TO: Clerk's Office
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

APPLICATION FOR LEAVE TO FILE DOCUMENT UNDER SEAL

****

United States

-v.-

Joseph Stephan

20-M-855
Docket Number

****

SUBMITTED BY: Plaintiff____ Defendant____ DOJ ✓
Name: Sarah Wilson Rocha
Firm Name: Criminal Division, Fraud Section
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INDICATE UPON THE PUBLIC DOCKET SHEET: YES ____ NO ✓
If yes, state description of document to be entered on docket sheet:

A) If pursuant to a prior Court Order:
Docket Number of Case in Which Entered:____________
Judge/Magistrate Judge:____________
Date Entered:____________

B) If a <u>new</u> application, the statute, regulation, or other legal basis that authorizes filing under seal

Criminal document submitted and individual is not in custody.

ORDERED SEALED AND PLACED IN THE CLERK'S OFFICE, AND MAY <u>NOT</u> BE UNSEALED UNLESS ORDERED BY THE COURT.

DATED: Brooklyn , NEW YORK
9/25/2020

/s/ Roanne L. Mann

U.S. MAGISTRATE JUDGE

RECEIVED IN CLERK'S OFFICE 9/25/2020
DATE

MANDATORY CERTIFICATION OF SERVICE:
A.) ___ A copy of this application either has been or will be promptly served upon all parties to this action, **B.)** ___ Service is excused by 31 U.S.C. 3730(b), or by the following other statute or regulation:______; or **C.)** ✓ This is a criminal document submitted, and flight public safety, or security are significant concerns. (Check one)

9/25/2020
DATE

Sarah Wilson Rocha
SIGNATURE

JN/ABS:SWR
F. #2019R01296

20-M-855

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

– X

UNITED STATES OF AMERICA

- against -

JOSEPH STEPHAN,

Defendant.

– X

TO BE FILED UNDER SEAL

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

EASTERN DISTRICT OF NEW YORK, SS:

DAVID EIDAM, being duly sworn, deposes and states that he is a Special Agent with the Department of Labor, Office of Inspector General ("DOL-OIG"), duly appointed according to law and acting as such.

Upon information and belief, in or about and between August 2018 and August 2020, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant JOSEPH STEPHAN did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud one or more health care benefit programs, as defined in Title 18, United States Code, Section 24(b), to wit: the United States Department of Labor Office of Workers' Compensation Program, and to obtain, by 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.

(Title 18, United States Code, Section 1347, 2 and 3551 et seq.)

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

1. I have been a DOL-OIG Special Agent since March 2017. During my tenure with DOL-OIG, I have been responsible for conducting and assisting in investigations into the activities of individuals and criminal groups responsible for, among other things, defrauding federal health care benefit programs including federal workers' compensation programs. These investigations are conducted both in an undercover and an overt capacity. I have participated in investigations involving search warrants and arrest warrants. As a result of my training and experience, I am familiar with the techniques and methods of operation used by individuals involved in criminal activity to conceal their activities from detection by law enforcement authorities.

2. Among other duties, I am currently participating in an investigation of violations of, among other things, 18 U.S.C. § 1347 (health care fraud) by the defendant JOSEPH STEPHAN, a New York State licensed chiropractor. Specifically, the investigation is focused on a scheme involving the fraudulent submission of claims for reimbursement for chiropractic services to the United States Department of Labor ("DOL") Office of Worker's Compensation Program ("OWCP").

3. I am familiar with the investigation described below through my own participation in it as well as analysis of reports submitted by other law enforcement personnel. The facts and information contained in this Affidavit are additionally based upon my discussions with other federal law enforcement officers; my own and other law enforcement officers' review of consensual audio/video recordings made by an undercover agent; records discovered in the course of the investigation; interviews with witnesses; and my training and experience.

4. Except as explicitly set forth below, in this Complaint I have not distinguished between facts of which I have personal knowledge and facts of which I have hearsay knowledge. Because the purpose of this Complaint is to set forth only those facts necessary to establish probable cause to arrest, I have not described all the relevant facts and circumstances of which I am aware. Instead, I have set forth only those facts, in substance and in pertinent part, that I believe are necessary to establish probable cause for the issuance of an arrest warrant. Except where otherwise noted, all conversations and documents described in this Affidavit are set forth in part and in substance only.

I. BACKGROUND

A. OWCP

5. The OWCP administered benefits payable under the Federal Employees' Compensation Act ("FECA"), 5 U.S.C. § 8101 et seq., which provided medical payments and compensation benefits to federal employees who sustained on the job injuries.

6. Certain federal employees, including employees of the United States Postal Service ("USPS"), who became disabled due to occupational injuries sustained during the performance of their official duties, could qualify for OWCP benefits. Such employees were referred to as "claimants."

7. Health care programs administered by OWCP were "health care benefit programs," as defined by 18 U.S.C. § 24(b).

8. Under applicable DOL regulations, an injured, covered employee was entitled to receive, among other things, all medical services which a qualified physician

prescribed or recommended and which OWCP considered necessary to treat the work-related injury. This included chiropractic services.[1]

9. Medical providers who provided services to OWCP claimants were required to enroll with OWCP. If an OWCP-enrolled medical provider intended to bill OWCP for a procedure where prior authorization was required, the provider must have requested such prior authorization from OWCP.

10. OWCP required medical providers to submit claims for payment for services actually rendered to a claimant.

11. OWCP imposed restrictions on enrolled medical providers to ensure that they billed only for legitimate claims. DOL regulations stated that by submitting a bill or accepting payment, the provider signified that the service for which reimbursement was sought was performed as described, necessary, appropriate and properly billed in accordance with accepted industry standards.

12. Claims for services were identified by using billing codes or Current Procedural Terminology ("CPT") codes.

13. CPT code 99204 is a code used to identify an office or other outpatient visit for the evaluation and management of a new patient, which requires three key components: a comprehensive history; a comprehensive examination; and medical decision making of moderate complexity. The description of CPT code 99204 indicates that: (a) usually, the

[1] The Federal Employees' Compensation Act, 5 U.S.C. 8101(2), establishes that the term "physician" includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist. Physical therapy services performed by a chiropractor are also reimbursable when prescribed by a physician.

presenting problem(s) are of moderate to high severity; and (b) typically, 45 minutes are spent face-to-face with the patient and/or family.

14. CPT code 99214 is a code used to identify an office or other outpatient visit for the evaluation and management of an established patient, which requires at least two of three key components: a detailed history; a detailed examination; and/or medical decision making of moderate complexity. The description of CPT code 99214 indicated that: (a) usually, the presenting problem(s) were of moderate to high severity; and (b) typically, 25 minutes were spent face-to-face with the patient and/or family.

B. The Defendant

15. The defendant JOSEPH STEPHAN was a licensed chiropractor, who maintained offices and purportedly provided chiropractic services to claimants at 115-72 Francis Lewis Boulevard, Cambria Heights, New York 11411 (the "Practice Address"), among other locations.

II. THE FRAUDULENT BILLING SCHEME

16. Our investigation has obtained evidence that, beginning in approximately August 2018 and continuing through at least approximately August 2020, the defendant JOSEPH STEPHAN engaged in a fraudulent scheme in which he sought unlawfully to enrich himself by submitting and causing the submission of fraudulent claims for reimbursement to OWCP for services that were not actually rendered.

17. Between approximately November 2014 and June 2020, the defendant JOSEPH STEPHAN submitted and caused to be submitted approximately $902,445 in claims for CPT code 99214 to OWCP. STEPHAN was paid approximately $721,429 by OWCP on those claims.

A. Enrollment in OWCP and Related Guidance

18. The defendant JOSEPH STEPHAN was enrolled with OWCP since 2008. STEPHAN signed an OWCP provider enrollment form (the "Enrollment Form"), dated on or about April 5, 2007, and the Enrollment Form was received by DOL on or about January 2008.

19. The Enrollment Form contained a notice that stated: "[a]nyone who misrepresents or falsifies essential information to receive payment from Federal funds may upon conviction be subject to fine and imprisonment under applicable Federal laws."

B. Undercover Operations

20. A USPS-OIG special agent working in an undercover capacity ("the UCA") posed as a United States postal employee seeking treatment at defendant JOSEPH STEPHAN's practice beginning on or about January 16, 2020. During the course of this investigation, I have reviewed recordings made during the undercover operations.[2] The results of the undercover operations indicate that STEPHAN submitted false and fraudulent claims for reimbursement to OWCP on behalf of the UCA.

21. The defendant JOSEPH STEPHAN fraudulently billed OWCP for purportedly providing services to the UCA on certain dates, when, in fact, the UCA did not visit STEPHEN's practice on those dates or receive the specific services for which STEPHAN billed OWCP. Specifically, the UCA visited STEPHAN on 34 dates; however, STEPHAN submitted claims to OWCP for purported services to the UCA for 57 dates – the 34 dates the UCA had visits and an additional 23 dates. For example, STEPHAN submitted claims to OWCP for

[2] Some of the consensually-recorded conversations with the defendant JOSEPH STEPHAN (the "Recorded Conversations") have been summarized in this Affidavit. The summary in this Affidavit from the Recorded Conversations is based on upon a preliminary review of the recorded conversations, and not final transcripts. The summary does not include all statements or topics covered during the course of the Recorded Conversations.

purported services rendered to the UCA on the following dates when there was no visit with the UCA:

Date of Purported Service	**CPT Code**	**Approximate Amount Billed**	**Approximate Amount Paid**
January 27, 2020	99214	$295.00	$171.86
January 30, 2020	99214	$295.00	$171.86
February 3, 2020	99214	$295.00	$171.86
February 10, 2020	99214	$295.00	$171.86
February 15, 2020	99214	$295.00	$171.86
February 17, 2020	99214	$295.00	$171.86
February 25, 2020	99214	$295.00	$171.86
March 2, 2020	99214	$295.00	$171.86
TOTAL		**$2,360.00**	**$1,374.88**

22. When the defendant JOSEPH STEPHAN did conduct an in-office visit with the UCA, the interactions between STEPHAN and the UCA were brief, and did not support the CPT codes billed by STEPHAN (as detailed in paragraphs 8, 13 and 14 above).

23. The UCA's first visit was on January 16, 2020, and lasted approximately 10 minutes, during which the defendant JOSEPH STEPHAN asked about the UCA's injury and medical history, manipulated his/her neck and performed light stretching, used a "VibraCussor" to massage his/her neck and shoulder, and then pushed down on his/her upper back. For this visit, despite the fact that it was nowhere near the 45 minutes typically spent for CPT code 99204; the problems were not of moderate to high severity; and the visit did not include any of the three components (a comprehensive history; a comprehensive examination; and medical

decision making of moderate complexity), STEPHAN submitted a claim using CPT code 99204 to OWCP for purported services rendered to the UCA in the approximate amount of $400 and was paid $261.51.

24. For every other visit with the UCA, the defendant JOSEPH STEPHAN billed CPT code 99214 in the approximate amount of $295.00 and was paid approximately $171.86, despite the fact that none of the visits lasted anywhere near the 25 minutes typically spent, the presenting problem(s) were not of moderate to high severity, and the visits did not include any of the required components: detailed history; a detailed examination; and/or medical decision making of moderate complexity. For example, the UCA's second visit with STEPHAN took place on January 21, 2020, lasted only five minutes and consisted of spinal manipulation of his/her neck. Similarly, a visit on January 23, 2020 lasted only four minutes. The UCA's longest visit with STEPHAN was approximately seven minutes, and most visits were approximately five minutes. A visit with STEPHAN on February 24, 2020 lasted just two minutes.

25. In my training and experience, the brief nature of the UCA's visits and severity of the presenting problem(s) do not support the use of CPT code 99214. In addition, the UCA's visits do not contain any of the required components of CPT code 99214 because they did not include: a detailed history; a detailed examination; and/or medical decision making of moderate complexity.

26. In total, the defendant JOSEPH STEPHAN submitted claims to OWCP for purported services rendered to the UCA in the approximate amount of $16,330 and was paid approximately $9,596.

27. During the visits, the defendant JOSEPH STEPHAN demonstrated knowledge of the OWCP and claims process.

C. Additional Examples of Fraudulent Claims

28. In addition, I and other federal agents have conducted interviews of certain claimants purportedly receiving treatment from the defendant JOSEPH STEPHAN at the Practice Address. A review of the claims data submitted by STEPHAN revealed multiple instances where STEPHAN submitted claims to OWCP for services purportedly rendered to patients on dates when those patients were not at the location. I have also reviewed pole camera footage of the Practice Address for certain days between December 19, 2019 and March 7, 2020. The following are a few examples of STEPHAN's fraudulent practices:

a. The defendant JOSEPH STEPHAN billed for services purportedly performed on Patient-1, an individual whose identity is known to me, from approximately December 2013 to March 2020. According to Patient-1, his/her treatments with STEPHAN lasted approximately five minutes and consisted of STEPHAN providing chiropractic adjustments and stretching of his/her neck and his/her lower and middle back. According to Patient-1, he/she received treatment from STEPHAN once per week and had not gone to the Practice Address for treatment on a Saturday since 2013. Nevertheless, STEPHAN submitted claims for CPT code 99214 in the approximate amount of $295.00 and was paid approximately $171.86 on those claims for services purportedly provided to Patient-1 on each of the following Saturdays: December 28, 2019; January 4, 2020; February 8, 2020; February 22, 2020; and February 29, 2020. Pole camera footage at the Practice Address does not show STEPHAN entering or leaving the Practice Address on those dates.

b. The defendant JOSEPH STEPHAN has billed for services purportedly performed on Patient-2, an individual whose identity is known to me, from approximately February 2017 through December 2018. According to Patient-2, he/she received treatments once or twice a week beginning in February 2017 and stopped receiving treatments in the summer of 2018 when he/she returned to work. USPS employment records verify that Patient-2 returned to work in July 2018. Nevertheless, STEPHAN continued to bill for services purportedly rendered to Patient-2 from approximately August 2018 to December 2018. In total, STEPHAN submitted $18,585 in claims to OWCP for the purported treatment of Patient-2 during this time and was paid approximately $10,740 on those claims.

III. CONCLUSION

29. Based on my training and experience, and the facts set forth in this affidavit, there is probable cause to believe that the defendant JOSEPH STEPHAN engaged in a scheme to defraud OWCP by submitting and causing the submission of fraudulent claims for reimbursement to OWCP for services that were not actually rendered.

30. Accordingly, I respectfully request that the Court issue a warrant for the arrest of the defendant JOSEPH STEPHAN so that he may be brought before the Court and dealt with according to law.

31. It is further respectfully requested that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the instant complaint and application and related arrest warrant. The defendant JOSEPH STEPHAN

is currently at liberty, and it is respectfully submitted that sealing these documents is necessary to prevent the defendant from avoiding arrest and prosecution.

Dated: Brooklyn, New York
September 25, 2020

David J. Eidam
David Eidam
Special Agent, DOL-OIG

Sworn to before me, by telephone, this
25th day of September, 2020

/s/ Roanne L. Mann
THE HONORABLE ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

AO 442 (Rev. 11/11) Arrest Warrant

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

United States of America
v.
Joseph Stephan

Defendant

Case No. 20-MJ-855

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay
(name of person to be arrested) Joseph Stephan ,
who is accused of an offense or violation based on the following document filed with the court:

❐ Indictment ❐ Superseding Indictment ❐ Information ❐ Superseding Information ❐ Complaint
❐ Probation Violation Petition ☑ Supervised Release Violation Petition ❐ Violation Notice ❐ Order of the Court

This offense is briefly described as follows:

Health care fraud, in violation of Title 18, United States Code, Section 1347

Date: 09/25/2020

/s/ Roanne L. Mann
Issuing officer's signature

City and state: Brooklyn, New York

Hon. Roanne L. Mann, United States Magistrate Judge
Printed name and title

Return

This warrant was received on *(date)* ______ , and the person was arrested on *(date)* ______
at *(city and state)* ______ .

Date: ______

______
Arresting officer's signature

______
Printed name and title

AO 442 (Rev. 11/11) Arrest Warrant (Page 2)

This second page contains personal identifiers provided for law-enforcement use only and therefore should not be filed in court with the executed warrant unless under seal.

(Not for Public Disclosure)

Name of defendant/offender: Joseph Stephan

Known aliases:

Last known residence: 42 RICHARD STREET, FARMINGDALE, NEW YORK

Prior addresses to which defendant/offender may still have ties:

Last known employment:

Last known telephone numbers:

Place of birth:

Date of birth: 07/17/1970

Social Security number:

Height: 5' 6"

Weight:

Sex: Male

Race:

Hair:

Eyes:

Scars, tattoos, other distinguishing marks:

History of violence, weapons, drug use:

Known family, friends, and other associates *(name, relation, address, phone number)*:

FBI number:

Complete description of auto:

Investigative agency and address:

Name and telephone numbers (office and cell) of pretrial services or probation officer *(if applicable)*:

Date of last contact with pretrial services or probation officer *(if applicable)*:

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