

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CR - KING

Case No. **11-20592**

18 U.S.C. § 1349
18 U.S.C. § 371
18 U.S.C. § 982

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FILED by *TR* D.C.
AUG 30 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT
S. D. of FLA. - MIAMI

UNITED STATES OF AMERICA

v.

BARRY NASH,

Defendant.

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Indictment,

The Medicare Program

1. The Medicare Program ("Medicare") is a federal health care program providing benefits to persons who were over the age of sixty-five or disabled. Medicare is 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 receive benefits under Medicare are referred to as Medicare "beneficiaries." Medicare is a "health care benefit program," as defined by Title 18, United States Code, Section 24(b), and a "Federal health care program," as defined by Title 42, United States Code, Section 1320a-7b(f).

2. Part B of the Medicare program covers partial hospitalization programs ("PHPs") connected with the treatment of mental illness. The treatment plan of PHPs closely resembles that of a highly structured, short-term hospital inpatient program, but it is a distinct and organized intensive treatment program that offers less than 24-hour daily care and is designed, in part, to reduce medical costs by treating qualifying individuals outside the hospital setting.

3. Under the PHP benefit, Medicare covers the following services: (1) individual and group therapy with physicians or psychologists (or other authorized mental health professionals); (2) occupational therapy; (3) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients; (4) drugs and biologicals furnished for therapeutic purposes that cannot be self-administered; (5) individualized activity therapies that are not primarily recreational or diversionary; (6) family counseling (for treatment of the patient's condition); (7) patient training and education; and (8) diagnostic services.

4. Medicare generally requires that the PHP be provided at a facility that is hospital-based or hospital-affiliated, but Medicare also allows a PHP to be provided in a Community Mental Health Center ("CMHC"), which is a provider type under Part A of Medicare.

5. Medicare requires that, to qualify for the PHP benefit, the services must be reasonable and necessary for the diagnosis and active treatment of the individual's condition. The program also must be reasonably expected to improve or maintain the condition and functional level of the patient and to prevent relapse or hospitalization. The program must be prescribed by a physician, furnished under the general supervision of a physician, and delivered under an established plan of treatment that meets Medicare requirements.

6. Typically, a patient who needs this intensive PHP treatment has a long history of mental illness that has been treated. Patients are ordinarily referred either (a) by a hospital after full inpatient hospitalization for severe mental illness or (b) by a doctor who is trying to prevent full inpatient hospitalization for a severely mentally ill patient the doctor has been treating.

7. Medicare guidelines specifically exclude meals and transportation from coverage under the PHP benefit.

8. Medicare does not cover programs involving primarily social, recreational, or diversionary activities.

9. In order to receive payment from Medicare, a CMHC, medical clinic, or physician is required to submit a health insurance claim form to Medicare, called a Form 1450. The claims may be submitted in hard copy or electronically. A CMHC, medical clinic, and physician may contract with a billing company to transmit claims to Medicare on their behalf.

10. Medicare Part B is administered in Florida by First Coast Service Options, which, pursuant to contract with the United States Department of Health and Human Services, serves as a contracted carrier to receive, adjudicate, and pay Medicare Part B claims submitted to it by Medicare beneficiaries, physicians, or CMHCs. Medicare Part B pays CMHCs and physicians directly for the cost of PHP services furnished to eligible Medicare beneficiaries, provided that the services meet Medicare requirements.

11. An "Assisted Living Facility" or "ALF" means any facility licensed by the Florida Agency for Health Care Administration, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services

for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

12. A Halfway House is a facility that supports the reintegration of persons who have been recently released from prison or jail, or assists individuals who are recovering from various drug and alcohol addictions.

Defendant, Relevant Entities, and Relevant Persons

13. Defendant **BARRY NASH**, a resident of Santa Rosa County, was the owner, Registered Agent, and Manager of Starter House, LLC (“Starter House”).

14. Starter House, a Florida corporation, was a Halfway House located at 411 S.E. 8th Street, Fort Lauderdale, Florida 33312.

15. American Therapeutic Corporation (“ATC”) was a Florida corporation originally established in 2002 and was headquartered in Miami, Florida. ATC operated several purported PHPs throughout Florida from Homestead to Orlando, including PHPs at the following addresses: 1801 N.E. 2nd Avenue, Miami, Florida 33132; 61 Grand Canal Drive, Suite #100, Miami, Florida 33144; 1001 West Commercial Blvd., Fort Lauderdale, Florida 33309; 4960 North Dixie Highway, Fort Lauderdale, Florida 33334; 27112 South Dixie Highway, Naranja, Florida 33032; 717 East Palmetto Park Road, Boca Raton, Florida 33432; and 4790 North Orange Blossom Trail, Orlando, Florida 32810.

16. Medlink Professional Management Group, Inc. (“Medlink”) was a Florida corporation established in 2003 and was headquartered at 484 Brickell Avenue, Suite 1220, Miami, Florida 33132 and later at 1809 N.E. 2nd Avenue, Miami, Florida 33132.

17. Lawrence S. Duran (“Duran”), a resident of Miami-Dade County, was the manager and owner of ATC and Medlink.

18. Marianella Valera (“Valera”), a resident of Miami-Dade County, was the owner, CEO, president, secretary, and treasurer of ATC.

19. Judith Negron (“Negron”), a resident of Miami-Dade County, was the vice president and part owner of Medlink.

20. Margarita Acevedo, a/k/a Margarita De La Cruz (“Acevedo”), a resident of Miami-Dade County, was the Marketing Director of ATC. Acevedo supervised ATC’s “marketers” who would pay and cause the payment of kickbacks to ALF and Halfway House owners and operators and patient recruiters – including **BARRY NASH** – in exchange for Medicare beneficiary “referrals” to ATC.

21. Joseph Valdes, a/k/a Joseph Valdez (“Valdes”), a resident of Broward County, was a marketer for ATC who would pay and cause the payment of kickbacks to ALF and Halfway House owners and operators and patient recruiters – including **BARRY NASH** – in exchange for Medicare beneficiary “referrals” to ATC.

COUNT 1
Conspiracy to Commit Health Care Fraud
(18 U.S.C. § 1349)

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

2. From on or about May 2, 2007, through on or about October 18, 2010, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

BARRY NASH,

did knowingly and willfully combine, conspire, confederate and agree with others, known and unknown to the Grand Jury, including Duran, Valera, Negron, Acevedo, and Valdes to violate Title 18, United States Code, Section 1347, that is, 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, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for **BARRY NASH** and his co-conspirators, known and unknown to the Grand Jury, to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare through ATC for services that were medically unnecessary, that were not eligible for Medicare reimbursement, and that were never provided; (b) offering and paying kickbacks and bribes to ALF and Halfway House owners and operators as well as patient recruiters who provided and had access to ineligible Medicare beneficiaries to attend ATC's CMHCs; and (c) receiving kickbacks and bribes to ensure the attendance of these ineligible Medicare beneficiaries at ATC's CMHCs.

Manner and Means

The manner and means by which the defendant and his co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. Duran and Valera would own and operate ATC as a company registered in the State of Florida, concealing Duran's ownership interest.

5. Valera would maintain a Medicare provider number for five of ATC's locations in order to submit Medicare claims for PHP services at all of ATC's locations.

6. Duran and Negron would own and operate Medlink in the State of Florida.

7. **BARRY NASH**, along with other ALF and Halfway House owners and operators and patient recruiters, would solicit and receive kickback payments from Duran, Valera, Negron, Acevedo, Valdes, and others in return for referring Medicare beneficiaries, who did not qualify for PHP treatment, to ATC for purported PHP services.

8. Duran, Valera, Negron, Acevedo, Valdes, and others would pay and cause the payment of kickbacks to **BARRY NASH**, along with other ALF and Halfway House owners and operators and patient recruiters, in exchange for the delivery or causing the delivery of Medicare beneficiaries, who did not qualify for PHP treatment, to ATC for purported PHP services.

9. **BARRY NASH** would deliver and cause the delivery of Medicare beneficiaries, who did not qualify for PHP treatment, to ATC for purported PHP treatment based solely on their eligibility to receive benefits under Medicare and regardless of whether the beneficiaries qualified for such treatment.

10. Duran, Valera, and others would cause the fabrication and alteration of treatment notes for the purpose of making it falsely appear that the patients who were purportedly treated at ATC qualified for PHP services.

11. Duran, Valera, Negron, and others would cause the transfer and disbursement of illicit proceeds derived from the fraudulent billing scheme into and out of ATC's and Medlink's various corporate bank accounts to themselves and others, including kickback payments from Medlink to Starter House, a company controlled by **BARRY NASH**.

12. **BARRY NASH**, and Duran, Valera, Negron, Acevedo, Valdes, and others would cause claims to be submitted to Medicare for services purportedly provided at ATC's locations in an amount exceeding \$200 million.

All in violation of Title 18, United States Code, Section 1349.

COUNT 2
Conspiracy to Defraud the United States and to Receive and Pay Health Care Kickbacks
(18 U.S.C. § 371)

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

2. From on or about May 2, 2007, through on or about October 18, 2010, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

BARRY NASH,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with others, known and unknown to the Grand Jury, including Duran, Valera, Negron, Acevedo, and Valdes, to commit certain offenses against the United States, that is:

- a. To defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of Medicare;
- b. To violate Title 42, United States Code, Section 1320a-7b(b)(1), by knowingly and willfully soliciting and receiving remuneration, specifically, kickbacks and bribes, directly and indirectly, overtly and covertly, in return for referring individuals to a

person or persons for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part under a Federal health care program, that is, Medicare; and in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, item, and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare; and

- c. To violate Title 42, United States Code, Section 1320a-7b(b)(2), by knowingly and willfully offering and paying remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, to any person or persons to induce such person or persons to refer individuals to a person or persons for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part under a Federal health care program, that is, Medicare; and to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, item, and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for **BARRY NASH** and his co-conspirators to unlawfully enrich themselves by receiving and paying kickbacks and bribes in exchange for (a) securing the attendance of Medicare beneficiaries at ATC and (b) providing Medicare beneficiary information that was used to submit claims to Medicare.

Manner and Means of the Conspiracy

The manner and means by which the defendant and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

4. Paragraphs 4 through 12 of the Manner and Means section under Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

Overt Acts

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one of the co-conspirators committed and caused to be committed in the Southern District of Florida at least one of the following overt acts, among others:

1. On or about February 27, 2009, **BARRY NASH** negotiated a kickback check numbered 7092 in the approximate amount of \$2,430 written from the Medlink Wachovia Bank account ending 0305 and payable to Starter House.

2. On or about June 15, 2009, **BARRY NASH** negotiated a kickback check numbered 7724 in the approximate amount of \$1,770 written from the Medlink Wachovia Bank account ending 0305 and payable to Starter House.

3. On or about April 16, 2010, **BARRY NASH** negotiated a kickback check numbered 8406 in the approximate amount of \$1,410 written from the Medlink Wachovia Bank account ending 0305 and payable to Starter House.

All in violation of Title 18, United States Code, Section 371.

CRIMINAL FORFEITURE
(18 U.S.C. § 982)

1. The allegations contained in Counts 1 and 2 of this Indictment are realleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which defendant **BARRY NASH** has an interest.

2. Pursuant to Title 18, United States Code, Section 982(a)(7), upon conviction for any of the offenses charged in Counts 1 and 2 of this Indictment, **BARRY NASH** shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

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

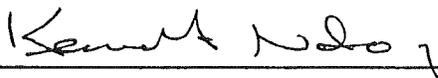
- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be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

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

All pursuant to Title 18, United States Code, Section 982(a)(7) and the procedures outlined in Title 21, United States Code, Section 853.

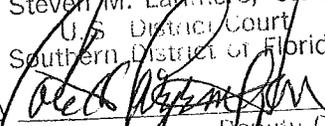
A. TRUE BILL

FOREPERSON


WIFREDO A. FERRER
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA


HANK BOND WALTHER
DEPUTY CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE


STEVEN KIM
JENNIFER L. SAULINO
TRIAL ATTORNEYS
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

Certified to be a true and correct copy of the document on file
Steven M. Larkmore, Clerk,
U.S. District Court
Southern District of Florida
By 
Deputy Clerk
Date 08/31/11