

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

15-20398

CR COOKE

Case No. _____

18 U.S.C. § 1349

18 U.S.C. § 1347

18 U.S.C. § 371

18 U.S.C. § 982

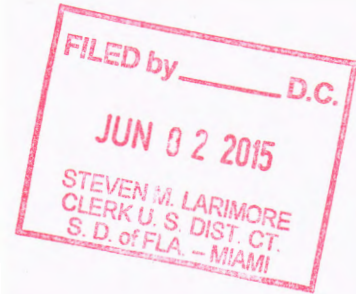
/TORRES

UNITED STATES OF AMERICA

vs.

JOSE PANDO,
MAGALY GONZALEZ, and
DAYSI SANCHEZ

Defendant.



INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times material to this Indictment:

The Medicare Program

1. The Medicare Program ("Medicare") was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services ("CMS"), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."

2. Medicare programs covering different types of benefits were separated into different program "parts." Part D of Medicare subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. It was enacted a part of the Medicare Prescription

Drug, Improvement, and Modernization Act of 2003 and went into effect on January 1, 2006.

3. In order to receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies approved by Medicare. Those companies were often referred to as drug plan “sponsors.” A beneficiary in a Medicare drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

4. A pharmacy could participate in Part D by entering a retail network agreement with one or more Pharmacy Benefit Managers (“PBMs”). Each PBM acted on behalf of one or more Medicare drug plans. Through a plan’s PBM, a pharmacy could join the plan’s network. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim to the PBM that represented the beneficiary’s Medicare drug plan. The PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

5. A pharmacy could also submit claims to a Medicare drug plan to whose network the pharmacy did not belong. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

6. Medicare, through CMS, compensated the Medicare drug plan sponsors. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors’ plans. Such payments were called capitation fees. The capitation fees were adjusted periodically based on various factors, including the beneficiary’s medical condition. In addition, in some cases where a sponsor’s expenses for a beneficiary’s prescription drugs exceeded that beneficiary’s capitation fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

7. Medicare, Medicare drug plan sponsors, and PBMs were “health care benefit program[s],” as defined by Title 18, United States Code, Section 24(b).

Medicare Drug Plan Sponsors

8. United, Penn Life, United NY, and SilverScript Insurance Company (“SilverScript”) were Medicare drug plan sponsors.

9. CVS/Caremark was a PBM.

The Defendants, and a Related Individual

10. Pharma and Services Corp. (“Pharma”) was a Florida corporation, incorporated on or about August 17, 2010, that did business in Miami-Dade County, purportedly providing prescription drugs to Medicare beneficiaries. Pharma’s principal place of business was 4214 W. 16th Ave., Hialeah, Florida.

11. **JOSE PANDO**, a resident of Miami-Dade County, was an owner and shareholder of Pharma, and was the President of Pharma in 2012.

12. **MAGALY GONZALEZ**, a resident of Miami-Dade County, was a corporate officer of Pharma in 2012.

13. **DAYSI SANCHEZ**, a resident of Miami-Dade County, was a corporate officer of Pharma in 2012, and was the Registered Agent of Pharma in 2012.

14. Eduardo Torres, a resident of Miami-Dade County, was an owner and shareholder of Pharma, and was the Vice President of Pharma in 2012.

COUNT 1
Conspiracy to Commit Health Care Fraud
(18 U.S.C. § 1349)

1. Paragraphs 1 through 14 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. Beginning in or around October 2011, and continuing through in or around December 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**JOSE PANDO,
MAGALY GONZALEZ, and
DAYSI SANCHEZ**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with each other, with Eduardo Torres, and with others known and unknown to the Grand Jury, to commit offenses against the United States, that is:

a. to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, United, Penn Life, United NY, SilverScript, and CVS/Caremark, and to obtain, by means of materially false and fraudulent pretenses, money and property owned by, and under the control of these 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; and

b. to knowingly and with the intent to defraud, devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing the scheme and

artifice, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, and sounds, in violation of Title 18, United States Code, Section 1343.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (b) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds; and (c) diverting the fraud proceeds for their personal use and benefit, and the use and benefit of others, and to further the fraud.

Manner and Means of the Conspiracy

The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

4. **JOSE PANDO, MAGALY GONZALEZ, DAYSI SANCHEZ** and their co-conspirators recruited and paid Medicare beneficiaries kickbacks to induce said Medicare beneficiaries to obtain prescriptions for pharmaceutical drugs to be used in conjunction with the false and fraudulent billing of Medicare Part D through Pharma.

5. **JOSE PANDO** and his co-conspirators submitted false and fraudulent prescription drug wholesaler invoices to PBMs, when said PBMs were conducting audits of Pharma, in order to conceal that Pharma had not purchased sufficient quantities of prescription drugs from prescription drug wholesalers.

6. **JOSE PANDO, MAGALY GONZALEZ, DAYSI SANCHEZ** and their co-conspirators submitted and caused Pharma to submit claims, via interstate wire, that falsely and

fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and provided by Pharma to Medicare beneficiaries, when, in fact, they were not provided, and not medically necessary.

7. As a result of such false and fraudulent prescription drug claims, Medicare and Medicare drug plan sponsors, including Silverscript, through their PBMs, made overpayments funded by Medicare to Pharma, in the approximate amount of \$2.7 million.

8. **JOSE PANDO, MAGALY GONZALEZ, DAYSI SANCHEZ** and their co-conspirators used the proceeds from the false and fraudulent Medicare Part D claims for their own use and the use of others, and to further the fraud.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2-5
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 14 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around October 2011, and continuing through in or around December 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**JOSE PANDO,
MAGALY GONZALEZ, and
DAYSI SANCHEZ**

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, United, Penn Life, United NY, SilverScript, and CVS/Caremark, 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, these health care benefit programs.

Purpose of the Scheme and Artifice

3. It was a purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent prescription drug claims to health care benefit programs; (b) concealing the submission of false and fraudulent prescription drug claims to healthcare benefit programs, and the receipt and transfer of proceeds; and (c) diverting fraud proceeds for the personal use and benefit of themselves and others, and to further the fraud.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 8 of the Manner and Means section of Count 1 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution or Attempted Execution of the Scheme and Artifice

5. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**JOSE PANDO,
MAGALY GONZALEZ, and
DAYSI SANCHEZ**

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, United, Penn Life, United NY, SilverScript, and CVS/Caremark, 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, said health care benefit programs, in that the defendants submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that Pharma provided pharmaceutical items and service to Medicare beneficiaries pursuant to physicians' orders and prescriptions:

Count	Medicare Beneficiary	Approx. Date of Submission of Claim	Medicare Claim Number	Medicare Drug Plan Sponsor	Item Claimed; Approx. Amount Claimed
2	V.R.	3/5/2012	12065342588612899991	Silverscript Insurance Company	Lexapro Tab 20MG; \$129
3	V.R.	4/4/2012	12095511509206999991	Silverscript Insurance Company	Lexapro Tab 20MG; \$129
4	A.A.	5/14/2012	12135368720107899991	Silverscript Insurance Company	Plavix Tab 75MG; \$198
5	A.A.	6/12/2012	12164341241206099991	Silverscript Insurance Company	Plavix Tab 75MG; \$198

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

COUNT 6
Conspiracy to Defraud the United States And Pay Health Care Kickbacks
(18 U.S.C. § 371)

1. Paragraphs 1 through 14 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From at least as early as in or around October 2011, and continuing through in or around December 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**JOSE PANDO,
MAGALY GONZALEZ, and
DAYSI SANCHEZ**

and their co-conspirators did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with Eduardo Torres and others known and unknown to the Grand Jury, to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of the Medicare program; and to commit certain offenses against the United States, that is to violate Title 42, United States Code, Section 1320a-7b(b)(2)(B), by knowingly and willfully offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to any person to induce such person to purchase, order, and arrange for and recommend purchasing and ordering of any good, service, and item for which payment may be made in whole or in part under a Federal health care program, that is, Medicare.

Purpose of the Conspiracy

3. It was the purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by: (1) offering and paying kickbacks to ensure that Medicare beneficiaries would serve as patients of Pharma; and (2) submitting claims for Medicare items and services, primarily prescription drugs, that Pharma purportedly provided to these beneficiaries.

Manner and Means of the Conspiracy

The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

3. **JOSE PANDO, MAGALY GONZALEZ, DAYSI SANCHEZ**, Eduardo Torres, and others, offered and paid kickbacks and bribes to Medicare beneficiaries in return for these beneficiaries serving as patients for Pharma.

4. **JOSE PANDO, MAGALY GONZALEZ, DAYSI SANCHEZ**, Eduardo Torres, and others, wrote and/or received Pharma corporate checks in small amounts, cashed these checks, and then used the cash to pay kickbacks to Medicare beneficiaries.

5. **JOSE PANDO, MAGALY GONZALEZ, DAYSI SANCHEZ**, Eduardo Torres, and others, submitted and caused Pharma to submit Medicare claims for the recruited Medicare beneficiaries for prescription drugs purportedly provided to these beneficiaries.

6. Medicare, PBMs and various Medicare drug plan sponsors paid Pharma based upon claims for prescription drugs purportedly provided to these beneficiaries.

Overt Acts

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one of the co-conspirators committed and caused to be committed, in the Southern District of Florida, at least one of the following overt acts, among others:

1. On or about January 10, 2012, **JOSE PANDO** signed Pharma Check No. 1327 made out to himself in the approximate amount of \$2,300.

2. On or about January 11, 2012, **DAYSI SANCHEZ** signed Pharma Check No. 1332 made out to herself in the approximate amount of \$2,300.

3. On or about March 6, 2012, **DAYSI SANCHEZ** signed Pharma Check No. 1463 made out to herself in the approximate amount of \$2,300.

4. On or about March 13, 2012, **JOSE PANDO** signed Pharma Check No. 1478 made out to himself in the approximate amount of \$2,300.

5. On or about April 16, 2012, **DAYSI SANCHEZ** signed Pharma Check No. 1551 made out to **MAGALY GONZALEZ** in the approximate amount of \$2,300.

6. On or about April 23, 2012, **JOSE PANDO** signed Pharma Check No. 1569 made

out to **MAGALY GONZALEZ** in the approximate amount of \$2,300.

All in violation of Title 18, United States Code, Section 371.

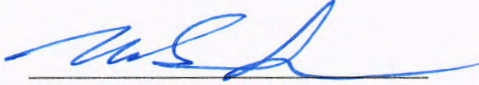
FORFEITURE
(18 U.S.C. § 982 (a)(7))

1. The allegations contained in this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendants **JOSE PANDO, MAGALY GONZALEZ**, and **DAYSI SANCHEZ** have an interest.


2. Upon conviction of any violation of Title 18, United States Code, Sections 1347, 1349, or Title 18, United States Code, Section 371, as alleged in this Indictment, the defendants so convicted shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense pursuant to Title 18, United States Code, Section 982(a)(7).

All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth in Title 21, United States Code, Section 853, made applicable by Title 18, United States Code, Section 982(b).

A TRUE BILL


FOREPERSON


WIFREDO A. FERRER
UNITED STATES ATTORNEY


JAMES V. HAYES
ASSISTANT U.S. ATTORNEY