

SCJ:PEN  
F#2013R01072

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

HAROUTYOUN MARGOSSIAN,

Defendant.

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IN MATTER OF THE SEARCH OF THE  
PREMISES KNOWN AND DESCRIBED AS  
THE MEDICAL OFFICE OF HAROUTYOUN  
MARGOSSIAN, M.D., 7206 NARROWS  
AVENUE, BROOKLYN, NEW YORK 11209

**TO BE FILED UNDER SEAL**

AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR AN  
ARREST WARRANT  
(18 U.S.C. § 1347)

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IN MATTER OF THE SEARCH OF THE  
PREMISES KNOWN AND DESCRIBED AS  
THE MEDICAL OFFICE OF HAROUTYOUN  
MARGOSSIAN, M.D., 1529 RICHMOND  
ROAD, STATEN ISLAND,  
NEW YORK, 10304

AFFIDAVIT IN SUPPORT OF  
APPLICATION FOR A  
SEARCH WARRANT  
(18 U.S.C. §§ 1341, 1343 and 1347)

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EASTERN DISTRICT OF NEW YORK, ss:

ELYSIA DOHERTY, being duly sworn, deposes and states that she is a Special Agent with the Office of Inspector General of the Department of Health and Human Services ("HHS"), duly appointed according to law and acting as such.

Upon information and belief, on or about and between January 1, 2007 through December 31, 2013, within the Eastern District of New York and elsewhere, the defendant HAROUTYOUN MARGOSSIAN, together with others, did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud 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, Medicare, in connection with the delivery of and payment for health care benefits, items, and services.

(Title 18, United States Code, Section 1347)

Upon information and belief, there is probable cause to believe that there are kept and concealed within the premises known and described as (1) THE MEDICAL OFFICE OF HAROUTYOUN MARGOSSIAN, M.D., 7206 NARROWS AVENUE, BROOKLYN, NEW YORK 11209, WHICH IS LOCATED WITHIN THE BASEMENT AND FIRST FLOORS OF A THREE-STORY BUILDING (“SUBJECT PREMISES I”) and (2) THE MEDICAL OFFICE OF HAROUTYOUN MARGOSSIAN, M.D., 1529 RICHMOND ROAD, STATEN ISLAND, NEW YORK, 10304, WHICH IS LOCATED WITHIN THE FIRST FLOOR OF A ONE-STORY BUILDING WITH A SUBTERRANIAN BASEMENT (“SUBJECT PREMISES II”) (collectively, “SUBJECT PREMISES”), property, as described on Exhibit A (attached hereto and incorporated herein), and other items, all of which constitute evidence, fruits and instrumentalities of violations of federal law, including violations of Title 18, United States Code, Section 1341, 1343 and 1347 (mail fraud, wire fraud and health care fraud).

The source of your affiant's information and the grounds for her belief are as follows:

1. I have been an HHS Special Agent for approximately 12 years. During my tenure with HHS, I have participated in a variety of criminal health care fraud investigations, during the course of which I have interviewed witnesses, conducted physical surveillance, executed search warrants, and reviewed health care claims data, bank records, telephone records, medical records, invoices, and other business records. I am familiar with the records and documents maintained by health care providers and the laws and regulations related to the administration of the Medicare and Medicaid programs and other health care benefit programs. I currently am assigned to investigate health care fraud violations, including schemes to defraud the Medicare program.

2. I have personally participated in the investigation of the offenses discussed below. I am familiar with the facts and circumstances of this investigation from: (a) my personal participation in this investigation, (b) reports made to me by other law enforcement authorities, and (c) information obtained from witnesses.

3. Except as explicitly set forth below, I have not distinguished in this affidavit between facts of which I have personal knowledge and facts of which I have hearsay knowledge. Because this affidavit is being submitted for the limited purpose of establishing probable cause for the issuance of an arrest warrant for the defendant HAROUTYOUN MARGOSSIAN, and search warrants for the SUBJECT PREMISES, I have not set forth each and every fact learned during the course of this investigation. Instead, I have set forth only those

facts, in substance and in pertinent part, which I believe are necessary to establish probable cause for the issuance of an arrest and search warrants.

#### THE MEDICARE PROGRAM

4. The Medicare program (“Medicare”) was a federal health care program providing benefits to persons who were over the age of 65 or disabled. Medicare was 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 received benefits under Medicare were referred to as Medicare “beneficiaries.”

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

6. Medicare included coverage under two primary components, hospital insurance (“Part A”) and medical insurance (Part “B”). Generally, Medicare Part B covered these costs if, among other requirements, they were medically necessary and ordered by a physician.

7. A physician or medical clinic that sought to participate in Medicare was required to apply for and receive a provider identification number (“PIN”) or provider transaction access number (“PTAN”). The PIN/PTAN allowed a physician or medical clinic to submit bills, known as “claims,” to Medicare to obtain reimbursement for the cost of treatment and related health care benefits, items, and services that they had supplied or provided to beneficiaries.

8. Medical providers were authorized to submit claims to Medicare only for services they actually rendered and were required to maintain patient records verifying the provision of services. By submitting the claim, either electronically or in writing, the provider

was certifying, among other things, that the services that were rendered to the patient were medically necessary.

9. Providers submitted to Medicare claims using billing codes, also called current procedural terminology or “CPT” codes, which were numbers referring to specific descriptions of the medical services provided to beneficiaries.

#### THE DEFENDANT

10. The investigation has revealed that on or about and between approximately January 1, 2007 and December 31, 2013, the defendant HAROUTYOUN MARGOSSIAN was a licensed physician with a specialty in obstetrics and gynecology. He has been a Medicare provider since approximately January 2006. On January 12, 2012, a Medicare Enrollment Application signed in the defendant’s name was submitted to Medicare to re-validate the defendant’s registration. On this registration statement, the defendant’s specialty was listed as “Obstetrics/Gynecology.” The application identified the defendant as the sole proprietor of the professional corporation NY Urogynecology & Reconstructive Pelvic Surgery, P.C. (“NYURPS”). It listed the defendant’s “practice locations” as 7206 Narrows Avenue, Brooklyn, NY, 11201, and 1529 Richmond Road, Staten Island, NY 10304 (SUBJECT PREMISES) and stated that the defendant’s medical records were stored at these practice locations. Under Section 7B of the application, which requires identification of any “billing agency or individual that you contract with to prepare or submit your claims,” no biller was listed. The contact person for the practice was listed as “Laury Banboukian,” who is believed to be the defendant’s wife, at the

address of the defendant's personal residence in Staten Island, New York.<sup>1</sup> In an application to CIGNA Health Insurance dated September 30, 2010, "Laury" is identified as the contact person for billing questions. Under Section 6 of the application, which requires identification of any managing employees of the practice locations, no individuals were listed. In signing the application, the defendant certified in Section 15 that "I will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare, and will not submit claims with deliberate ignorance or reckless disregard for their truth or falsity."

11. Between January 2, 2008 and November 29, 2013, Medicare and private insurers routinely made deposits in payment of the defendant's claims into two Citibank accounts in the name of NYURPS (hereinafter referred to as "NYURPS Account 1" and "NYURPS Account 2," respectively). Between January 2, 2008 and December 6, 2010, Medicare and private insurers deposited approximately \$11,900,008 into NYURPS Account 1. NYURPS Account 1 was closed on or about December 6, 2010, and NYURPS Account 2 was opened. The signatories for NYURPS Account 2 were the defendant HAROUTYOUN MARGOSSIAN and Laury Banbourkian. Between September 2, 2010 and November 29, 2013, Medicare and private insurers deposited approximately \$12,271,200 into NYURPS Account 2. Between January 15, 2008 and December 13, 2013, approximately \$10,021,904 was transferred from NYURPS Account 1 and NYURPS Account 2 into a JP Moran Chase savings account in the name of HAROUTYOUN MARGOSSIAN and Laury Banboukian. Between December 18,

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<sup>1</sup> The defendant's Staten Island personal residence was established through his listing of the address on his driver's license and his registrations for his personal motor vehicles. Furthermore, the defendant has been observed during physical surveillance leaving the location in the early morning hours. His Staten Island personal residence is not the same location as SUBJECT PREMISES II.

2007 and December 13, 2013, approximately \$13, 599,754 was transferred from NYURPS Account 1 and NYURPS Account 2 into a JP Moran Chase checking account in the name of HAROUTYOUN MARGOSSIAN and Laury Banboukian.

#### THE SUBJECT PREMISES

12. SUBJECT PREMISES I is depicted in the photograph attached as exhibit B. According to the New York City Registrar, 7206 Narrows Avenue, Brooklyn, New York, was deeded in 2006 by the defendant HAROUTYOUN MARGOSSIAN and Laury Banboukian Margossian to Halor LLC, with a listed address that was the same as the defendant's personal residence in Staten Island. According to a Certificate of Occupancy ("CO") filed with the New York City Department of Buildings, 7206 Narrows Avenue, Brooklyn, New York, is a three-story building. According to the CO, the basement is identified as an "ambulatory, diagnostic or treatment care facil[ilities], mechanical and storage room and accessory off street enclosed parking for one car," and the first floor is identified as an "ambulatory diagnostic or treatment care facility." According to the CO, the second floor is identified as being used as a one family residence. The first floor and basement each have front doors. The window of the first floor lists the name "H. Margossian, M.D." On December 9, 2013, I entered the first floor front door and spoke to the receptionist. The receptionist stated that the defendant HAROUTYOUN MARGOSSIAN was the only doctor practicing at the location. I also looked through the basement glass front door and observed medical supplies.

13. SUBJECT PREMISES II is depicted in the photograph attached as Exhibit C. According to the New York City Registrar, 1529 Richmond Road, Staten Island, 10304, is owned by Margogaro LLC, with a listed address that was the same as the defendant's personal

residence in Staten Island. In front of the building, there is a sign post on which is written “H. Margossian.” On December 9, 2013, I placed a telephone call to the defendant’s medical receptionist at SUBJECT PREMISES I. During that conversation, the receptionist stated that the defendant was the only physician practicing at SUBJECT PREMISES II. On May 5, 2014, I spoke with a practicing obstetrician/gynecologist, who stated that she used to have a practice within SUBJECT PREMISES II, which was separate from the defendant HAROUTYOUN MARGOSSIAN’s practice. However, she stated that she vacated SUBJECT PREMISES II over four years ago.

#### PROBABLE CAUSE

14. Through my investigation, I learned that the defendant is currently the fifth most prodigious biller in the United States for provision of Anorectal Manometry (“ARM”) testing, which is a diagnostic test billed under CPT Code 91122. I have conducted a review of claims submitted by the defendant to Medicare and private insurance companies, which qualify as health care benefit programs, as defined by Title 18, United States Code, Section 24(b) (“private insurers”), between January 1, 2007 and December 31, 2013 (the “Submitted Claims”). This review showed that the defendant submitted a total of 3,284 claims to Medicare under CPT Code 91122 for 591 beneficiaries, which equals approximately 6 claims per patient. The total number of beneficiaries for whom the defendant has submitted claims to Medicare for any kind of test or treatment was approximately 1,324, thus almost half the defendant’s Medicare patients have allegedly received the ARM test. This review also showed that the defendant submitted a total of \$2,349,587.87 worth of claims under CPT Code 91122 to Medicare, for which Medicare paid the defendant \$716,832.61 (approximately \$240.00 per test) and a total of \$6,101,797.45

worth of claims under CPT Code 91122 to private insurers, for which he was paid a total of \$1,890,962.69 (ranging approximately from \$238 to \$240 per test). Based upon a review of the defendant's business and personal bank accounts, these collective payments represented approximately 10% of the defendant's total income. There is probable cause to believe that a substantial portion of the defendant's claims under CPT code 91122 for his alleged provision of ARM tests, along with related treatment, were false and fraudulent based in part upon (1) patient interviews that failed to substantiate that the tests were performed; (2) the defendant's substantial billing for treatment provided while he was on vacation; and (3) the impossibility of the defendant's ability to perform the number of tests that he often billed in a single day.

#### THE ARM TEST – CPT CODE 91122

15. On April 15, 2014, I telephonically interviewed a colorectal surgeon ("Surgeon 1"), who has been a practicing physician for approximately 30 years and has consulted with insurance companies reviewing claims in his specialty for approximately 10 years. Surgeon 1 stated that an ARM test is a diagnostic tool used to identify the cause of a patient's unusual constipation or fecal incontinence. He advised me that these problems are normally addressed by colorectal specialists or gastroenterologists and not obstetrician/gynecologists. Surgeon 1 further

stated that the ARM test is one of four diagnostic tests used to evaluate the aforementioned

conditions.<sup>2</sup>

16. Surgeon 1 advised me that, during an ARM test, a manometry catheter is inserted into the rectum to measure and record pressure exerted by anal/rectal muscles. At times, a balloon is inflated from the catheter to assist in taking the measurements. He further stated that an individual receiving an ARM test must “fast” for four hours and usually receives an enema prior to the procedure. The test ordinarily requires 45 minutes to one hour to administer, with 30 to 45 minutes used for patient preparation and 15 minutes used for the actual test. Patients can suffer some discomfort, particularly when the balloon is inflated, and the test can be painful. There is a risk of bleeding or perforation of the rectum. In sum, the patient would be well aware that they were being given an ARM test because of (1) the embarrassing nature of the procedure, (2) the preparation involved, and (3) level of discomfort.

17. Additionally, Surgeon 1 stated that unusual constipation or fecal incontinence generally results from physical or neural damage to the anal/rectal muscles, which is caused by physical injury, surgery, or certain neurological conditions, such as multiple sclerosis or spinal cord injury. He stated that the ARM test is strictly a diagnostic test. If the ARM test indicates that there has been damage to the anal/rectal muscles, a surgeon may attempt to repair the damage through surgery. According to Surgeon I, there is rarely a reason to repeat the ARM test, because the patient is capable of determining the extent to which his or her symptoms have been alleviated by the surgery. Furthermore, Surgeon I stated that he was unaware of any therapeutic or treatment value to the ARM test.

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2 Electromyography (“EMG”), ultrasound and sigmoidoscopy are the other three tests.

18. I also have interviewed the Director of the Northeastern Program Integrity Field Office for CMS, who stated that CPT Code 91122 is a diagnostic gastroenterology code and not a treatment code. She stated that, under Medicare rules, physicians are required to personally perform ARM tests billed under CPT Code 91122.

#### PATIENT INTERVIEWS

19. I and my fellow agents randomly selected 26 beneficiaries from the Submitted Claims, for whom the defendant HAROUTYOUN MARGOSSIAN submitted claims to Medicare or private insurers under CPT Code 91122, and attempted to personally interview each one. Each of these beneficiaries was a woman who had an average age in the mid-seventies. Three beneficiaries were elderly and could not personally communicate about their condition. Of the remaining 23 beneficiaries, all of whom were personally interviewed, only one beneficiary stated that she had fecal and urinary incontinence issues and had a device inserted into her rectum as part of her diagnostic testing. Four beneficiaries stated that they did not seek treatment from the defendant for fecal incontinence, but they were not sure if they had a device inserted into their rectum. One beneficiary, who also did not seek treatment for fecal incontinence, stated that the defendant did a test to the rectum. However, the defendant billed Medicare and private insurers for the administration of an average of 6 ARM tests for the remaining 17 beneficiaries, all of whom specifically stated that they did not seek treatment from the defendant for fecal incontinence and that they never had a device inserted into their anus/rectum.

20. Most of the 23 beneficiaries who were personally interviewed stated that they sought consultation and treatment from the defendant HAROUTYOUN MARGOSSIAN for

a dropped or prolapsed bladder and/or urinary incontinence issues related to stress incontinence or urgency. One beneficiary had a pulled muscle in the abdomen, and one had pain in the lower abdomen from an infection. Sixteen reported going to the defendant for extended treatment. This treatment appears to have involved pelvic floor exercise, electric stimulation to the pelvic floor and a catheter in the vagina. Some beneficiaries reported having a combination of these treatments. Multiple beneficiaries also stated that they saw the doctor on their first visit but that all subsequent treatment was provided by the defendant's staff.

#### TRAVEL ANALYSIS

21. A comparison of the defendant HAROUTYOUN MARGOSSIAN's travel records, which were accessed through a Customs and Border Patrol database, to the Submitted Claims revealed that the defendant submitted claims for the provision of ARM tests to patients while he was travelling outside the country. For example, between July 24, 2008 and August 31, 2013, the defendant claimed he provided 512 ARM tests, for a total of \$405,504.00, on dates while he was traveling outside of the country (including travel days). The defendant was paid by Medicare and private insurers for 209 of the billed 512 tests, for a total of \$165,538.<sup>3</sup> A summary of this activity is as follows:

a. On July 24, 2008, the defendant HAROUTYOUN MARGOSSIAN boarded a ship that departed Cape Canaveral, Florida, bound for Nassau, Bahamas. On July 27, 2008, the defendant boarded a ship in Nassau bound for Cape Canaveral. The defendant submitted claims to Medicare and private insurers which reflected the provision of treatment to

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<sup>3</sup> The government is unaware at this time of the reason why the defendant was not paid for the remaining 303 tests.

34 patients, including the administration of 14 ARM tests, on and between July 24, 2008 and July 27, 2008.

b. On December 28, 2008, the defendant HAROUTYOUN MARGOSSIAN boarded a ship that departed Cape Canaveral, Florida, bound for Nassau, Bahamas. On December 31, 2008, the defendant boarded a ship in Nassau bound for Cape Canaveral. The defendant submitted claims to Medicare and private insurers which reflected the provision of treatment to 32 patients, including the administration of 16 ARM tests, on and between December 28, 2008 and December 31, 2008.

c. On August 6, 2009, the defendant HAROUTYOUN MARGOSSIAN flew from Newark, New Jersey, to London, England. On August 20, 2009, the defendant flew from Munich, Germany, to Newark. The defendant submitted claims to Medicare and private insurers which reflected the provision of treatment to 169 patients, including the administration of 100 ARM tests, between August 6, 2009 and August 20, 2009.

d. On December 28, 2009, the defendant HAROUTYOUN MARGOSSIAN boarded a ship that departed Fort Lauderdale, Florida, bound for Cancun, Mexico. On December 31, 2009, the defendant boarded a ship in Cancun bound for Fort Lauderdale. The defendant submitted claims to Medicare and private insurers which reflected the provision of treatment to 54 patients, including the administration of 13 ARM tests, on and between December 28, 2009 and December 31, 2009.

e. On April 26, 2011, the defendant HAROUTYOUN MARGOSSIAN boarded a ship that departed Cape Canaveral, Florida, bound for Nassau, Bahamas. On May 1, 2011, the defendant boarded a ship in Nassau bound for Cape Canaveral. The defendant

submitted claims to Medicare and private insurers which reflected the provision of treatment to 83 patients, including the administration of 31 ARM tests, on and between April 26, 2011 and May 1, 2011.

f. On March 25, 2013, the defendant HAROUTYOUN MARGOSSIAN boarded a ship bound for San Juan, Puerto Rico. On March 31, 2013, the defendant boarded a ship in St. Thomas, Virgin Islands, bound for New York via the Dominican Republic. The defendant submitted claims to Medicare and private insurers which reflected the provision of treatment to 25 patients, including the administration of 13 ARM tests, on and between March 25, 2013 and March 31, 2013.

g. On August 15, 2013, the defendant HAROUTYOUN MARGOSSIAN flew from Newark, New Jersey, to London, England. On August 31, 2013, the defendant flew from London to Newark. The defendant submitted claims to Medicare and private insurers which reflected the provision of treatment to 140 patients, including the administration of 42 ARM tests, between August 15, 2013 and August 31, 2013.

#### TIME ANALYSIS

22. On approximately October 30, 2013, a fellow agent placed a call to the defendant HAROUTYOUN MARGOSSIAN's practice location in Brooklyn (SUBJECT PREMISES I) and inquired about the defendant's work schedule. I was advised that the defendant had office hours at SUBJECT PREMISES I on Tuesdays between 9:00 a.m. and 5:00 p.m., Thursday from 12:00 p.m. and 6:00 p.m., and Saturdays from 8:00 a.m. and 12:00 p.m. I was further advised that he had office hours at SUBJECT PREMISES II on Thursdays from 2:00

p.m. and 6:00 p.m. I was told that the defendant was out of the office performing surgery on Monday, Wednesday and Thursday mornings.

23. A review of the Submitted Claims, however, showed CPT Code 91122 billings inconsistent with these office hours. As previously mentioned, according to Surgeon 1, the ARM test requires approximately 30 to 45 minutes for preparation time, in addition to 15 minutes for the actual procedure.<sup>4</sup> Yet, a review of the Submitted Claims showed that the defendant HAROUTYOUN MARGOSSIAN once claimed to have administered ARM tests to 24 patients in a single day. Additionally he claimed to have administered ARM tests to 23 patients in a single day on 3 occasions, 21 patients in a single day on 6 occasions, 20 patients in a single day on 5 occasions, 19 patients in a single day on 6 occasions, 18 patients in a single day on 12 occasions, 17 patients in a single day on 19 occasions, 16 patients in a single day on 20 occasions, 15 patients in a single day on 24 occasions, 14 patients in a single day on 36 occasions, and 13 patients in a single day on 32 occasions. These billings indicate that the defendant personally spent an average of 4.2 hours a day administering ARM tests, exclusive of preparation time. If one were to consider preparation time, the defendant at times would have had patients in his office preparing for and receiving ARM tests for at least 9 hours a day to as much as 24 hours a day. Based upon the defendant's stated office hours, it would appear that, for many days, the defendant was billing for the administration of more ARM tests than his practice could physically perform. Moreover, these billings make it appear that the defendant's practice

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<sup>4</sup> Although Medicare requires the defendant to indicate on his claims when services were provided by another individual working at the defendant's practice, the defendant's CPT Code 91122 billings had no such indication.

was almost exclusively dedicated to the administration of ARM tests rather than for the treatment of woman with obstetric and gynecological issues.

PROBABLE CAUSE TO SEARCH THE SUBJECT PREMISES

24. Based on my knowledge, training and experience, and the experience of other law enforcement officers, I have knowledge of common business practices. In particular, I am aware that businesses routinely document and maintain records of their operating accounts - both in hard copy and electronically - including the receipt, expenditure and accounting of business funds. Businesses also maintain detailed records of their business activities, including with respect to vendors, customers, lenders and employees. As such, there is probable cause to believe that there will be located at the SUBJECT PREMISES business records documenting interactions and communications regarding the fraudulent scheme.

25. Based on my knowledge, training and experience, businesses billing Medicare and private insurers also routinely maintain records of patient files, bills, invoices and claims for payments/reimbursements for services billed, provided, or alleged to have been provided. Documents include reimbursement claim forms, explanations of medical benefits, detailed written orders or prescriptions, certificates of medical necessity, information from the treating physician concerning the patient's diagnosis, proof of delivery of services and/or items that were submitted by the defendant HAROUTYOUN MARGOSSIAN to Medicare and private insurers or any representative acting on his behalf that were based upon false claims for reimbursement by Medicare and private insurers.

26. Based on my knowledge, training and experience, businesses billing Medicare and private insurers also retain contracts, agreements, papers and affiliated records pertaining to the provision of diagnostic services, including manufacturer catalogs, lists of billing codes, purchase orders, invoices and receipts.

27. Based on my knowledge, training and experience, businesses billing Medicare and private insurers also retain letters relating to efforts to collect co-payments and deductibles from individuals that receive health care coverage from Medicare and private insurers. In addition, businesses retain correspondence and cancelled checks relating to notices of overpayment and requests for refunds from Medicare and private insurers. Businesses billing Medicare and private insurers also have correspondence to and from Medicare and private insurers including, but not limited to, manuals, advisories, newsletters, bulletins and publications. Businesses also retain correspondence to and from patients regarding Medicare and private insurers.

28. Based on my knowledge, training and experience, the financial books, records and documents constituting bank accounts, money market accounts, checking accounts, investment accounts, stock fund accounts, 401K funds, mutual funds, retirement funds, bonds, or bond funds, including deposits and disbursements, cancelled checks or draft electronic transfers, ledgers, credit card, ATM and debit card accounts are also retained by businesses.

29. Based on my knowledge, training and experience, contracts, agreements, logs, lists or papers affiliated with any medical professional services, referrals or storage, including records of payment, are also retained by businesses.

30. Based on my knowledge, training and experience, medical clinics often hire outside medical insurance billing companies. Therefore, all contracts, agreements or paper affiliated with these companies are relevant.

31. Based on my knowledge, training and experience, medical offices often contain an IT department, IT servers, an accounting department and administrative offices, which contain common business records including but not limited to patient records, billing records, and financial records – all of which are relevant to the fraudulent schemes.

#### TECHNICAL BACKGROUND

32. Since at least 2005, Medicare, as well as most private insurers, required physicians to submit claims electronically through the use of a computer. Thus, I know that when an individual or business uses a computer as part of a scheme to submit fraudulent billing information to Medicare or private insurers, the individual's or business's computer will generally serve both as an instrumentality for committing the crime, and also as a storage medium for evidence of the crime. The computer is an instrumentality of the crime, because it is used as a means of committing the acts that constitute the criminal offense. The computer is also likely to be a storage medium for evidence of crime. From my training and experience, I believe that a computer used to commit a crime of this type may contain: data that is evidence of how the computer was used; data that was sent or received; notes as to how the criminal conduct was achieved; records of Internet discussions about the crime; and other records that indicate the nature of the offense.

33. As described above, this application seeks permission to search for records that might be found in any of the SUBJECT PREMISES, in whatever form they are

found. One form in which the records are likely to be found, based on the information provided above, is data stored on a computer's hard drive or other storage media. Thus, the warrant applied for would authorize the seizure of electronic storage media or, potentially, the copying of electronically stored information, all under Rule 41(e)(2)(B).

34. I submit that if a computer or storage medium is found on the SUBJECT PREMISES, there is probable cause to believe that records will be stored on that computer<sup>5</sup> or storage medium,<sup>6</sup> for at least the following reasons:

a. Based on my knowledge, training, and experience, I know that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted or viewed via the Internet. Electronic files downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person "deletes" a file on a computer, the data contained in the file does not actually disappear; rather, that data remains on the storage medium until it is overwritten by new data.

b. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space – that is, in space on the storage medium that is not currently being

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5 For purposes of the requested warrant, a computer includes all types of electronic, magnetic, optical, electrochemical, or other high speed data processing devices performing logical, arithmetic, or storage functions, including desktop computers, laptops, mobile phones, tablets, server computers, and network hardware, as well as wireless routers and other hardware involved in network and Internet data transfer.

6 A "storage medium" for purpose of the requested warrant is any physical object upon which computer data can be recorded. Examples include external hard drives, CDs and DVDs, and flash drives.

used by an active file – for long periods of time before they are overwritten. In addition, a computer’s operating system may also keep a record of deleted data in a “swap” or “recovery” file.

c. Wholly apart from user-generated files, computer storage media - in particular, computers’ internal hard drives - contain electronic evidence of how a computer has been used, what it has been used for and who has used it. To give a few examples, this forensic evidence can take the form of operating system configurations, artifacts from operating system or application operation; file system data structures, and virtual memory “swap” or paging files. Computer users typically do not erase or delete this evidence, because special software is typically required for that task. However, it is technically possible to delete this information.

d. Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or “cache.”

35. As further described in above, this application seeks permission to locate not only computer files that might serve as direct evidence of the crimes described on the warrant, but also electronic “attribution” evidence that establishes how computers were used, the purpose of their use, who used them, and when. There is probable cause to believe that this forensic electronic evidence will be on any storage medium in any of the SUBJECT PREMISES because:

a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file

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(such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave traces of information on the storage medium that show what tasks and processes were recently active. Web browsers, email programs and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media and the times the computer was in use. Computer file systems can record information about the dates files were created and the sequence in which they were created, although this information can later be falsified.

b. Forensic evidence on a computer or storage medium can also indicate who has used or controlled the computer or storage medium. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, registry information, configuration files, user profiles, email, email address books, “chat,” instant messaging logs, photographs, the presence or absence of malware and correspondence (and the data associated with the foregoing, such as file creation and last-accessed dates) may be evidence of who used or controlled the computer or storage medium at a relevant time.

c. A person with appropriate familiarity with how a computer works can, after examining this forensic evidence in its proper context, draw conclusions about how computers were used, the purpose of their use, who used them and when.

d. The process of identifying the exact files, blocks, registry entries, logs, or other forms of forensic evidence on a storage medium that are necessary to draw an

accurate conclusion is a dynamic process. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.

e. Further, in finding evidence of how a computer was used, the purpose of its use, who used it and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium. For example, the presence or absence of counter-forensic programs or anti-virus programs (and associated data) may be relevant to establishing the user's intent.

36. In most cases, a thorough search of a premises for information that might be stored on computers or storage media often requires agents to seize physical storage media and later review the media consistent with the warrant. In lieu of removing storage media from the premises, it is sometimes possible to make an image copy of storage media. Generally speaking, imaging is the taking of a complete electronic picture of the computers data, including all hidden sectors and deleted files. Either seizure or imaging is often necessary to ensure the accuracy and completeness of data recorded on the storage media, and to prevent the loss of the data either from accidental or intentional destruction. This is true because of the following:

a. The time required for an examination. As noted above, not all evidence takes the form of documents and files that can be easily viewed on site. Analyzing evidence of how a computer has been used, what it has been used for and who has used it requires considerable time, and taking that much time on the SUBJECT PREMISES could be unreasonable. As explained above, because the warrant calls for forensic electronic evidence, it

is exceedingly likely that it will be necessary to thoroughly examine storage media to obtain evidence. Storage media can store a large volume of information. Reviewing that information for things described in the warrant can take weeks or months, depending on the volume of data stored, and would be impractical and invasive to attempt on-site.

b. Technical requirements. Computers can be configured in several different ways, featuring a variety of different operating systems, application software and configurations. Therefore, searching them sometimes requires tools or knowledge that might not be present on the search site. The vast array of computer hardware and software available makes it difficult to know before a search what tools or knowledge will be required to analyze the system and its data on the SUBJECT PREMISES. However, taking the storage media off-site and reviewing it in a controlled environment will allow its examination with the proper tools and knowledge.

c. Variety of forms of electronic media. Records sought under this warrant could be stored in a variety of storage media formats that may require off-site reviewing with specialized forensic tools.

37. Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit seizing, imaging or otherwise copying storage media that reasonably appear to contain some or all of the evidence described in the warrant, and would authorize a later review of the media or information consistent with the warrant. The later review may require techniques, including but not limited to computer-assisted scans of the entire medium, which might expose many parts of a hard drive to human inspection in order to determine whether it is evidence described by the warrant.

38. I recognize that the SUBJECT PREMISES functions as a medical practice with employees and that a seizure of the defendant HAROUTYOUN MARGOSSIAN's computers may have the unintended effect of limiting the defendant's ability to conduct legitimate business. As with any search warrant, I expect that officers executing this warrant will take appropriate steps to execute the warrant reasonably and avoid causing unnecessary inconvenience to the defendant's practice, his employees and his patients. Such steps may include:

a. Identifying a system administrator of the network (or other knowledgeable employee) who would be willing to assist law enforcement by identifying, locating and copying the things described in the warrant; imaging items on-site, as described above; and,

b. If imaging proves impractical, or even impossible for technical reasons, seizing those components of the defendant's computer system that are necessary to conduct an off-site examination. The seized components would be removed from the SUBJECT PREMISES. If employees of the defendant's practice so request, the agents will, to the extent practicable, attempt to provide the employees with copies of data that may be necessary or important to the continuing function of the defendant's legitimate business. If, after inspecting the computers, it is determined that some or all of this equipment is no longer necessary to retrieve and preserve the evidence, the government will return it within a reasonable time.

39. Based on my training and experience, and the facts as set forth in this affidavit, there is probable cause to believe that within the SUBJECT PREMISES there exists evidence of crimes – specifically, evidence of violations of 18 U.S.C. §§ 1341, 1343 and 1347.

CONCLUSION AND APPLICATION

40. Based upon my training and experience, as well as my analysis of the Submitted Claims, witness interviews, travel analysis and time analysis, as detailed in part above, in paragraphs 20 through 23 above, there is probable cause to believe that the defendant HAROUTYOUN MARGOSSIAN engaged in a scheme to defraud Medicare and private insurers by submitting false and fraudulent claims for the provision of ARM tests and other services to beneficiaries when in truth and in fact tests were not performed.

41. WHEREFORE, it is respectfully requested that the Court issue a warrant for the arrest of the defendant HAROUTYOUN MARGOSSIAN so that he may be brought before the Court and dealt with according to law.

42. Further there is reasonable cause to believe that there is now contained within the SUBJECT PREMISES items described in Attachment A, all of which constitute evidence, fruits, or instrumentalities of violations of 18 U.S.C. §§ 1341, 1343 and 1347.

43. WHEREFORE, it is further respectfully requested that the Court issue search warrants for SUBJECT PREMISES I and SUBJECT PREMISES II, as described in paragraphs 12 and 13, respectively, authorizing the search and seizure, in accordance with the details of paragraphs 32 through 40, of the items described in Attachment A, all of which constitute evidence, fruits, or instrumentalities of violations of 18 U.S.C. §§ 1341, 1343 and 1347.

44. It is further respectfully requested that this Court issue an order sealing, until such time as an arrest of the defendant is effectuated, all papers submitted in support of this application, including the application, arrest warrant and search warrants. I believe that sealing

these documents is necessary, because the items and information to be seized are relevant to an ongoing investigation. If the defendant, a foreign-born citizen who owns property in Lebanon, were made aware of the contents of this affidavit prior to his arrest, he might flee the jurisdiction, hide or destroy evidence or tamper with witnesses, many of whom are his employees. Thus, premature disclosure of the contents of this affidavit and related documents may have a significant and negative impact on the continuing investigation and may severely jeopardize its effectiveness.

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Elysia Dougherty  
Special Agent, HHS-OIG

Sworn to before me this  
day of May, 2014

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THE HONORABLE JOAN M. AZRACK  
UNITED STATES MAGISTRATE JUDGE  
EASTERN DISTRICT OF NEW YORK  
doh