered by the person to whom it was addressed, such matter and thing, in violation of Title 18, United States Code, Section 1341.

Overt Acts

23. In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about May 10, 2007, AUGUSTO GUZMAN, the defendant, instructed an employee at the Wadsworth Clinic to complete a Medicare claim form for the amount of \$753.12, for 300 micrograms of Neupogen purportedly provided to a Patient.

b. On or about August 7, 2007, ROBERTO AYMAT, the defendant, by submitting fraudulent bills to Medicare, caused Medicare to transmit electronically approximately \$76,620 to the Aymat-Citibank Account in New York, New York.

c. On or about March 6, 2008, ASMED BARRERA, the defendant, signed a check drawn on the Aozzyval Nursing-Wachovia Account, payable to a pharmaceutical company, in the amount of approximately \$12,421.

d. On or about November 26, 2008, JORGE RIVERO, the defendant, signed a Medicare claim form for the amount of approximately \$5,806.

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

COUNT TWO
(Health Care Fraud)

The Grand Jury further charges:

24. The allegations set forth in paragraphs 1 through 19 and 23 are repeated and realleged as if fully set forth herein.

25. From at least in or about January 2007, up to and including in or about April 2009, in the Southern District of New York and elsewhere, AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT and JORGE RIVERO, the defendants, and others known and unknown, unlawfully, willfully, and knowingly executed, and attempted to 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 the delivery of and payment for health care benefits, items, and services, to wit, the defendants submitted and caused to be submitted fraudulent claims to Medicare Part B, a health care benefit program, for reimbursement for the Drugs which were either not administered to the Patients or were administered despite not being medically necessary.

(Title 18, United States Code, Sections 1347 and 2.)

COUNT THREE
(Mail Fraud)

The Grand Jury further charges:

26. The allegations set forth in paragraphs 1 through 19 and 23 are repeated and realleged as if fully set forth herein.

27. From at least in or about January 2007, up to and including in or about April 2009, in the Southern District of New York and elsewhere, AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT and JORGE RIVERO, the defendants, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting so to do, placed in a post office and authorized depository for mail matter, a matter and thing to be sent and delivered by the Postal Service, and deposited and caused to be deposited a matter and thing to be sent and delivered by a private and commercial interstate carrier, and took and received therefrom, a matter and thing, and knowingly caused to be delivered by mail and such carrier according to the direction thereon, and at the place at which it was directed to be delivered by the person to whom it was addressed, such matter and thing, to wit, the defendants submitted and caused to be submitted fraudulent claims to Medicare Part B for reimbursement for the Drugs which were either

not administered to the Patients or were administered despite not being medically necessary and, in furtherance of the fraudulent scheme, mailed and caused the mailing of the Drugs, Medicare notices to the Patients, and correspondence between Medicare and the Clinics.

(Title 18, United States Code, Sections 1341 and 2.)

FORFEITURE ALLEGATIONS

28. As the result of committing one or more of the federal health care offenses in violation of 18 U.S.C. §§ 24, 1347, 1341 and 1349, alleged in Counts One through Three of this Indictment, AUGUSTO GUZMAN, ASMED BARRERA, ROBERTO AYMAT, and JORGE RIVERO, the defendants, shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the offenses charged in Counts One through Three of this Indictment, including but not limited to the following:

a. At least \$8,000,000 in United States currency.

Substitute Asset Provision

29. 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; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), and Title 28, United States Codes, Section 2461(c), to seek forfeiture of any other property of said defendants up to the value of the forfeitable property.

(Title 18, United States Code, Sections 982, 1349, 1347, and 1341; Title 21, United States Code, Section 853; and Title 28, United States Code, Section 2461.)



FOREPERSON



PREET BHARARA
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

AUGUSTO GUZMAN, ASMED BARRERA,
ROBERTO AYMAT, and JORGE RIVERO,

Defendants.

INDICTMENT


10 Cr.

(18 U.S.C. §§ 1341, 1347, & 1349)

PREET BHARARA

United States Attorney.

A TRUE BILL


Foreperson.

5/4/10 Filed Indictment. Case assigned to J. Koeltl.



FOX
U.S.M.J.