



**SEALED**

Office of the United States Attorney  
District of Nevada  
501 Las Vegas Boulevard, Suite 1100  
Las Vegas, Nevada 89101  
(702) 388-6336

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
MAY 23 2018	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY

1 DAYLE ELIESON  
 United States Attorney  
 2 KILBY MACFADDEN  
 Assistant United States Attorney  
 3 501 Las Vegas Boulevard South, Suite 1100  
 Las Vegas, Nevada 89101  
 4 (702) 388-6336 / Fax: (702) 388-6020  
 kilby.macfadden@usdoj.gov

5 *Representing the United States of America*

6 **UNITED STATES DISTRICT COURT**  
 7 **DISTRICT OF NEVADA**

8 -000-

9 **UNITED STATES OF AMERICA,**  
 10 **Plaintiff,**

11 vs.

12 **ROBERT D. HARVEY,**  
 13 **ALEJANDRO "ALEX" INCERA,**  
**A.P.R.N., a.k.a. ALEXANDER**  
 14 **JIMINEZ- INCERA, and**  
 15 **LESLIE KALYN, D.N.P./A.P.R.N.,**  
**a.k.a. LESLIE FETH,**  
 16 **Defendants.**

**SEALED**  
**CRIMINAL INDICTMENT**

17 **CASE NO: 2:18-CR- 169**

18 **VIOLATIONS:**

- 21 U.S.C. § 846 - Conspiracy to Distribute a Controlled Substance
- 21 U.S.C. § 841(a)(1) & (b)(1)(C) – Distribution of a Controlled Substance (Schedule II)
- 18 U.S.C. § 1349 – Conspiracy to Commit Health Care Fraud
- 18 U.S.C. § 1347 – Health Care Fraud
- 42 U.S.C. § 1320a-7b(a)(3) – Fraudulent Concealment Involving a Federal Health Care Program
- 18 U.S.C. § 1035 – False Statements Relating to a Health Benefit Program
- 18 U.S.C. § 2 – Aiding and Abetting

19  
20  
21  
22 **THE GRAND JURY CHARGES THAT:**  
23

1 At all times material to this Indictment:

2 *Distribution of Controlled Substances Counts*

3 1. The Defendant, Alejandro Incera (hereinafter "Incera"), is a licensed  
4 Advance Practice Registered Nurse who practices in Nevada under Nurse  
5 Practitioner license number APRN1889 and Registered Nurse license number  
6 RN69659. As part of Defendant Incera's practice, he prescribes Controlled  
7 Substances, including highly addictive opioids, with his Drug Enforcement  
8 Administration (DEA) license under DEA License Number MI3475589.

9 2. The Defendant, Robert D. Harvey (hereinafter  
10 "Harvey"), has no medical license. Harvey is a surgical technician in Nevada. In this  
11 role, Harvey cannot prescribe any medications, including controlled substances, or  
12 independently provide treatment for patients.

13 3. Under the Controlled Substances Act, Title 21, United States Code,  
14 Section 841(a) et seq., and Title 21, Code of Federal Regulations, Section 1306.04, a  
15 prescription for a controlled substance is not legal or effective unless issued for a  
16 legitimate medical purpose by a practitioner acting in the usual course of  
17 professional practice.

18 4. Defendant Incera routinely prescribes various Schedule II-IV  
19 controlled substances including Fentanyl, Morphine Sulfate, Hydrocodone, and  
20 Oxycodone for his patients, and other individuals, outside the usual course of  
21 professional practice, without a legitimate medical purpose. Additionally, Defendant  
22 Harvey routinely distributes Schedule II-IV controlled substances, including  
23

1 Oxycodone and Hydrocodone, to individuals, without a medical license or a DEA  
2 Number.

3 5. Defendants Harvey and Incera both used the same prescription pad  
4 with "Incera LLC, 10885 South Eastern Ave., Suite 100, Henderson, NV 89052"  
5 listed on the top portion of the controlled substance Schedule II-IV prescriptions. An  
6 unnamed co-conspirator's and DEA number appeared on the signature lines of these  
7 prescriptions. In addition, Defendant Incera also used a prescription pad with  
8 "Tuventus Medical Center, 3365 E. Flamingo Road, Suite 2, Las Vegas, NV 89121,"  
9 that includes Incera's signature and uses his own DEA Number.

10 6. In furtherance of the conspiracy, individuals would call and set up a  
11 meeting in various parking lots with Defendant Harvey to obtain unlawful opioid  
12 prescriptions. These individuals, claiming to be patients, would provide Harvey with  
13 a driver's license and cash payments. Harvey would fill out and sign the opioid  
14 prescriptions in exchange for the cash payments.

15 7. Other individuals, who claimed to be patients, would meet with  
16 Defendant Incera in his office. Incera would request any driver's license and cash  
17 payment for the controlled substance prescriptions. Oftentimes, a driver's license  
18 would be provided for an individual who was not present. Incera would use the  
19 driver's license to fill out and sign the prescriptions for the person identified in the  
20 driver's license. Incera would then provide the prescription to the individual who  
21 presented the driver's license.

22 8. If they did see an individual in person, both defendants Harvey and  
23 Incera never conducted any medical examination or obtained medical histories for

1 these individuals. Instead, they performed simple cash transactions in exchange for  
2 controlled substance Schedule II-V prescriptions.

3 *Medicare & Medicaid Program Fraud*

4 9. The federal Medicare program (hereinafter "Medicare") provided basic  
5 medical coverage for persons age 65 and over who are entitled to retirement benefits  
6 and for persons under age 65 who suffer from certain disabilities. The United States  
7 funded 100% of Medicare, a program administered by the United States Department  
8 of Health and Human Services. The Medicaid program (hereinafter "Medicaid") was  
9 a joint federal and state program that helped with medical costs for some people with  
10 limited income and resources. Medicaid was a government insurance program for  
11 persons of all ages whose income and resources are insufficient to pay for health  
12 care. Medicaid was and continues to be the largest source of funding of medical and  
13 health-related services for people with low income in the United States.

14 10. The Center for Medicare & Medicaid Services (hereinafter "CMS") is a  
15 federal agency within the United States Department of Health and Human Services  
16 (hereinafter "HHS") that administered the Medicare and Medicaid programs.  
17 Medicare and Medicaid are "health care benefit programs" as defined in 18 U.S.C. §  
18 24(b).

19 11. Health Plan of Nevada (hereinafter "HPN") is contracted as a Managed  
20 Care Organization (hereinafter "MCO") for Nevada Medicaid. Atlas Pharmacy  
21 (hereinafter "Atlas") submitted claims for high volumes of Lidocaine, Modafinil, and  
22 Diclofenac Sodium.

23



1 Sections 841(a)(1) and 841(b)(1)(C). All in violation of Title 21, United States Code,  
2 Section 846.

3 **COUNTS TWO THROUGH FOUR**  
4 *(Distribution of Controlled Substances - Schedule II)*

5 15. The Grand Jury realleges and incorporates Paragraphs One through  
6 Fourteen as though fully set forth herein.

7 16. On or about the dates set forth below, in the State and Federal District  
8 of Nevada, and elsewhere,

9 **ROBERT D. HARVEY and ALEJANDRO INCERA,**

10 Defendants herein, did knowingly and intentionally distribute, a mixture and  
11 substance containing a detectable amount of Schedule II controlled substances,  
12 Oxycodone and Hydrocodone, as listed below, without a legitimate medical purpose  
13 and outside the usual course of professional practice, each of which constitutes a  
14 separate count of this Indictment:

Count	Approx. Date of Distribution	Patient	Controlled Substance
2	March 13, 2018	Patient A	Oxycodone
3	March 22, 2018	Patient B	Hydrocodone Acetaminophen (Norco)
4	April 18, 2018	Patient A	Oxycodone

15 All in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(c); Title  
16 21, Code of Federal Regulations, Section 1306.04; and Title 18, United States Code,  
17 Section 2.  
18  
19  
20  
21  
22  
23

**COUNTS FIVE THROUGH TWELVE**  
*(Distribution of Controlled Substances - Schedule II)*

17. The Grand Jury realleges and incorporates Paragraphs One through Sixteen as though fully set forth herein.

18. On or about the dates set forth below, in the State and Federal District of Nevada, and elsewhere,

**ALEJANDRO INCERA,**

Defendant herein, did knowingly and intentionally distribute, a mixture and substance containing a detectable amount of a Schedule II controlled substance, Oxycodone and Hydrocodone, as listed below, without a legitimate medical purpose and outside the usual course of professional practice, each of which constitutes a separate count of this Indictment:

Count	Approx. Date of Distribution	Patient	Controlled Substance
5	March 1, 2018	Patient C	Hydrocodone Acetaminophen (Norco)
6	March 1, 2018	Patient C	Hydrocodone Acetaminophen (Norco)
7	March 1, 2018	Patient C	Hydrocodone Acetaminophen (Norco)
8	March 29, 2018	Patient C	Hydrocodone Acetaminophen (Norco)
9	March 29, 2018	Patient C	Hydrocodone Acetaminophen (Norco)
10	March 29, 2018	Patient D	Oxycodone Acetaminophen (Percocet)
11	March 29, 2018	Patient D	Oxycodone Acetaminophen



Count	Approx. Date of Distribution	Patient	Controlled Substance
			(Percocet)
12	March 29, 2018	Patient D	Oxycodone Acetaminophen (Percocet)

All in violation of Title 21, United States Code, Sections 841(a)(1) and (b)(1)(c); Title 21, Code of Federal Regulations, Section 1306.04; and Title 18, United States Code Section 2.

**COUNT THIRTEEN**

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

**Objects and Purpose of the Conspiracy**

19. The Grand Jury realleges and incorporates Paragraphs One through Eighteen as if fully set forth here.

20. From on or about July 29, 2016, to on or about August 17, 2017, in the District of Nevada, and elsewhere,

**ROBERT D. HARVEY, ALEJANDRO INCERA, and LESLIE KALYN,**

Defendants herein, and others known and unknown, did conspire, confederate, and agree with each other and with persons known and unknown to the grand jury, to commit an offense against the United States, to wit, health care fraud in violation of Title 18, United States Code, Section 1347.

21. It was a part and an object of the conspiracy that the Defendants Harvey, Incera and Kalyn, and others known and unknown, would and did execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program, to wit: Medicare and Medicaid, and to obtain, by means of false and

1 fraudulent pretenses, representations, and promises, money and property owned by,  
2 and under the custody and control of, a health care benefit program, to wit: Medicare  
3 and Medicaid, in connection with the delivery of and payment for health care benefits,  
4 items, and services, to wit: Lidocaine, Modafinil, and/or Diclofenac Sodium  
5 prescriptions, all in violation of Title 18, United States Code, Section 1347.

6 22. It was a further part of the conspiracy that the Defendants, in  
7 conjunction with Atlas, to cause fraudulent claims to be submitted for Medicare and  
8 Medicaid for payment of Lidocaine, Modafinil, and/or Diclofenac Sodium  
9 prescriptions provided to Patients A-H. All in violation of Title 18, United States  
10 Code, Section 1349 and Title 18, United States Code, Section 2.

11 **COUNTS FOURTEEN THROUGH TWENTY ONE**

12 *(Health Care Fraud)*  
13 *(18 U.S.C. § 1347)*

14 23. The Grand Jury realleges and incorporates Paragraphs One through  
15 Twenty Two as if fully set forth herein.

16 24. On or about July 29, 2016, continuing to on or about August 17, 2017,  
17 in the State and Federal District of Nevada, and elsewhere,

18 **ALEJANDRO INCERA,**

19 Defendant herein, did knowingly and willfully execute a scheme and artifice to  
20 defraud a health care benefit program, to wit: the Medicaid and Medicare Part B  
21 and D programs, by the filling and processing of medically unnecessary  
22 prescriptions, and to obtain by means of materially false and fraudulent pretenses,  
23 representations, promises, and omissions, money and property owned by and under

1 the custody and control of Medicaid and Medicare, in connection with Atlas, and the  
 2 delivery of and payment for health care benefits, items and services, to wit:  
 3 Defendant Incera caused the submission of fraudulent Medicaid and Medicare  
 4 claims to be submitted by Atlas, specifically, prescriptions of Lidocaine, Modafinil,  
 5 and/or Diclofenac Sodium for Patients E-L, as listed below, each of which  
 6 constitutes a separate violation of Title 18, United States Code, Section 1347.

COUNT	Patient	Approximate Date	Health Care Benefit
14	Patient E	January 13, 2017 – May 23, 2017	Medicaid
15	Patient F	July 29, 2016 – September 12, 2016	Medicaid
16	Patient G	April 5, 2017	Medicaid/Medicare
17	Patient H	December 29, 2016 – February 27, 2017	Medicaid
18	Patient I	November 21, 2016 – February 14, 2017	Medicaid
19	Patient J	March 3, 2017- March 28, 2017	Medicaid
20	Patient K	February 7, 2017 – March 8, 2017	Medicaid
21	Patient L	March 10, 2017- August 17, 2017	Medicaid

21 All in violation of Title 18, United States Code, Section 1347 and 18 United States  
 22 Code Section 2.

**COUNTS TWENTY TWO THROUGH TWENTY SEVEN**

*(Health Care Fraud)*

(18 U.S.C. § 1347)

25. The Grand Jury realleges and incorporates Paragraphs One through Twenty Four as if fully set forth herein.

26. On or about November 18, 2016, continuing to on or about August 3, 2017, in the State and Federal District of Nevada, and elsewhere,

**LESLIE KALYN,**

Defendant herein did knowingly and willfully execute a scheme and artifice to defraud a health care benefit program, to wit: the Medicaid, and to obtain by means of materially false and fraudulent pretenses, representations, promises, and omissions, money and property owned by and under the custody and control of Medicaid, in connection with Atlas, and the delivery of and payment for health care benefits, items and services, to wit: Defendant Kalyn did cause the submission of fraudulent Medicaid claims by Atlas, specifically prescriptions of Lidocaine, Modafinil, and/or Diclofenac Sodium for Patients M-R, each of which constitutes a separate violation of Title 18, United States Code, Section 1347.

<u>COUNT</u>	<u>Patient</u>	<u>Approximate Date</u>	<u>Health Care Benefit</u>
22	Patient M	February 27, 2017 – May 23, 2017	Medicaid
23	Patient N	January 19, 2017-February 16, 2017	Medicaid
24	Patient O	February 6, 2017 – August 3, 2017	Medicaid
25	Patient P	January 31, 2017	Medicaid

<u>COUNT</u>	<u>Patient</u>	<u>Approximate Date</u>	<u>Health Care Benefit</u>
26	Patient Q	November 18, 2016 – April 18, 2017	Medicaid
27	Patient R	February 17, 2017- April 21, 2017	Medicaid

All in violation of Title 18, United States Code, Section 1347 and 18 United States Code Section 2.

**COUNT TWENTY EIGHT**

*(Fraudulent Concealment Involving a Federal Health Care Program)*  
(42 U.S.C. § 1320a-7b(a)(3))

27. The Grand Jury realleges and incorporates Paragraphs One through Twenty Six as if fully set forth herein.

28. On or about April 27, 2015, in the State and Federal District of Nevada, and elsewhere,

**ALEJANDRO INCERA,**

Defendant herein, having knowledge of the occurrence of an event affecting Defendant Incera's initial and continued right to Medicaid provider status, to wit: Defendant Incera's Medicaid Provider Initial Enrollment Application, did knowingly and intentionally conceal and fail to disclose such event with the intent to fraudulently to secure such benefits, in connection with the furnishing of services for which payment is or may be paid under the Medicaid program. All in violation of Title 42, United States Code, Sections 1320a-7b(a)(3).

COUNT TWENTY NINE

*(False Statements Relating to a Health Benefit Program)*  
(18 U.S.C. § 1035)

27. On or about April 27, 2015, in the State and Federal District of Nevada,  
and elsewhere,

**ALEJANDRO INCERA,**

Defendant herein, in a matter involving a health care benefit program, to wit: a  
Medicaid federal health care Provider Initial Enrollment Application, knowingly and  
willfully made a materially false, fictitious and fraudulent statement, to wit: that  
Incera did not disclose that he was convicted of a misdemeanor offense, on or about  
January 30, 2007 in Las Vegas, Nevada, of Battery Constituting Domestic Violence,  
in case number 06M22989X, *State v. Alejandro Incera*, in connection with the  
delivery of and payment for health care benefits, items and services, in violation of  
Title 18, United States Code, Sections 1035 and 2.

FORFEITURE ALLEGATION ONE

*(Conspiracy to Distribute a Controlled Substance and Distribution of Controlled  
Substances - Schedule II)*

1. The allegations of Counts One through Twelve of this Criminal Indictment  
are hereby realleged and incorporated herein by reference for the purpose of alleging  
forfeiture pursuant to Title 21, United States Code, Section 853(a)(1) and 853(a)(2);  
Title 21, United States Code, Section 881(a)(6) with Title 28, United States Code,  
Section 2461(c); and Title 18, United States Code, Section 981(a)(1)(C) with Title 28,  
United States Code, Section 2461(c).

1           2. Upon conviction of any of the felony offenses charged in Counts One through  
2 Twelve of this Criminal Indictment,

3                           **ROBERT D. HARVEY and ALEJANDRO INCERA,**

4           defendants herein, shall forfeit to the United States of America, any property  
5 constituting, or derived from, any proceeds obtained, directly or indirectly, as the  
6 result of violations of Title 21, United States Code, Sections 841(a)(1) and 846:

7           defendants herein, shall forfeit to the United States of America, any property  
8 used, or intended to be used, in any manner or part, to commit, or to facilitate the  
9 commission of violations of Title 21, United States Code, Sections 841(a)(1) and 846:

10           defendants herein, shall forfeit to the United States of America, all moneys,  
11 negotiable instruments, securities, or other things of value furnished or intended to  
12 be furnished in exchange for a controlled substance or listed chemical in violations of  
13 Title 21, United States Code, Sections 841(a)(1) and 846, all proceeds traceable to  
14 such an exchange, and all moneys, negotiable instruments, and securities used or  
15 intended to be used to facilitate any violation of Title 21, United States Code, Sections  
16 841(a)(1) and 846:

17           defendants herein, shall forfeit to the United States of America, any property,  
18 real or personal, which constitutes or is derived from proceeds traceable to violations  
19 of Title 21, United States Code, Section 841(a)(1), a specified unlawful activity as  
20 defined in Title 18, United States Code, Sections 1956(c)(7)(A) and 1961(1)(D), or Title  
21 21, United States Code, Section 846, conspiracy to commit such offense:

22           an in personam criminal forfeiture money judgment including, but not limited  
23 to, at least \$3,749,121.29 (property).

1 3. If any property being subject to forfeiture pursuant to Title 21, United  
2 States Code, Section 853(a)(1) and 853(a)(2); Title 21, United States Code, Section  
3 881(a)(6) with Title 28, United States Code, Section 2461(c); and Title 18, United  
4 States Code, Section 981(a)(1)(C) with Title 28, United States Code, Section 2461(c),  
5 as a result of any act or omission of the defendants -

- 6 a. cannot be located upon the exercise of due diligence;  
7 b. has been transferred or sold to, or deposited with, a third party;  
8 c. has been placed beyond the jurisdiction of the court;  
9 d. has been substantially diminished in value; or  
10 e. has been commingled with other property which cannot be divided without  
11 difficulty;

12 it is the intent of the United States of America, pursuant to Title 21, United States  
13 Code, Section 853(p), to seek forfeiture of any properties of the defendants for the in  
14 personam criminal forfeiture money judgment including, but not limited to, at least  
15 \$3,749,121.29.

16 All pursuant to Title 21, United States Code, Sections 841(a)(1), 846, 853(a)(1),  
17 853(a)(2), and 853(p); Title 21, United States Code, Section 881(a)(6) with Title 28,  
18 United States Code, Section 2461(c); and Title 18, United States Code, Section  
19 981(a)(1)(C) with Title 28, United States Code, Section 2461(c).

20 **FORFEITURE ALLEGATION TWO**

21 *(Conspiracy to Commit Health Care Fraud; Health Care Fraud; Fraudulent*  
22 *Concealment Involving a Federal Health Care Program; and False Statements*  
23 *Relating to a Health Benefit Program)*



1           1. The allegations contained in Counts Thirteen through Twenty-Nine of this  
2 Criminal Indictment are hereby realleged and incorporated herein by reference for  
3 the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section  
4 981(a)(1)(C) with Title 28, United States Code, Section 2461(c) and Title 18, United  
5 States Code, Section 982(a)(7).

6           2. Upon conviction of any of the felony offenses charged in Counts Thirteen  
7 through Twenty-Nine of this Criminal Indictment,

8           **ROBERT D. HARVEY, ALEJANDRO INCERA, and LESLIE KALYN,**

9           defendants herein, shall forfeit to the United States of America, any property,  
10 real or personal, which constitutes or is derived from proceeds traceable to violations  
11 of Title 18, United States Code, Sections 1035 and 1347 and Title 42, United States  
12 Code, Section 1320a-7b(a)(3), specified unlawful activities as defined in Title 18,  
13 United States Code, Section 1956(c)(7)(F), involving a Federal health care offense as  
14 defined in Title 18, United States Code, Section 24, or Title 18, United States Code,  
15 Section 1349, conspiracy to commit such offenses:

16           defendants herein, shall forfeit to the United States of America, property, real  
17 or personal, that constitutes or is derived, directly or indirectly, from gross proceeds  
18 traceable to the commission of Title 18, United States Code, Sections 1035, 1347, and  
19 1349 and Title 42, United States Code, Section 1320a-7b(a)(3), Federal health care  
20 offenses as defined in Title 18, United States Code, Section 24:

21           an in personam criminal forfeiture money judgment including, but not limited  
22 to, at least \$3,749,121.29.

1 3. If any property subject to forfeiture pursuant to Title 18, United States  
2 Code, Section 981(a)(1)(C) with Title 28, United States Code, Section 2461(c) and Title  
3 18, United States Code, Section 982(a)(7), as a result of any act or omission of the  
4 defendants-

- 5 a. cannot be located upon the exercise of due diligence;
- 6 b. has been transferred or sold to, or deposited with, a third party;
- 7 c. has been placed beyond the jurisdiction of the court;
- 8 d. has been substantially diminished in value; or
- 9 e. has been commingled with other property which cannot be divided without  
10 difficulty;

11 it is the intent of the United States of America, pursuant to Title 21, United States  
12 Code, Section 853(p), to seek forfeiture of any properties of the defendants for the in  
13 personam criminal forfeiture money judgment including, but not limited to, at least  
14 \$3,749,121.29.

15 All pursuant to Title 18, United States Code, Section 981(a)(1)(C) with Title  
16 28, United States Code, Section 2461(c); Title 18, United States Code, Section

17 ///  
18 ///

19  
20  
21  
22  
23


1 982(a)(7); Title 18, United States Code, Sections 1035, 1347, and 1349; Title 21,  
2 United States Code, Section 853(p); and Title 42, United States Code, Section  
3 1320a-7b(a)(3).

4 **DATED:** this the 23rd day of May, 2018.

5  
6 **A TRUE BILL:**

7 */S/*  
8 FOREPERSON OF THE GRAND JURY

9 DAYLE ELIESON  
United States Attorney

10   
11 \_\_\_\_\_  
KILBY MACFADDEN  
12 Assistant United States Attorney

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23



**Add Judges in Criminal Case**

**United States District Court**

**District of Nevada**

**Notice of Electronic Filing**

The following transaction was entered on 5/23/2018 at 2:45 PM PDT and filed on 5/23/2018

**Case Name:** USA v. Harvey et al

**Case Number:** 2:18-cr-00169-JCM-NJK \*SEALED\*

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**Case assigned to Judge James C. Mahan and Magistrate Judge Nancy J. Koppe. (SLD)**

**2:18-cr-00169-JCM-NJK \*SEALED\*-1** No electronic public notice will be sent because the case/entry is sealed.

**2:18-cr-00169-JCM-NJK \*SEALED\*-2** No electronic public notice will be sent because the case/entry is sealed.

**2:18-cr-00169-JCM-NJK \*SEALED\*-3** No electronic public notice will be sent because the case/entry is sealed.

