

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)
)
 v.) Criminal No.
)
MARTHA BELL) (18 U.S.C. §§ 1347, 1035(a)(2)
ATRIUM I NURSING AND) and 2)
REHABILITATION CENTER)

INDICTMENT

The grand jury charges:

INTRODUCTION

At all times material to this indictment:

1. Defendant ATRIUM I NURSING AND REHABILITATION CENTER ("ATRIUM"), a Pennsylvania non-profit corporation located at 5180 Campbell's Run Road, Pittsburgh, Pennsylvania 15205, was a skilled nursing facility and personal care home which specialized in care of residents afflicted with Alzheimer's disease (dementia).

2. ATRIUM was owned by the Alzheimer's Disease Alliance of Western Pennsylvania ("ADAWP"). ADAWP was also a Pennsylvania non-profit corporation.

3. Defendant MARTHA BELL was a registered nurse and President of ADAWP. BELL became President of ATRIUM in 1995, and Administrator of ATRIUM in 1998. She also was President of two other Pennsylvania non-profit corporations: The Alzheimer's

Disease Foundation ("ADF"), and Geriatric Healthcare Associates, Inc. ("GHA").

4. The nursing home industry was highly regulated and structured to protect vulnerable individuals who did not require hospitalization, but nonetheless needed some type of attended care. Often residents needed to remain in nursing homes for extended periods of time. Federal Regulations required nursing homes to operate in a manner that would promote maintenance or enhancement of residents' quality of life by providing necessary care and services to attain and maintain the highest practicable physical, mental, and psychosocial well-being of each resident. Title 42, Code of Federal Regulations, Section 483.

5. ATRIUM was compensated for care provided to approximately 70% of its residents, and received between 70% and 80% of its revenue, through the Medicare Part A ("Medicare") and Medicaid programs, which were established pursuant to the Social Security Act of 1965 (Title 42, United States Code, Sections 1395 et seq. and 1396 et seq.). Medicare and Medicaid were healthcare benefit programs, as defined in Title 18, United States Code, Section 24(b).

6. The Medicare program, established to assist elderly and disabled persons in the purchase of necessary health care,

provided federally funded payments for up to 100 days of skilled nursing home care that followed a qualifying hospital stay. Prior to 1999, ATRIUM received Medicare reimbursement for costs incurred. Beginning on January 1, 1999, Medicare payments to ATRIUM were based on a formula which calculated a per diem rate for each resident. This per diem rate, adjusted on a yearly basis, ranged from approximately \$120-\$480 per day.

7. The Medicaid program provided joint federal and state funding to pay for nursing home care for aged, blind or disabled individuals whose income and resources were insufficient to meet the costs of necessary medical services. Such payments were made, without time limitation, based on a formula which determined a per diem rate applicable to each nursing home facility. The per diem rate was adjusted on a quarterly basis. The per patient per diem rate applicable to ATRIUM ranged from approximately \$133-\$145 per day.

8. The Medicare program was administered by the Center for Medicare and Medicaid Services (CMS), formerly known as the Health Care Financing Administration (HCFA), an agency of the Department of Health and Human Services. The Medicaid program in Pennsylvania was administered by the Commonwealth of Pennsylvania Department of Public Welfare (DPW). CMS contracted with fiscal

intermediaries to provide claims processing and cost reporting services. Such intermediaries included Veritus Medicare Services (for Medicare), and the DPW (for Medicaid). The DPW likewise provided these services for the Medicaid program in Pennsylvania. In Pennsylvania, CMS delegated to the Commonwealth Department of Health (DOH) the responsibility for inspection of nursing homes in connection with the Medicare program. The DPW likewise delegated this function to DOH in connection with the Medicaid program.

9. Since November 21, 1995, ATRIUM was certified as a Medicare and Medicaid provider. Each Medicare and Medicaid provider was required to comply with Medicare and Medicaid regulations, and to maintain records sufficient to disclose the nature of care provided to residents. Pennsylvania law (Title 28, Pennsylvania Code, Section 211.5) required all nursing homes to create and maintain clinical records, including all information necessary to fully disclose the extent of services provided to nursing home residents, for a minimum period of 7 years after a resident's discharge or death. Title 42, Code of Federal Regulations, Section 483.75(1) required each facility to maintain complete and accurately documented clinical records, for each resident, for a period of 5 years from the date of discharge (in the absence of any state law requirement).

10. The DOH conducted surveys at nursing homes, including ATRIUM, on an annual basis and also in response to any complaints, in order to ensure that Medicare and Medicaid regulations were followed and that residents were receiving adequate and proper care. CMS and DPW relied upon DOH surveys to determine whether nursing homes, including ATRIUM, were in compliance with regulations and eligible to receive Medicare and Medicaid funds. Such surveys could result in deficiency citations by DOH and CMS, leading to enforcement actions ranging from fines and civil monetary penalties to a ban on admissions, loss of license, and decertification from the Medicare and Medicaid programs.

11. DOH surveyors relied on nursing home records, including those prepared and maintained by ATRIUM, in conducting surveys, evaluating residents' care and determining whether to cite deficiencies and initiate enforcement actions.

THE SCHEME AND ARTIFICE

12. From in and around 1999, and continuing thereafter to in and around August of 2003, in the Western District of Pennsylvania, the defendants, MARTHA BELL and ATRIUM I NURSING AND REHABILITATION CENTER, did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud health care

benefit programs, that is Medicare and Medicaid, and to obtain, by means of false and fraudulent pretenses, representations and promises, money under the control of such health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services, which scheme and artifice to defraud and to obtain money was in sum and substance as follows:

13. It was a part of the scheme and artifice that defendants MARTHA BELL and ATRIUM:

a. falsely represented that the required care, services and environment would be provided to residents;

b. failed to provide the required care, services and environment; and

c. falsely represented that the required care, services and environment had been provided.

14. It was further a part of the scheme and artifice that defendants MARTHA BELL and ATRIUM caused the falsification of records maintained by ATRIUM which reflected the nature of resident care and the manner in which the facility operated. Such falsification of records included:

a. Admission records were falsified by making it appear that residents had been admitted to ATRIUM with bruises and sores which they had subsequently developed;

b. Nursing notes were altered in order to conceal the nature of residents' conditions and care administered;

c. Doctors' signatures on medical records were forged;

d. Doctors' orders were altered to make it appear that laboratory work was done in a timely manner;

e. Doctors' orders regarding administration of medication to residents were falsified;

f. Medication Administration records ("MARs") were altered to make it appear that medications had been timely administered;

g. Intake/output records were falsified to make it appear that hydration treatments which had not occurred had been administered to residents;

h. Records regarding residents' weight measurements were falsified;

i. Employees were directed to "fill in holes" in Activities of Daily Living records ("ADLs") and residents' charts;

j. Employees were directed to "fix" records in preparation for DOH surveys, and threatened that their pay would be withheld or reduced if they did not do so;

k. Employees were directed that resident charts were to be withheld from DOH surveyors until the records could be "fixed";

l. Employees were directed to create false records and provide false information to investigators regarding dates and times during which employees were on duty; and

m. Original records were removed from residents' medical files.

15. It was further a part of the scheme and artifice that defendants MARTHA BELL and ATRIUM maintained staffing at inadequate levels to provide needed care, and thereby jeopardized the health and physical condition of residents.

16. It was further a part of the scheme and artifice that defendants MARTHA BELL and ATRIUM curtailed services provided to residents by failing to pay vendors who provided such services.

17. It was further a part of the scheme and artifice that defendant MARTHA BELL supplemented her ATRIUM salary, and avoided limitations placed on the amount of such salary by reason of ATRIUM's non-profit status and participation in government health care programs, by causing ATRIUM funds to be indirectly paid to BELL by way of ATRIUM payments to ADAWP, ADF, and GHA, and by using a corporate credit card for personal expenses.

18. It was further a part of the scheme and artifice that, during the following time periods, ATRIUM received the below-listed payments from Medicare and Medicaid:

<u>YEAR</u>	<u>MEDICARE PAYMENTS</u>	<u>MEDICAID PAYMENTS</u>
1999	\$ 906,714	\$ 2,268,778.93
2000	\$ 814,551	\$ 2,605,836.75
2001	\$ 647,217	\$ 2,655,662.94
2002	\$ 455,096	\$ 2,372,255.92
2003	\$ <u>191,669</u>	\$ <u>1,871,918.14</u>
TOTAL	\$3,015,247	\$11,774,452.68

EXECUTION

19. From in and around 1999, and continuing thereafter to in and around August of 2003, in the Western District of Pennsylvania, the defendants, MARTHA BELL and ATRIUM I NURSING AND REHABILITATION CENTER, did execute and attempt to execute the aforesaid scheme and artifice by:

- a. falsely representing that the required care, services and environment would be provided to residents;
- b. failing to provide the required care, services and environment; and
- c. falsifying records pertaining to the care of residents and the operation of the facility.

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

COUNTS 2 - 11

The grand jury further charges:

20. Paragraphs 1 through 19 of this indictment are realleged and incorporated herein as if fully set forth.

21. In and around the dates specified below, in the Western District of Pennsylvania, in a matter involving health care benefit programs, that is Medicare and Medicaid, defendants MARTHA BELL and ATRIUM I NURSING AND REHABILITATION CENTER did knowingly and willfully cause to be made the following materially false, fictitious and fraudulent statements and representations in connection with the delivery of and payment for health care benefits, items and services, each of which constitutes a separate count of this indictment:

<u>COUNT</u>	<u>DATE</u>	<u>FALSE STATEMENT</u>
2	6/01	falsified a physician order by changing a date to make it appear that blood work for resident H.B. had been timely performed
3	10/01	directed a CNA to write a false statement regarding observations of resident M.T. on the night the latter died
4	10/01 - 12/01	falsified ADLs and flow sheets for residents, making it appear that services had been performed by a CNA who did not do so
5	1/02	falsified a physician note in file for resident A.W.

<u>COUNT</u>	<u>DATE</u>	<u>FALSE STATEMENT</u>
6	3/02	removal and replacement of an inter-disciplinary progress note, reflecting an apparent seizure and delay in notifying physician, from file for resident M.D.
7	4/02	removal and replacement of an inter-disciplinary progress note, reflecting resident's distress, from file for L.C.
8	6/02	post-dated an admission assessment for resident C.C. to falsely represent that C.C. had bruises on head and coccyx at time of admission
9	7/02	falsified intake/output forms to make it appear that resident H.F. had received hydration flushes which had not been administered
10	8/02	falsified a physician order for dilantin level testing for resident P.G. to make it appear that the test was ordered for a date 2 weeks later than the doctor directed
11	7/03	falsified a "weekly weight master" chart by fabricating entries for residents' weights as of 7/2/03 and 7/9/03

All in violation of Title 18, United States Code,

Sections 1035(a)(2) and 2.

SENTENCING ALLEGATIONS

The allegations of Counts 1 through 11 of this indictment are hereby realleged and incorporated by reference for the purpose of applying the following sections of the Sentencing Guidelines:

a. The amount of loss was more than \$7,000,000 (U.S.S.G. § 2B1.1(b)(1)(K));

b. The offense involved 10 or more victims (§ 2B1.1(b)(2)(A));

c. Defendant MARTHA BELL was an organizer or leader of criminal activity that involved 5 or more participants or was otherwise extensive (§ 3B1.1(a)); and

d. Defendant MARTHA BELL abused a position of private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense (§ 3B1.3).

A True Bill,

FOREPERSON

MARY BETH BUCHANAN
United States Attorney
PA ID No. 50254

