SCJ/GG:BDF/ABS/FTB
F.#2015R00056

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

OLGA PROSKUROVSKY,
TATYANA SHEVCHUK and
YURIY OMELCHENKO,

Defendants.

- - - - - - - - - - - - - - - - - - X

INDICTMENT

Cr. No. CR 15-291
(T. 18, U.S.C., §§ 371, 982(a)(7), 1349 and 3551 et seq.; T. 21, U.S.C., § 853(p))

WEINSTEIN, J.

REYES, M.J.

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

I. Background

A. The Medicare and Medicaid Programs

1. The Medicare program ("Medicare") was a federal health care program providing benefits to persons who were at least age 65 or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services. Individuals who received benefits under Medicare were referred to as Medicare "beneficiaries."

2. The New York State Medicaid program ("Medicaid") was a federal and state health care program providing benefits to individuals and families who met specified

financial and other eligibility requirements, and certain other individuals who lacked adequate resources to pay for medical care. CMS was responsible for overseeing the Medicaid program in participating states, including New York. Individuals who received benefits under Medicaid were similarly referred to as "beneficiaries."

3. Medicare and Medicaid were each a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

4. Medicare was divided into multiple parts. Medicare Part B covered the costs of physicians' services and outpatient care, such as physical therapy, occupational therapy and diagnostic tests. Generally, Medicare Part B covered these costs only if, among other requirements, they were medically necessary and ordered by a physician.

5. Medicaid covered the costs of medical services and products ranging from routine preventive medical care for children to institutional care for the elderly and disabled. Among the specific medical services and products provided by Medicaid were physical therapy, occupational therapy and diagnostic tests. Generally, Medicaid covered these costs only if, among other requirements, they were medically necessary and ordered by a physician.

6. Medical providers and suppliers that sought to participate in Medicare Part B and Medicaid and to bill Medicare and/or Medicaid for the cost of their treatment of Medicare and Medicaid beneficiaries and related benefits, items and services were required to apply for and receive a provider identification number ("PIN") or provider transaction access number ("PTAN"). The PIN/PTAN allowed medical providers and suppliers to submit bills, known as claims, to Medicare and Medicaid to obtain reimbursement for the

cost of treatment and related health care benefits, items and services that they had supplied or provided to beneficiaries.

7. Medical providers and suppliers were authorized to submit claims to Medicare and Medicaid only for services they actually rendered and were required to maintain patient records verifying the provision of services.

8. To receive reimbursement from Medicare for a covered service, a medical provider was required to submit a claim, either electronically or in writing, through Form CMS-1500 or Form UB-92. To receive reimbursement from Medicaid for a covered service, a medical provider was required to submit a claim, either electronically or in writing, through the New York State eMedNY-150003 Claim Form. Each claim form required certain important information, including (a) the beneficiary's name and identification number; (b) the PIN/PTAN of the doctor or other qualified health care provider who ordered the health care benefit, item or service that was the subject of the claim; (c) the health care benefit, item or service that was provided or supplied to the beneficiary; (d) the billing codes for the benefit, item or service; (e) the date upon which the benefit, item, or service was provided or supplied to the beneficiary and (f) whether or not the beneficiary was also a Medicaid or Medicare recipient. By submitting the claim, the provider was certifying, among other things, that the services were not induced by kickbacks, that the services were rendered to the beneficiary and that the services were medically necessary.

B. Relevant Entities and Persons

(1) The Medical Clinics and other Relevant Corporate Entities

9. Prime Care on the Bay, LLC ("Prime Care") and Bensonhurst Mega Medical P.C. ("Bensonhurst") were New York State corporations. Prime Care was located at 1711 Sheepshead Bay Road in Brooklyn, New York. Bensonhurst was located nearby at 2761 Bath Avenue in Brooklyn, New York. Both Prime Care and Bensonhurst were authorized to participate in Medicare and Medicaid. They purported to provide, among other things, physical therapy, occupational therapy and diagnostic tests to Medicare and Medicaid beneficiaries.

10. Bensonhurst Best Care, Inc. ("Best Care") was a New York State corporation doing business in Brooklyn, New York. Best Care purported to provide management services to Prime Care and Bensonhurst.

(2) The Defendants and Other Relevant Individuals

11. The defendant OLGA PROSKUROVSKY was a manager and a medical biller at Prime Care and Bensonhurst.

12. The defendant TATYANA SHEVCHUK was a manager at Prime Care and Bensonhurst.

13. The defendant YURIY OMELCHENKO was a manager at Prime Care and Bensonhurst.

14. Coconspirator 1 ("CC 1"), Coconspirator 2 ("CC 2") and Coconspirator 3 ("CC 3"), whose identities are known to the Grand Jury, were ambulette drivers who transported Medicare and Medicaid beneficiaries to and from, among other places, Prime Care.

II. The Fraud Scheme

15. From approximately February 2008 to February 2011, the defendants, OLGA PROSKUROVSKY, TATYANA SHEVCHUK and YURIY OMELCHENKO, together with others, agreed to execute and executed a fraud scheme in which they enriched themselves as follows: (a) they artificially and corruptly increased demand for medical services by providing Medicare and Medicaid beneficiaries with cash payments per visit to induce those beneficiaries to subject themselves to medically unnecessary procedures, services and tests; (b) they submitted and caused to be submitted claims to Medicare and Medicaid for medically unnecessary services to beneficiaries, such as physical therapy, occupational therapy, chiropractic and diagnostic testing; (c) they submitted and caused to be submitted claims to Medicare and Medicaid for physical therapy and occupational therapy services that were not supervised and not performed by professionals trained and authorized to perform those medical services; (d) they submitted and caused to be submitted claims to Medicare and Medicaid for physical therapy, occupational therapy, chiropractic and diagnostic testing that were induced by cash kickbacks and (e) they engaged in deceptive acts and contrivances intended to hide information, mislead, avoid suspicion and avert further inquiry into the nature of the services offered at Prime Care and Bensonhurst.

16. Specifically, the defendants OLGA PROSKUROVSKY, TATYANA SHEVCHUK and YURIY OMELCHENKO, together with others, submitted and caused to be submitted to Medicare and Medicaid false and fraudulent claims for physical therapy, occupational therapy, chiropractic and diagnostic tests that were not medically necessary and not provided. For example:

(a) Clinic managers delivered envelopes of cash to ambulette drivers and patient recruiters who then paid cash to beneficiaries as a bribe for the beneficiaries to submit themselves for unnecessary medical procedures. For example, beneficiary B.L., whose identity is known to the Grand Jury, was paid cash by ambulette drivers to attend Prime Care on August 17, 24, and 31, 2010; September 7, 14, 21, and 28, 2010; and October 5, 14, 21, and 26, 2010;

(b) In return for receiving cash kickbacks, beneficiaries at Prime Care and Bensonhurst agreed to follow instructions to request medically unnecessary services from doctors, physical therapists, occupational therapists and chiropractors;

(c) To conceal the excessive and unnecessary nature of the medical services purportedly provided at Prime Care and Bensonhurst, beneficiaries were given alternating diagnoses relating to different body parts. After beneficiaries received a cycle of physical or occupational therapy on one body part, those beneficiaries' diagnoses would be switched to a different body part so that the same beneficiaries could receive medically unnecessary physical and occupational therapy for extended periods of time that lasted for months and even years. For example, between January 2009 and December 2010, claims for alternating cycles of physical and occupational therapy relating to alternating generalized diagnoses associated with pain in the lower back, spine, neck and leg were submitted for beneficiary Z.S, whose identity is known to the Grand Jury. Between May 2008 and November 2010, claims for alternating cycles of physical and occupational therapy relating to alternating generalized diagnoses associated with pain in the hands, shoulders, lower back, spin, leg, neck and thigh were submitted for beneficiary N.P, whose identity is known to the

Grand Jury. Claims were submitted in similar patterns for many of the beneficiaries purportedly receiving treatment at Prime Care and Bensonhurst;

(d) Beneficiaries at Prime Care and Bensonhurst would also receive separate diagnoses that would falsely justify medically unnecessary chiropractic services, often purportedly provided on the same day as the physical and occupational therapy. In addition, repetitive and unnecessary diagnostic tests and office visits would be ordered for beneficiaries during each of their visits to the clinic;

(e) Individuals without medical licenses or training established rules and policies at Prime Care and Bensonhurst requiring that medically unnecessary physical and occupational therapy services be provided to beneficiaries in certain quantities for certain amounts of time in order to falsely justify inflated claims to Medicare and Medicaid;

(f) Physical therapy aides were used to perform most of the physical and occupational therapy. Under Medicare and Medicaid, physical therapy and occupational therapy services are only reimbursable if they are performed by a licensed physical or occupational therapist, or a licensed physical or occupational therapy assistant supervised by a licensed physical or occupational therapist. At Prime Care and Bensonhurst, physical therapists and occupational therapists generally provided only initial evaluations and re-evaluations. Beneficiaries were actually seen and handled by unsupervised aides who were not licensed or authorized under New York State law to perform physical therapy or occupational therapy;

(g) On several occasions, claims were submitted for physicians' services, physical therapy and occupational therapy on days where the rendering professional

listed on the claim was not in the country and therefore unavailable to supervise or perform the services purportedly rendered; and

(h) False and fraudulent claims were submitted and caused to be submitted to Medicare and Medicaid on behalf of associated physicians, physical therapists, occupational therapists and chiropractors. These claims were fraudulent in that they were induced by cash kickbacks, not rendered, not medically necessary, not appropriately supervised and not performed by licensed individuals.

17. The defendants OLGA PROSKUROVSKY, TATYANA SHEVCHUK and YURIY OMELCHENKO, together with others, engaged in deceptive acts and contrivances intended to hide information, mislead, avoid suspicion and avert further inquiry into the operation of Prime Care and Bensonhurst. For example:

(a) Prime Care and Bensonhurst were falsely incorporated in the names of medical professionals, as required by New York State law. In reality, Prime Care and Bensonhurst were not owned, operated or controlled by medical professionals;

(b) In order to avoid scrutiny, documents were submitted to the Medicare and Medicaid programs that misrepresented the nature of Prime Care and Bensonhurst's ownership, management, and operation;

(c) In order to conceal the fraudulent nature of what was provided to Medicare and Medicaid beneficiaries, medical files containing false information about the services provided and the medical necessity of those services were created. These files with false information were based on uniform templates and filled with superficial medical notes designed to conceal the fact that services were not medically necessary and not performed;

(d) Occupational and physical therapists were paid to submit and to cause to be submitted fraudulent claims to Medicare and Medicaid under their respective PINs/PTANs. They were also paid to sign patient charts and superbills — documents listing procedure and diagnoses codes, which are signed by medical professionals to certify what should be billed — falsely supporting those fraudulent claims. By spreading out fraudulent claims for physical and occupational therapy services among several physical and occupational therapists, the defendants intended to conceal and cover up the excessive number of physical and occupational therapy claims; and

(e) After reimbursements for false and fraudulent claims were deposited by Medicare and Medicaid into accounts in the name of Prime Care, Bensonhurst, and Best Care, checks drawn on those accounts were made payable to companies purporting to provide medical and business support services. These checks did not represent payment for legitimate services provided to Prime Care, Bensonhurst and Best Care. Instead, they were negotiated and cashed. The resulting cash was then diverted back to the defendants in the form of salaries and bonuses and used to pay kickbacks to beneficiaries. In order to conceal the true nature of these transactions, business agreements and false invoices with false descriptions were created.

18. Between approximately February 2008 and February 2011, Prime Care submitted approximately $37.5 million in claims to Medicare and Medicaid. Between approximately February 2008 and February 2011, Bensonhurst submitted approximately $23.6 million in claims to Medicare and Medicaid.

COUNT ONE

(Conspiracy to Commit Health Care Fraud and Wire Fraud)

19. The allegations contained in paragraphs 1 through 18 are realleged and incorporated as if fully set forth in this paragraph.

20. In or about and between February 2008 and February 2011, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants OLGA PROSKUROVSKY, TATYANA SHEVCHUK and YURIY OMELCHENKO, together with others, did knowingly and intentionally conspire:

(a) to execute a scheme and artifice to defraud 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, contrary to Title 18, United States Code, Section 1347; and

(b) to devise a scheme and artifice to defraud Medicare and Medicaid, and to obtain money and property from them by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, to transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce writings, signs, signals, pictures and sounds, contrary to Title 18, United States Code, Section 1343.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNT TWO

(Conspiracy to Make False Statements Relating to Health Care Matters)

21. The allegations contained in paragraphs 1 through 18 are realleged and incorporated as if fully set forth in this paragraph.

22. In or about and between February 2008 and February 2011, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants OLGA PROSKUROVSKY, TATYANA SHEVCHUK and YURIY OMELCHENKO, together with others, did knowingly and intentionally conspire to, in matters involving one or more health care benefit programs, including Medicare and Medicaid (1) falsify, conceal and cover up by trick, scheme and device material facts and (2) make materially false, fictitious and fraudulent statements and representations and make and use materially false writings and documents knowing the same to contain materially false, fictitious and fraudulent statements and entries, in connection with the delivery of and payment for health care benefits, items and services, in that the defendants agreed to falsely alter original medical records and make false and misleading statements concerning services provided to Medicare and Medicaid beneficiaries, contrary to Title 18, United States Code, 1035(a)(1) and (a)(2).

23. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendants OLGA PROSKUROVSKY, TATYANA SHEVCHUK and YURIY OMELCHENKO, together with others, committed and caused to be committed, among others, the following:

OVERT ACTS

(a) PROSKUROVSKY deposited check 3674 in the amount of approximately $5,000, which was drawn on a Prime Care bank account and dated November 9, 2010;

(b) OMELCHENKO deposited check number 1119 in the amount of approximately $2,765, which was drawn on a Bensonhurst bank account and dated February 2, 2011;

(c) SHEVCHUK deposited check number 11318 in the amount of approximately $2,6134, which was drawn on a Prime Care bank account and dated February 22, 2011;

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT THREE

(Conspiracy to Defraud by Obstructing the Lawful Functions of the Department of Health and Human Services and to Pay Health Care Kickbacks)

24. The allegations contained in paragraphs 1 through 18 are realleged and incorporated as if fully set forth in this paragraph.

25. In or about and between February 2008 and February 2011, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants OLGA PROSKUROVSKY and TATYANA SHEVCHUK, together with others, did knowingly and intentionally conspire:

(a) 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 and Medicaid programs; and

(b) to offer and pay cash kickbacks, directly and indirectly, overtly and covertly, to Medicare and Medicaid beneficiaries, in order to induce the referral of said beneficiaries to Prime Care and Bensonhurst for the furnishing, and arranging for the furnishing, of items and services for which payment may be made in whole and in part under

Medicare and Medicaid and to induce Medicare and Medicaid beneficiaries to purchase, lease, order and arrange for and recommend purchasing, leasing and ordering any goods, services and items for which payment may be made in whole and in part under Medicare and Medicaid, contrary to Title 42, United States Code, Section 1320a-7b(b)(2).

26. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, the defendants OLGA PROSKUROVSKY and TATYANA SHEVCHUK, together with others, committed and caused to be committed, among others, the following:

OVERT ACTS

(a) On or about August 17, 2010, CC 3 paid a cash kickback to Medicare beneficiary B.L. to receive purported medical services at Prime Care.

(b) On or about August 24, 2010, CC 1 paid a cash kickback to Medicare beneficiary B.L. to induce B.L. to receive purported medical services at Prime Care.

(c) On or about September 14, 2010, CC 2 paid a cash kickback to Medicare beneficiary B.L. to induce B.L. to receive purported medical services at Prime Care.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION
AS TO COUNTS ONE THROUGH THREE

27. The United States hereby gives notice to the defendants charged in Counts One through Three that, upon their conviction of any such offense, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982(a)(7),

which requires any person convicted of such offenses to forfeit any property, real and personal, which constitutes or is derived, directly or indirectly, from gross proceeds traceable to such offenses.

28. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with, a third party;

(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 divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section

853(p), to seek forfeiture of any other property of such defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 982(a)(7); Title 21, United States Code, Section 853(p))

A TRUE BILL

FOREPERSON

BY: _____
ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. 0.136

KELLY T. CURRIE
ACTING UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

Andrew Weissmann by Brzyan Furbe
ANDREW WEISSMANN
CHIEF, FRAUD SECTION
CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE

F. #2015R00056
FORM DBD-34
JUN. 85

No.

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

OLGA PROSKUROVSKY,
TATYANA SHEVCHUK and
YURIY OMELCHENKO

Defendants.

INDICTMENT

(T. 18, U.S.C., §§ 371, 982(a)(7), 1349, 2 and 3551 et seq.; T. 21, U.S.C., § 853(p)).)

A true bill.

_____ *Foreperson*

Filed in open court this _____ *day,*

of _____ *A.D. 20* _____

_____ *Clerk*

Bail, $ _____

_____

Bryan Fields, Trial Attorney (718) 254-6033