

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

SATHISH NARAYANAPPA BABU

CASE NUMBER:
UNDER SEAL

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief:

From in or about November 2012 through in or about December 2013, in the Northern District of Illinois, Eastern Division, and elsewhere, the defendant, SATHISH NARAYANAPPA BABU, violated:

Count One

Code Section

Title 21, United States Code, Section 846

Offense Description

Defendant did conspire with others to knowingly and intentionally dispense a controlled substance, namely, oxycodone, a Schedule II Controlled Substance, outside of the usual course of professional practice and without a legitimate medical purpose, in violation of Title 21, United States Code, Section 841(a)(1).

Count Two

Title 18, United States Code, Section 1347

Defendant did knowingly and willfully participate in a scheme to defraud a health care benefit program, namely, Medicare, and to obtain money owned by and under the custody and control of Medicare by means of false and fraudulent pretenses, representations, and promises, in connection with the delivery of and payment for health care benefits, items, and services, and, on or about December 7, 2012, did execute the scheme by knowingly and willfully submitting and causing to be submitted a false claim, specifically, that he provided services to the UC, using procedure code 99345.

This criminal complaint is based upon these facts:

X Continued on the attached sheet.

CESAR A. FLORES
Task Force Officer, Drug Enforcement
Administration (DEA)

Sworn to before me and signed in my presence.

Date: February 18, 2014

Judge's signature

City and state: Chicago, Illinois

SHEILA FINNEGAN, U.S. Magistrate Judge
Printed name and Title

AFFIDAVIT

I, CESAR A. FLORES, being duly sworn, state as follows:

1. I am a Task Force Officer with the Drug Enforcement Administration. I have been so employed since approximately April 2012 and am currently assigned to the Chicago Field Division. Prior to that date, I was a task force officer with DEA from approximately March 2009 through April 2011. Furthermore, since approximately August 2001, I have been an officer with the North Chicago Police Department. As part of my duties as a DEA Task Force Officer, I investigate criminal violations relating to narcotics trafficking offenses, including the diversion of prescription drugs, and health care fraud.

2. This affidavit is submitted in support of a criminal complaint alleging that SATHISH NARAYANAPPA BABU has violated Title 21, United States Code, Section 846, and Title 18, United States Code, Section 1347. Because this affidavit is being submitted for the limited purpose of establishing probable cause, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that the defendant committed the offense alleged in the complaint.

3. This affidavit is based on my personal knowledge, information provided to me by other law enforcement personnel and from persons with knowledge regarding the relevant facts.

Summary of the Investigation

4. The DEA and United States Department of Health and Human Services conducted a drug diversion and health care fraud investigation of BABU, a physician licensed in the State of Illinois who owns and operates Anik Life Medical Sciences Corp. As described below, the investigation has shown that, from approximately November 2012 through December 2013, BABU knowingly prescribed controlled substances, including oxycodone, a Schedule II controlled substance, to a patient, who was actually an undercover officer (“UC”), despite never having seen or examined this patient. Moreover, BABU permitted unlicensed personnel associated with Anik Life Sciences to issue prescriptions to UC in BABU’s name. In addition, BABU billed Medicare, and received a total of approximately \$1,657 from Medicare, for services purportedly provided to UC that were not rendered by BABU or another medical professional licensed in the State of Illinois.

Background Information Regarding BABU

5. Based upon a search of records of the Illinois Department of Financial and Professional Regulation, BABU is a licensed physician in the State of Illinois. DEA records reflect that BABU, as a licensed physician, holds DEA controlled substances registration number FB2946816.

6. According to records from the Illinois Secretary of State, Anik Life Sciences is an Illinois corporation and BABU is its registered agent.

7. Anik Life Sciences’s public website states that Anik Life Sciences is a healthcare organization. The website further states that BABU is the “medical

director/founder/owner and the president” of Anik Life Sciences, and a practicing physician. The website contains a photograph of BABU, which matches BABU’s driver’s license photograph. Records from the Illinois Department of Employment Security confirm that BABU is employed by Anik Life Sciences.

8. According to Medicare records, BABU has been enrolled as a physician with the Medicare program since approximately 2010 and was assigned a provider number, under which BABU submits claims to Medicare. In approximately 2010, BABU provided electronic funds transfer paperwork to Medicare so that he could receive Medicare reimbursements directly into a bank account. On this paperwork, which appears to be signed by BABU, BABU stated that he was the chairman and director of Anik Life Sciences, and he listed himself as the contact person for Anik Life Sciences.

The Undercover Investigation

9. DEA and HHS conducted an investigation into BABU, Anik Life Sciences, and others. As described below, the investigation involved the UC, who was a healthy individual purportedly covered by Medicare and seeking physician services in order to obtain prescription medication, including oxycodone.¹ The UC further purported to have a shoulder pain from a previous shoulder injury and to be on disability.

¹ At the time of the undercover operation, UC was an active DEA special agent and was able-bodied. Just prior to the undercover operation, UC had a standard DEA physical and was found to be fit for duty. As a part of the undercover investigation, law enforcement obtained a unique undercover Medicare number for UC. Through the use of UC’s Medicare number, law enforcement tracked Medicare claims related to UC, including claims submitted by BABU and claims for the controlled substances BABU prescribed to UC.

10. As described below, during the course of the investigation, BABU prescribed controlled substances to UC, including approximately 300 dosages of oxycodone, although BABU never met with or examined UC.² Furthermore, BABU caused unlicensed personnel from Anik Life Sciences to provide purported medical care – including prescriptions issued under BABU’s name and DEA registration number for controlled substances – to UC, and then billed Medicare for that purported medical care. The controlled substances that BABU prescribed were paid for in large part by Medicare, and to a lesser extent, by a copay provided by UC; BABU did not have to pay for the controlled substances that he prescribed to UC.

11. More specifically, as detailed below, beginning on or about November 20, 2012, and continuing through on or about December 3, 2013, representatives from Anik Life Sciences, none of whom were licensed as physicians, nurses, or other medical professionals in the State of Illinois, visited UC on approximately 10 occasions. Each visit occurred at UC's purported residence in an apartment building in Chicago, Illinois, which was an undercover law enforcement apartment equipped with audio and video recording devices.³

² Pursuant to 21 C.F.R. § 1306.04, a prescription for a controlled substance “must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.”

³ Each time a representative from BABU’s office visited the UC, the visit occurred at the undercover apartment and was audio and video recorded. Furthermore, law enforcement officers performed surveillance of the undercover apartment building during each visit. Law enforcement has not yet transcribed all of the conversations during the visits, and therefore, some of the information contained herein regarding the visits is based on UC reporting and other information is based upon law enforcement review of the recordings and draft transcripts of the recordings. The transcripts of the calls and recordings described in this affidavit remain in draft form; to the extent quotations from the conversations are included, they are preliminary, not final. The summary of the recorded

BABU Fraudulently Prescribed Medication to UC

12. According to UC, law enforcement surveillance, and a recording, on or about November 20, 2012, UC received his first visit from a representative of Anik Life Sciences. Specifically, an individual who referred to himself as a doctor and who was identified by law enforcement through a review of a driver's license photograph and will be referred to here as "Anik Representative A," came to UC's purported residence that day. Law enforcement performing surveillance of UC's residence observed Anik Representative A arrive at UC's residence at approximately 3:53 p.m. and exit UC's residence at approximately 4:21 p.m.

13. According to the UC, during the less than 30 minutes that Anik Representative A was at UC's residence, Anik Representative A told UC that he was a doctor. Furthermore, a review of Anik Life Sciences' website reflects that Anik Representative A is purportedly an "MD" working at Anik Life Sciences. Law enforcement officers searched record databases, including the Illinois Department of Financial and Professional Regulation, and found no evidence that Anik

conversations described in this affidavit do not include all potentially criminal statements or topics covered during the course of the conversations. In certain instances, these conversations are summarized and placed in context. My understanding of these conversations is aided by the contents and context of the conversations, my familiarity with the facts and circumstances of this investigation, my experience as a law enforcement officer, my discussions with other law enforcement officers, including the UC, the experience of other law enforcement agents and officers in this investigation and other evidence developed during the course of the investigation.

Representative A is a licensed physician, nurse, or other medical professional licensed in Illinois.⁴

14. Anik Representative A asked UC if UC had any medical complaints, to which UC responded that he/she had no medical issues other than shoulder pain and just wanted to get medication. UC further told Anik Representative A that a previous doctor had prescribed UC with oxycodone and hydrocodone but that the last time he/she got a prescription was approximately March 2011. Since then, UC stated that he/she had gotten the same medication from friends.

15. According to UC and a recording from the meeting, Anik Representative A told UC that he was going to look UC over and then call Dr. BABU to discuss UC's case and request that Dr. BABU give UC the prescription for oxycodone. Anik Representative A asked UC some questions about his shoulder injury, took UC's blood pressure, and looked at UC's neck, arms, and legs. UC then observed Anik Representative A take out his cellular phone and attempt to make a call, which Anik Representative A stated was to Dr. BABU. Anik Representative A told UC that he was unable to get reception on his cellular phone and said that he was going to step outside to make the call. Approximately one or two minutes later, Anik Representative A came back into UC's residence and told UC that he was unable to reach Dr. BABU. Anik Representative A told UC that he would come back to UC's residence after talking to Dr. BABU. Anik Representative A provided

⁴ In fact, according to IDES records, Anik Representative A was employed by various parking garage companies in 2010 and 2011.

UC with a piece of paper containing Anik Representative A's phone number.⁵ At the end of the meeting, Anik Representative A asked UC to sign some paperwork confirming that he had visited UC.

16. According to toll records for Anik Representative A's phone, at approximately 4:16 p.m. on November 20, 2012, Anik Representative A, using the Anik Representative A Phone, called phone number 505-553-XXXX.⁶ Subscriber records for the called phone number indicate that this phone is subscribed to by BABU at BABU's home address in Bolingbrook, Illinois, with service provided by Sprint/Nextel. Toll records reflect that Anik Representative A's call to BABU's cell phone lasted approximately one minute. Toll records further indicate that Anik Representative A called Anik Life Sciences at telephone number 847-354-XXXX at approximately 4:33 p.m., and the call lasted approximately two minutes. Toll records reflect that Anik Representative A's telephone number received a telephone call from BABU's cell phone at approximately 4:46 p.m., which lasted one minute. Toll records further reflect that, at approximately 4:57 p.m., Anik Representative A called BABU's cell phone and the call lasted approximately three minutes.

17. At approximately 5:09 p.m. that same day (November 20, 2012), surveillance observed Anik Representative A arrive back at UC's residence. According to UC and a preliminary review of the recording, during this meeting,

⁵Law enforcement obtained telephone toll records for this phone, which confirmed that it was a cellular phone subscribed to by Anik Representative A at an address in Chicago, Illinois.

⁶ This telephone number and others have been partially redacted in this affidavit because this document will be publicly filed.

Anik Representative A told UC that he had talked to Dr. BABU and BABU told him to prescribe a regular pain killer to UC for now, not Oxycodone. Anik Representative A stated that once Dr. BABU went through UC's file and records, it would not be a problem to get the oxycodone. Anik Representative A then pulled out what appeared to be a prescription pad and wrote on the pad. Anik Representative A then handed UC a prescription for the pain killers Tramadol and Naproxene. At approximately 5:19 p.m. on November 20, 2012, surveillance observed Anik Representative A exit UC's residence.

18. UC subsequently provided the prescription that he/she had received from Anik Representative A to law enforcement officers. The prescription was dated November 20, 2012, and was preprinted with "Anik Life Sciences Medical Corporation" and "Narayanappa Sathish Babu, MD, MS, FRCS" as the prescribing physician. The prescription contained BABU's signature and BABU's DEA registration number.

19. According to Medicare records, on or about December 7, 2012, a claim was submitted to Medicare under BABU's provider number for Anik Representative A's visit to UC2's residence on November 20, 2012. The claim was submitted under procedure code "99345." According to the American Medical Association, which provides definitions of procedure codes, procedure code "99345" is to be used when the following conditions are met:

Home visit for the evaluation and management of a new patient, which requires these 3 key components: A comprehensive history; A comprehensive examination; and Medical decision making of high complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the patient is unstable or has developed a significant new problem requiring immediate physician attention. Typically, 75 minutes are spent face-to-face with the patient and/or family.

20. As set forth above, neither BABU nor any medical professional licensed in the State of Illinois was present for the visit to UC. Furthermore, Anik Representative A spent less than 30 minutes with UC. According to Medicare records, as a result of the false claim submitted for the November 20, 2012 visit to UC, Medicare paid BABU approximately \$180.25.

BABU Fraudulently Prescribed a Schedule III Controlled Substance to UC

21. According to UC, law enforcement surveillance, and a recording, on or about December 17, 2012, UC was visited at the undercover apartment by another person purporting to be a doctor and Dr. BABU's employee. Law enforcement subsequently identified this individual through a driver's license photograph, who will be referred to here as "Anik Representative B." Law enforcement observed Anik Representative B arrive at the undercover apartment and leave less than approximately 30 minutes later.

22. During the meeting between Anik Representative B and UC, Anik Representative B held himself out to UC as a doctor.⁷ Anik Representative B asked

⁷Law enforcement officers searched record databases, including the Illinois Department of Financial and Professional Regulation, and found no evidence that Anik Representative B

the UC how he/she was doing and UC stated that everything was good, he just needed his medication. Anik Representative B felt UC's neck, looked at UC's wrists, took UC's blood pressure, and used a stethoscope on UC. UC provided Anik Representative B with previous medical records (namely, blood work and MRI results), and previously prescribed pill bottles.⁸ UC observed Anik Representative B make a number of telephone calls regarding UC, which based upon Anik Representative B's statements that UC was able to hear, appeared to be to Anik Life Sciences and Anik Representative A. After the telephone calls, Anik Representative B said that UC could pick up his medication the next day at a pharmacy selected by Anik Representative B.

23. According to Medicare records, a claim was submitted to Medicare under BABU's unique provider number for Anik Representative B's visit to UC's residence on December 17, 2012. This claim was billed under BABU's name and was submitted under procedure code "99349" which, according to the American Medical Association, is to be used under the following conditions:

is a licensed physician, nurse, or other licensed medical professional in Illinois. Anik Life Sciences' publicly available website states that Anik Representative B is an "MD" and "patient evaluator."

⁸ The MRI submitted by UC related to the neck and back, not the shoulder (the UC had complained of a shoulder injury).

Home visit for the evaluation and management of a new patient, which requires 2 of these 3 key components: A detailed interval history; A detailed examination; and Medical decision making of high complexity. Counseling and/or coordination of care with other physicians, other qualified health care professionals, or agencies are provided consistent with the nature of the problem(s) and the patient's and/or family's needs. Usually, the presented problems are moderate to high severity. Typically, 40 minutes are spent face-to-face with the patient and/or family.

24. As set forth above, BABU was not present during the December 17, 2012 visit to UC, nor was any medical professional licensed in Illinois. According to Medicare records, Medicare paid \$105.11 to BABU for the visit.

25. On or about December 20, 2012, UC placed a consensually recorded call to BABU's cell phone to ask about obtaining a prescription. During this conversation, BABU told UC to call the office. More specifically, UC asked, "is this Dr. BABU?" To which the person on the line responded, "Yes, speaking." UC then stated his/her name, and BABU responded, "oh yeah, yeah, [UC], what's up?" UC said that the receptionist at Anik Life Sciences said that the UC should call BABU. BABU responded that the receptionist stepped out, and that UC should call her in 10 to 15 minutes. Approximately 15 minutes later, UC received a call from the receptionist at Anik Life Sciences, who said that she was calling in regards to UC's medication. The receptionist further stated, "the doctor that came out to see you said he didn't think you needed the medication [Anik Representative B did not think that UC needed hydrocodone], so Dr. BABU is only going to give you 15 [15 dosage units of medication]." UC asked "15 of what?" The receptionist responded, "hydrocodone."

26. Pursuant to 21 C.F.R. § 1308.13, hydrocodone is a Schedule III controlled substance.

27. On or about January 8, 2013, UC went to the pharmacy and picked up a prescription for 15 doses of hydrocodone. UC subsequently provided the pill bottle to other law enforcement officers and agents. The label on the pill bottle indicated that Dr. BABU was the prescribing physician, and it contained BABU's DEA registration number.

BABU Fraudulently Prescribed a Schedule II Controlled Substance to UC

28. After BABU prescribed hydrocodone to the UC, the UC continued to receive periodic visits from representatives of BABU's office.

29. According to the UC, a recording, and law enforcement surveillance, on or about June 13, 2013, at approximately 2:15 p.m., Anik Representative A came to the undercover apartment to meet with the UC. UC told Anik Representative A that he/she wanted oxycodone, and Anik Representative A expressed that he thought UC already was receiving oxycodone. UC told Anik Representative A that he had asked for oxycodone previously and the pharmacist told the UC that BABU had not yet mailed in the prescription. Anik Representative A told the UC that the girls in the office [the women who work at Anik Life Sciences] were in charge of that. Later in the conversation, UC asked Anik Representative A if he could raise the dosage of UC's Xanax prescription from 1mg to 2mg. Anik Representative A responded that, any prescription the UC wanted, he should talk to BABU. UC responded, "I know you guys [Anik Representative A and the other people who

visited from Anik Life Sciences], I don't know him [BABU]." Anik Representative A replied, "that's what makes it better, he [BABU] doesn't know you too." UC reiterated that he did not want to talk to BABU because he did not know him, to which Anik Representative A responded, "you don't have to know him."

30. Oxycodone is the active pharmaceutical ingredient in OxyContin, a brand name prescription drug. Pursuant to 21 C.F.R. § 1308.12, oxycodone is a Schedule II Controlled Substance. Pursuant to 21 C.F.R. § 1306.11, except under certain circumstances, a pharmacist may dispense a Schedule II Controlled Substance, such as oxycodone, only pursuant to a written prescription signed by the physician.

31. According to UC and law enforcement surveillance, UC went to the pharmacy on or about June 18, 2013, and asked the pharmacist about the status of his/her prescription for OxyContin. According to the UC, the pharmacist told UC that he had not yet received the OxyContin prescription in the mail from the doctor's office. The pharmacist further stated that he had called the doctor's office and confirmed that the doctor's office had mailed the prescription. The pharmacist told the UC that he would call the UC when the OxyContin prescription was ready.

32. Following this visit, on or about July 2, 2013, UC went to the pharmacy and picked up a prescription for 60 doses of OxyContin 80mg strength. UC provided the pill bottle to other law enforcements officers and agents. The pill bottle indicated that the OxyContin was prescribed by BABU and contained BABU's DEA number.

33. After July 2013, UC had three additional home visits from BABU's office – on or about August 28, 2013, October 1, 2013, and December 3, 2013. Each of these three visits occurred at the undercover apartment, and was recorded, and each time it was Anik Representative A who visited UC. Based upon UC reporting, the recordings, and law enforcement surveillance, BABU was not present during any of these visits. Nevertheless, according to Medicare records, BABU submitted claims to Medicare, and received payment from Medicare, for each of these visits.

34. Furthermore, after July 2013, BABU continued to prescribe OxyContin to UC through December 2013 although BABU never met with or examined UC. More specifically, BABU issued to UC four additional prescriptions for 60 doses of OxyContin 80mg, which UC picked up from the pharmacy on or about August 7, 2013, September 11, 2013, October 23, 2013, and December 11, 2013. Each time, UC provided the pill bottles to investigators. Each of the pill bottles indicated that the OxyContin was prescribed by BABU and contained BABU's DEA number.⁹ In addition, Medicare claims records reflect that Medicare was billed for each prescription and that OxyContin was the prescribed drug.

35. During the December 3, 2013 visit, Anik Representative A gave UC a hard copy of the UC's prescription for OxyContin. UC subsequently provided the prescription to other law enforcement agents and officers. The prescription

⁹ Law enforcement officers have submitted the OxyContin that BABU prescribed to UC to the DEA laboratory for testing, but the results are not yet complete. Based upon my training and experience, I understand that the markings on the OxyContin pills, namely, the marking of "80" of one side of the pill and "OP" on the other side of the pill, are consistent with the controlled substance OxyContin 80mg.

contained printed information at the top with BABU's name as the prescribing physician, and set forth his position as a cardiothoracic surgeon at Anik Life Sciences. Furthermore, the prescription contained what appears to be BABU's signature and BABU's DEA registration number.

36. Thus, from approximately November 2012 through approximately December 2013, BABU issued five prescriptions for OxyContin to UC, each containing 60 dosages of 80mg strength OxyContin, despite never having met with or examined UC. Furthermore, during the same time period, BABU submitted false claims to Medicare under his Medicare provider number for services he purportedly rendered to UC, and as a result, Medicare paid BABU a total of approximately \$1,657.

CONCLUSION

37. Based on the above information, I respectfully submit that there is probable cause to believe that, from in or about November 2012 through in or about December 2013, BABU conspired with others to knowingly and intentionally distribute oxycodone, a Schedule II Controlled Substance, and knowingly and willfully participated in a scheme to defraud Medicare and to obtain money owned by and under the custody and control of Medicare.

FURTHER AFFIANT SAYETH NOT.

CESAR A. FLORES
Task Force Officer, Drug Enforcement
Administration

SUBSCRIBED AND SWORN to before me on February 18, 2014.

SHEILA FINNEGAN
United States Magistrate Judge