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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

NORTHERN DISTRICT OF TEXAS
FILED
MAR 14 2007
CLERK, U.S. DISTRICT COURT
By _____
Deputy

UNITED STATES OF AMERICA §
v. §
GARY R. TREBERT (1) §
STEPHEN MICHAEL EWING (2) §
a/k/a "Stephen Michaels" §
LARRY GORDON MAY (3) §

No. **4-07CR-030-Y**

INDICTMENT

The Grand Jury Charges:

Introduction

At all times material to this indictment:

1. The Internal Revenue Service (IRS) was an agency of the United States of America responsible for assessing and collecting taxes owed by individuals and business entities including the income taxes, social security taxes, and Medicare taxes (payroll taxes) withheld from employees' pay by their employers.

2. Employers who withheld payroll taxes from employees' pay are required to file Employer's Quarterly Federal Tax Returns, Form 941 with the IRS and pay the withheld payroll taxes to the IRS. Those employers were required to prepare for each employee a Form W-2 earnings and withholding statement which reflected the

employee's income earned and the income taxes, social security taxes and Medicare taxes withheld.

3. The IRS relied on employers to issue the Form W-2 earnings and withholding statements to their employees to facilitate the filing of the employees' personal tax returns. The IRS relied, in part, on the Form W-2 statements to issue tax refunds to employees. The IRS would issue tax refunds to employees even though the employer had not paid to the IRS the taxes withheld from the employees' pay.

4. Employers were also required to file a copy of the employees' Form W-2 earnings and withholding statements with the Social Security Administration (SSA) in order to credit the employees' accounts for retirement purposes. The SSA provided coverage to employees even though their employer had not paid to the SSA the taxes withheld from the employees' pay.

5. The Department of Health and Human Services (HHS) was an agency for the United States of America responsible for administering the licensing, certification, and funding of the Medicare and Medicaid programs in connection with nursing facilities.

6. Medicare was a federal health insurance program under the jurisdiction of HHS and was administered by the Centers for Medicare and Medicaid Services (CMS), an agency of HHS and the federal government. Medicare provisions provided for payment to lawfully licensed nursing facility providers for the care and treatment of patients covered by Medicare. Medicare taxes withheld from employees' pay were to be

used to fund Medicare expenses.

7. Mutual of Omaha was an insurance company that contracted with the federal government (HHS) to provide audit services of nursing facility providers and to pay claims for nursing facility care and treatment of Medicare patients.

8. Medicaid was a jointly financed federal-state program administered by each state. Each state contracted with an insurance company or fiscal intermediary to audit and pay Medicaid patient claims for care and treatment at lawfully licensed nursing facilities.

9. The licensing of nursing facilities in each state was regulated by that state. A valid license was required before a nursing facility and its owners could lawfully receive payments for the care and treatment of Medicare and Medicaid patients.

The Defendants

1. Defendant **Gary R. Trebert** was a resident of Texas, a licensed attorney and business man, who, at times, secretly controlled and managed nursing facilities and staffing/payroll companies in Texas, Oklahoma, Kansas, Iowa and Virginia.

2. Defendant **Stephen Michael Ewing**, who used the name Stephen Michaels, was a resident of Texas, who secretly controlled and managed nursing facilities and staffing/payroll companies in Texas and Oklahoma. **Ewing** had previously operated a nursing home in Illinois.

3. Defendant **Larry Gordon May**, a resident of Texas, became president and a controller of various nursing facility entities and staffing/payroll companies. **May** had no previous experience or knowledge of nursing facility operations or responsibilities.

Count 1
The Conspiracy to Defraud the Internal Revenue Service and the
U.S. Department of Health and Human Services
(Violation of 18 U.S.C. § 371)

1. Beginning in August 1999 and continuing through on or about May 19, 2004, in the Northern District of Texas and elsewhere, the defendants, **Gary R. Trebert, Stephen Michael Ewing, and Larry Gordon May**, did knowingly and willfully combine, conspire and agree together and with each other, and others known to the Grand Jury, to defraud the United States of America by impeding, impairing, obstructing, and defeating the lawful government functions of (a) the Internal Revenue Service (IRS) of the Treasury Department in the ascertainment, computation, assessment, and collection of the revenue, that is, nursing facility employees' withheld income taxes, social security taxes and Medicare taxes, and (b) the Department of Health and Human Services (HHS) of the United States in the administration of the Social Security Act and the Medicare and Medicaid programs to properly license, certify, contract, and pay Medicare and Medicaid payments to nursing facilities for the care of patients.

Manner and Means

2. The defendants used the following manner and means, among others, to defraud the United States by impeding, impairing, obstructing, and defeating the government functions of the IRS and HHS:

3. It was part of the conspiracy that the defendants, using the names of sham corporate entities, obtained control of 70 licensed nursing facilities with over 6,000

patient beds and more than 4,500 employees. In order to acquire control of the nursing facilities, the defendants utilized false statements and false and fraudulent documents including, but not limited to, Applications for Nursing Facility License and Medicaid Contracts, Medicare Federal Provider Enrollment Applications, ownership documents, IRS Employer Identification Applications, Health Insurance Benefit Agreements, and Electronic Fund Transfer forms.

4. It was part of the conspiracy that the defendants would use the false statements and documents to hide from HHS, state licensing and Medicaid agencies, and the IRS, the defendants' true control and management of the nursing facilities, their responsibility for over \$200,000,000 in money derived therefrom, and their responsibility for the nursing facilities' residents.

5. It was part of the conspiracy that the defendants created over 150 sham staffing/payroll entities, many with foreign business addresses at drop boxes in England and Austria for the purposes of (a) filing Form 941 employer withholding tax returns with the IRS, (b) preventing the IRS from assessing and attempting to collect over \$34,000,000 of unpaid payroll tax liabilities from the defendants, and (c) making it appear that the sham staffing/payroll entities were the employers of over 4,500 employees of the nursing facilities.

6. It was part of the conspiracy to obstruct and impede the IRS that the defendants would not file corporate income tax returns for the sham corporate entities, as required by law.

7. It was part of the conspiracy that the defendants made, in the names and with the addresses of the sham staffing/payroll entities, false employer withholding tax returns to the IRS on Forms 941, wherein the defendants declared over \$34,000,000 in employees' income taxes, social security taxes and Medicare taxes were due and payable; however, the defendants did not pay the taxes withheld from the nursing facility employees' paychecks into the United States Treasury.

8. It was part of the conspiracy that a defendant would fly to London, England and from there would mail to the IRS in the United States the sham payroll/staffing companies' false withholding tax returns.

9. It was part of the conspiracy that the defendants would divert to themselves and their personal activities substantial sums of money derived from the defendants' nursing home operations and from the non-payment of employees' withheld payroll taxes.

Overt Acts

10. The Grand Jury re-alleges and incorporates herein the acts charged in Counts 2 through 29 as overt acts in furtherance of the conspiracy to defraud the United States for the purpose of impeding, impairing, and obstructing the lawful governmental functions of the IRS and HHS.

All in violation of 18 U.S.C. § 371.

Counts 2 through 10
 Tax Evasion-Aiding and Abetting
 (Violations of 26 U.S.C. § 7201 and 18 U.S.C. § 2)

1. The Grand Jury re-alleges, and incorporates into Counts 2 through 10, the allegations contained in paragraphs 2 through 9 of Count 1 as part of the manner and means of each tax evasion Count.

2. For each Count listed below, on or about the date stated, in the Northern District of Texas and elsewhere, the defendants, **Gary R. Trebert, Stephen Michael Ewing, and Larry Gordon May**, did willfully attempt to evade and defeat the withheld federal income taxes, social security taxes, and Medicare taxes and the payment of those taxes for the number of nursing homes listed for each Count, by preparing and causing to be prepared, and by signing and causing to be signed, false and fraudulent Employer's Quarterly Federal Tax Return, Form 941 tax returns, which were filed for each nursing home with the Internal Revenue Service on said date, and on each Form 941 tax return a sham staffing/payroll company with an overseas address was listed as the employer responsible for the withheld, due, and owing payroll taxes listed for each Count, when in truth and fact, each defendant knew that each defendant was responsible to account for and pay to the IRS the withheld taxes as stated.

<u>Count</u>	<u>Date Filed</u>	<u>Number of Nursing Homes And Sham Staffing/Payroll Company Tax Returns File</u>	<u>Income, Social Security, and Medicare Taxes Withheld, Due, Owing and Evaded</u>
2	04-26-2002	13	\$1,401,247.34
3	07-30-2002	13	\$1,426,325.83
4	10-29-2002	12	\$1,295,877.36

<u>Count</u>	<u>Date Filed</u>	<u>Number of Nursing Homes And Sham Staffing/Payroll Company Tax Returns File</u>	<u>Income, Social Security, and Medicare Taxes Withheld, Due, Owing and Evaded</u>
5	01-30-2003	11	\$1,230,529.38
6	04-28-2003	33	\$2,929,277.59
7	07-30-2003	34	\$2,840,244.09
8	10-30-2003	63	\$4,452,198.59
9	01-28-2004	57	\$4,413,350.12
10	04-30-2004	42	\$4,113,375.74

Each Count in violation of 26 U.S.C. § 7201 and 18 U.S.C. § 2.

Counts 11 through 15
Mail Fraud
(Violations of 18 U.S.C. §§ 1341 and 2)

The Scheme

1. Beginning sometime in 1999 and continuing through on or about December 2003, in the Northern District of Texas and elsewhere, the defendants, **Gary R. Trebert, Stephen Michael Ewing, and Larry Gordon May**, knowingly and intentionally devised and intended to devise a scheme and artifice to defraud the United States Department of Health and Human Services, state nursing home licensing agencies, Medicare, Medicaid, and private individuals and businesses and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, as set out herein, well knowing at the time that the pretenses, representations and promises would be and were false and fictitious when made, all in the following manner and means.

Manner and Means

2. A part of the defendants' scheme and artifice to defraud was to obtain state licenses, Medicaid and Medicare certifications, and contracts for nursing facilities with materially false and fictitious statements and documents, including but not limited to: nursing facility license applications and renewal forms; Medicare Federal Provider Enrollment Applications; Health Insurance Benefit Agreements and contracts; Electronic Fund Transfer Authorizations; financial status and solvency documents; and ownership documents.

3. A part of the defendants' scheme and artifice to defraud was to hide from the

said state and federal authorities the defendants' control of nursing facilities as well as their responsibility for the operation of the nursing facilities, the care for patients, and the money paid by Medicare, Medicaid, and private payors derived from the defendants' control of nursing facilities and over 6,000 patient beds.

4. A part of the defendants' scheme and artifice to defraud was to use false and forged names and signatures on documents submitted to the said federal and state authorities and to private businesses and suppliers of nursing facilities controlled by the defendants.

5. A part of the defendants' scheme and artifice to defraud was to obtain over \$200,000,000 from Medicare patients, Medicaid patients, and private pay patients based on fraudulently obtained certifications and licenses to operate nursing facilities, and based on non-disclosure of the defendants' control, management, and responsibility for the nursing facilities, patients and payments received for the patients' care.

6. A part of the defendants' scheme and artifice to defraud was to file false nursing facility Cost Reports and Staffing and Compensation Reports with state and federal authorities in order to obtain and increase money to the defendants from their fraudulent control of the said nursing facilities.

Mail Fraud Counts

7. For each Count charged here, the Grand Jury incorporates, as though fully set forth, the allegations in paragraphs 1 through 6 of the Scheme and Manner and Means of the mail fraud.

8. For each Count listed below, on or about the date stated, in the Northern District of Texas, and elsewhere, the defendants, **Gary R. Trebert, Stephen Michael Ewing, and Larry Gordon May**, for the purpose of executing and attempting to execute the said scheme and artifice to defraud, knowingly deposited and caused to be deposited with the private or commercial interstate carrier as stated for each Count, the matter described in each Count to be sent and delivered to the addressee of the said matter, according to the directions thereon.

<u>Count</u>	<u>Date</u>	<u>Interstate Carrier and Deposited Item</u>
11	05-02-2003	Fed Ex package containing a Medicare Federal Health Care Provider/Supplier Enrollment Application for HC Healthcare Investors, Inc. d/b/a Redstone Nursing and Rehab Center addressed to Medicare, Mutual of Omaha Plaza, Omaha, Nebraska
12	05-05-2003	Lone Star Overnight package containing 6 Applications for Nursing Facility License and Title XIX Medicaid Contract addressed to Texas Department of Human Services 701 West 51st Street, Austin, Texas
13	05-05-2003	Fed Ex package containing 6 Medicare Federal Health Care Provider/Supplier Enrollment Applications addressed to Mutual of Omaha Medicare Audit and Reimbursement Mutual of Omaha Plaza, Omaha, Nebraska
14	06-09-2003	Fed Ex package containing 7 Medicare Federal Health Care Provider/Supplier Enrollment Application revisions addressed to Mutual of Omaha Medicare Audit and Reimbursement Mutual of Omaha Plaza, Omaha, Nebraska

<u>Count</u>	<u>Date</u>	<u>Interstate Carrier and Deposited Item</u>
15	10-01-2003	Fed Ex package containing 3 Medicare Federal Health Care Provider/Supplier Enrollment Application revisions addressed to Mutual of Omaha Mutual of Omaha Plaza, Omaha, Nebraska

Each Count in violation of 18 U.S.C. §§ 1341 and 2.

Counts 16 through 22
False Statement to Government Agency
(Violations of 18 U.S.C. §§ 1001 and 2)

1. The Grand Jury re-alleges, and incorporates into Counts 16 through 22, the allegations contained in paragraphs 2 through 6 of the manner and means of the mail fraud as though fully set forth herein.

2. For each Count listed below, on or about the date stated, in the Northern District of Texas and elsewhere, the defendants, **Gary R. Trebert, Stephen Michael Ewing, and Larry Gordon May**, aided and abetted by each other, in a matter within the jurisdiction of the United States Department of Health and Human Services, did knowingly and willfully falsify, conceal, and cover up by trick, scheme, and device, material facts in the Medicare Federal Health Care Provider/Supplier Enrollment Application for the nursing facility stated for each Count, in that for each Count, the defendants (a) concealed and did not disclose their ownership, control and management of the said nursing facility, (b) falsely represented that the authorized official, owner and manager for said nursing facility was "R. Burroughs," and (c) falsely declared that there was no staffing company paying employees of the said nursing facility.

<u>Count</u>	<u>Date</u>	<u>Medicare Nursing Facility Enrollment Application</u>
16	05-05-2003	HC Healthcare Investors, Inc. dba Redstone Nursing & Rehab Center, Inc. Austin, Texas
17	05-06-2003	Hurst Plaza Nursing & Rehab Center, Inc. Hurst, Texas

<u>Count</u>	<u>Date</u>	<u>Medicare Nursing Facility Enrollment Application</u>
18	05-06-2003	Copper Valley, Inc. Bandera, Texas
19	05-06-2003	Hillside Health & Rehab, Inc. Wells, Texas
20	05-06-2003	Crestview Villa, Inc. Corrigan, Texas
21	05-06-2003	Leonard Country Care & Rehab, Inc. Leonard, Texas
22	05-06-2003	Sunbranch Nursing Center, Inc. Groesbeck, Texas

Each Count in violation of 18 U.S.C. §§ 1001 and 2.

Counts 23 through 29
False Statements Relating to Health Care Matters
(Violations of 18 U.S.C. §§ 1035 and 2)

For each Count listed below, on or about the date stated, in the Northern District of Texas and elsewhere, the defendants, **Larry Gordon May, Stephen Michael Ewing, and Gary R. Trebert**, in a matter involving the Medicaid health care benefit program, and in order to obtain a license in connection with the delivery of and payment for Medicaid health care benefits, items, and services at the owner/applicant nursing facility stated for each Count, did knowingly and willfully make a materially false, fictitious, and fraudulent statement and representation in the Application for Nursing Facility License and Title XIX Medicaid contract, to wit, that the listed person for each Count had controlling/directional/governing/managing interest in the owner/applicant nursing facility, whereas in truth and in fact, as the defendants knew and believed, the defendants had the controlling/directional/governing/managing interest in the owner/applicant nursing facility.

<u>Count</u>	<u>Date</u>	<u>Owner/Applicant Nursing Facility</u>	<u>Falsely Listed Controlling Person</u>
23	02-05-2003	HC Healthcare Investors, Inc., d/b/a Redstone Nursing and Rehab Center Austin, Texas	Robert B. Burroughs
24	05-06-2003	Hurst Plaza Nursing and Rehab Center Inc. Hurst, Texas	Robert Burroughs
25	05-06-2003	Hillside Health & Rehab Inc. Wells, Texas	Robert B. Burroughs

<u>Count</u>	<u>Date</u>	<u>Owner/Applicant Nursing Facility</u>	<u>Falsely Listed Controlling Person</u>
26	05-06-2003	Crestview Villa, Inc. Corrigan, Texas	Robert B. Burroughs
27	05-06-2003	Copper Valley, Inc. Bandera, Texas	Robert B. Burroughs
28	05-06-2003	Leonard Country Care & Rehab, Inc. Leonard, Texas	Robert B. Burroughs
29	05-06-2003	Sunbranch Nursing Center, Inc. Groesbeck, Texas	Robert B. Burroughs


Each Count in violation of 18 U.S.C. §§ 1035 and 2.

A TRUE BILL

REDACTED

FOREPERSON

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