

2015 NOV -6 AM 9:27

CLERK OF DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY *np* DEPUTY

SEALED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

June 2014 Grand Jury

15 CR 2820 BAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIAN GARCIA,

Defendant.

Case No.

I N D I C T M E N T

Title 18, U.S.C., Sec. 371 -
Conspiracy to Commit Honest
Services Mail Fraud, Mail Fraud
and Violate Travel Act; Title 18,
U.S.C., Secs. 1341 and 1346 -
Honest Services Mail Fraud;
Title 18, U.S.C.,
Sec. 1952(a)(1)(A) and (a)(3)(A) -
Travel Act; Title 18, U.S.C.,
Sec. 2 - Aiding and Abetting;
Title 18, U.S.C.,
Sec. 981(a)(1)(C), and Title 28,
U.S.C., Sec. 2461(c) - Criminal
Forfeiture

The grand jury charges:

INTRODUCTORY ALLEGATIONS

At all times pertinent to this Indictment:

1. Defendant JULIAN GARCIA was a provider of durable medical equipment ("DME") licensed by the State of California to sell or rent such equipment to medical practitioners, including chiropractors.
2. Hot/cold packs, also known as hot/cold therapy units, are used to treat swelling and injuries and operate via a reservoir holding hot or cold water, which is continuously circulated through tubes and pads affixed to a patient's body.

1 3. Dr. A was a chiropractor licensed to practice in California,
2 who operated three clinics specializing in chiropractic medicine.

3 4. Physicians, including medical doctors and chiropractors,
4 owed a fiduciary duty to their patients, requiring physicians to act
5 in their patients' best interests, and not for their own professional,
6 pecuniary, or personal gain. Physicians owed a duty of honest
7 services to their patients for decisions made relating to the care of
8 those patients, including the informed choice as to whether to undergo
9 ancillary medical procedures and, if so, an informed choice as to the
10 providers of such ancillary medical procedures.

11 **CALIFORNIA WORKERS' COMPENSATION PROGRAM**

12 5. The California Workers' Compensation System ("CWCS")
13 requires that employers in California provide workers' compensation
14 benefits to their employees for qualifying injuries sustained in the
15 course of their employment. Under the CWCS, all claims for payments
16 for services or benefits provided to the injured employee, including
17 medical and legal fees, are billed directly to, and are paid by, the
18 insurer. Most unpaid claims for payment are permitted to be filed as
19 liens against the employee's workers' compensation claim, which accrue
20 interest until paid in an amount ordered by the Workers' Compensation
21 Appeals Board or an amount negotiated between the insurer and the
22 service or benefits provider. The CWCS is regulated by the California
23 Labor Code, the California Insurance Code, and the California Code of
24 Regulations, and is administered by the California Department of
25 Industrial Relations.

26 6. CWCS benefits are administered by the employer, an insurer,
27 or a third party administrator. The CWCS requires claims
28 administrators to authorize and pay for medical care, including DME,

1 which is "reasonably required to cure or relieve the injured worker
2 from the effects of his or her injury."

3 7. California law, including but not limited to the California
4 Business and Professions Code, the California Insurance Code, and the
5 California Labor Code, prohibits the offering, delivering, soliciting,
6 or receiving of anything of value in return for referring a patient
7 for DME.

8 Count 1

9 **CONSPIRACY TO COMMIT HONEST SERVICES MAIL FRAUD,
10 MAIL FRAUD AND VIOLATE THE TRAVEL ACT, 18 USC § 371**

11 8. Paragraphs 1 through 7 of this Indictment are realleged and
12 incorporated by reference.

13 9. Beginning on a date unknown and continuing through at least
14 August 2015, within the Southern District of California and elsewhere,
15 defendant JULIAN GARCIA did knowingly and intentionally conspire with
16 others known and unknown to:

17 a. commit Honest Services Mail Fraud, that is, knowingly and
18 with the intent to defraud, devise and participate in a material
19 scheme to defraud and to deprive patients of the intangible right to
20 Dr. A's honest services, and cause mailings in furtherance of the
21 scheme, in violation of Title 18, United States Code, Sections 1341
22 and 1346.

23 b. commit Mail Fraud, that was, knowingly and with the intent
24 to defraud, devise and participate in a material scheme to defraud,
25 and to obtain money and property, by means of materially false and
26 fraudulent pretenses, representations, promises, and omissions and
27 concealments of material facts, and cause mailings in furtherance of
28

1 the scheme, in violation of Title 18, United States Code,
2 Section 1341; and

3 c. use and cause to be used facilities in interstate commerce
4 with intent to promote, manage, establish, carry on, distribute the
5 proceeds of, and facilitate the promotion, management, establishment,
6 carrying on, and distribution of the proceeds of an unlawful activity,
7 that is, bribery in violation of California Labor Code Sections 139.3,
8 139.32, and 3215, California Business and Professions Code Section
9 650, and California Insurance Code Section 750 and, thereafter, to
10 promote and attempt to perform acts to promote, manage, establish,
11 carry on, distribute the proceeds of, and facilitate the promotion,
12 management, establishment, carrying on, and distribution of the
13 proceeds of such unlawful activity, in violation of Title 18, United
14 States Code, Section 1952(a)(1)(A) and (a)(3)(A).

15 **FRAUDULENT PURPOSE**

16 10. It was the purpose of the conspiracy to fraudulently obtain
17 money from CWCS insurers by submitting claims for DME that were
18 secured through a pattern of bribes paid to Dr. A and those acting
19 with him and on his behalf, in exchange for the referral of patients
20 for DME to a particular provider, which was a violation of the Dr. A's
21 fiduciary duty to his patients and which defendant JULIAN GARCIA knew
22 to be unlawful under California law.

23 **MANNER AND MEANS**

24 11. The conspirators, including defendant JULIAN GARCIA, used
25 the following manner and means in pursuit of their fraudulent purpose:

26 a. Knowing that receiving a per-patient referral fee was
27 unlawful, defendant JULIAN GARCIA offered to pay Dr. A and others to
28

1 refer workers' compensation patients to defendant JULIAN GARCIA and
2 others for hot/cold packs.

3 b. Defendant JULIAN GARCIA and others provided \$50 per
4 workers' compensation patient referred to defendant JULIAN GARCIA and
5 others for the purpose of providing hot/cold packs.

6 c. Defendant JULIAN GARCIA and others concealed the true
7 nature of the financial relationship established to compensate Dr. A
8 and others for the referral of workers' compensation patients,
9 including paying kickbacks in cash and avoiding making contracts and
10 records involving the payments.

11 d. Defendant JULIAN GARCIA and others obtained patient
12 referrals for hot/cold packs in exchange for paying unlawful
13 kickbacks, and then billed, or caused insurers to be billed, via mail
14 for those hot/cold packs.

15 e. Defendant JULIAN GARCIA and others mailed or caused to
16 be mailed hot/cold packs to patients procured through unlawful
17 kickbacks, in order to bill insurers for those items.

18 f. Defendant JULIAN GARCIA and others generated and
19 submitted claims to insurers totaling over \$2.7 million dollars for
20 providing hot/cold packs, which were fraudulently procured through
21 unlawful kickback payments.

22 **OVERT ACTS**

23 12. In furtherance of the conspiracy and in order to effect the
24 objects thereof, defendant JULIAN GARCIA and others caused the
25 commission of the following overt acts in the Southern District of
26 California and elsewhere:

1 a. On January 28, 2015, GARCIA sent a text message to
2 Dr. A arranging a meeting for the same day to discuss the referral of
3 patients to receive hot/cold packs in exchange for kickbacks.

4 b. On January 28, 2015, GARCIA met Dr. A and offered to
5 pay \$50 for each patient referred for receipt of hot/cold packs.

6 c. On March 18, 2015, GARCIA spoke with Dr. A via cellular
7 telephone and discussed the status of hot/cold packs being shipped to
8 patients referred to GARCIA in exchange for kickbacks.

9 d. On March 25, 2015, GARCIA paid Dr. A \$5,000 cash in
10 kickbacks for patients referred to GARCIA for receipt of hot/cold
11 packs.

12 e. On April 6, 2015, GARCIA sent a text message to Dr. A
13 requesting to meet on April 9, 2015 so GARCIA could provide Dr. A an
14 additional kickback payment.

15 f. On April 9, 2015, GARCIA gave Dr. A \$5,000 cash in
16 kickbacks for patients referred to GARCIA for receipt of hot/cold
17 packs.

18 All in violation of Title 18, United States Code, Section 371.

19 Counts 2-11

20 **HONEST SERVICES MAIL FRAUD, 18 U.S.C. §§ 1341, 1346 AND 2**

21 13. Paragraphs 1 through 7 of this Indictment are realleged and
22 incorporated by reference.

23 14. Beginning on a date unknown and continuing through at least
24 August 2015, within the Southern District of California and elsewhere,
25 defendant JULIAN GARCIA knowingly and with the intent to defraud,
26 devised a material scheme to defraud, that is, to deprive patients of
27 their intangible right to Dr. A's honest services.

1 15. Paragraphs 10 through 12 of this Indictment are realleged
2 and incorporated by reference as more fully describing the scheme to
3 defraud, that is, to deprive patients of their intangible right to
4 Dr. A's honest services.

5 16. On or about the dates below, within the Southern District of
6 California and elsewhere, defendant JULIAN GARCIA and others, for the
7 purpose of executing the aforesaid scheme, knowingly caused hot/cold
8 packs to be placed in a post office and authorized depository for mail
9 matters to be delivered by the United States Postal Service and by
10 private commercial carrier:

Count	Date	Patient Name
2	December 9, 2014	A. N.
3	February 15, 2015	J. S.
4	April 20, 2015	M. C.
5	April 20, 2015	R. E.
6	April 20, 2015	S. G.
7	April 20, 2015	R. M.
8	April 20, 2015	R. N.
9	April 20, 2015	C. A.
10	May 11, 2015	J. A.
11	May 11, 2015	A. C.

11
12
13
14
15
16
17
18
19 All in violation of Title 18, United States Code, Sections 1341, 1346
20 and 2.

21 Counts 12-14

22 TRAVEL ACT

23 18 USC §§ 1952 (a) (1) (A), (a) (3) (A) AND 2

24 17. The allegations contained in paragraphs 1 through 7 are
25 realleged and incorporated by reference.

26 18. Beginning on date unknown and continuing through at least
27 August 2015, within the Southern District of California and elsewhere,
28 defendant JULIAN GARCIA knowingly used and caused to be used
facilities in interstate commerce with intent to promote, manage,

1 establish, carry on, distribute the proceeds of, and facilitate the
 2 promotion, management, establishment, carrying on, and distribution of
 3 the proceeds of an unlawful activity, that is, bribery in violation of
 4 California Labor Code Sections 139.3, 139.32, and 3215, California
 5 Business and Professions Code Section 650, and California Insurance
 6 Code Section 750 and, thereafter, to promote and attempt to perform
 7 acts to promote, manage, establish, carry on, distribute the proceeds
 8 of, and facilitate the promotion, management, establishment, carrying
 9 on, and distribution of the proceeds of such unlawful activity as
 10 follows:

Count	Date	Use of Facility in Interstate Commerce	Acts Performed Thereafter
12	January 28, 2015	GARCIA sent a text message to Dr. A arranging a meeting to discuss the referral of patients to receive hot/cold packs in exchange for kickbacks.	On January 28, 2015, GARCIA met Dr. A and offered to pay \$50 for each patient referred for receipt of hot/cold packs.
13	March 18, 2015	GARCIA spoke with Dr. A via cellular telephone and discussed the status of hot/cold packs being shipped to patients referred to GARCIA in exchange for kickbacks.	On March 25, 2015, GARCIA paid Dr. A \$5,000 cash as a kickback for patients referred to GARCIA for receipt of hot/cold packs.
14	April 6, 2015	GARCIA sent a text message to Dr. A requesting to meet on April 9, 2015 so GARCIA could provide Dr. A an additional kickback payment.	On April 9, 2015, GARCIA gave Dr. A \$5,000 cash in kickbacks for patients referred to GARCIA for receipt of hot/cold packs.

25 All in violation of Title 18, United States Code,
 26 Sections 1952(a)(1)(A), (a)(3)(A) and 2.

27 //
 28 //

FORFEITURE ALLEGATION

1
2 19. Paragraphs 1 through 18 of this Indictment are realleged and
3 incorporated as if fully set forth herein for the purpose of
4 alleging forfeiture pursuant to Title 18, United States Code,
5 Section 981(a)(1)(C), and Title 28, United States Code,
6 Section 2461(c).

7 20. Upon conviction of the offense of Conspiracy as alleged in
8 Count 1, Mail Fraud as alleged in Counts 2 through 11, and violations
9 of the Travel Act as alleged in Counts 12 through 14, defendant JULIAN
10 GARCIA shall forfeit to the United States all right, title, and
11 interest in any property, real or personal, that constitutes or is
12 derived from proceeds traceable to a violation of such offenses,
13 including a sum of money equal to the total amount of gross proceeds
14 derived, directly or indirectly, from such offenses.

15 21. If any of the above described forfeitable property, as a
16 result of any act or omission of defendant JULIAN GARCIA: (a) cannot
17 be located upon the exercise of due diligence; (b) has been
18 transferred or sold to, or deposited with, a third party; (c) has been
19 placed beyond the jurisdiction of the Court; (d) has been
20 substantially diminished in value; or (e) has been commingled with
21 other property which cannot be divided without difficulty;

22 //

23 //

24 //

25 //

26 //

27 //

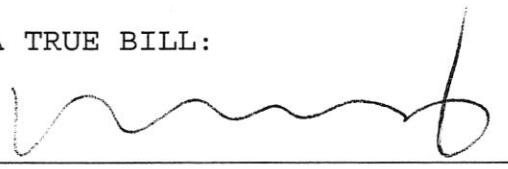
28

1 it is the intent of the United States, pursuant to Title 21, United
2 States Code, Section 853(p) and Title 18, United States Code,
3 Section 982(b), to seek forfeiture of any other property of defendant
4 JULIAN GARCIA up to the value of the forfeitable property described
5 above.

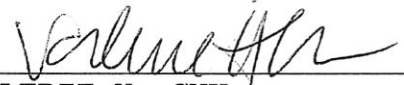
6 All pursuant to Title 18, United States Code, Section 981(a)(1)(C),
7 and Title 28, United States Code, Section 2461(c).

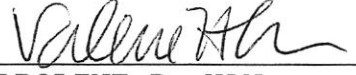
8 DATED: November 5, 2015.


9 A TRUE BILL:

10 
11 _____
12 Foreperson

12 LAURA E. DUFFY
13 United States Attorney

14
15 By: 
16 VALERIE H. CHU
17 Assistant U.S. Attorney

18 By: 
19 CAROLINE P. HAN
20 Assistant U.S. Attorney

21 By: 
22 FRED A. SHEPPARD
23 Assistant U.S. Attorney