

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

~~ORIGINAL FILED~~

DEC - 8 2011

MADELINE COX ARLEO
U.S. MAG. JUDGE

UNITED STATES OF AMERICA : Hon. Madeline Cox Arleo
v. : Magistrate No. 11-8231
LUCIO CARDOSO : **CRIMINAL COMPLAINT**

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with the Department of Health and Human Services, Office of the Inspector General, and that this Complaint is based on the following facts:

SEE ATTACHMENT B

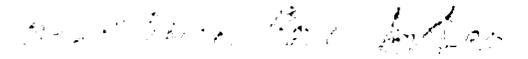
continued on the attached pages and made a part hereof.



Naomi Gruchacz, Special Agent
Department of Health and Human Services
Office of the Inspector General

Sworn to before me and subscribed in my presence,
December 8, 2011 at Newark, New Jersey

HONORABLE MADELINE COX ARLEO
UNITED STATES MAGISTRATE JUDGE



Signature of Judicial Officer

ATTACHMENT A

From at least in or about 2010 through at least in or about November 2011, in the District of New Jersey, and elsewhere, defendant

LUCIO CARDOSO

did knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, a kickback, from Orange Community MRI in return for referring patients to Orange Community MRI for the furnishing or arranging for the furnishing of items and services for which payment may be made in whole or in part under a Federal health care program, as described in Attachment B below.

In violation of Title 42, United States Code, Section 1320a-7b(b)(1)(A), and Title 18, United States Code, Section 2.

ATTACHMENT B

I, Naomi Gruchacz, am a Special Agent with the Department of Health and Human Services, Office of the Inspector General (“HHS-OIG”). I have knowledge of the facts set forth herein through my personal participation in this investigation and through oral and written reports from other federal agents or other law enforcement officers. Where statements of others are set forth herein, these statements are related in substance and in part. Since this Criminal Complaint is being submitted for a limited purpose, I have not set forth every fact that I know or other law enforcement officers know concerning this investigation. I have only set forth those facts that I believe are sufficient to show probable cause exists to believe that the defendant has committed the offense set forth in Attachment A. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

1. At all times relevant to this Complaint:

a. Defendant LUCIO CARDOSO was a physician licensed in New Jersey practicing internal medicine. CARDOSO operated an office at 253 Lafayette Street, Newark, New Jersey.

b. Orange Community MRI (“OCM”) was located at 345 Henry Street, Suite 102, Orange, New Jersey. OCM provided services to patients that included magnetic resonance imaging (“MRIs”), ultrasound imaging (“Ultrasounds”), echocardiograms (“Echos”), computed axial tomographies (“CAT Scans” or “CT Scans”), and dual-emission X-ray absorptiometries (“DEXA Scans”).

c. There was a Cooperating Witness (the “CW”) who held himself out to be an individual acting on behalf of OCM. Starting from in or about September 2011 to in or about December 2011, the CW did so at the direction and under the supervision of HHS-OIG.

2. The Medicare Program (“Medicare”) is a federal program that provides free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare is a “Federal health care program” as defined in Title 42, United States Code, Section 1320a-7b(f). Individuals who receive benefits under Medicare are commonly referred to as “beneficiaries.”

3. The Medicare Part B program is a federally funded supplemental insurance program that provides supplementary Medicare insurance benefits for individuals aged sixty-five or older, and certain individuals who are disabled. The Medicare Part B program pays for various medical services and diagnostic testing, including MRIs, Ultrasounds, Echos, CT Scans, and DEXA Scans for beneficiaries.

4. The Medicaid Program (“Medicaid”) is a jointly funded, federal-state health insurance program that provides certain health benefits to the disabled, as well as individuals and families with low incomes and resources. The federal involvement in Medicaid is largely limited to providing matching funds and ensuring that states comply with minimum standards in the administration of the program. Medicaid is a “Federal health care program” as defined in Title 42, United States Code, Section 1320a-7b(f). Individuals who receive benefits under Medicaid are commonly referred to as “beneficiaries.”

5. The federal Medicaid statute sets forth the minimum requirements for state Medicaid programs to qualify for federal funding, which is called federal financial participation. 42 U.S.C. §§ 1396 et seq. In New Jersey, the New Jersey Medical Assistance Program is administered by the New Jersey Department of Human Services. Under New Jersey law,

Medicaid pays for certain medical services and diagnostic testing, including MRIs, Ultrasounds, Echos, CAT Scans, and DEXA Scans for beneficiaries.

6. At all times relevant to this Complaint, OCM was a Medicare- and Medicaid-approved provider of, among other things, diagnostic testing, including MRIs, Ultrasounds, Echos, CAT Scans, and DEXA Scans.

The Kickback Scheme

7. Starting in at least in or about 2010, individuals acting on behalf of OCM made cash payments to certain New Jersey health care practitioners, including CARDOSO, in exchange for referring patients to OCM.

8. After the end of each calendar month, individuals acting on behalf of OCM, including CW, printed OCM patient reports that included, among other information, dates of service, patient name, the referring health care practitioner, the kind of medical insurance to be billed, and the diagnostic tests performed (the “Kickback Reports”). There was a separate Kickback Report printed for OCM patients who received MRIs, Ultrasounds, Echos, CAT Scans, and DEXA scans. The Kickback Reports were then used to tally the number of OCM patients referred by each doctor and the type of insurance used, and the results of these tallies were used to determine the amount of the kickback payment paid by OCM to the health care provider. In the event the Ultrasound Kickback Report indicated that OCM performed an Ultrasound on both the right and left portions of a patient (e.g., right venous doppler and left venous doppler), the right and left Ultrasounds counted as only one Ultrasound for the purpose of calculating the kickback payment.

9. Pursuant to CARDOSO's agreement with OCM, CARDOSO was to receive payment from OCM for each Medicare or Medicaid beneficiary MRI, CAT Scan, or Ultrasound referred to OCM. Pursuant to the same agreement, CARDOSO also was to receive payment from OCM for certain privately-insured patient MRI, CAT Scan, or Ultrasound referred to OCM. In the event a patient referred to OCM paid for diagnostic tests directly and not through Medicare, Medicaid, or an insurance plan (i.e., the patient "self-paid" for the tests), then CARDOSO did not receive any payment.

10. On or about October 4, 2011, CARDOSO met with CW at CARDOSO's office located at 253 Lafayette Street in Newark, New Jersey. During this meeting, CARDOSO accepted from CW a white envelope containing \$200 in cash, which included payments for patients CARDOSO referred to OCM during August 2011.

11. During this meeting, CARDOSO and CW discussed that CARDOSO was receiving payment for patient referrals from August, and that the payment amount reflected the fact that CARDOSO was on vacation for multiple weeks in August.

12. According to the MRI Kickback Report, for September 2011, CARDOSO referred a total of 2 MRIs to OCM; 1 of those 2 tests was for a Medicare or Medicaid beneficiary. According to the Ultrasound Kickback Report for September 2011, CARDOSO referred a total of 4 Ultrasounds to OCM; all 4 of those tests were Medicare or Medicaid beneficiaries.

13. On or about October 13, 2011, CARDOSO met with CW at CARDOSO's office located at 253 Lafayette Street, in Newark, New Jersey. During this meeting, CARDOSO accepted from CW a white envelope containing \$275 in cash, which included payments for the 1 MRI referred to OCM and performed on a Medicare or Medicaid beneficiary, as well as the 4

Ultrasounds referred to OCM and performed on Medicare or Medicaid beneficiaries during September 2011.

14. During this meeting, after CW explained that CARDOSO was being paid for two MRI referrals and four Ultrasound referrals, CARDOSO told CW that he thought there “might have been a little bit more” business referred to OCM during September 2011. CARDOSO thereafter asked CW, in sum and substance, to confirm with a specific member of CARDOSO’s office staff the number of referrals CARDOSO sent to OCM during the month of September. CARDOSO and CW thereafter reviewed CARDOSO’s September referrals to OCM with that member of CARDOSO’s office staff.

15. According to the MRI Kickback Report, for October 2011, CARDOSO referred a total of 4 MRIs to OCM; 2 of those 4 MRIs were for Medicare or Medicaid beneficiaries. According to the CAT Scan Kickback Report, for October 2011, CARDOSO referred a total of 3 CAT Scans to OCM; all 3 CAT Scans were for Medicare or Medicaid beneficiaries. According to the Ultrasound Kickback Report, for October 2011, CARDOSO referred a total of 13 Ultrasounds to OCM; 12 of those 13 tests were for Medicare or Medicaid beneficiaries.

16. On or about November 15, 2011, CARDOSO met with CW at CARDOSO’s office located at 253 Lafayette Street, in Newark, New Jersey. During this meeting, CARDOSO accepted from CW a white envelope containing \$820 in cash, which included payments for the 2 MRIs referred to OCM and performed on Medicare or Medicaid beneficiaries, as well as the 3 CAT Scans referred to OCM and performed on Medicare or Medicaid beneficiaries, and the 12 Ultrasounds referred to OCM and performed on Medicare or Medicaid beneficiaries during October 2011.

17. During this meeting, CARDOSO responded "Good ...very good" when told by CW, in sum and substance, that he was being paid for four MRI referrals, three CAT Scan referrals, and 13 Ultrasound referrals. CW also explained to CARDOSO in sum and substance that although CARDOSO was owed \$825, the payment that CARDOSO had just accepted from CW only contained \$820.