

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 17-
 :
 v. : 18 U.S.C. § 1349
 :
 ROBERT CLAUDE MCGRATH : INFORMATION

The defendant having waived in open court prosecution by indictment, the Acting United States Attorney for the District of New Jersey charges:

1. At all times relevant to this Information:
 - a. Atlantic Spine & Joint Institute (“Atlantic Spine”) was a medical practice with offices in Westmont, New Jersey, and, starting in February 2014, Wayne, Pennsylvania;
 - b. Defendant ROBERT CLAUDE MCGRATH was a resident of New Jersey, a Doctor of Osteopathy, and the majority owner of Atlantic Spine; and
 - c. Robert Christopher McGrath was a Doctor of Chiropractic Medicine, the minority owner of Atlantic Spine, and the son of ROBERT CLAUDE MCGRATH.
 - d. Medicare was a federal program to assist qualified elderly, blind, and disabled individuals in paying for the cost of health care. Medicare was a “health care benefit program” as defined in 18 U.S.C. § 24(b). Individuals who receive benefits under Medicare are commonly referred to as “beneficiaries.”
 - e. Payment of a claim by Medicare was conditioned upon certification by a provider that the claims and underlying transactions billed by the provider complied with all applicable law, regulations, program instructions, and conditions of participation in Medicare.

f. Under Medicare rules, a doctor may bill for providing physical therapy under his or her National Provider Identification, or NPI, number if the doctor provided the physical therapy. Under Medicare's "incident to" rules, a doctor also may bill under his or her NPI number for physical therapy provided by another person incident to the doctor's services in the doctor's office, but only if (a) the person providing the therapy is either a licensed physical therapist or a graduate of a physical therapist education program, and (b) the doctor supervises the therapy, which requires that the doctor be present in the office suite and immediately available to furnish assistance and directions throughout the performance of the procedure.

2. From in or about January 2011 through in or about April 2016, Atlantic Spine billed Medicare for physical therapy under defendant ROBERT CLAUDE MCGRATH'S NPI number. These billings represented that the physical therapy was either performed by him or performed by other qualified personnel in compliance with the "incident to" rules.

3. From in or about January 2011 through in or about April 2016, defendant ROBERT CLAUDE MCGRATH and Robert Christopher McGrath supervised and directed the personnel preparing bills submitted to Medicare.

4. From in or about January 2011 through in or about April 2016, defendant ROBERT CLAUDE MCGRATH and Robert Christopher McGrath supervised and directed the persons at Atlantic Spine who purported to provide physical therapy to Medicare beneficiaries. The persons who purported to provide physical therapy frequently were not licensed physical therapists or graduates of a physical therapist education program.

5. From in or about January 2011 through in or about April 2016, defendant ROBERT CLAUDE MCGRATH and Robert Christopher McGrath obtained approximately \$890,000 from Medicare through billings that falsely and fraudulently claimed that ROBERT

CLAUDE MCGRATH provided individual physical therapy to beneficiaries in compliance with Medicare rules, including the “incident to” rules, when in fact:

- a. ROBERT CLAUDE MCGRATH did not provide the physical therapy, and the therapy was provided by persons who were neither licensed physical therapists nor graduates of a physical therapist education program;
- b. ROBERT CLAUDE MCGRATH frequently was not present when the physical therapy was provided; and
- c. Medicare beneficiaries received physical therapy in a group setting and not the individual, one-to-one therapy claimed in the billing to Medicare.

6. From in or about January 2011 through in or about April 2016, in Camden County, in the District of New Jersey, and elsewhere, defendant

ROBERT CLAUDE MCGRATH

did knowingly and willfully conspire and agree with Robert Christopher McGrath and others to execute a scheme and artifice to defraud a health care benefit program, namely, Medicare, and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, or under the custody and control of, Medicare, in connection with the delivery of and payment for health care benefits, items, and services, contrary to Title 18, United States Code, Section 1347.

Object of the Conspiracy

7. It was the object of the conspiracy that defendant ROBERT CLAUDE MCGRATH and Robert Christopher McGrath submitted and caused to be submitted bills to Medicare that falsely represented services provided to Medicare beneficiaries in order to obtain money from Medicare.

Manner and Means of the Conspiracy

8. It was part of the conspiracy that defendant ROBERT CLAUDE MCGRATH and Robert Christopher McGrath caused Atlantic Spine to submit bills to Medicare falsely and fraudulently claiming that ROBERT CLAUDE MCGRATH provided individual physical therapy to beneficiaries in compliance with Medicare rules, including the “incident to” rules, when in fact:

- a. ROBERT CLAUDE MCGRATH did not provide the physical therapy, and the therapy was provided by persons who were neither licensed physical therapists nor graduates of a physical therapist education program;
- b. ROBERT CLAUDE MCGRATH frequently was not present when the physical therapy was provided; and
- c. Medicare beneficiaries received physical therapy in a group setting and not the individual, one-to-one therapy claimed in the billing to Medicare.

Acts Furthering the Conspiracy

9. In furtherance of the conspiracy and to effect its objects, its members committed and caused to be committed numerous acts, including, for example, the following acts:

- a. On October 17, 2013, Medicare beneficiaries received physical therapy from individuals who were neither licensed physical therapists nor graduates of a physical therapist education program, and Atlantic Spine subsequently billed that physical therapy to Medicare under defendant ROBERT CLAUDE MCGRATH’s NPI number.
- b. On August 4, 2014, when defendant ROBERT CLAUDE MCGRATH was in Atlantic Spine’s Wayne, Pennsylvania office, Medicare beneficiaries received

physical therapy in the Westmont office, and Atlantic Spine subsequently billed Medicare for that therapy under defendant ROBERT CLAUDE MCGRATH's NPI number.

- c. On October 14, 2014, when defendant ROBERT CLAUDE MCGRATH was in Atlantic Spine's Wayne, Pennsylvania office, Medicare beneficiaries received physical therapy in the Westmont office, and Atlantic Spine subsequently billed Medicare for that therapy under defendant ROBERT CLAUDE MCGRATH's NPI number.

In violation of Title 18, United States Code, Section 1349.

FORFEITURE ALLEGATION

1. As a result of committing the offenses alleged in this Information, defendant ROBERT CLAUDE MCGRATH 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 from proceeds traceable to the commission of the offenses, including but not limited to a forfeiture money judgment in the amount of \$890,000, representing all property constituting or derived from proceeds traceable to the commission of the offenses to which he is pleading guilty.

2. If any of the above-described forfeitable property, 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 person;
- 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 intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.



WILLIAM E. FITZPATRICK
Acting United States Attorney