

FILED by SL D.C.
ELECTRONIC

APR 22, 2010

STEVEN M. LARIMORE
CLERK, U.S. DIST. CT.
S. D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
10-20289-CR-KING/BANDSTRA
Case No. _____

18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 2
18 U.S.C. § 982

UNITED STATES OF AMERICA

vs.

ERNESTO ANGEL MONTANER,

Defendant.

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

The Medicare Program

1. The Medicare Program ("Medicare") was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services ("HHS"), through its agency, the Centers for Medicare and Medicaid Services ("CMS"), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."
2. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

3. Part A of the Medicare Program was a medical insurance program that covered, among other things, certain physician and outpatient services that were medically necessary and ordered by licensed medical doctors or other qualified health care providers. Part A of the Medicare Program also covered certain outpatient services, including physical therapy ("PT"), rehabilitation and occupational therapy ("OT") services, which are typically administered at Comprehensive Outpatient Rehabilitation Facilities ("CORFs") or by Outpatient Physical Therapy Providers ("OPTs"). Medicare Part A covered such services so long as they were ordered by a medical doctor or other qualified health care provider, and deemed medically necessary.

4. Medicare regulations generally required that all PT/OT services rendered at CORFs be performed by, or under the supervision of, a physician. Medicare regulations further required that the physician be physically present at the CORF facility for a sufficient time to: (i) provide, in accordance with accepted standards of medical practice, medical direction, medical care services, and consultation; (ii) establish the plan of treatment in cases where a plan has not yet been established by the referring physician; (iii) assist in establishing and implementing the patient care policies; and (iv) participate in plan of treatment reviews, patient case review conferences, comprehensive patient assessment and reassessments, and utilization reviews.

5. Medicare regulations permitted CORFs to submit claims to Medicare for services rendered by qualified personnel working under the supervision of a physician, including licensed practical nurses, occupational therapists, occupational therapist assistants, physical therapists, and physical therapist assistants. Medicare regulations required that such personnel be licensed by the state in which they worked or, alternatively, that such personnel have attained certain minimum educational, certification, or job experience requirements.

Medicare Billing and Payment Procedures

6. A CORF or OPT that sought to participate in Medicare Part A and bill Medicare for the cost of PT/OT services was required to apply for and receive a "supplier number" or "provider number" for Part A of the Medicare Program.

7. Medicare regulations generally required that Medicare providers administer PT/OT services from a single, fixed physical location identified in the provider application. If a Medicare provider wished to administer PT/OT from a satellite or branch location, it was required to provide advance notice to CMS, and obtain requisite approvals to ensure safety and compliance with various statutory and regulatory requirements. In the absence of prior notification, CMS and its authorized subcontractors had authority to deny bills for services furnished at satellite or branch locations.

8. For Florida Medicare beneficiaries, Medicare Part A PT/OT benefits were administered by First Coast Service Options ("First Coast") or Mutual of Omaha ("Mutual"), pursuant to a contract with HHS to receive, process and pay claims. First Coast and Mutual received, adjudicated and paid the claims of authorized PT/OT providers that were seeking reimbursement for the cost of PT/OT services supplied or provided to Medicare beneficiaries.

9. To receive payment from Medicare, a CORF or OPT, using its Part A supplier number or provider number, would submit a health insurance claim form known as a CMS-1450. Medicare permitted CORF and OPT companies to submit CMS-1450's electronically or by way of a paper claim form. Each claim form required certain information, including: (a) the Medicare beneficiary's name and identification number; (b) the identification number of the doctor or other qualified health care provider who ordered or furnished the health care benefit, item, or service that was the subject of the claim; (c) the health care benefit, item, or service that was provided or

supplied to the beneficiary; (d) the billing codes for the benefit, item, or service; and (e) the date upon which the benefit, item, or service was provided or supplied to the beneficiary.

10. Subject to certain limitations described below, Medicare, through First Coast or Mutual, would generally pay a substantial portion of the cost of the related health care benefits, items, and services that were medically necessary and ordered by licensed doctors or other qualified health care providers.

11. To cut Medicare spending, Congress imposed an annual per beneficiary financial limitation for outpatient PT/OT services. For example, in 2006, the annual per beneficiary limitation was \$1,740 for PT, and \$1,740 for OT. These limitations were subject to certain exceptions for patients with certain medical conditions or complexities, or for patients requiring additional therapy. To submit bills in excess of the normal annual limits, Medicare providers could use certain billing codes, commonly known as modifier codes, when submitting claims to First Coast or Mutual.

12. Payments under Medicare Part A were often made directly to the CORF or OPT company rather than to the patient/beneficiary. For this to occur, the beneficiary would assign the right of payment to the CORF or OPT company or other health care providers. Once such an assignment took place, the CORF or OPT company would assume the responsibility for submitting claims to, and receiving payments from, Medicare.

Corporations

13. Infinity Therapy, Inc. (hereinafter "Infinity Therapy") was incorporated in the State of Florida, and maintained a place of business at adjoining addresses: 1901 NW 17th Avenue, Miami, Florida, and 1917 NW 17th Avenue, Miami, Florida. Infinity Therapy was a CORF and was

purportedly in the business of rendering PT/OT, among other services, to Medicare beneficiaries. Infinity Therapy applied for and received Medicare Provider Number 684573.

14. Mega Therapy Center, Inc. (hereinafter "Mega Therapy") was incorporated in the State of Florida and maintained a place of business at 100 NW 82nd Avenue, Suites 204 and 205, Plantation, Florida, 33324. Mega Therapy was a CORF and was purportedly in the business of rendering PT/OT, among other services, to Medicare beneficiaries. Mega Therapy applied for and received Medicare Provider Number 6848725.

15. Florida Rehabilitation Clinic, Inc. (hereinafter "Florida Rehab") was incorporated in the State of Florida and maintained a place of business at 9744 SW 24th Street, Miami, Florida, 33165. Florida Rehab was purportedly in the business of rendering PT/OT, among other services, to Medicare beneficiaries. Florida Rehab did not have its own Medicare provider number and was not registered with CMS as a branch or satellite location of any authorized Medicare provider; nonetheless, it submitted bills or claims to Medicare through Infinity Therapy.

16. Miami Dade Medical Group, Corp. (hereinafter "Miami Dade Medical") was incorporated in the State of Florida and maintained a place of business at 4692 NW 183 Street, Miami, Florida, 33055. Miami Dade Medical Group was purportedly in the business of rendering PT/OT, among other services, to Medicare beneficiaries. Miami Dade Medical was not registered with CMS as a satellite or branch location for any authorized Medicare supplier; nonetheless, it submitted bills or claims to Medicare through Mega Therapy.

17. J.A.V. Consulting, Inc. (hereinafter "JAV Consulting") was incorporated in the State of Florida and purportedly maintained a place of business at 9744 SW 24th Street, Suite A, Miami, Florida, 33165. JAV Consulting was a shell corporation with no legitimate or lawful business.

Defendant

18. Defendant **ERNESTO ANGEL MONTANER**, together with his son Ernesto Montaner and others known and unknown to the Grand Jury, operated and managed the following entities: Infinity Therapy from in or around January 2003 until in or around September 2008; Mega Therapy from in or around January 2006 until in or around September 2008; and Miami Dade Medical at various times from in or around October 2006 until in or around July 2008. **ERNESTO ANGEL MONTANER**, together with his son Ernesto Montaner, co-conspirator Jose Antonio Varona, and others known and unknown to the Grand Jury also operated and managed Florida Rehab from in or around February 2006 until in or around September 2008.

Health Care Fraud Conspiracy
(18 U.S.C. § 1349)

1. Paragraphs 1 through 18 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. From at least as early as in or around January 2006, and continuing through in or around September 2008, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ERNESTO ANGEL MONTANER,

did knowingly and willfully combine, conspire, confederate and agree with Ernesto Montaner, Jose Antonio Varona, and others known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1347, that is, to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, 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, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendant and his conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare; (b) concealing the submission of false and fraudulent claims to Medicare; and (c) diverting the fraud proceeds for their personal use and benefit.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and his conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

4. **ERNESTO ANGEL MONTANER**, Ernesto Montaner, and Jose Antonio Varona made periodic cash kickback payments to patient recruiters who referred Medicare beneficiaries to Infinity Therapy, Mega Therapy, Florida Rehab, and Miami Dade Medical for PT/OT. **ERNESTO ANGEL MONTANER**, Ernesto Montaner, and Jose Antonio Varona paid for such referrals without regard to the Medicare beneficiaries' actual medical condition, and without regard to whether PT/OT services were medically necessary for the Medicare beneficiaries' health.

5. **ERNESTO ANGEL MONTANER** and Ernesto Montaner made cash kickback payments to an undercover law enforcement officer, whom they believed to be a patient recruiter. Such payments were made to induce the undercover law enforcement officer to refer Medicare beneficiaries to Infinity Therapy, Mega Therapy, and Miami Dade Medical for PT/OT services. **ERNESTO ANGEL MONTANER** and Ernesto Montaner paid for such referrals without regard

to the Medicare beneficiaries' actual medical condition, and without regard to whether PT/OT services were medically necessary for the Medicare beneficiaries' health.

6. **ERNESTO ANGEL MONTANER** and Jose Antonio Varona made periodic cash kickback payments to the owners of assisted living facilities (ALFs), home health agencies (HHAs), and other medical facilities, all of whom referred Medicare beneficiaries to Infinity Therapy, Mega Therapy, or Florida Rehab for PT/OT services. **ERNESTO ANGEL MONTANER** and Jose Antonio Varona paid for such referrals without regard to the beneficiaries' actual medical condition, and without regard to whether PT/OT services were medically necessary for the Medicare beneficiaries' health.

7. Ernesto Montaner, with the knowledge and approval of **ERNESTO ANGEL MONTANER**, utilized billing software to track the number of patients referred to Infinity Therapy, Mega Therapy, Miami Dade Medical and Florida Rehab by each patient recruiter and medical company owner. Ernesto Montaner and **ERNESTO ANGEL MONTANER** utilized this program to determine the amount of the illegal kickback payments owed to each patient recruiter and medical company owner.

8. To create the appearance of legitimacy, **ERNESTO ANGEL MONTANER** and Ernesto Montaner employed multiple purported physical therapists, occupational therapists, and therapy assistants at Infinity Therapy and Mega Therapy. Some of these purported therapists employed at Infinity Therapy and Mega Therapy did not satisfy the licensing, education, certification, or job experience requirements specified in the Medicare regulations.

9. To create the appearance of legitimacy, **ERNESTO ANGEL MONTANER** and Jose Antonio Varona employed multiple purported physical therapists, occupational therapists, and therapy assistants at Florida Rehab. None of the purported therapists employed at Florida Rehab satisfied the licensing, education, certification, or job experience requirements specified in the Medicare regulations.

10. **ERNESTO ANGEL MONTANER** established a relationship with a complicit physician who served as the in-house physician at Infinity Therapy. The complicit physician prescribed PT/OT for the recruited patients of Infinity Therapy and Mega Therapy, and purportedly supervised the administration of such therapy as required by Medicare regulations. In return for his services, the complicit physician received a portion of the profits associated with such patients.

11. Jose Antonio Varona, with the knowledge and approval of **ERNESTO ANGEL MONTANER**, established a relationship with a complicit physician who prescribed PT/OT to the recruited patients of Florida Rehab, so long as the patients were elderly, and properly coached to complain of certain symptoms. The complicit physician was never physically present on the premises of Florida Rehab, and did not supervise, direct, or consult with the unlicensed therapists that allegedly rendered PT/OT to the recruited patients of Florida Rehab.

12. **ERNESTO ANGEL MONTANER** and Ernesto Montaner submitted or caused the submission of false and fraudulent claims to Medicare on behalf of Infinity Therapy, Mega Therapy, and Miami Dade Medical for PT/OT allegedly rendered to recruited Medicare beneficiaries who, unbeknownst to **ERNESTO ANGEL MONTANER** and Ernesto Montaner, were actually cooperating government witnesses.

13. **ERNESTO ANGEL MONTANER**, Ernesto Montaner, and Jose Antonio Varona submitted or caused the submission of false and fraudulent claims to Medicare on behalf of Infinity Therapy, Mega Therapy, Miami Dade Medical and Florida Rehab for PT/OT services rendered by unlicensed and unqualified physical therapists, occupational therapists, and therapy assistants.

14. On or about February 21, 2008, the complicit physician working at Infinity Therapy, died of natural causes. Thereafter, **ERNESTO ANGEL MONTANER** and Ernesto Montaner continued to submit or cause the submission of false and fraudulent claims to Medicare for PT/OT services, knowing that such services were being supervised by a conspirator who was not licensed as a physician in the United States.

15. **ERNESTO ANGEL MONTANER**, Ernesto Montaner, and Jose Antonio Varona knew and understood that subordinate personnel at Infinity Therapy, Mega Therapy, Miami Dade Medical and Florida Rehab would frequently instruct Medicare beneficiaries to sign visitation logs for multiple past and future PT/OT sessions, thereby ensuring they had adequate documentation to justify billing Medicare for seventeen PT/OT visits. **ERNESTO ANGEL MONTANER**, Ernesto Montaner, and Jose Antonio Varona knew and understood that a substantial majority of the patients did not actually need or receive seventeen PT/OT sessions.

16. Ernesto Montaner, with the knowledge and approval of **ERNESTO ANGEL MONTANER** and Jose Antonio Varona, designed and implemented a variety of "billing templates" intended to maximize the fraudulent proceeds obtained from Medicare on behalf of Infinity Therapy, Mega Therapy, Florida Rehab, and Miami Dade Medical. Ernesto Montaner's billing templates were designed, among other things, to ensure that Medicare was typically billed for seventeen PT/OT

sessions, using an optimized set of predetermined billing codes, regardless of how many times the Medicare beneficiary actually visited the clinic, and regardless of the Medicare beneficiaries' actual health or condition. Ernesto Montaner, with the knowledge and approval of **ERNESTO ANGEL MONTANER** and Jose Antonio Varona, also utilized modifier codes in conjunction with these billing templates to bypass Medicare's normal annual financial limits for PT/OT services.

17. Florida Rehab did not have a Medicare provider number. Therefore, **ERNESTO ANGEL MONTANER**, Jose Antonio Varona, and Ernesto Montaner agreed to submit claims to Medicare on behalf of Florida Rehab using the provider number assigned to Infinity Therapy.

18. **ERNESTO ANGEL MONTANER**, Ernesto Montaner, and others agreed to submit claims to Medicare on behalf of Miami Dade Medical for PT/OT using the provider number assigned to Mega Therapy.

19. Based on the foregoing schemes, **ERNESTO ANGEL MONTANER**, Ernesto Montaner, and Jose Antonio Varona submitted and caused the submission of more than \$2.5 million of false and fraudulent claims to Medicare through Infinity Therapy and Mega Therapy for PT/OT, and other medical services that were not medically necessary, not rendered, not supervised by a physician, or not rendered by licensed or qualified physical therapists, occupational therapists, and therapy assistants.

20. **ERNESTO ANGEL MONTANER** and Ernesto Montaner, through Infinity Therapy, distributed fraud proceeds to Jose Antonio Varona in the form of a salary and bonuses.

21. To facilitate the payment of illegal cash kickbacks, **ERNESTO ANGEL MONTANER** and Ernesto Montaner issued checks payable from Infinity Therapy to JAV

Consulting, a shell corporation controlled by Jose Antonio Varona, or to other shell corporations controlled by Varona's personal associates. Thereafter, VARONA utilized the funds to make illegal cash kickback payments to patient recruiters, and to the owners of various medical facilities.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2-7
Health Care Fraud
(18 U.S.C. § 1349)

1. Paragraphs 1 through 18 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.
2. From at least as early in or around January 2006, and continuing through in or around September 2008, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ERNESTO ANGEL MONTANER,

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud Medicare, a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), 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, that is, the defendant and his conspirators, through Infinity Therapy and Mega Therapy, submitted false and fraudulent claims to Medicare, seeking reimbursement for the cost of various PT/OT services, and related medical items and services, that were purportedly rendered to beneficiaries by qualified personnel.

Purpose of the Scheme and Artifice

3. It was the purpose of the scheme and artifice for the defendant and his accomplices to unlawfully enrich themselves by, among other things: (a) submitting or causing the submission of false and fraudulent claims to Medicare; (b) concealing the submission of false and fraudulent claims to Medicare and the receipt and transfer of fraud proceeds; and (c) diverting fraud proceeds for the personal use and benefit of themselves and others.

The Scheme and Artifice

4. The allegations in paragraphs 4 through 21 of the Manner and Means section of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution or Attempted Execution of the Scheme and Artifice

5. On or about the dates specified as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, ERNESTO ANGEL MONTANER, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud a health care benefit program affecting commerce, that is, 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, said health care benefit program, in that the defendant and his conspirators submitted and caused the submission of false and fraudulent Medicare claims seeking the below-listed dollar amounts, and represented that, on or about the below-listed dates of service, Infinity Therapy or Mega Therapy provided the identified medical services to the below-listed beneficiaries pursuant to physicians' orders or prescriptions:

Count	Approx. Claim Date or Service Date	Medical Clinic	Beneficiary	Claim Number or Identifier	Item Claimed	Claimed Amount
2	01/09/08	Mega	M.H.	2080430208420	Physical Therapy-Therapeutic Procedure	\$35
3	01/14/08	Mega	M.H.	2080430208430	Occupational Therapy-Therapeutic Activities	\$72
4	10/26/07	Mega	B.O.	2073480184340	Physical Therapy-Electrical Stimulation	\$20
5	10/31/07	Mega	B.O.	2073480184350	Physical Therapy-Manuel Therapy Techniques	\$30
6	01/02/08	Infinity	C.K.	2080100124810	Occupational Therapy-Therapeutic Procedure	\$70
7	01/07/08	Infinity	C.K.	2080150258200	Physical Therapy-Therapeutic Procedure	\$70

In violation of Title 18, United States Code, Sections 1347 and 2.

FORFEITURE
(18 U.S.C. § 982)

1. The allegations contained in Counts 1 through 7 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendant, **ERNESTO ANGEL MONTANER**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1349, as alleged in this Indictment, the defendant, **ERNESTO ANGEL MONTANER**, shall forfeit all of his right, title and interest to the United States in any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such offense pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property which is subject to forfeiture includes, but is not limited to, the following sum of \$2,872,195 USD, which sum constitutes a minimum estimate of the gross proceeds derived from the fraud alleged in this Indictment, which were reasonably foreseeable to **ERNESTO ANGEL MONTANER** as a result of his participation in the health care fraud conspiracy.

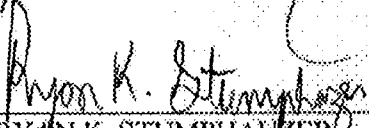
All pursuant to Title 18, United States Code, Sections 982 (a)(7) and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

FOREPERSON



JEFFREY H. SLOMAN
UNITED STATES ATTORNEY



RYAN K. STUMPHAUZER
ASSISTANT UNITED STATES ATTORNEY