

FILED by _____ D.C.
MAY 01 2014
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **14-20287**

18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 2
18 U.S.C. § 982

ALTONAGA/
O'SULLIVAN

UNITED STATES OF AMERICA

vs.

JESUS FUNDORA
and
CARLOS MANUEL PEREZ GOMEZ,

Defendants.

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times material to this Indictment:

The Medicare Program

1. The Medicare Program (Medicare) was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services (CMS), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."
2. Medicare programs covering different types of benefits were separated into different program "parts." Part D of the Medicare Program subsidized the costs of prescription drugs for

Medicare beneficiaries. Part D was enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and went into effect on January 1, 2006.

The Medicare Part D Program

3. In order to receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies approved by Medicare. Those companies were often referred to as drug plan “sponsors.” A beneficiary in a Medicare drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

4. A pharmacy could participate in Part D by entering a retail network agreement directly with a plan or with one or more Pharmacy Benefit Managers (“PBMs”). A PBM acted on behalf of one or more Medicare drug plans. Through a plan’s PBM, a pharmacy could join the plan’s network. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim either directly to the plan or to a PBM that represented the beneficiary’s Medicare drug plan. The plan or PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

5. A pharmacy could also submit claims to a Medicare drug plan to whose network the pharmacy did not belong. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

6. Medicare, through CMS, compensated the Medicare drug plan sponsors. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors’ plans. Such payments were called capitation fees. The capitation fee was adjusted periodically based on various factors, including the beneficiary’s medical conditions. In addition, in some cases where a sponsor’s

expenses for a beneficiary's prescription drugs exceeded that beneficiary's capitation fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

7. Medicare and Medicare drug plan sponsors were "health care benefit program[s]," as defined by Title 18, United States Code, Section 24(b).

Medicare Drug Plan Sponsors

8. United Healthcare Insurance Company ("United"); United Healthcare of Florida, Inc. ("United Florida"); United American Insurance Company ("United American"); and Medica Healthcare Plans, Inc. ("Medica") were Medicare drug plan sponsors.

The Defendant and a Related Company

9. Kiara Discount Pharmacy, Corp. ("Kiara Pharmacy") was a corporation organized under the laws of the State of Florida. Kiara Pharmacy did business in Miami-Dade County purportedly providing prescription drugs to Medicare beneficiaries. Kiara Pharmacy's principal place of business was 9620 S.W. 72nd Street, Miami, Florida.

10. **JESUS FUNDORA**, a resident of Miami-Dade County, was the president, director and registered agent of Kiara Pharmacy.

11. **CARLOS MANUEL PEREZ GOMEZ**, a resident of Miami-Dade County, was manager of Kiara Pharmacy.

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

1. Paragraphs 1 through 11 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around June of 2011, and continuing through at least in or around December of 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**JESUS FUNDORA
and
CARLOS MANUEL PEREZ GOMEZ,**

did knowingly and willfully combine, conspire, confederate and agree with each other and others known and unknown to the Grand Jury, 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 various Medicare drug plan sponsors, including United, United Florida, United American and Medica, 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 programs, in connection with the delivery of and payment for health care benefits, items, and services.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (b) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds; and (c) diverting fraud proceeds for the personal use and benefit of themselves and others.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

4. Co-conspirators recruited and paid Medicare beneficiaries to induce said Medicare beneficiaries to obtain prescriptions for pharmaceutical drugs to be used in conjunction with false and fraudulent billing of Medicare Part D through Kiara Pharmacy.

5. Co-conspirators provided false and fraudulent prescriptions from the Medicare beneficiaries they recruited and paid to **JESUS FUNDORA** and **CARLOS MANUEL PEREZ GOMEZ** for use in filing false and fraudulent prescription drug claims under Medicare Part D through Kiara Pharmacy.

6. **JESUS FUNDORA, CARLOS MANUEL PEREZ GOMEZ** and their co-conspirators submitted and caused Kiara Pharmacy to submit claims that falsely and fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and had been provided by Kiara Pharmacy to Medicare beneficiaries.

7. As a result of such false and fraudulent claims, Medicare and Medicare prescription drug plan sponsors, through their PBMs, made overpayments funded by Medicare to Kiara Pharmacy's corporate bank accounts in the amount of approximately \$6,218,924.

8. **JESUS FUNDORA, CARLOS MANUEL PEREZ GOMEZ** and their co-conspirators used the proceeds from the false and fraudulent Medicare Part D claims for their own use and the use of others, and to further the fraud.

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

COUNTS 2-13
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 11 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From in or around June of 2011, and continuing through in or around December of 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

JESUS FUNDORA
and
CARLOS MANUEL PEREZ GOMEZ,

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare and various Medicare drug plan sponsors, including United, United Florida, United American and Medica, 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 programs.

Purpose of the Scheme and Artifice

3. It was the purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by, among other things: (a) submitting or causing the submission of false and fraudulent claims to health care benefit programs; (b) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds; and (c) diverting fraud proceeds for the personal use and benefit of themselves and others.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 8 of the Manner and Means section of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution or Attempted Execution of the Scheme and Artifice

5. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida and elsewhere, the defendants,

**JESUS FUNDORA
and
CARLOS MANUEL PEREZ GOMEZ,**

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare and various Medicare drug plan sponsors, including United, United Florida, United American and Medica, 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 programs, in that the defendant submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that Kiara Pharmacy provided pharmaceutical items and services to Medicare beneficiaries pursuant to physicians' orders and prescriptions:

Count	Medicare Beneficiary	Approx. Date of Submission of Claim	Claim Number	Item Claimed; Approx. Amount Paid
2	R.H	06/28/2011	111794693711070996	Solaraze Gel 3% W/W; \$515
3	G.P.	07/28/2011	112092634351033999	Megaces ES SUS 625/25ML; \$605
4	G.P.	10/31/2011	113042321791004999	Zyprexa Tab 20MG; \$1142
5	C.S.	11/30/2011	046498238	Solaraze Gel 3% W/W; \$519

Count	Medicare Beneficiary	Approx. Date of Submission of Claim	Claim Number	Item Claimed; Approx. Amount Paid
6	R.H.	12/21/2011	113552532542022996	Solaraze Gel 3% W/W; \$515
7	R.H.	01/19/2012	120193213360087983	Lidoderm Dis 5%; \$221
8	C.S.	01/26/2012	120262672458102999	Solaraze Gel 3% W/W; \$563
9	J.B.	04/30/2012	121212731218024981	Dovonex Cre 0.005%; \$585
10	C.S.	05/30/2012	13782526276153933013	Solaraze Gel 3% W/W; \$566
11	J.B.	06/08/2012	121602578732043981	Advair Disku Aer 250/50; \$242
12	G.P.	06/28/2012	121802624842008997	Advair Disku Aer 250/50; \$242
13	J.B.	07/09/2012	121912380156104981	Dovonex Cre 0.005%; \$778

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

FORFEITURE

1. The allegations contained in 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 the defendants, **JESUS FUNDORA** and **CARLOS MANUEL PEREZ GOMEZ**, have an interest.

2. Upon conviction of any violation of Title 18, United States Code, Sections 1347 or 1349, as alleged in this Indictment, the defendants shall forfeit all of their right, title and interest to the United States of any property, real or personal, that constitutes or is derived, directly or

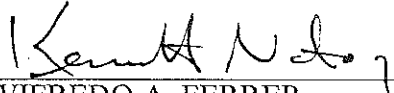
indirectly, from gross proceeds traceable to the commission of such violations, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property subject to forfeiture includes, but is not limited to, the sum of at least \$6,218,924 in United States currency, which is a sum of money equal in value to the gross proceeds traceable to the commission of the violations alleged in this Indictment, which the United States will seek as a forfeiture money judgment as part of the defendants' sentence.

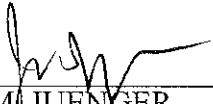
All pursuant to Title 18, United States Code, Section 982(a)(7); and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

~~A TRUE BILL~~

FOREPERSON



WIFREDO A. FERRER
UNITED STATES ATTORNEY



JON M. JUENGER
ASSISTANT U.S. ATTORNEY