

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America)

v.)

INDIRA MARTELL)

Case No. 15-2805-TORRES

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of June 12, 2015 in the county of Miami-Dade in the Southern District of Florida, the defendant(s) violated:

Code Section 18 U.S.C. § 1347

Offense Description The defendant, INDIRA MARTELL did knowingly and willfully engage in a Scheme to Commit Health Care Fraud, in violation of Title 18, United States Code, Section 1347..

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT.

Continued on the attached sheet.

Handwritten signature of Tameka Williams

Complainant's signature

TAMEKA WILLIAMS, SA HHS-OIG

Printed name and title

Sworn to before me and signed in my presence.

Date: 06/12/2015

City and state: Miami, Florida

Handwritten signature of Steven M. Larimore

Certified to be true and correct copy of the document on file

Steven M. Larimore, Clerk

EDWIN G. TORRES, U.S. MAGISTRATE JUDGE

Southern District of Florida

By [Handwritten Signature] Deputy Clerk

Date 06-12-15

**AFFIDAVIT OF SPECIAL AGENT TAMEKA WILLIAMS
IN SUPPORT OF CRIMINAL COMPLAINT**

I, TAMEKA WILLIAMS, hereby swear and affirm as follows:

A. Introduction

1. I am a Special Agent with the Department of Health and Human Services, Office of Investigations (HHS-OIG) and have so been employed since August 2010. Currently, I am assigned to the Miami Regional Office of HHS-OIG. During my time in Miami, I have worked as part of the Medicare Fraud Strike Force in Miami, Florida. During my almost 5 years as a Special Agent HHS, I have been responsible for, and have had extensive experience in, the investigation of criminal activity and the violation of federal laws. I have investigated numerous matters relating to frauds against health care programs, including fraud committed against Medicare Part D in cases involving pharmacies, and have attended numerous health care fraud training programs.

2. This affidavit is submitted in support of a criminal complaint charging Indira MARTELL with committing health care fraud in violation of 18 U.S.C. § 1347.

3. The facts contained in this affidavit are based on my personal knowledge and observations as well as facts related to me by other agents, inspectors, and Strike Force members.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that MARTELL and her accomplices, known and unknown, executed a scheme and artifice to defraud Medicare in violation of 18 U.S.C. § 1347.

5. This affidavit does not contain all the facts of this investigation known to me or to other law enforcement personnel. Rather, it sets forth only those facts necessary to establish probable cause in support of a criminal complaint charging MARTELL with a violation of 18 U.S.C. § 1347.

B. The Medicare Program

6. The Medicare Program ("Medicare") is a federally funded program that provides free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare are governed by federal statutes and regulations. The United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services ("CMS"), oversees and administers Medicare. Individuals who receive benefits under Medicare are commonly referred to as Medicare "beneficiaries."

7. Medicare programs covering different types of benefits are separated into different program "parts." Part D of Medicare subsidizes the costs of prescription drugs for Medicare beneficiaries in the United States. It was enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and went into effect on January 1, 2006.

8. In order to receive Part D benefits, a beneficiary enrolls in a Medicare drug plan. Medicare drug plans are operated by private companies approved by Medicare. Those companies are often referred to as drug plan "sponsors." A beneficiary in a Medicare drug plan can fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

9. A pharmacy can participate in Part D by entering a retail network agreement with one or more Pharmacy Benefit Managers ("PBMs"). Each PBM acts on behalf of one or more Medicare drug plans. Through a plan's PBM, a pharmacy can join the plan's network. When a Part D beneficiary presents a prescription to a pharmacy, the pharmacy submits a claim to the PBM that represents the beneficiary's Medicare drug plan. The PBM then processes the claim on behalf of the Medicare drug plan, determining whether the pharmacy is entitled to payment for each claim and, if so, paying the pharmacy for the claims for the prescription drug event (*e.g.* the dispensing of

prescription drugs to a beneficiary), minus any co-pay to be paid by the Medicare beneficiary. The drug plan's sponsor reimburses the PBM for its payments to the pharmacy.

10. Medicare, through CMS, compensates the Medicare drug plan sponsors. Medicare pays the sponsors a monthly fee for each Medicare beneficiary of the sponsors' plans. Such payments are called capitation fees. The capitation fee is adjusted periodically based on various factors, including the beneficiary's medical conditions. In addition, in some cases where a sponsor's expenses for a beneficiary's prescription drugs exceed that beneficiary's capitation fee, Medicare reimburses the sponsor for a portion of those additional expenses.

11. Medicare, Medicare drug plan sponsors, and PBMs are "health care benefit program[s]." as defined by Title 18, United States Code, Section 24(b).

12. CVS/Caremark, Express Scripts, and Humana Insurance Co., are and were, among others, Medicare PBMs acting on behalf of drug plan sponsors that reimbursed Martell Pharmacy.

13. PBMs periodically audit pharmacies participating in the Part D program by confirming that pharmacies have sufficient prescription drug wholesaler invoices from licensed prescription drug wholesale distributors to support the Part D billing done by that pharmacy in a particular period.

14. The Medicare Drug Integrity Contractor (the "MEDIC"), a program integrity contractor for Medicare Part D, also conducts wholesaler invoice reconciliations for subject pharmacies by aggregating the invoices from all prescription drug wholesalers used by a particular pharmacy and comparing them to all of the Part D billing data for that pharmacy, which includes all PBMs that provided Part D reimbursement to that pharmacy. Such reconciliations compare a pharmacy's Part D dispensing and billing records maintained by CMS to the inventory of drugs purchased by that pharmacy during a particular time period.

C. Martell Medical Equipments, Inc. d/b/a Martell Pharmacy

15. Martell Medical Equipments Inc. d/b/a Martell Pharmacy ("Martell Pharmacy") was a Florida corporation that did business in Miami-Dade County purportedly providing prescription drugs to Medicare beneficiaries through Part D of the program.

16. Martell Pharmacy was originally incorporated in December 12, 2002 with the Florida Secretary of State Division of Corporations, with MARTELL as President and Registered Agent. On or about January 30, 2003, Martell Pharmacy amended its articles of incorporation to name MARTELL its sole officer, as President and Director. The Corporation converted to a Limited Liability Company on July 28, 2010, with MARTELL as its President and Director (a different Registered Agent was briefly used when Martell Pharmacy converted to an LLC). MARTELL is also currently the Registered Agent of Martell Pharmacy, and has been since 2011.

17. Martell Pharmacy's purported principal place of business, since on or about January 30, 2003, was 2121 W. Flagler Street, Miami, FL. 33135.

18. MARTELL is a resident of Miami-Dade County.

19. In or around January 2003, MARTELL signed and submitted a signature card for a Bank of America account held in the name of "Martell Medical Equipments, Inc.", account number ending in 1974, on which she listed himself as President of Martell Pharmacy. MARTELL had sole signatory authority over this account.

20. MARTELL's signature on the signature card for Martell Pharmacy's corporate bank account at Bank of America, referenced in paragraph 18 herein, is consistent with the signature on file for MARTELL with the State of Florida Driver and Vehicle Information Database, her signatures on checks written from this account, and her signature on the amended articles of

incorporation for Martell Pharmacy. filed with the Florida Secretary of State Division of Corporations.

D. Claims Data

21. Between in or around January 2007 and November 2014, Martell Pharmacy was paid more than \$11 million in reimbursements from Medicare Part D. Medicare Drug Plan Sponsors, through their PBMs, paid Martell Pharmacy these amounts, and the proceeds of this payment were deposited into Martell Pharmacy's corporate account at Bank of America referenced above at paragraph 18.

E. PBM Complaints

22. This case originated because in May 2012 CVS/Caremark informed the MEDIC that it believed that Martell Pharmacy had billed Part D for prescription drugs not rendered based on an invoice reconciliation that showed shortages for 30 out of 50 drugs reviewed and an approximate dollar loss of \$120,000.

23. In addition, Humana Insurance Co. informed the MEDIC on October 31, 2012, that Dr. D. had complained to Humana the Martell Pharmacy billed a Humana client for medication that Dr. D. stated he did not prescribe, resulting in an approximate dollar loss of \$7,500.

24. In addition, on November 2, 2012, Express Scripts informed the MEDIC that they had conducted a site visit and noted that no licensed pharmacist was on site and that all pharmacy staff was nevertheless filling prescriptions, which is a regulatory violation and felony in the State of Florida.

25. On February 22, 2013, the MEDIC referred this case for investigation of possible criminal violations to the HHS-OIG.

F. Interviews of Doctors

26. On October 15, 2013, Dr. S was interviewed. Dr. S and his staff reviewed lists of Part D claims from Martell Pharmacy for approximately 65 patients where Dr. S was listed as the prescribing physician. Dr. S and his staff confirmed that while he had provided prescriptions for most of these Martell Pharmacy patients, he had not prescribed medications for some of them. In addition, Dr. S and his staff noted that many times there were refill prescriptions that Dr. S had never authorized, and further that many of the patients Dr. S prescribed drugs to had, in their records, other prescriptions for drugs that Dr. S never prescribed.

27. On August 28, 2013 Dr. D was interviewed. Dr. D and his staff reviewed lists of Part D claims from Martell Pharmacy for 8 patients where Dr. D was listed as the prescribing physician. Dr. D and his staff confirmed that, many times, patients on this list were receiving refills that Dr. D never authorized.

G. Wholesaler Invoice Reconciliations Done By The Medic

28. In January 2015, the MEDIC conducted wholesaler invoice reconciliation for Martell Pharmacy covering the period from approximately January 2007 through October 2014. It reviewed 79 subject drugs and determined that Martell Pharmacy did not have sufficient wholesaler invoices to support Part D payments for 56 of them. The approximate dollar loss to Medicare Part D for this shortage was over \$2.5 million.

29. The MEDIC did a second invoice reconciliation in January 2015 for the same time period and prescription drugs which included reimbursements not only by Medicare Part D but also the Medicaid program.¹ This second reconciliation revealed a shortage for 74 of the 79

¹ The Medicaid Program is a joint federal and state program that provides healthcare benefits for low-income individuals and families. Although largely funded by the federal government,

drugs. The approximate dollar loss to Medicare Part D and Medicaid for this shortage was over \$4.9 million.

H. Conclusion

WHEREFORE, based upon the above information, I believe probable cause exists that, in the Southern District of Florida, in connection with the delivery of and payment for health care benefits, items, and services, MARTELL did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud health care benefit programs affecting commerce, as defined by 18 U.S.C. § 24(b), that is, Medicare, Medicare drug plan sponsors and their PBMs, and Medicaid, 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 programs, in that MARTELL and her accomplices submitted and caused the submission of false and fraudulent claims, representing that Martell Pharmacy provided pharmaceutical items and

services to Medicare and Medicaid beneficiaries pursuant to physicians' orders and prescriptions, in violation of 18 U.S.C. § 1347.

Medicaid is also funded by and administered through the particular state a Medicaid beneficiary lives in. Medicaid is a "health care benefit program" as defined by Title 18, United States Code, Section 24(b). The MEDIC is also able to audit and evaluate Medicaid claims on behalf of the Medicaid program.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Tameka Williams

TAMEKA WILLIAMS, SPECIAL AGENT
DEPARTMENT OF HEALTH AND HUMAN SERVICES

SWORN AND SUBSCRIBED TO BEFORE ME ON
THIS 12 DAY OF JUNE 2015, IN MIAMI, FL:

Edwin G. Torres

HON. EDWIN G. TORRES
UNITED STATES MAGISTRATE JUDGE

Certified to be - true and
correct copy of the document on file
Steven M. Larimore, Clerk,
U.S. District Court
Southern District of Florida
By *ASB* Deputy Clerk
Date 06-12-15