


UNITED STATES DISTRICT COURT
for the
Eastern District of California

FILED
JUN 27 2018

United States of America)
v.)
Hermine Hambartsumyan and Tem Phaphonh)
)
)
)
)
)

Case No.

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY 
DEPUTY CLERK

1: 18 MJ 00100 SKO

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of August 1, 2011 to June 26, 2018 in the county of Fresno in the Eastern District of California, the defendant(s) violated:

<i>Code Section</i>	<i>Offense Description</i>
18 USC Section 1347	Health Care Fraud

This criminal complaint is based on these facts:

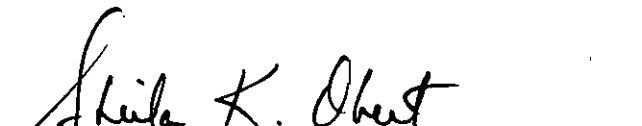
See attached affidavit

Continued on the attached sheet.


Complainant's signature
SA Alexia Crow, FBI
Printed name and title

Sworn to before me and signed in my presence.

Date: 06/27/2018


Judge's signature

City and state: Fresno, CA

Sheila K. Oberto, United States Magistrate Judge
Printed name and title

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

1
2
3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 HERMINE HAMBARTSUMYAN and

7 TEM PHAPHONH,

8 Defendants

CASE NO.

AFFIDAVIT OF FBI AGENT ALEXIA CROW
IN SUPPORT OF COMPLAINT

9
10
11 **I. EXPERTISE, TRAINING AND EXPERIENCE OF THE AFFIANT**

12 I, Alexia Crow, being sworn, depose, and state the following:

13
14 1. I am a Special Agent with the Federal Bureau of Investigation (FBI), where I have been
15 employed for approximately nine years. As a Special Agent with the FBI, I am currently responsible for
16 investigating allegations of health care fraud occurring in government-sponsored health care benefit
17 programs, such as Medicare. I have been assigned to investigate criminal matters, including health care
18 fraud and white collar crimes. As an FBI Special Agent, part of my duties and responsibilities include
19 investigating criminal violations relating to health care fraud. I have participated in numerous
20 investigations involving complex health care fraud investigations. I am familiar with the federal laws
21 relating to health care fraud, conspiracy to commit health care fraud, and common health care fraud
22 techniques and schemes.

23 2. This affidavit is made to support a complaint charging Hermine HAMBARTSUMYAN
24 and Tem PHAPHONH with Health Care Fraud, in violation of 18 U.S.C. § 1347. I have personally
25 participated in the investigation set forth below. I am familiar with the facts and circumstances of the
26 investigation through my personal participation; from discussions with other law enforcement; from my
27 review of records and reports relating to the investigation. Since this affidavit is being submitted for the
28 limited purpose of securing a criminal complaint warrant for the above-listed individuals, I have not

1 included details of every aspect of the investigation. Facts not set forth herein, are not being relied on in
2 reaching my conclusion that probable cause exists sufficient to charge the individuals. Nor do I request
3 that this Court rely on any facts not set forth herein in reviewing this affidavit.

4
5 **II. PROBABLE CAUSE**

6 **A. Summary of Probable Cause**

7 3. HAMBARTSUMYAN and PHAPHONH collaborated to use the information of elderly
8 Lao Medicare beneficiaries to submit false claims for Durable Medical Equipment (DME) and physical
9 therapy services. PHAPHONH recruited the patients and obtained their identification and insurance
10 information. She then passed it to HAMBARTSUMYAN, who ran a series of DME businesses. The
11 DME companies submitted claims to Medicare indicating that they had provided expensive orthotic
12 braces to the beneficiaries. These claims were false because either the beneficiaries had received
13 nothing or they had received inexpensive fabric sleeves that Medicare does not reimburse.

14 4. HAMBARTSUMYAN and PHAPHONH also set up a health clinic in Porterville,
15 California known as Villa Health Center LLC (VHC). PHAPHONH recruited patients for this clinic for
16 the purpose of submitting false claims, including false claims for physical therapy services.
17 Beneficiaries received massages during their visits to VHC, and VHC claimed to Medicare that these
18 were physical therapy services. The claims were false because Medicare requires such services be
19 provided by trained physical or occupational therapists.

20 **B. Medicare Billing Standards and Procedures Relating to DME**

21 5. Medicare is a health care benefit program, as defined by 18 U.S.C. § 24(b). It provides
22 health insurance benefits to individuals 65 or older or who are disabled. Individuals whose treatment is
23 covered by the program are known as "beneficiaries."

24 6. Medicare will only reimburse DME suppliers when they provide goods and services that
25 meet four requirements: 1) the DME goods and services claimed must have been provided to the
26 beneficiary; 2) the DME goods and services were prescribed by the beneficiary's physician; 3) the DME
27 goods and services were medically necessary to the treatment of the beneficiary's illness or injury; and
28 4) the DME supplier provided the DME goods and services in accordance with Medicare regulations

1 and guidelines, which govern whether Medicare would reimburse a particular item or service.

2 7. Approved Medicare DME suppliers can submit claims for Medicare reimbursement
3 either on paper, using a standardized claim form, or electronically. Every claim submitted by, or on
4 behalf of, a provider certifies that the claim is truthful and that the goods provided were reasonable and
5 necessary to the health of the Medicare beneficiary. Every claim submitted by, or on behalf of, a
6 provider is submitted under an agreement by the provider to abide by Medicare's program rules and
7 regulations. A physician's order or prescription for DME is required before a DME supplier can bill
8 Medicare for any DME supplied to a beneficiary.

9 8. Most Medicare claims are paid solely on the information provided in the claim form
10 itself. Once a claim is approved for payment, the carrier sends the reimbursement to the health care
11 provider by mail or directly to their bank account via an Electronic Funds Transfer (EFT), which is how
12 the claims were paid in this fraud case.

13 **C. Medicare Billing Requirements for Orthotic Braces and Physical Therapy Services**

14 Orthotic Braces

15 9. In addition to the general Medicare requirements that reimbursement for DME was
16 actually provided, was medically necessary, and was prescribed or ordered by a physician, the Medicare
17 contractor who oversaw Medicare payments in California described additional requirements for orthotic
18 braces.

19 10. In general, an orthotic brace is one that supports a weak or deformed body member or
20 restricts or eliminates motion in a diseased or injured part of the body.

21 11. Orthotic braces are highly-specialized and-expensive items of medical equipment. They
22 are eligible for reimbursement under Medicare Part B. They must be made out of rigid or semi-rigid
23 materials. Items made out of elastic or fabric materials are not orthotic braces as Medicare defines them
24 and Medicare is not allowed to reimburse such items.

25 Physical Therapy Services

26 12. In addition to the general Medicare requirements that physical therapy treatment be
27 actually provided, medically necessary and ordered or prescribed by a physician, Medicare requires that
28 physical therapy be provided by individuals who are graduates of training programs in physical therapy,

1 occupational therapy, or speech-language pathology.

2 13. Accordingly, Medicare is barred from reimbursing services performed by athletic
3 trainers, massage therapists, or other individuals not trained as physical or occupational therapists.

4 **D. HAMBARTSUMYAN and PHAPHONH's Scheme to Defraud**

5 14. From approximately at least August 2011 to November 2015, HAMBARTSUMYAN
6 worked for a DME business known as Shields Medical Equipment, Inc. ("Shields Medical"). From
7 November 2014 to approximately November 2016, HAMBARTSUMYAN operated a DME business
8 under a different entity name, Affordable Medical Supply, Inc. ("Affordable Medical").
9 HAMBARTSUMYAN owned Affordable Medical and controlled all its activities. HAMBARTSUMYAN
10 thereafter controlled another DME business known as SH Medical Supply LLC ("SH Medical") from
11 November 2016 onward. (HAMBARTSUMYAN's various business are collectively the "DME
12 Companies").

13 15. PHAPHONH contacted elderly members of the Lao community who were Medicare
14 beneficiaries and encouraged them to use her and other individuals associated with her to obtain
15 transportation to medical appointments, among other services. In the course of contacts with these
16 beneficiaries, PHAPHONH gained access to personal information of the beneficiaries, which she then
17 provided to HAMBARTSUMYAN and the DME Companies for the purpose of creating and submitting
18 false health care claims. In return, HAMBARTSUMYAN and the DME Companies paid PHAPHONH
19 a fee. This practice is known as "capping."

20 16. HAMBARTSUMYAN, acting through the DME Companies and billing staff used by the
21 DME Companies, used the information supplied by PHAPHONH to create and submit false claims
22 alleging that the DME Companies had provided expensive orthotic braces to beneficiaries. In fact, few
23 if any of the beneficiaries received the braces the DME Companies claimed to have provided.

24 17. The DME Companies generally did not have any such braces to provide because they
25 obtained very few of them. Instead, the DME Companies nearly exclusively purchased inexpensive
26 elastic braces from internet commerce sites generally costing less than \$10.

27 18. The beneficiaries had little or no contact with HAMBARTSUMYAN and often did not
28 know anything about the DME Companies or that the DME Companies had submitted reimbursement

1 claims for goods allegedly provided to them. Instead their contact was with PHAPHONH or other
2 members of PHAPHONH's family. At times, including at the beginning of her relationship with
3 beneficiaries, PHAPHONH indicated to beneficiaries that they could receive free braces. To these
4 beneficiaries, she provided the inexpensive braces purchased by the DME Companies.

5 19. HAMBARTSUMYAN and PHAPHONH, acting with persons known and unknown,
6 created false medical records reflecting that the actual orthotic braces had been authorized by physicians
7 and were medically necessary.

8 20. Both Shields Medical and Affordable Medical were terminated from the Medicare
9 program. In November 2015, a local Medicare contractor, acting on behalf of the program, notified
10 Shields Medical that its Medicare provider number was being revoked because it was failing to meet
11 administrative requirements such as insurance coverage and licenses. It also commenced a review of
12 107 of Shields' claims. The contractor denied 106 of them (a 99% denial rate).

13 21. In November 2016, a Medicare contractor notified Affordable Medical that its provider
14 number had been revoked retroactive to January 2016 based on similar administrative lapses. In the
15 course of its investigation, the contractor reviewed a set of claims submitted by Affordable Medical and
16 denied each of them.

17 **E. Representative Beneficiaries- Orthotic Braces**

18 22. Affordable Medical billed Medicare approximately \$1,936 for supposedly providing
19 several expensive orthotic braces on September 24, 2015 to Medicare beneficiary S.H., including a back
20 brace, two knee braces, and two ankle-foot braces. S.H. was interviewed by law enforcement and
21 indicated he had no knowledge of Affordable Medical or the braces it claimed to have provided to him.
22 Prior to September 2015, S.H. had had his left leg amputated from the knee down and wore a prosthesis.
23 Therefore, S.H. did not have a left foot or ankle on which to place an orthotic brace. S.H. did know
24 PHAPHONH and indicated that PHAPHONH and members of her family sometimes drove him to
25 medical appointments.

26 23. Affordable Medical billed Medicare approximately \$1,397 for an orthotic back brace and
27 two orthotic wrist braces supposedly provided to Medicare beneficiary S.P. on February 2, 2015. S.P.
28 was interviewed by law enforcement and indicated he had no knowledge of Affordable Medical or the

1 braces it claimed to have provided to him. In February 2015, S.P was in the midst of an approximately
2 four-month hospital stay; legitimately operating DME suppliers would generally not submit any claims
3 under Medicare Part B during a beneficiary's hospital stay, since Part B ordinarily covers outpatient
4 services. S.P also was never treated by the physician who purportedly prescribed the orthotic braces.
5 Finally, S.P. did know PHAPHONH and indicated that she and members of her family sometimes drove
6 him to medical appointments.

7 24. During its time as a Medicare provider, Affordable Medical billed Medicare
8 approximately \$930,093 and was paid approximately \$466,515.

9 **Physical Therapy Services**

10 25. HAMBARTSUMYAN and PHAPHONH together decided to open a health clinic in the
11 area of Porterville, California. The clinic was located on Villa Street and was known as the Villa Health
12 Center (VHC).

13 26. PHAPHONH's role was once again to recruit elderly Lao Medicare beneficiaries. She
14 was to bring them to VHC so that VHC, acting at the direction of HAMBARTSUMYAN could submit
15 false Medicare claims. PHAPHONH also performed a management role at VHC.

16 27. A primary method of recruiting and keeping patients was VHC's offering the
17 beneficiaries massages at each visit to VHC. The massages were not provided by anyone trained as a
18 physical or occupational therapist, but VHC nevertheless requested reimbursement from Medicare for
19 physical therapy services.

20 **Representative Beneficiaries- Physical Therapy Services**

21 28. VHC billed Medicare approximately \$2,076 for physical therapy services provided to
22 beneficiary B.P. on multiple dates between July 2016 and March 2017. B.P. was interviewed by law
23 enforcement and indicated he believed that VHC was run by PHAPHONH, with whom B.P. has a
24 family connection. B.P visited VHC two or three times, and each time he received a massage performed
25 by a female nurse, sometimes before he visited a doctor and sometimes afterward.

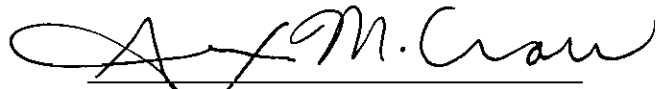
26 29. VHC billed Medicare approximately \$70 for physical therapy services provided to
27 beneficiary H.T. on three dates between July 2016 and September 2016. H.T. was interviewed by law
28 enforcement and indicated she visited VHC 10-15 times. Each time, she received a massage lasting

1 between 15-30 minutes.

2 **III. CONCLUSION**

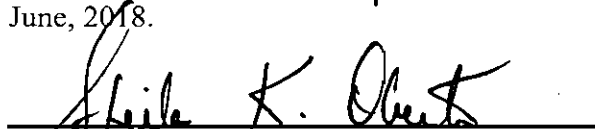
3 30. Based on above evidence, including beneficiary interviews and Medicare records, I
4 believe there is probable cause that HERMINE HAMBARTSUMYAN and TEM PHAPHONH did
5 knowingly and willfully execute, and attempt to execute, a scheme to defraud health care benefit
6 programs and to obtain by means of false or fraudulent pretenses, representations, or promises, any of
7 the money or property owned by, or under the custody or control of, health care benefit programs,
8 specifically, by submitting claims to Medicare alleging the provision of orthotic braces and physical
9 therapy provided by trained professionals, which were false, in violation of Title 18, United States Code,
10 Section 1347.

11
12 I declare under penalty of perjury that the foregoing is true and correct to the best of my
13 knowledge.

14
15 

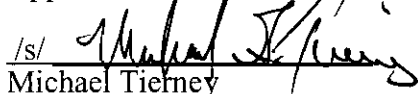
16 Alexia Crow
17 Special Agent, Federal Bureau of Investigation

18
19 SWORN TO BEFORE ME, AND SUBSCRIBED
20 IN MY PRESENCE THIS 27th DAY OF
21 June, 2018.

22 

23 Hon. Sheila K. Oberto
24 U.S. Magistrate Judge

25 Approved as to content and form:

26 

27 Michael Tierney
28 Assistant U.S. Attorney

7: 18 MJ 00100 SKO

PENALTY SLIP


AUSA Initial

DEFENDANT: Hermine Hambartsumyan

VIOLATION: 18 U.S.C. § 1347 (Health Care Fraud)
(All COUNTS,
ONE-EIGHT)

PENALTY: 10 years imprisonment
\$250,000 dollar fine
3 years supervised release
\$100 special assessment

PENALTY SLIP

7: 18 MJ 00100 SKO


AUSA Initial

DEFENDANT: Tem Phaphonh

VIOLATION: 18 U.S.C. § 1347 (Health Care Fraud)
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