

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon.
: :
v. : Criminal No. 11-
: :
AUGUSTUS EJERE : 18 U.S.C. § 1347
: 18 U.S.C. § 1035
: 18 U.S.C. § 2

I N D I C T M E N T

The Grand Jury, in and for the District of New Jersey,
sitting at Newark, charges:

COUNT ONE
(18 U.S.C. § 1347)

The Defendant and Pro Medical Equipment Supply, LLC

1. At all times relevant to this Indictment, the Defendant, AUGUSTUS EJERE, was the Director/Chief Executive Officer of Pro Medical Equipment Supply, LLC ("Promed"), a Medicare-approved provider of durable medical equipment ("DME"). Promed supplied a type of DME known as power mobility devices ("PMD"), such as power motorized wheelchairs ("Power Wheelchairs"). As part of his responsibilities at Promed, Defendant AUGUSTUS EJERE was responsible for Promed's Medicare billings.

The Medicare Program and Billing Procedures

2. The Medicare Program ("Medicare") is a federal program that provides free or below-cost health care benefits to

certain individuals, primarily the elderly, blind, and disabled. Medicare is a "health care benefit program" as defined by Title 18, United States Code, Section 24(b). Individuals who receive Medicare benefits are commonly referred to as "beneficiaries."

3. The Medicare Part B program is a federally funded supplemental insurance program that provides supplementary Medicare insurance benefits for individuals aged sixty-five or older and certain individuals who are disabled. The Medicare Part B program pays for medical services, including DME, for beneficiaries. The Medicare Part B program carrier for DME in New Jersey at all times relevant to this indictment was NHIC Corporation ("NHIC").

4. Medicare-approved providers of services and equipment to Medicare beneficiaries, such as Promed, are required to submit claims for payment on a form CMS-1500. Medicare requires that the provider of services or the supplier of items certify that the services rendered or the items delivered were medically necessary and were furnished by that provider or supplier. Providers participating in the Medicare program must certify 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. The bottom of the CMS-1500 form explicitly states that it is a crime to submit

any false claims or statements, or to conceal a material fact in relation to the submission of a claim.

5. Medicare does not reimburse providers for providing Power Wheelchairs unless the claim meets the requirements outlined in what are known as Local Coverage Decisions (herein "LCD"). An LCD is Medicare's method of advising providers of the requirements for billing. Should the required documentation outlined in the LCD not be on file with the supplier of the Power Wheelchair, any claims for reimbursement for the provision of the Power Wheelchair would be denied.

6. Since at least in or about July 2006, Promed has been receiving electronic newsletters from NHIC with regard to LCD policies, rules, regulations, and coding and billing issues. As a member of the NHIC electronic mailing list (known as a listserv), Promed is kept apprised of any changes that would affect reimbursement for DME supplies, including Power Wheelchair accessories. Each Power Wheelchair comes with an interface, or a mechanism for controlling the movement and direction of the machine. One type of interface is a joystick mechanism. A bulletin that is shared with all DME suppliers, entitled "Power Mobility Devices (PMD)-Basic Equipment Package," dated January 2007, states that there is no separate billing or payment for standard proportional joysticks (as opposed to non-proportional

joysticks), because the joysticks are included as part of the standard issue of the Power Wheelchair. Additionally, an NHIC Medicare Local Coverage Article entitled "Wheelchair Options and Accessories-Remote Joysticks and Controllers," dated June 13, 2008, states that there is no separate billing for a standard proportional remote joystick when it is provided at the time of initial issue of a Power Wheelchair.

7. According to records, AUGUSTUS EJERE attended Webinar "PMD 09-17," a Web-based seminar regarding PMDs. Also according to Medicare records, Defendant AUGUSTUS EJERE attended DME-provider training regarding PMDs in Atlantic City, New Jersey on June 11, 2008.

The Basic Equipment Package for Power Wheelchairs

8. When a Power Wheelchair is ordered for a Medicare beneficiary, that Power Wheelchair comes with the "basic equipment package." The Power Wheelchair basic equipment package includes a proportional controller/joystick and a semi-reclining back. A proportional controller/joystick moves in all directions, and the speed of the Power Wheelchair is adjusted depending upon how much pressure is applied to the controller/joystick. A semi-reclining back reclines backward to between 15 and 80 degrees of a vertical position.

9. In contrast to proportional controllers/joysticks and semi-reclining backs, non-proportional joysticks and fully-

reclining backs are not part of the basic equipment package for Power Wheelchairs. Instead, these accessories must be purchased separately and added onto the Power Wheelchair by a DME provider, such as Promed. If a non-proportional joystick or a fully reclining back is ordered for a beneficiary and these items are added onto the Power Wheelchair, Medicare is billed separately for these accessories, because they are not part of the Power Wheelchair basic equipment package. If billed appropriately, Medicare will then provide reimbursement to the DME provider for these accessories, provided they are medically necessary.

10. A non-proportional controller/joystick is designed for patients who do not have the ability to control a proportional controller/joystick. A Power Wheelchair equipped with a non-proportional controller/joystick moves at a constant speed. A fully reclining back accessory is a seat-back that reclines backward greater than 80 degrees of a vertical position.

11. As a Medicare-approved provider of Power Wheelchairs, Promed was allowed to seek Power Wheelchair reimbursement for accessories that it added to the basic equipment package. Specifically, Promed was allowed to seek reimbursement from Medicare for separate accessories added to a Power Wheelchair, such as a non-proportional controller/joystick or a fully reclining back. Promed was also permitted to seek reimbursement for wheelchair batteries that were provided with

the Power Wheelchairs. Promed was not allowed to bill Medicare for these items if they were not provided to beneficiaries.

The Scheme to Defraud

12. From at least in or about July 2005 through May 2010, in Essex County, in the District of New Jersey, and elsewhere, Defendant

AUGUSTUS EJERE

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, and aid and abet in executing, the above-described scheme and artifice to defraud a health care benefit program affecting commerce, that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of that health care benefit program.

The Object of the Scheme to Defraud

13. The object of the scheme and artifice to defraud was for Defendant AUGUSTUS EJERE to cause Promed to falsely code CMS-1500 forms in order to induce Medicare to make payments to Promed for non-proportional controllers/joysticks and fully reclining backs that Promed did not provide to beneficiaries, so that Promed and Defendant AUGUSTUS EJERE could profit as a result.

The Manner and Means of the Scheme to Defraud

14. From in or about approximately July 2005 through in or about November 2009, Promed billed Medicare for approximately 254 non-proportional controllers/joysticks and for approximately 228 fully reclining backs.

15. Despite billing for these non-proportional controllers/joysticks and fully reclining backs, Promed rarely, if ever, provided these accessories, and, in fact, did not even have them in stock. A review of manufacturers' invoices of Promed's orders from approximately July 2005 through December 2009 reveals that Promed had not ordered any fully reclining backs from its suppliers, and therefore never added such accessories to the Power Wheelchairs it provided to beneficiaries. During this same time period, Promed ordered from its suppliers only 26 separate controllers/joysticks. However, of the 26 separately purchased controllers, 24 were proportional joysticks, for which Promed was not permitted to bill Medicare separately.

16. Visual inspection of a sample of the Power Wheelchairs provided by Promed has confirmed that Promed inappropriately billed Medicare for non-proportional controllers/joysticks and fully reclining backs, although these items were not added onto any beneficiaries' Power Wheelchairs.

17. As described above, Promed rarely, if ever, provided non-proportional controllers/joysticks and fully reclining backs to its customers. Nevertheless, Promed regularly billed Medicare for these accessories. During the time period from approximately July 2005 through November 2009, Medicare reimbursed Promed approximately \$235,000 for non-proportional controllers/joysticks and approximately \$69,000 for fully reclining backs.

18. Continuing until at least May 2010, Defendant AUGUSTUS EJERE instructed the Promed staff to bill for joysticks, batteries, and other items that were not supplied to Promed customers.

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

COUNT TWO
(18 U.S.C. § 1035)

1. Paragraphs 1 through 11 and 14 through 18 of Count One of this Indictment are alleged as if set forth fully herein.

2. From at least in or about July 2005 through at least in or about May 2010, in Essex County, in the District of New Jersey, and elsewhere, Defendant

AUGUSTUS EJERE

did knowingly and willfully (1) falsify, conceal, and cover up by trick, scheme, and device a material fact, and (2) make materially false, fictitious, and fraudulent statements and representations, and make and use materially false writings and documents knowing the same to contain materially false, . . . fictitious, and fraudulent statements and entries, in connection with the delivery of and payment for health care benefits, items, and services in a matter involving a health care benefit program.

In violation of Title 18, United States Code, Sections 1035 and 2.

FORFEITURE ALLEGATION

1. The allegations contained in this Indictment are hereby realleged and incorporated by reference for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Section 982(a)(7).

2. Upon conviction of the offenses in violation of Title 18, United States Code, Sections 1347 and 1035, the defendant, AUGUSTUS EJERE, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), all right, title, and interest in any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the offenses of conviction, including but not limited to a sum of money equal to at least \$304,000 in United States currency.

3. If any of the property described above, 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, the United States shall be entitled, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(a)(7), to forfeiture of any other property of the defendant, AUGUSTUS EJERE, up to the value of the property described in the preceding paragraph.

A TRUE BILL

FOREPERSON



PAUL J. FISHMAN
United States Attorney

CASE NUMBER: 2009R01413

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UNITED STATES OF AMERICA

v.

AUGUSTUS EJERE

INDICTMENT FOR

18 U.S.C. §§ 1347, 1035, and 2

A True Bill,

Foreperson

PAUL J. FISHMAN

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