

Approved:

AMY GARZON

Assistant United States Attorney

12 MAG 2350

Before: HONORABLE JAMES C. FRANCIS, IV  
United States Magistrate Judge  
Southern District of New York

UNITED STATES OF AMERICA

:

SEALED COMPLAINT

- v. -

:

Violations of  
18 U.S.C. §§ 1349 and 1341

DANIEL R. DENIS,

:

COUNTY OF OFFENSE:

Defendant.

:

NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

ADAM M. SUITS, being duly sworn, deposes and says that he is a Special Agent with the Office of the Inspector General, Office of Investigations, United States Railroad Retirement Board ("RRB"), and charges as follows:

COUNT ONE

(Mail Fraud and Health Care Fraud Conspiracy)

1. From at least in or about 2002, up to and including in or about 2012, in the Southern District of New York and elsewhere, DANIEL R. DENIS, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with others to commit mail fraud and health care fraud in violation of Sections 1341 and 1347 of Title 18, United States Code, to wit DENIS conspired with others, known and unknown, to defraud the RRB by submitting a false claim for disability benefits to which he was not entitled.

2. It was a part and an object of the conspiracy that DANIEL R. DENIS, the defendant, and others known and unknown, willfully and knowingly, 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, 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 take and receive there from, such matter and thing, and would and did cause to be delivered by mail according to the direction thereon, and at the place at which it is directed to be delivered by the person to whom it is addressed, a matter and thing, in violation of Title 18, United States Code, Section 1341.

3. It was further a part and an object of the conspiracy that DANIEL R. DENIS, the defendant, and others known and unknown, willfully and knowingly would and did execute and attempt to execute a scheme and artifice to defraud health care benefit programs and obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, health care benefit programs, 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.

#### OVERT ACTS

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

a. On or about December 23, 2002, February 25, 2003, April 8, 2003, and May 5, 2003, DANIEL R. DENIS, the defendant, met with Peter J. Ajemian.

b. On or about March 5, 2011, DANIEL R. DENIS, the defendant, mailed a disability recertification to the RRB in New York, New York.

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

#### COUNT TWO (Mail Fraud)

5. From at least in or about 2002 until at least in or about 2011, DANIEL R. DENIS, the defendant, willfully and knowingly, 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, 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 take and receive there from, such matter and thing, and would and did cause to be delivered by mail according to the direction thereon, and at the place at which it is directed to be delivered by the person to whom it is addressed, a matter and thing, in violation of Title 18, United States Code, Section 1341, to wit, DENIS defrauded the RRB by submitting a false claim for disability benefits to which he was not entitled.

(Title 18, United States Code, Section 1341.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

6. I am a Special Agent with the Office of the Inspector General, Office of Investigations, United States Railroad Retirement Board ("RRB-OIG"). I have been a Special Agent with RRB-OIG since in or about October 2010, and, since that time, I have been personally involved in an investigation into disability fraud at the Long Island Railroad ("LIRR"), as set forth below. Previously, beginning in or about 1997, I was a Special Agent at the Federal Bureau of Investigation, in a variety of capacities, including as associate division counsel, and, prior to that, I was a prosecutor with the Judge Advocate General for the United States Navy. From in or about 1994 to 1996, I also worked as a senior casualty claims adjuster/fraud investigator for a private insurance carrier. I am familiar with the facts and circumstances set forth below from my personal participation in the investigation, my examination of reports and records, and my conversations with other law enforcement officers and witnesses. This affidavit is based upon my investigation, my conversations with witnesses and other law enforcement agents, and my examination of reports, records, and consensual recordings. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

BACKGROUND ON RAILROAD BENEFITS AND OVERVIEW  
OF THE PREMEDITATED DISABILITY FRAUD

7. The RRB is an independent federal agency that administers comprehensive retirement and benefit programs,

including disability benefits, for the nation's railroad workers and their families. The LIRR, founded in 1834, is one of the busiest commuter railroads in North America, carrying over 250,000 customers each week day.

8. Retiring LIRR employees are eligible to receive benefits both from the LIRR and the RRB. First, retiring LIRR workers hired before 1988 may draw a pension from the LIRR if they retire at or after the age of 50 and if they have been employed for at least 20 years as of the time of retirement. An LIRR pension is based, in part, on the average number of hours worked in the five years prior to retirement. Second, retiring LIRR workers may draw an additional pension from the RRB as of the time they reach age 65. If, however, an LIRR worker retires and is disabled, that LIRR worker can receive a disability pension from the RRB, even if he or she retires before age 65. Thus, a non-disabled LIRR retiree is only eligible to receive pension benefits from both the LIRR and the RRB if, among other things, that LIRR retiree is age 65 or older. By contrast, an LIRR worker who retires and is disabled is eligible to receive benefits from both the LIRR and the RRB as early as age 50 - pension benefits from the LIRR and disability benefits from the RRB.

9. To qualify for disability benefits, retiring railroad workers must file with the RRB an Application for Determination of Employee's Disability, known as a Form AA-1d (hereinafter referred to as a "Disability Application"). In their Disability Application, petitioning workers must describe in detail, under penalty of perjury, their disability and the limitations resulting therefrom, and state when they could no longer work because of their disability. At times, annuitants receiving disability payments are directed to file a Continuing Disability Update Report, known as a Form G-254 or G-254A (hereinafter referred to as a "Disability Recertification"), in which annuitants must certify, under penalty of perjury, their continuing inability to work.

10. DANIEL R. DENIS, the defendant, and others known and unknown, engaged in a multi-year, systemic fraud to obtain RRB disability benefits. As part of this fraud, LIRR workers who were ready to retire -- and who were older than 50 but younger than 65 years old -- falsely claimed to be disabled, including to be occupationally disabled, i.e., unable to perform their railroad occupation, in order to receive benefits both from the LIRR and the RRB. Specifically, LIRR employees, who were eligible to retire as early as age 50 with an LIRR pension, routinely sought to supplement

their LIRR pension by fraudulently procuring a separate RRB disability annuity which, when combined with their LIRR pension, resulted in a total income level that often approximated, and in some cases exceeded, their pre-retirement working income. This fraud was perpetrated with the knowing and intentional involvement of hundreds of LIRR retirees; "facilitators" who served as liaisons between retiring workers and participating doctors; and doctors themselves, who falsely declared retiring LIRR workers to be occupationally disabled. Typically, these disability doctors claimed that their LIRR patients suffered from various musculoskeletal impairments, which can involve claims of soft tissue injury that are more difficult to confirm by objective medical criteria than are other impairments, and are often diagnosed clinically, based upon pain as subjectively reported by the patient.

11. As a result of this pervasive fraud, hundreds of LIRR retirees received RRB disability benefits that they were not entitled to receive, and participating doctors received millions of dollars from patients and insurance companies. The foreseeable loss to the RRB disability funds -- if the scheme had not been uncovered and fraudulent claims had been paid out in full -- would have exceeded approximately \$1 billion. A complaint filed on October 26, 2011 in the U.S. District Court for the Southern District of New York against certain participants in this fraud is attached hereto and is incorporated by reference herein. The defendants named in that complaint have been separately indicted in S1 11 Cr. 1091 (VM).

#### THE DEFENDANT

12. DANIEL R. DENIS, the defendant, worked at the LIRR as a ticket agent from February 1971 to June 2003. As a ticket agent, DENIS's duties and responsibilities included servicing and repairing ticketing machines, selling tickets, and counting money. DENIS retired on or about July 2003, at the age of 50 years old, after approximately 32 years of employment, claiming disability. He has received RRB disability pension benefits from November 1, 2003 continuing to the present.

13. On or about July 30, 2003, DENIS applied for and was awarded an RRB occupational disability annuity. In his Disability Application, he claimed that he became "disabled" on May 2, 2003, approximately two months before he was due to retire and right around the time he submitted a sick leave application with the LIRR.

14. In his last full year with the LIRR (2002), DANIEL R. DENIS, the defendant, earned a salary of approximately \$63,514. In addition, DENIS worked approximately 651 overtime hours for which he earned approximately \$29,862 in 2002. Thus, his combined income in 2002 was approximately \$93,000. In 2004, DENIS's first full year in retirement, he received more in benefits than he did in salary during his last full year of employment at the LIRR. Specifically, DENIS received approximately \$43,000 in LIRR pension payments and approximately \$36,000 from his RRB disability payments. In total, DENIS received a combined amount of \$79,000 in payments in 2004.

#### OVERVIEW OF THE FRAUD

15. Based on the evidence set forth below, there is probable cause to believe that DANIEL R. DENIS, the defendant, deliberately defrauded the RRB by falsely claiming to be disabled. I base this conclusion on, among other things, evidence that, a little over a year before he retired, DENIS planned a particular date on which he would retire and in fact retired within two months of that date on account of his purported disability. DENIS openly admitted in testimony before the Grand Jury that he decided to apply for a disability annuity three or four years before he actually retired and well before he even saw the doctor who diagnosed him with his purported disability.

16. DANIEL R. DENIS, the defendant, also visited Peter J. Ajemian, who has been separately indicted and who, in only five months, diagnosed DENIS with a disability in order to allow him to claim he was "disabled" as of his planned last day of work. As part of this arrangement, DENIS paid Ajemian \$750 for a narrative in support of his Disability Application. Indeed, DENIS made this payment to Ajemian well in advance of the date he submitted his Disability Application (three months) and even before the date he stated he became disabled (two weeks).

17. In contrast to his purported physical restrictions, DANIEL R. DENIS, the defendant, worked a substantial amount of overtime in the year before he retired -- approximately 651.5 hours. Moreover, DENIS admitted in an interview with RRB agents that he could indeed work and was not prevented from doing anything at the time that he retired and submitted his Disability Application. Indeed, DENIS further admitted before the Grand Jury that after he retired and submitted his Disability Application he played golf at least once a week, gardened, did home improvement projects in both his house

and his friend's house, and worked as a bartender.

DENIS'S PURPORTED DISABILITY UPON RETIREMENT

18. After his retirement date, DANIEL R. DENIS, the defendant, submitted a Disability Application. I have reviewed DENIS's Disability Application, dated July 30, 2003, in which he stated the following, among other things, knowing that he could be prosecuted for false statements:

a. DENIS listed the medical condition causing him to file for disability as follows:

(1) C4-5 and C5-6 radiculopathy, C3-4 left paracentral [sic] herniated with left ventral cord impingement; (2) C4-5 disc bulge flattens the ventral margin of the cord; (3) C5-6 disc bulge narrows ventral CFS space without contacting the cord; (4) L5-S1 central disc herniation contacts the thecal sac; (5) L4-5 focal right paracentral herniation narrows the right lateral recess; (6) L5-S1 mild bilateral foraminal stenosis; (7) right shoulder acromial spur and degenerative osteoarthritic at the acromioclavicular joint; (8) severe carpal tunnel syndrome.

b. DENIS listed the date this condition began to affect his ability to work as May 1, 2003, and the date that he could no longer work because of this condition as the following day, May 2, 2003.

c. In response to a question asking DENIS to describe how his condition prevented him from working, DENIS responded:

I can no longer bend, climb, sit, stand, twist, turn, squat, grab and hold, lift and carry coin boxes and parts, walk over ballasts and up hills, push and pull, use physical force, due to constant pain in my lower back, down my legs, neck and right shoulder, and both hands.

d. In response to a question about his daily activities, DENIS stated that it was hard for him to sit, stand, walk, bathe, dress himself, do outdoor chores, drive a car, use public transportation, and write. He stated that he could only do light chores and that he could not do indoor chores, such as meal preparation, laundry, and cleaning, at all.

19. DANIEL R. DENIS, the defendant, first saw indicted co-conspirator Dr. Peter J. Ajemian on or about December 23, 2002 for various claimed ailments. In his progress notes, Ajemian catalogued DENIS's purported condition. DENIS later was approved by the RRB for disability benefits.

20. Ajemian's statements from his December 23, 2002 examination of DANIEL R. DENIS, the defendant, provided that DENIS's chief complaint was "pain involving his neck, right shoulder and his lower back and headaches as well." Ajemian noted that DENIS "is an otherwise active and healthy 49 year old" who was not taking any medications. Based on a physical examination, Ajemian stated that DENIS's "gait, station and ambulation are within noma [sic] limits. No assistive device is required . . . He can transfer up and down from the examination table without compression. He can walk on his toes and heels and forward flex and toe touch. Squatting is mildly painful." Ajemian recommended that DENIS receive "Rehab for the neck and lumbar spine and right shoulder" and have an "EMG study [for] both upper extremities and the lower extremities." There were no reported restrictions on DENIS's ability to work. In fact, Ajemian stated "[t]he patient may work."

21. DANIEL R. DENIS, the defendant, returned to Ajemian approximately 2 months later, on February 25, 2003. Ajemian's notes from DENIS's examination on that date indicated that "[t]he patient returns in a follow up visit unimproved since his previous visit. He continues to complain of both cervical neck pain, lower back pain, pain that radiates into his upper and lower extremities, numbness and tingling into his upper and lower extremities." Since his last visit, DENIS had "EMG's which demonstrated a L4-5 radiculopathy, as well as a C4-5 and C5-6 radiculopathy with severe left carpal tunnel syndrome and mild right carpal tunnel syndrome."<sup>1</sup> Again, there were

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1 As noted in the attached complaint, other law enforcement agents interviewed a medical technician who had long been employed by Ajemian to perform certain diagnostic testing including Magnetic Resonance Imagings ("MRIs") for Ajemian's LIRR patients. Based upon my review of a report of that interview, I am aware that the medical technician explained that most laborers in their fifties would have normal degenerative changes that could be documented, i.e., that would



no reported restrictions on DENIS's ability to work.

22. DANIEL R. DENIS, the defendant, saw Ajemian again on April 8, 2003. Ajemian's notes from his examination of DENIS on that date stated that "[t]he patient returns in follow up visit unimproved since his previous visit." "He continues to complain of both cervical neck pain, lower back pain, pain that radiates to his upper and lower extremities, significant numbness and tingling to his upper extremities, left greater than right." Ajemian further stated that DENIS's "examination today is unchanged from previous examination." He also wrote that "[i]n candor I have also discussed with the patient his consideration for retirement. He has been getting progressively worse and the longer he continues to work he will continue to get worse."

23. Based on my review of the Disability Application of DANIEL R. DENIS, the defendant, I know that Ajemian provided a narrative in support of DENIS's application. In that narrative, Ajemian diagnosed DENIS with

[c]linical findings of C3-4, left paracentral disc herniation and C4-5 disc bulge, C5-6 bulging disc, cervical spasm, C4-5 and C5-6 radiculopathy, right shoulder recurrent impingement syndrome, carpal tunnel syndrome left and mild carpal tunnel syndrome right with cervical radiculopathy at C4-5 and C5-6, lumbar scoliosis of the lumbar spine, herniated disc at L4-5 and L5-S1 and also foraminal stenosis of L5-S1, and L4-5 radiculopathy.

Ajemian also stated that he "advised the patient to retire from the Long Island Railroad and consider himself medically appropriate to have decision in his favor."

24. According to records obtained from Ajemian's employer, a medical practice based in Rockville Centre, New York, I know that DANIEL R. DENIS, the defendant, paid Ajemian a total of \$2,630 for office visits, physical exams, and other medical treatment. This amount includes a payment on April 15, 2003 of \$750 for a "[n]arrative."

25. I have reviewed documents from the RRB related to DENIS's Disability Application and I have learned that DENIS's Disability Application was granted effective November 1, 2003.

26. In 2011, DANIEL R. DENIS, the defendant, mailed a Disability Recertification to RRB's offices in New York, New York. In the Disability Recertification, dated March 5, 2011, DENIS certified that his condition had become "worse."

27. I also know that DANIEL R. DENIS, the defendant, consulted with Ajemian to support his application for sick leave right before he retired. On May 5, 2003, DENIS submitted a Sick Leave Administration Form Application for Sick Leave Due to Illness or Disability. Based on my review of that application, I know that DENIS claimed he became disabled as of May 4, 2003. I also know that in support of his sick leave application, DENIS submitted a Doctor's Statement prepared by Ajemian. The statement indicated that DENIS was a 50 year old male who he diagnosed with "cervical radiculopathy, degeneration of cervical, lumber radiculopathy, [and] impingement syndrome shoulder." It also indicated that DENIS was unable to work as of May 4, 2003, and that it was "undeterminable at this time" when DENIS would be able to return to work again.

#### DENIS'S DISABILITY CLAIM WAS FRAUDULENT

28. I am aware that DANIEL R. DENIS, the defendant, had been contemplating early retirement for approximately eighteen months prior to his actual retirement. I base this conclusion on the fact that on or about January 6, 2002, DENIS submitted an Application for Pension Estimate in which he anticipated that his "planned retirement date" would be September 1, 2003. Based on my review of his Application for Pension Estimate, I know that DENIS indeed submitted his Application for Pension Estimate on May 15, 2003 and retired effective July 1, 2003.

29. Through my investigation, I have learned that DANIEL R. DENIS, the defendant, was not physically restricted in the ways in which he and his doctor, Peter J. Ajemian, represented to the RRB. Specifically, in the years leading up to his retirement DENIS worked substantial overtime. Based on my review of DENIS's overtime records from the LIRR, I have learned that in 2002, the last full year that DENIS worked at the LIRR, he worked approximately 651.5 overtime hours. In 2003, DENIS worked approximately 200.5 overtime hours.

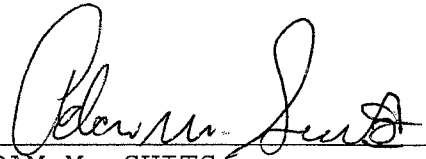
30. On or about April 28, 2011, DANIEL R. DENIS, the defendant, testified before the Grand Jury. Based on my review of his testimony, I have learned that DENIS decided to apply for an occupational disability annuity well before his retirement date. Specifically, DENIS said that he started thinking about applying for an occupational disability annuity three or four years before his actual retirement date. DENIS further testified that, after he retired, DENIS gardened in his yard when he could and mowed the lawn when his son could not do it. According to his testimony, DENIS also undertook some home improvement projects in both his house and in his friend's house. Specifically, DENIS, with the help of his son and son's friend, ripped off rotted flooring in his bedroom and replaced it. DENIS also helped his friend redo his basement. DENIS admitted to putting up sheetrock and painting the basement. After he retired, DENIS also worked as a bartender at a friend's bar once a week for about a month. His shift usually lasted four to five hours. DENIS also admitted that he played golf at a nine-hole golf course at least once a week after he retired.

31. Aside from Ajemian's statements right before DANIEL R. DENIS, the defendant, retired, there are no notes in DENIS's medical files stating that, due to DENIS's neck, back, and shoulder pain, he should stop working or take additional precautions at work.

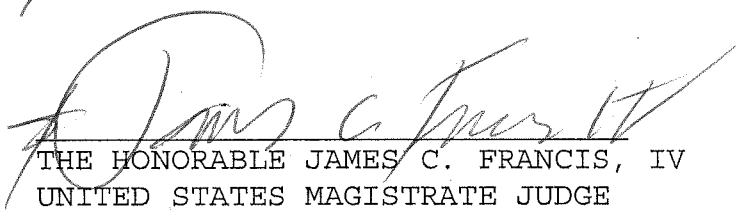
32. On April 28, 2011, along with others, I interviewed DANIEL R. DENIS, the defendant, and he admitted that he was not disabled at the time he retired and submitted his Disability Application. When asked whether he was prevented from doing anything when he submitted his Disability Application, DENIS responded, "no." DENIS also stated that he submitted his Disability Application because everyone else did, and you would either qualify for it or not because "it's a crap shoot." DENIS also stated that he knew nothing of the restrictions put on him at the onset of his disability. DENIS also admitted to signing his Disability Application.

33. I have reviewed documents from the Nassau County Department of Parks Recreation and Museums, through which I am aware that DENIS has continued to play golf through 2012 despite his claims in his Disability Application that it was hard for him to sit, stand, walk, bathe, dress himself, do outdoor chores, and write.

WHEREFORE, deponent asks that a warrant be issued for the arrest of DANIEL R. DENIS and that he be imprisoned or bailed, as the case may be.

  
ADAM M. SUITS  
Special Agent  
Office of the Inspector General,  
U.S. Railroad Retirement Board

Sworn to before me this  
7 day of September 2012

  
THE HONORABLE JAMES C. FRANCIS, IV  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK

## WARRANT FOR ARREST

United States District Court		DISTRICT SOUTHERN DISTRICT OF NEW YORK	
UNITED STATES OF AMERICA  v.  DANIEL R. DENIS		DOCKET NO.  <b>12 MAG 2350</b>	MAGISTRATE'S CASE NO.
WARRANT ISSUED ON THE BASIS OF: <input type="checkbox"/> Indictment <input type="checkbox"/> Information <input type="checkbox"/> Order of Court <input type="checkbox"/> Complaint		NAME AND ADDRESS OF INDIVIDUAL TO BE ARRESTED  DANIEL R. DENIS	
TO: UNITED STATES MARSHAL OR ANY OTHER AUTHORIZED OFFICER		DISTRICT OF ARREST  CITY NEW YORK	
YOU ARE HEREBY COMMANDED to arrest the above-named person and bring that person before the United States District Court to answer to the charge(s) listed below.			
DESCRIPTION OF CHARGES			
CONSPIRACY TO COMMIT MAIL FRAUD AND HEALTH CARE FRAUD MAIL FRAUD			
IN VIOLATION OF	UNITED STATES CODE TITLE 18	SECTION 1349 and 1341	
BAIL	OTHER CONDITIONS OF RELEASE		
ORDERED BY JAMES C. FRANCIS IV UNITED STATES MAGISTRATE JUDGE SOUTHERN DISTRICT OF NEW YORK CLERK OF COURT	SIGNATURE (FEDERAL JUDGE/U.S. MAGISTRATE) <i>James C. Francis IV</i> (BY) DEPUTY CLERK		DATE ORDERED <b>SEP 07 2012</b>
DATE ISSUED			
RETURN			
This warrant was received and executed with the arrest of the above-named person.			
DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER	
DATE EXECUTED			

Note: The arresting officer is directed to serve the attached copy of the charge on the defendant at the time this warrant is executed.