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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
February 2013 Grand Jury

CR13-0313

UNITED STATES OF AMERICA,	)	CR No.
)	
Plaintiff,	)	<u>I N D I C T M E N T</u>
)	
v.	)	[18 U.S.C. § 1349: Conspiracy
	)	to Commit Health Care Fraud;
ERIC MKHITARIAN,	)	18 U.S.C. § 1347: Health Care
	)	Fraud; 18 U.S.C. § 2(b):
Defendant.	)	Causing an Act to be Done; 18
	)	U.S.C. § 1956(h): Conspiracy
	)	to Commit Money Laundering; 18
	)	U.S.C. § 1956(a)(1)(B)(i):
	)	Laundering Monetary
	)	Instruments; 18 U.S.C.
	)	§ 1028A: Aggravated Identity
	)	Theft; 18 U.S.C. § 982(a)(7),
	)	21 U.S.C. § 853: Forfeiture]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. § 1349]

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

1. Defendant ERIC MKHITARIAN ("MKHITARIAN") assisted in the operation of Orthomed Appliance, Inc. ("Orthomed"), a

1 purported supplier of durable medical equipment ("DME") located
2 in Los Angeles, California.

3 2. Between on or about April 10, 2009, and on or about
4 February 15, 2011, Orthomed submitted to Medicare claims totaling
5 approximately \$1,584,640 for DME and related services, and
6 Medicare paid Orthomed approximately \$994,036 on those claims.

7 3. Between on or about April 10, 2009, and on or about
8 February 15, 2011, defendant MKHITARIAN caused funds in excess of
9 approximately \$622,228.38 to be withdrawn from Orthomed's
10 corporate bank account (number xxxxxx0774) at Bank of America
11 (the "Orthomed BoA Account").

12 The Medicare Program

13 4. Medicare was a federal health care benefit program,
14 affecting commerce, that provided benefits to individuals who
15 were over the age of 65 or disabled. Medicare was administered
16 by the Centers for Medicare and Medicaid Services ("CMS"), a
17 federal agency under the United States Department of Health and
18 Human Services ("HHS").

19 5. CMS contracted with private insurance companies to
20 (a) certify DME providers for participation in the Medicare
21 program and monitor their compliance with Medicare standards;
22 (b) process and pay claims; and (c) perform program safeguard
23 functions, such as identifying and reviewing suspect claims.

24 6. Individuals who qualified for Medicare benefits were
25 referred to as Medicare "beneficiaries." Each Medicare
26 beneficiary was given a Health Identification Card containing a
27 unique identification number ("HICN").

28

1 7. DME companies, physicians, and other health care
2 providers that provided medical services that were reimbursed by
3 Medicare were referred to as Medicare "providers."

4 8. To obtain payment from Medicare, a DME company first
5 had to apply for and obtain a provider number. By signing the
6 provider application, the DME company agreed to abide by Medicare
7 rules and regulations.

8 9. If Medicare approved a provider's application, Medicare
9 would assign the provider a Medicare provider number, enabling
10 the provider (such as a DME company) to submit claims to Medicare
11 for services and supplies provided to Medicare beneficiaries.

12 10. Most DME providers, including Orthomed, submitted their
13 claims electronically pursuant to an agreement with Medicare that
14 they would submit claims that were accurate, complete, and
15 truthful.

16 11. From in or about October 2006 onward, Noridian
17 Administrative Services ("Noridian") processed and paid Medicare
18 DME claims in Southern California.

19 12. Medicare paid DME providers only for DME that was
20 medically necessary to the treatment of a beneficiary's illness
21 or injury, was prescribed by a beneficiary's physician, and was
22 provided in accordance with Medicare regulations and guidelines
23 that governed whether a particular item or service would be paid
24 by Medicare.

25 13. To bill Medicare for DME it provided to a beneficiary,
26 a DME provider was required to submit a claim (Form 1500) to
27 Noridian. Medicare required claims to be truthful, complete, and
28 not misleading. In addition, when a claim was submitted, the

1 provider was required to certify that the services or supplies
2 covered by the claim were medically necessary.

3 14. Medicare required a claim for payment to set forth,
4 among other things, the beneficiary's name and HICN, the type of
5 DME provided to the beneficiary, the date the DME was provided,
6 and the name and unique physician identification number ("UPIN")
7 of the physician who prescribed or ordered the DME.

8 15. Medicare had a co-payment requirement for DME.
9 Medicare reimbursed providers 80% of the allowed amount of a DME
10 claim and the beneficiary was ordinarily obligated to pay the
11 remaining 20%.

12 B. THE OBJECT OF THE CONSPIRACY

13 16. Beginning on or about April 10, 2009, and continuing
14 through on or about February 15, 2011, in Los Angeles County,
15 within the Central District of California, and elsewhere,
16 defendant MKHITARIAN, together with others known and unknown to
17 the Grand Jury, knowingly combined, conspired, and agreed to
18 commit health care fraud, in violation of Title 18, United States
19 Code, Section 1347.

20 C. THE MANNER AND MEANS OF THE CONSPIRACY

21 17. The object of the conspiracy was carried out, and to be
22 carried out, in substance, as follows:

23 a. Defendant MKHITARIAN and his co-conspirators would
24 arrange for a straw purchaser who used the name "J.L." to be the
25 owner of record for Orthomed.

26 b. On or about April 10, 2009, J.L. or another co-
27 conspirator purporting to be J.L. would execute legal documents
28 for the purchase of Orthomed. The former owners would be paid

1 \$15,000 for the purchase of Orthomed. As a result of this
2 transaction, "J.L." would become the owner of record of Orthomed.

3 c. On or about April 16, 2009, J.L. or another co-
4 conspirator purporting to be J.L. would open the Orthomed BoA
5 Account. J.L. or another co-conspirator purporting to be J.L.
6 would maintain sole signature authority over this account.

7 d. On or about April 22, 2009, J.L. or another co-
8 conspirator purporting to be J.L. would execute and submit an
9 electronic funds transfer agreement ("EFT") to Medicare,
10 requesting that all future reimbursements from Medicare be
11 directly deposited into the Orthomed BoA Account.

12 e. On or about July 13, 2009, J.L. or another co-
13 conspirator purporting to be J.L. would execute and submit an
14 application to Medicare to obtain and maintain a Medicare
15 provider number for Orthomed. This application would request an
16 effective date of April 10, 2009.

17 f. On or about January 28, 2010, J.L. or another co-
18 conspirator purporting to be J.L. would file a Statement of
19 Information with the State of California, giving notice of
20 Orthomed's recent change in ownership to J.L. This statement,
21 which was signed by J.L. or another co-conspirator purporting to
22 be J.L., would identify J.L. as Orthomed's Chief Executive
23 Officer ("CEO"), Secretary, Chief Financial Officer ("CFO"), sole
24 Officer/Director, and Registered Agent.

25 g. Once J.L. or another co-conspirator purporting to
26 be J.L. executed the above documentation on behalf of Orthomed,
27 defendant MKHITARIAN and his co-conspirators would submit, and
28 cause to be submitted, false and fraudulent claims to Medicare

1 for DME and related services that were neither medically
2 necessary nor provided by Orthomed.

3 h. As a result of the co-conspirators' submission of
4 false and fraudulent claims, Medicare would make payments to the
5 Orthomed BoA Account totaling approximately \$994,039.

6 i. Defendant MKHITARIAN would then withdraw, and
7 cause the withdrawal of, cash proceeds from the Orthomed BoA
8 Account through a series of checks written in amounts less than
9 \$10,000 to fictitious individuals.

10 k. Defendant MKHITARIAN would also use the Orthomed
11 debit card to make purchases using money from the Orthomed BoA
12 Account.

COUNTS TWO THROUGH SEVEN

[18 U.S.C. §§ 1347, 2(b)]

A. INTRODUCTORY ALLEGATIONS

18. The Grand Jury incorporates by reference and re-alleges paragraphs 1 through 15 above of this Indictment as though set forth in their entirety here.

B. THE SCHEME TO DEFRAUD

19. Beginning on or about April 10, 2009, and continuing through at least on or about February 15, 2011, in Los Angeles County, within the Central District of California, and elsewhere, defendant MKHITARIAN, together others known and unknown to the Grand Jury, knowingly, willfully, and with intent to defraud, executed, and attempted to execute, a scheme and artifice: (a) to defraud a health care benefit program, namely Medicare, as to material matters in connection with the delivery of and payment for health care benefits, items, and services; and (b) to obtain money from Medicare by means of material false and fraudulent pretenses and representations and the concealment of material facts in connection with the delivery of and payment for health care benefits, items, and services.

C. MEANS TO ACCOMPLISH THE SCHEME TO DEFRAUD

20. The fraudulent scheme operated, in substance, as described in paragraph 17 above of this Indictment, which is hereby incorporated by reference as though set forth in its entirety here.

D. THE EXECUTION OF THE FRAUDULENT SCHEME

21. On or about the dates set forth below, within the Central District of California and elsewhere, defendant

1 MKHITARIAN, together with others known and unknown to the Grand
2 Jury, for the purpose of executing and attempting to execute the
3 fraudulent scheme described above, knowingly and willfully caused
4 to be submitted to Medicare for payment the following false and
5 fraudulent claims primarily for orthotics, including back, neck,
6 and ankle braces:

<u>COUNT</u>	<u>BENEFICIARY</u>	<u>CLAIM NUMBER</u>	<u>APPROXIMATE DATE SUBMITTED</u>	<u>APPROXIMATE AMOUNT OF CLAIM</u>
TWO	M.A.	10355809779000	10/05/10	\$1,069
THREE	R.B.	10363848832000	10/26/10	\$756
FOUR	T.D.	11004810327000	11/06/10	\$1,542
FIVE	E.D.	11005835343000	11/12/10	\$253
SIX	E.N.	11006845799000	11/15/10	\$788
SEVEN	O.V.	11010876044000	11/22/10	\$1,080

COUNT EIGHT

[18 U.S.C. § 1956(h)]

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3 A. INTRODUCTORY ALLEGATIONS

4 22. The Grand Jury incorporates by reference and re-alleges
5 paragraphs 1 through 15, and 17 above of this Indictment as
6 though set forth in their entirety here.

7 23. A co-conspirator known to the Grand Jury ("CC1")
8 managed activities at a check cashing store ("the Store") in Los
9 Angeles, California. Once Medicare paid Orthomed for its
10 purported provision of DME and related services, defendant
11 MKHITARIAN utilized CC1 and the Store to cash, and provide him
12 with the proceeds of, Orthomed checks drawn from the Orthomed BoA
13 Account.

14 B. THE OBJECT OF THE CONSPIRACY

15 24. Beginning at least on or about January 4, 2011, and
16 continuing through at least on or about February 10, 2011, in Los
17 Angeles County, within the Central District of California, and
18 elsewhere, defendant MKHITARIAN, together with CC1 and others
19 known and unknown to the Grand Jury, knowingly combined,
20 conspired, and agreed to commit money laundering, in violation of
21 Title 18, United States Code, Section 1956(a)(1)(B)(i).

22 C. THE MANNER AND MEANS OF THE CONSPIRACY

23 25. The object of the conspiracy was carried out, and to be
24 carried out, in substance, as follows:

25 a. Defendant MKHITARIAN and his co-conspirators would
26 submit, and cause the submission of, false and fraudulent claims
27 to Medicare on behalf of Orthomed for DME and related services
28 that were neither medically necessary nor provided.

1 b. Through the submission of these false and
2 fraudulent claims, defendant MKHITARIAN and his co-conspirators
3 would cause Medicare to make payments to the Orthomed BoA
4 Account.

5 c. After Medicare began to make these payments to the
6 Orthomed BoA Account, defendant MKHITARIAN would provide CC1 with
7 presigned checks from the Orthomed BoA Account.

8 d. Defendant MKHITARIAN would instruct CC1 to fill in
9 as the payee of the Orthomed checks the names of individuals who
10 defendant MKHITARIAN knew to be fictitious. Defendant MKHITARIAN
11 would instruct CC1 to cash the checks at the Store, and then
12 provide the cash directly back to defendant MKHITARIAN.

13 e. Through CC1 and the Store, defendant MKHITARIAN
14 would cash approximately \$622,228.38 in checks drawn upon the
15 Orthomed BoA Account, which represented a portion of the proceeds
16 of the health care fraud, in violation of Title 18, United States
17 Code, Sections 1349 and 1347, as charged in Counts One through
18 Seven of this Indictment.

19 f. These transactions concealed and disguised the
20 nature, location, source, ownership, and control of the proceeds
21 of the health care fraud by, among other means: (a) making it
22 appear that money from the Orthomed BoA Account was being paid to
23 the fictitious individuals named on the checks, when in fact the
24 money was being paid to defendant MKHITARIAN; and (b) making it
25 appear that J.L. owned and controlled the money in the Orthomed
26 BoA Account, when in fact defendant MKHITARIAN owned and
27 controlled the money in the account.

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COUNTS NINE THROUGH THIRTEEN

[18 U.S.C. §§ 1956(a)(1)(B)(i), 2(b)]

26. The Grand Jury incorporates by reference and re-alleges paragraphs 1 through 15, 17 and 23 of this Indictment as though set forth in their entirety herein.

27. On or about the following dates, in Los Angeles County, within the Central District of California, and elsewhere, defendant MKHITARIAN, together with CCl and others known and unknown to the Grand Jury, knowing that the property involved in each of the financial transactions described below represented the proceeds of some form of unlawful activity, conducted, and willfully caused others to conduct, the following financial transactions affecting interstate commerce, which transactions in fact involved the proceeds of specified unlawful activity, namely conspiracy to commit health care fraud, in violation of Title 18, United States Code, Section 1349, and health care fraud, in violation of Title 18, United States Code, Section 1347, knowing that each of the transactions was designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of such specified unlawful activity:

COUNT	DATE POSTED	MONETARY TRANSACTION
NINE	1/6/11	Cashing of check #554 for \$9,700.00, drawn upon Orthomed's BoA Account and written to V.G.
TEN	1/6/11	Cashing of check #560 for \$9,123.50, drawn upon Orthomed's BoA Account and written to A.L.
ELEVEN	1/12/11	Cashing of check #556 for \$9,714.30, drawn upon Orthomed's BoA Account and written to S.S.

COUNT	DATE POSTED	MONETARY TRANSACTION
TWELVE	1/26/11	Cashing of check #578 for \$9,349.61, drawn upon Orthomed's BoA Account and written to C.M.
THIRTEEN	1/26/11	Cashing of check #579 for \$9,391.00, drawn upon Orthomed's BoA Account and written to A.M.

COUNTS FOURTEEN THROUGH NINETEEN

[18 U.S.C. §§ 1028A, 2(b)]

28. The Grand Jury incorporates by reference and re-alleges paragraphs 1 through 15 and 17 of this Indictment as though set forth in their entirety herein.

29. On or about the dates set forth below, in Los Angeles County, within the Central District of California, and elsewhere, defendant MKHITARIAN did knowingly transfer, possess, and use, and willfully cause others to knowingly transfer, possess, and use, without lawful authority, a means of identification that defendant MKHITARIAN knew belonged to another person, during and in relation to a felony violation of Title 18, United States Code, Sections 1349 and 1347, as alleged in Counts One through Seven of this Indictment, to wit: names, dates of birth, and Medicare numbers of the Medicare beneficiaries set forth below.

COUNT	MEANS OF IDENTIFICATION	APPROXIMATE DATE
FOURTEEN	Beneficiary M.A.'s name, date of birth, and Medicare number XXXXXX262M	10/05/10
FIFTEEN	Beneficiary R.B.'s name, date of birth, and Medicare number XXXXXX871M	10/26/10
SIXTEEN	Beneficiary T.D.'s name, date of birth, and Medicare number XXXXXX506A	11/06/10
SEVENTEEN	Beneficiary E.D.'s name, date of birth, and Medicare number XXXXXX422M	11/12/10

<u>COUNT</u>	<u>MEANS OF IDENTIFICATION</u>	<u>APPROXIMATE DATE</u>
EIGHTEEN	Beneficiary E.N.'s name, date of birth, and Medicare number XXXXXX183A	11/15/10
NINETEEN	Beneficiary O.V.'s name, date of birth, and Medicare number XXXXXX330M	11/22/10

1 the jurisdiction of this Court; has been substantially diminished
2 in value; or has been commingled with other property that cannot
3 be divided without difficulty.

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1 FORFEITURE ALLEGATION TWO

2 [18 U.S.C. § 982(a)(1) and 21 U.S.C. § 853]

3 33. The Grand Jury hereby realleges and incorporates by
4 reference Counts Eight through Thirteen of this Indictment as
5 though fully set forth herein, for the purpose of alleging
6 forfeiture, pursuant to the provisions of Title 18, United States
7 Code, Section 982(a)(1).

8 34. Counts Eight through Thirteen of this Indictment allege
9 acts or activities constituting offenses involving money
10 laundering pursuant to Title 18, United States Code, Sections
11 1956(h), 2(b) and 1956(a)(1)(B)(i). Pursuant to Title 18, United
12 States Code, Section 982(a)(1), upon conviction of a money
13 laundering offense, defendant MKHITARIAN shall forfeit to the
14 United States of America:

15 a. All right, title and interest in any property,
16 real or personal, involved in such offense, or any property
17 traceable to such offense; and/or

18 b. A sum of money equal to the total amount of
19 property involved in such offense.

20 35. Pursuant to Title 21, United States Code, Section
21 853(p), as incorporated by Title 18, United States Code, Section
22 982(b)(1), a defendant so convicted shall forfeit substitute
23 property, up to the value of the amount described in paragraph
24 34, if, by any act or omission of said defendant, the property
25 described in paragraph 34, or any portion thereof, cannot be
26 located upon the exercise of due diligence; has been transferred,
27 sold to or deposited with a third party; has been placed beyond
28 the jurisdiction of this Court; has been substantially diminished

1 in value; or has been commingled with other property that cannot
2 be divided without difficulty.

3
4 A TRUE BILL

5
6 IS/
7 Foreperson

8 ANDRÉ BIROTTE JR.
9 United States Attorney

10 *DOM*
11 *Dorothy C. Kim*
Dep. Chief, Crim. Div. Fed.

12 ROBERT E. DUGDALE
13 Assistant United States Attorney
14 Chief, Criminal Division

15 RICHARD E. ROBINSON
16 Assistant United States Attorney
17 Chief, Major Frauds Section

18 BEN SINGER
19 Deputy Chief, Fraud Section
20 United States Department of Justice

21 BENTON CURTIS
22 Assistant Chief, Fraud Section
23 United States Department of Justice

24 ALEXANDER F. PORTER
25 Trial Attorney, Fraud Section
26 United States Department of Justice
27
28