

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

2017 JUL -5 PM 12:09  
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MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

CASE NO. 3:17-cr-121-J-39 MCR  
18 U.S.C. § 1347

v.

MICHAEL ROTSTEIN

### INFORMATION

The United States Attorney charges:

### GENERAL ALLEGATIONS

At all relevant times to this Information:

#### The Medicare Program

1. The Medicare program (“Medicare”) was a federal health insurance program that provided coverage for people 65 and older, and for certain disabled persons. The United States Department of Health and Human Services (HHS) was responsible for the administration of the Medicare program. The Centers for Medicare and Medicaid Services (CMS) was the component agency of HHS that administers and supervises the Medicare program.

2. CMS contracted with First Coast Service Options (FCSO) to receive, adjudicate and pay certain Medicare claims submitted to it by Medicare beneficiaries and providers in the State of Florida. First Coast Service Options was located at all relevant times in Jacksonville, Florida.

3. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

4. Medicare provided coverage and reimbursed for “outpatient medical services.” These “outpatient medical services” are medical procedures or tests that were done in a qualified medical center without the need for an overnight stay.

### **The TRICARE Program**

5. TRICARE was a triple option entitlement plan established by Congress and funded through Federal appropriations, and allocated as part of the National Defense Authorizations Act. Eligible beneficiaries include all seven branches of the Uniformed services: Army, Air Force, Navy, Marine Corps, National Oceanic Atmospheric Administration, Coast Guard, and the commissioned corps of the Public Health Service.

6. TRICARE benefits were authorized by Congressional legislation incorporated in Chapter 55 of Title 10, United States Code, and administered.

by the secretary of Defense in Title 32, code of Federal Regulations, part 199 (32 CFR 199).

7. TRICARE was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

### **Medicare and TRICARE Billing Procedures**

8. The Medicare program, through its Part B coverage plan, and the TRICARE program paid providers for outpatient medical services such as physician office visits, Magnetic Resonance Imaging (MRI) and outpatient surgery.

9. In order for a medical provider to bill Medicare and TRICARE, that provider was required to meet certain contractual obligations to the programs. These obligations were to: (a) bill only for reasonable and necessary medical services; (b) not make false statements or misrepresentations of material facts concerning requests for payment; (c) provide economical medical services, and then, only where medically necessary; (d) assure that such services are not substantially in excess of the needs of such beneficiaries, and (e) not submit or cause to be submitted bills or requests for payment substantially in excess of the provider’s costs.

10. To bill Medicare and TRICARE for services rendered, the healthcare provider was required to submit a claim on a “CMS Form 1500” to

First Coast Service Options, or send the form to a billing service, which, in turn, billed Medicare and/or TRICARE on behalf of the provider. When a CMS Form 1500 was submitted, the provider certified that the contents of the form are true, correct, and complete, and that the form was prepared in compliance with the laws and regulations governing the Medicare and/or TRICARE programs.

11. On the CMS Form 1500, the provider was required to certify that “the services shown on this form were medically indicated and necessary for the health of the patient and were personally furnished by me or were furnished incident to my professional service by my employee under my immediate personal supervision, except as otherwise expressly permitted by Medicare or [TRICARE] regulations.” The form advised the provider “any one who misrepresents or falsifies essential information to receive payment from Federal funds requested by this form may upon conviction be subject to fine and imprisonment under applicable Federal laws.”

12. At all relevant times, Medicare and TRICARE made the physician the “gatekeeper” for determining when medical services were medically necessary, and it was the physician who “must certify the necessity of the services.” See 42 U.S.C. §§ 1320c-5(a); 42 U.S.C. §§ 1395n(a)(2)(B) and 42 C.F.R. §§ 410.12(a)(3).

13. Absent a valid certification by the treating physician, Medicare and TRICARE lacked the statutory authority to pay the claim. See 42 U.S.C. §§1395n(a)(2)(b) and 1395y(a)(1) (stating that “no payment may be made . . . for any expenses incurred for items or services . . . which, . . . , are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, . . .”).

**Dr. Michael Rotstein**

14. Dr. MICHAEL ROTSTEIN was a Medicare and TRICARE provider at all relevant times. At all relevant times, with short intervals between renewal of the company name with different addresses, MICHAEL ROTSTEIN continuously operated under the name of Ocala Podiatry Center.

15. Ocala Podiatry Center was an approved Medicare and TRICARE provider at its current address. The address listed in the Medicare system as the place of business is 2135 SW 19<sup>th</sup> Avenue Road, Suite 104 in Ocala, Florida.

**COUNT ONE**

1. Paragraphs 1-15 of the General Allegations section of this Information are realleged and incorporated by reference as though fully set forth herein.

2. Beginning in or about January 2014, and continuing through in or about December 2016, in the Middle District of Florida, and elsewhere,

**MICHAEL ROTSTEIN**

the defendant herein, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud any health care benefit program that affected interstate commerce and to obtain, by means of false and fraudulent pretenses, representations, and promises, any of the money and property owned by, and under the custody and control of, any health care benefit program that affected interstate commerce, 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 defendant to unlawfully enrich himself by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare and TRICARE; (b) billing for services never rendered or performed; and (c) billing for non-covered or non-reimbursable services.

**Manner and Means of the Scheme and Artifice**

The manner and means by which the defendant sought to accomplish the purpose of the scheme and artifice included, among other things, the following:

4. Beginning in or about January 2014, MICHAEL ROTSTEIN began submitting claims to the Medicare and TRICARE programs involving Current Procedural Terminology (CPT) codes 11043 and 28002. These two

CPT codes respectively represent “removal of skin and muscle up to 20 square centimeters” and “drainage of fluid-filled sac.”

5. Between in or about January 2014 and December 2016, nearly 50% of the claims submitted by MICHAEL ROTSTEIN to the Medicare program were for CPT 11043. Put another way, MICHAEL ROTSTEIN reported that half of his practice was removal of large skin and muscle. In comparison, the national average for utilization of this code is 0.2%.

6. While MICHAEL ROTSTEIN billed for these procedural codes, he did not actually perform these procedures. While he did render medical services, he did not actually remove skin and muscle or drain fluid-filled sacs. Rather, the majority of the times that MICHAEL ROTSTEIN billed for these procedures, he was actually performing routine foot care. Routine foot care is not a reimbursable service under either Medicare or TRICARE.

7. Because the services that MICHAEL ROTSTEIN was performing were not reimbursable (routine foot care), MICHAEL ROTSTEIN instead devised a scheme to submit claims to the Medicare and TRICARE programs using false and fictitious CPT codes. Rather than accurately report his actual services to the Medicare and TRICARE programs, he reported that he was performing procedures consistent with codes 11043 and 28002. MICHAEL ROTSTEIN also included notes in the patients’ medical files to make it appear

that he was actually performing these services when, in fact, he knew that these notes were inaccurate.

8. Between January 2014 and December 2016, MICHAEL ROTSTEIN submitted or caused to be submitted false and fraudulent claims to Medicare and TRICARE that resulted in reimbursement payments being made directly to bank accounts controlled by MICHAEL ROTSTEIN.

9. It was further part of the scheme and artifice that MICHAEL ROTSTEIN performed acts and made statements and entries in patient charts to hide and conceal the purpose of the scheme and the acts committed in furtherance thereof.

**Act in Execution of the Scheme and Artifice**

10. On or about January 21, 2015, in Ocala, in the Middle District of Florida,

**MICHAEL ROTSTEIN**

the defendant herein, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute the above-described scheme and artifice to defraud a health care benefit program affecting interstate 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



program affecting interstate commerce, by submitting a claim for Medicare Beneficiary T.L. in the amount of \$229 to First Coast Service Options, the Medicare claims adjudication contractor located in Jacksonville in the Middle District of Florida, for the provision of CPT code 11043 (Removal of skin and/or muscle first 20 sq cm or less), when, in truth and in fact, as MICHAEL ROTSTEIN then and there well knew, no such services had been provided to T.L..

All in violation of 18 U.S.C. § 1347.

#### **FORFEITURE**

The allegations contained in Count One are incorporated by reference for the purpose of alleging forfeiture pursuant to 18 U.S.C. § 982(a)(7).

1. Upon conviction of the violation of 18 U.S.C. § 1347, the defendant, MICHAEL ROTSTEIN, shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

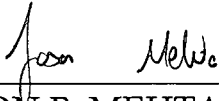
2. The property to be forfeited includes, but is not limited to a \$1,504,952.67 forfeiture money judgment, which represents the proceeds of the offense.

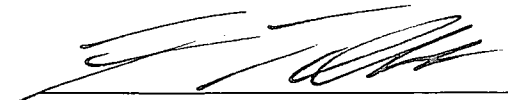
3. If any of the property described above, as a result of any act or omission of the defendant:

- 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;

the United States shall be entitled to forfeiture of substitute property under the provisions of 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1).

W. STEPHEN MULDROW  
Acting United States Attorney

By:   
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JASON P. MEHTA  
Assistant United States Attorney

By:   
\_\_\_\_\_  
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