

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

Case:2:16-cr-20436
Judge: Lawson, David M.
MJ: Patti, Anthony P.
Filed: 06-16-2016 At 04:09 PM
IND SEALED V SEALED (BG)

D-1 SHIRLEY DOUGLAS,
D-2 MALIK FUQUA, and
D-3 FRANK MIDDLETON

VIO: 18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 1343
18 U.S.C. § 2
21 U.S.C. § 846
21 U.S.C. § 843
18 U.S.C. § 981
18 U.S.C. § 982
21 U.S.C. § 853

Defendants.

INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times relevant to this Indictment:

1. The Medicare program was a federal health care program providing benefits to persons who were over the age of 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. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

3. The Medicare program included coverage under two primary components, hospital insurance (“Part A”) and medical insurance (“Part B”). Part B of the Medicare program covered the cost of physicians’ services, medical equipment and supplies, and other ancillary services not covered by Part A. Specifically, Part B covered medically necessary services involving physician office services and outpatient physical therapy services. The medical services at issue in this Indictment were covered by Part B.

4. Wisconsin Physicians Service (“WPS”) administered the Medicare Part B program for claims arising in the State of Michigan. CMS contracted with WPS to receive, adjudicate, process, and pay certain Part B claims, including medical services related to physician office services and outpatient physical therapy services.

5. TrustSolutions LLC was the Program Safeguard Contractor for Medicare Part A and Part B in the State of Michigan until April 24, 2012, when it was replaced by Cahaba Safeguard Administrators LLC. On April 10, 2015, AdvanceMed replaced Cahaba as the Program Safeguard Contractor.

6. Payments under the Medicare program were often made directly to a provider of the goods or services, rather than to a Medicare beneficiary. This

payment occurred when the provider submitted the claim to Medicare for payment, either directly or through a billing company.

7. Upon certification, the medical provider, whether a clinic, physician, or other health care provider that provided services to Medicare beneficiaries, was able to apply for a Medicare Provider Identification Number (“PIN”) for billing purposes. A health care provider who was assigned a Medicare PIN and provided services to beneficiaries was able to submit claims for reimbursement to the Medicare contractor/carrier that included the PIN assigned to that medical provider.

8. A Medicare claim was required to set forth, among other things, the beneficiary’s name, the date the services were provided, the cost of the services, and the name and identification number of the physician or other health care provider who had ordered the services. When an individual medical provider was associated with a clinic and medically necessary services were provided at that clinic’s location, Medicare Part B required that the individual provider numbers associated with the clinic be placed on the claim submitted to the Medicare contractor.

9. By becoming a participating provider in Medicare, enrolled providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. To receive Medicare funds, enrolled providers, together with their

authorized agents, employees, and contractors, were required to abide by all provisions of the Social Security Act, the regulations promulgated under the Act, and applicable policies, procedures, rules, and regulations issued by CMS and its authorized agents and contractors. Health care providers were given and provided with online access to Medicare manuals and services bulletins describing proper billing procedures and billing rules and regulations.

10. Health care providers could only submit claims to Medicare for services they rendered. Moreover, health care providers could only submit claims for services, such as physical therapy, that are medically necessary. Medicare regulations required health care providers enrolled with Medicare to maintain complete and accurate patient medical records reflecting the medical assessment and diagnoses of their patients, as well as records documenting actual treatment of the patients to whom services were provided and for whom claims for payment were submitted by the physician. Medicare requires complete and accurate patient medical records so that Medicare may verify that the services were provided as described on the claim form. These records were required to be sufficient to permit Medicare, through WPS and other contractors, to review the appropriateness of Medicare payments made to the health care provider.

11. To receive reimbursement for a covered service from Medicare, a provider must submit a claim, either electronically or using a form (*e.g.*, a CMS-

1500 form or UB-92), containing the required information appropriately identifying the provider, rendering practitioner, patient, and services rendered, among other things.

12. Blue Cross and Blue Shield of Michigan (BCBSM) was a non-profit, privately operated insurance company authorized and licensed to do business in the state of Michigan.

13. BCBSM was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

14. BCBSM had agreements with participating providers to furnish medical services to patients insured by BCBSM. The agreements allowed the participating providers to bill BCBSM directly, and to be paid directly, for services provided to insured patients. BCBSM routinely issued notices to all participating providers advising them that services not reasonably necessary for patient treatment would not be paid by BCBSM.

15. BCBSM required participating providers to provide a diagnostic code and a procedure code on claims in order to be paid for professional services rendered to BCBSM subscribers. Payment for services depended upon the truthful submission of specific diagnostic and procedure codes indicated on the claim. BCBSM distributed payments to participating providers electronically, by

depositing money into the provider's bank account of record, or by mailing a check to the provider's address of record.

The Defendants and Relevant Entities

16. 1st Priority Physical Therapy, L.L.C. (1st Priority) was a Michigan limited liability company that operated two clinics, located at 18597 West 10 Mile Road, Southfield, Michigan and 17721 Fenkell Avenue, Detroit, Michigan. 1st Priority submitted claims for physical therapy and prescribed "pain management" medications.

17. Abyssinia Love Knot Physical Therapy, L.L.C. (Abyssinia) was a Michigan limited liability company that operated two clinics, located at 18597 West 10 Mile Road, Southfield, Michigan and 21700 Greenfield Road, Oak Park, Michigan. Abyssinia submitted claims for physical therapy and prescribed "pain management" medications.

18. SHIRLEY DOUGLAS, a resident of Wayne County, Michigan, was the owner, controller and manager of Abyssinia.

19. MALIK FUQUA, a resident of Wayne County, Michigan, was the owner, controller and manager of 1st Priority.

20. FRANK MIDDLETON, a resident of Oakland County, Michigan, was an employee of Abyssinia and 1st Priority.

COUNT 1

(18 U.S.C. § 1349—Health Care Fraud and Wire Fraud Conspiracy)

D-1 SHIRLEY DOUGLAS

D-2 MALIK FUQUA

D-3 FRANK MIDDLETON

21. Paragraphs 1 through 20 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

22. From in or around August 14, 2009, and continuing through the present, the exact dates being unknown to the Grand Jury, in Wayne and Oakland Counties, in the Eastern District of Michigan, and elsewhere, the defendants, SHIRLEY DOUGLAS, MALIK FUQUA and FRANK MIDDLETON, did willfully and knowingly, combine, conspire, confederate, and agree with each other, and others known and unknown to the Grand Jury, to commit certain offenses against the United States, namely:

a. to knowingly and willfully execute a scheme and artifice to defraud health care benefit programs affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare and BCBSM, 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 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 that the pretenses, representations and promises were false and fraudulent when made, and knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Purpose of the Conspiracy

23. It was a purpose of the conspiracy for defendants SHIRLEY DOUGLAS, MALIK FUQUA, FRANK MIDDLETON, and others to unlawfully enrich themselves by, among other things: (a) submitting false and fraudulent claims to Medicare and BCBSM for physical therapy services and other services that were (i) medically unnecessary; (ii) not provided; and (iii) not eligible for reimbursement; (b) providing kickbacks and bribes in the form of cash, prescriptions for controlled substances and gym access, to patients for the purpose of such patients providing their Medicare or BSBCM information to support false

and fraudulent claims to Medicare and BCBSM; (c) diverting proceeds of the fraud for the personal use and benefit of the defendants and their coconspirators.

Manner and Means

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

24. SHIRLEY DOUGLAS and MALIK FUQUA certified to Medicare that they would comply with all Medicare rules and regulations, including that they would not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare and would refrain from violating the federal anti-kickback statute.

25. SHIRLEY DOUGLAS and MALIK FUQUA would operate and control the day-to-day operations at Abyssinia and 1st Priority, and employ physicians who would write medically unnecessary prescriptions for oxycodone, Xanax and other controlled substances.

26. SHIRLEY DOUGLAS, MALIK FUQUA and FRANK MIDDLETON would provide kickbacks and bribes in the form of cash, prescriptions for controlled substances and gym access, to patients who provided their Medicare and BCBSM billing information to support false and fraudulent claims to Medicare and BCBSM.

27. SHIRLEY DOUGLAS and MALIK FUQUA would require patients to sign up for physical therapy services before permitting the physicians they employed to write prescriptions for controlled substances, without regard to whether or not physical therapy was medically necessary or provided.

28. SHIRLEY DOUGLAS, MALIK FUQUA, and others, would submit claims to Medicare for services purportedly provided to Medicare beneficiaries after those beneficiaries had died.

29. SHIRLEY DOUGLAS, MALIK FUQUA, FRANK MIDDLETON, and others, would falsify, fabricate and alter, and cause the falsification, fabrication and alteration, of magnetic resonance imaging (MRI) reports, Michigan Automated Prescription System (MAPS) reports and toxicology reports, to provide a fraudulent medical basis to support prescriptions for controlled substances and physical therapy, and claims for office visits and physical therapy.

30. Purported patients and others would receive this fake documentation from MALIK FUQUA, FRANK MIDDLETON, and others, and would submit this paperwork to the physicians employed at Abyssinia and 1st Priority, where they would receive prescriptions for controlled substances. These purported patients would use these prescriptions to obtain Schedule II through V controlled substances, including but not limited to, oxycodone and hydromorphone.

31. SHIRLEY DOUGLAS, MALIK FUQUA, MIDDLETON and others, through the use of interstate wires, would submit and cause the submission of false and fraudulent claims to Medicare for services purportedly provided by Abyssinia and 1st Priority that were not provided as billed, or were induced by kickbacks to patients, in an amount of approximately \$36 million.

32. SHIRLEY DOUGLAS, MALIK FUQUA, FRANK MIDDLETON, and other coconspirators would cause 1st Priority to submit approximately \$480,000 in claims to BCBSM.

COUNTS 2-5
(18 U.S.C. §§ 1347 and 2—Health Care Fraud)
D-1 SHIRLEY DOUGLAS
D-2 MALIK FUQUA

33. Paragraphs 21 through 31 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

34. On or about the dates enumerated below, in Wayne and Oakland Counties, in the Eastern District of Michigan, and elsewhere, SHIRLEY DOUGLAS AND MALIK FUQUA, 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, 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, in connection with the delivery of and payment for health care benefits, items, and services.

Purpose of the Scheme and Artifice

35. It was the purpose of the scheme and artifice for SHIRLEY DOUGLAS, and MALIK FUQUA, and others, to unlawfully enrich themselves through the submission of false and fraudulent Medicare claims for services that were not rendered and not medically necessary.

The Scheme and Artifice

36. Paragraphs 21 through 31 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 of the Scheme and Artifice

37. On or about the dates specified as to each count below, in Wayne and Oakland Counties, in the Eastern District of Michigan, and elsewhere, SHIRLEY DOUGLAS and MALIK FUQUA, 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 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 program:

Count Defendant(s)	Medicare Beneficiary	Provider	Approximate Date of Service	Description of Items Billed	Approximate Amount Billed to Medicare
2 DOUGLAS	E.P.	Abyssinia	7/21/14	Electrical Stimulation	\$50
3 DOUGLAS	C.W.	Abyssinia	5/29/15	Therapeutic Exercise	\$40
Count Defendant(s)	BCBSM Patient	Provider	Approximate Date of Service	Description of Items Billed	Approximate Amount Billed to BCBSM
4 FUQUA	M.L.	1 st Priority	2/26/16	Aquatic Therapy	\$100
5 FUQUA	J.H.	1 st Priority	4/26/16	Therapeutic Procedure	\$170

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

COUNT 6

(21 U.S.C. § 846—Conspiracy to Obtain Controlled Substances by Fraud)

D-1 SHIRLEY DOUGLAS

D-2 MALIK FUQUA

D-3 FRANK MIDDLETON

38. Paragraphs 16 through 20, 25, 28 and 29 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

39. From in or about January of 2011 through the present, in the Eastern District of Michigan and elsewhere, defendants SHIRLEY DOUGLAS, MALIK FUQUA and FRANK MIDDLETON, and others, knowingly and intentionally, and unlawfully combined, conspired, confederated, and agreed with each other and other persons not named in this Indictment, to unlawfully acquire and obtain possession of controlled substances, including but not limited to oxycodone and hydromorphone, by misrepresentation, fraud, forgery, deception, or subterfuge, all in violation of 21 U.S.C. § 843(a)(3).

All in violation of Title 21, United States Codes, Sections 846.

FORFEITURE ALLEGATIONS

(18 U.S.C. § 982(a)(7) and/or 18 U.S.C. § 981 with 28 U.S.C. § 2461, and/or 21 U.S.C. § 853)

40. The above allegations contained in this Indictment are incorporated by reference as if set forth fully herein for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 982(a)(7) and/or 18 U.S.C. § 981 with 28 U.S.C. § 2461, and/or 21 U.S.C. § 853.

41. Upon conviction from their engagement in the violations alleged in the first object of the conspiracy charged in Count One of the Indictment (health care fraud) and the violations alleged in Counts Two through Five, the defendants, SHIRLEY DOUGLAS, MALIK FUQUA and FRANK MIDDLETON, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(7), any and all right, title, and interest they have in any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, including, but not limited to the following:

- a. Approximately \$7,041.73 seized from Bank of America Checking Account #375008753246 held in the name of Abyssinia Love Knot Physical Therapy, LLC;
- b. Approximately \$68,903.21 seized from Bank of America Checking Account #375011433472 held in the name of Abyssinia Group, Inc.;

- c. Approximately \$10,433.14 seized from Comerica Bank Basic Business Checking Account #1852621893 held in the name of 1st Priority Physical Therapy, LLC; and
- d. Approximately \$200,367.65 seized from Comerica Bank Business Savings Account #9414025842 held in the name of 1st Priority Physical Therapy, LLC.

42. Upon conviction from their engagement in the violations alleged in the second object of the conspiracy charged in Count One of this Indictment (wire fraud), the defendants, SHIRLEY DOUGLAS, MALIK FUQUA and FRANK MIDDLETON, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), all of their interest in any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including, but not limited to the following:

- a. Approximately \$7,041.73 seized from Bank of America Checking Account #375008753246 held in the name of Abyssinia Love Knot Physical Therapy, LLC;
- b. Approximately \$68,903.21 seized from Bank of America Checking Account #375011433472 held in the name of Abyssinia Group, Inc.;
- c. Approximately \$10,433.14 seized from Comerica Bank Basic Business Checking Account #1852621893 held in the name of 1st Priority Physical Therapy, LLC; and
- d. Approximately \$200,367.65 seized from Comerica Bank Business Savings Account #9414025842 held in the name of 1st Priority Physical Therapy, LLC.

43. Upon conviction from their engagement in the violations alleged in Count Six of this Indictment, the defendants, SHIRLEY DOUGLAS, MALIK FUQUA and FRANK MIDDLETON, shall forfeit to the United States of America, pursuant to Title 21, United States Code, Section 853(a)(1) and (2), all of their interest in: 1) property constituting, or derived from, any proceeds the defendants obtained, directly or indirectly, as a result of such violations; and 2) property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violations. The property to be forfeited includes, but is not limited to, the following:

- a. Approximately \$7,041.73 seized from Bank of America Checking Account #375008753246 held in the name of Abyssinia Love Knot Physical Therapy, LLC;
- b. Approximately \$68,903.21 seized from Bank of America Checking Account #375011433472 held in the name of Abyssinia Group, Inc.;
- c. Approximately \$10,433.14 seized from Comerica Bank Basic Business Checking Account #1852621893 held in the name of 1st Priority Physical Therapy, LLC; and
- d. Approximately \$200,367.65 seized from Comerica Bank Business Savings Account #9414025842 held in the name of 1st Priority Physical Therapy, LLC.

44. Substitute Assets: If the property described above as being subject to forfeiture, 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 that 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) and 28 U.S.C. § 2461(c), to seek to forfeit any other property of the defendants up to the value of the forfeitable property described above.

45. Money Judgment: A sum of money equal to at least \$9,186,304.91 million, or such amount as is proved at trial in this matter, representing the total amount of gross proceeds obtained as a result defendants' violations, as alleged in this Indictment.

THIS IS A TRUE BILL.

s/Grand Jury Foreperson

Grand Jury Foreperson

LESLIE CALDWELL
Assistant Attorney General

s/Allan Medina

ALLAN MEDINA
Asst. Deputy Chief
Criminal Division, Fraud Section
U.S. Department of Justice

s/Drew Bradylyons

DREW BRADYLYONS
Trial Attorney
Criminal Division, Fraud Section
U.S. Department of Justice

Date: June 16, 2016