

M
ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

| |
|--|
| U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED <div style="border: 1px solid black; padding: 5px; text-align: center;"> AUG 24 2011 </div> CLERK, U.S. DISTRICT COURT By _____ Deputy |
|--|

UNITED STATES OF AMERICA

vs.

DANIEL K. LEONG (1)
CAL GRAVES (2)

§
§
§
§
§
§

No.

3. - 11CR - 247 - M

INDICTMENT

The Grand Jury charges:

Count One
Conspiracy to Commit Health Care Fraud
(Violation of 18 U.S.C. § 1349)

Introduction

At all times relevant to this indictment:

The Medicare Program

1. The Medicare Program (Medicare) was a federal program that provided health care benefits to certain individuals, including those age 65 years or older, blind, or disabled. Individuals who received benefits under Medicare were often referred to as "beneficiaries." Medicare was a "health care benefit program" as defined by 18 U.S.C. § 24(b).

2. Medicare Part B paid for outpatient physician services and Medicare Part D paid for prescriptions. Office visits were reimbursed by Medicare at different rates,

depending on whether the patient was new and the severity of the presenting problems.

3. Medicare paid for diagnostic testing, which included diagnostic x-rays, all laboratory tests, and electrodiagnostic studies. Diagnostic tests must have been ordered by the physician who treated the beneficiary. The physician must have used the results in the management of the beneficiary's specific medical problem. Tests not ordered by the physician who treated the beneficiary were not reasonable and necessary.

4. A physician assistant (PA), if properly accredited and licensed, could have provided reimbursable services only when supervised by a physician. If a PA performed the service and the provider billed Medicare and Medicaid using the physician's provider number, the supervising physician must provide a higher level of supervision than he would have had the service been billed using the PA's number.

The Medicaid Program

5. The Texas Medical Assistance program (Medicaid) was a state program jointly funded by the State of Texas and the federal government and provided medical and related services to low-income families with dependent children and aged, blind, or disabled individuals. Individuals eligible under the Medicaid program were referred to as Medicaid "clients." Medicaid was a "health care benefit program" as defined by 18 U.S.C. § 24(b).

6. Among the types of reimbursable medical assistance available to Medicaid clients were office visits, diagnostic testing, and prescription drugs. For Medicaid clients

eligible to receive benefits under both Medicare and Medicaid, Medicare paid a percentage of an allowable claim first, and then Medicaid paid the coinsurance or deductible. This type of claim was referred to as a "crossover" claim.

Authority to Distribute Controlled Substances

7. Medical practitioners were authorized to handle controlled substances by being issued a registration by the Drug Enforcement Administration (DEA). A "practitioner" was defined as a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practiced or did research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

Texas Administrative Code

8. The Texas Administrative Code regulated physician supervision of a PA. In addition to holding a valid Texas Medical License, a supervising physician must have retained professional and legal responsibility for the care rendered by the physician assistant.

9. A pain management clinic is a facility for which a majority of patients were issued, on a monthly basis, a prescription for opioids, benzodiazepines, barbiturates, or other controlled substances. Effective September 10, 2010, all such clinics could not operate in Texas without a certificate from the Texas Medical Board (Board).

Designation as a pain management clinic subjected the owner to a higher level of scrutiny from the Board.

10. Anyone dispensing controlled substances in Texas must have registered with the Texas Department of Public Safety in addition to having registered with the DEA.

The Defendants

11. **Dr. Daniel K. Leong (Leong)** became a doctor in 1981.

12. In May 2004, **Leong** registered South Dallas Community Medical Center as a professional association. The address was 5105 Fairglen Dr., Plano, TX 75093, **Leong's** home address. **Leong** was listed as the only professional practicing at the association, president, and registered agent.

13. In October 2003, **Leong** received a Medicare provider number, XXX035. He listed the practice location as 2929 Martin Luther King Blvd., Dallas, TX 75215, which was located in the Northern District of Texas, Dallas Division. This was the location of the South Dallas Community Medical Center.

14. In December 2003, **Leong** received Medicaid provider number XXXX232. He indicated that his specialty was family practice and that his subspecialty was emergency medicine.

15. In February 2010, **Leong** hired **Cal Graves (Graves)** to be a PA at South Dallas Community Medical Center. **Graves** did not have authority from the DEA to

distribute controlled substances.

The Conspiracy

16. **Leong and Graves**, during the period beginning at least in or about February 2010, and continuing thereafter until in or about February 2011, in the Dallas Division of the Northern District of Texas and elsewhere, did knowingly, intentionally, and willfully combine, conspire, confederate, and agree with each other and with other persons known and unknown to the Grand Jury, to commit certain offenses against the United States, that is, to knowingly and willfully execute, and attempt to execute, a scheme and artifice: (a) to defraud health care benefit programs, that is, Medicare, Medicaid; and (b) to obtain money and property owned by and under the custody and control of health care benefit programs, that is, Medicare and Medicaid by means of materially false and fraudulent pretenses, representations, and promises, in connection with payments for health care services, namely office visits, diagnostic tests, and drug prescriptions, in violation of 18 U.S.C. § 1347.

The Purpose of the Conspiracy

16. It was the purpose of the conspiracy for the defendants and others to unlawfully enrich themselves by: (a) submitting false and fraudulent claims to Medicare and Medicaid; (b) concealing the submission of false and fraudulent claims to Medicare and Medicaid as well as the receipt and transfer of the proceeds of the fraud; and (c) diverting proceeds of the fraud for personal use and benefit of the defendants and their

coconspirators.

The Manner and Means of the Conspiracy

17. The manner and means by which the defendants and their coconspirators sought to accomplish the purpose and object of the conspiracy included, among others, the following:

18. From on or about February 2010 to on or about February 2011, **Leong** falsely represented to Medicare and Medicaid—through claims for office visits, diagnostic tests, and drug prescriptions— that he supervised **Graves**. In fact, **Leong** was rarely at the office.

19. **Leong** told **Graves** he must order a certain number diagnostic tests per day and, if he ordered more, he would be paid a bonus.

20. **Leong** employed **Graves**, who he knew did not have authority from the DEA to distribute controlled substances.

21. **Leong** signed a blank prescription with his DEA and DPS numbers, which was photocopied by clinic staff. **Graves** would sign his name above **Leong's** photocopied signature on all prescriptions in order to get the pharmacy to fill the prescription.

22. **Graves**, with **Leong's** knowledge and approval, dispensed controlled substances to a majority of the patients on every visit, even though South Dallas

Community Medical Clinic was not registered as a pain management clinic with the Board.

All in violation of 18 U.S.C. § 1349.

Counts Two-Seven
Health Care Fraud
(Violation of 18 U.S.C. §§ 1347 and 2)

1. Paragraphs 1 through 23 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

2. From on or about January 2009 to on or about February 2011, the exact dates being unknown to the grand jury, in Dallas County, in the Northern District of Texas, and elsewhere, **Leong** and others known and unknown to the Grand Jury, including **Graves** from February 2010 to February 2011, each aided and abetted by each other and, 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 18 U.S.C. § 24(b), that is, Medicare and Medicaid, 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 Medicare and Medicaid, in connection with the delivery of and payment for health care benefits, items, and services.

Purpose of the Scheme and Artifice

3. It was the purpose of the scheme and artifice for the defendants and their coconspirators to unlawfully enrich themselves through the submission of false and fraudulent Medicare and Medicaid claims for office visits, diagnostic tests, and drug prescriptions.

The Scheme and Artifice

4. Paragraphs 17 through 22 of Count One of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution of the Scheme and Artifice

5. On or about the dates specified as to each count below in the Dallas Division of the Northern District of Texas, and elsewhere, the defendants, specifically identified as to each count below, 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 a health care benefit program affecting commerce, that is, Medicare and Medicaid, 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.

| Ct. | Defendant | Claim No. | Patient | Approx. Date of Claim | Description of Services Billed | Amount Billed |
|------------|------------------|--|----------------|------------------------------|---------------------------------------|----------------------|
| 2 | Leong | Medicare Claim: 452909240777080 Medicaid Claim: 10030302009257574 690101 | T.G. | 8/28/2009 | Office visit | \$95.00 |

| | | | | | | |
|---|---------------------|---|------|------------|--|------------|
| 3 | Leong | Medicare Claim: 452209266135860 Medicaid Claim: 10030302009282648 11761 | D.H. | 9/23/2009 | Office visit; muscle test, two limbs; motor nerve conduction test; sense nerve conduction test | \$1,426.56 |
| 4 | Leong and Graves | Medicaid Claim: 10020302010306693 10481 | M.L. | 11/02/2010 | Office visit; spirometry review; evaluation of wheezing; airway inhalation therapy | \$322.46 |
| 5 | Leong and Graves | Medicare Claim: 452210322446860 Medicaid Claim: 10030302010338805 39659 | C.J. | 11/18/2010 | Office visit; glucose test | \$110.00 |
| 6 | Leong and Graves | Medicare Claim: 452210326267970 Medicaid Claim: 10030302010341811 46930 | T.C. | 11/22/2010 | Office visit | \$95.00 |
| 7 | Leong and Graves | Medicare Claim: 06411911651215342 00641191165121534 204444 | T.C. | 11/22/2010 | Hydrocodone (60 pills) | \$15.72 |

In violation of 18 U.S.C. §§ 1347 and 2.

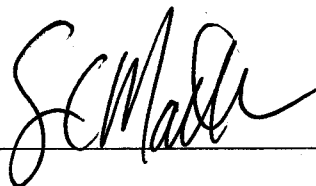
Forfeiture Notice
[18 U.S.C. § 982(a)(7)]

Upon conviction for any of the offenses alleged in Counts One through Seven of this Indictment and pursuant to 18 U.S.C. § 982(a)(7), defendants **Daniel K. Leong** and **Cal Graves** shall forfeit to the United States any property, real or personal, constituting or derived from, directly or indirectly, the gross proceeds traceable to the commission of the respective offense. This property includes, but is not limited to, the following:

1. A personal money judgment in the amount of U.S. currency constituting the gross proceeds traceable to the offense.


Pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b), if any of the above-described property subject to forfeiture, as a result of any act or omission of one or more of the previously-mentioned defendants, cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third person; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be subdivided without difficulty, it is the intent of the United States of America to seek forfeiture of any other property of the previously-mentioned defendants up to the value of the above-described property subject to forfeiture.

A TRUE BILL

A handwritten signature in cursive script, appearing to read "J. T. Jacks", written over a horizontal line.

FOREPERSON

JAMES T. JACKS
UNITED STATES ATTORNEY

A handwritten signature in cursive script, appearing to read "Michael McCarthy", written over a horizontal line.

MICHAEL MCCARTHY
Assistant United States Attorney
Texas State Bar No. 24072230
1100 Commerce Street, Third Floor
Dallas, Texas 75242-1699
Telephone: 214.659.8600
Facsimile: 214.659.8812

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE UNITED STATES OF AMERICA

v.

DANIEL K. LEONG (1)
CAL GRAVES (2)

3. - 11CR - 247 - M

INDICTMENT

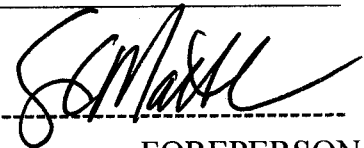
18 U.S.C. § 1349
Conspiracy to Commit Health Care Fraud

18 U.S.C. §§ 1347 and 2
Health Care Fraud

18 U.S.C. § 982(a)(7)
Forfeiture Allegation

7 Counts

A true bill rendered



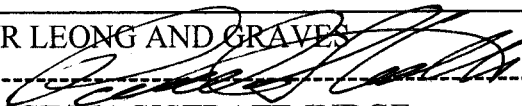
DALLAS

FOREPERSON

Filed in open court this 24 day of August, 2011

Clerk

SUMMONS' TO ISSUE FOR LEONG AND GRAVES



UNITED STATES DISTRICT/MAGISTRATE JUDGE

No Criminal Case Pending