

**May 12, 2015**

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

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

**15-20346-CR-LENARD/GOODMAN**  
Case No.

18 U.S.C. § 1347

18 U.S.C. § 2

18 U.S.C. § 982

UNITED STATES OF AMERICA

vs.

TOMAS GARCIA TORRES  
a/k/a Tomas Garcia,

**Defendant.**

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**INDICTMENT**

The Grand Jury charges that:

**GENERAL ALLEGATIONS**

At all times material 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, 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 programs covering different types of benefits were separated into different program “parts.” Part D of Medicare subsidized 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.

3. In order to receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies approved by Medicare. Those companies were often referred to as drug plan “sponsors.” A beneficiary in a Medicare drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

4. A pharmacy could participate in Part D by entering a retail network agreement with one or more Pharmacy Benefit Managers (“PBMs”). Each PBM acted on behalf of one or more Medicare drug plans. Through a plan’s PBM, a pharmacy could join the plan’s network. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim to the PBM that represented the beneficiary’s Medicare drug plan. The plan or PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

5. A pharmacy could also submit claims to a Medicare drug plan to whose network the pharmacy did not belong. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

6. Medicare, through CMS, compensated the Medicare drug plan sponsors. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors’ plans. Such payments were called capitation fees. The capitation fee was 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 exceeded that beneficiary's capitation fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

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

**Medicare Drug Plan Sponsors**

8. Blue Cross and Blue Shield of Florida, Inc. ("Blue Cross"), United Health Group, Inc. ("United"), Aegon N.V. ("Aegon"), Wellcare Health Plans, Inc. ("Wellcare") were, among others, Medicare drug plan sponsors.

**San Nicolas Pharmacy Corporation**

9. San Nicolas Pharmacy Corporation ("San Nicolas") was a Florida corporation, incorporated on or about February 4, 2013, that did business in Miami-Dade County purportedly providing prescription drugs to Medicare beneficiaries.

**The Defendant**

10. Defendant **TOMAS GARCIA TORRES a/k/a Tomas Garcia**, a resident of Miami-Dade County, was the sole shareholder, director and registered agent of San Nicolas.

**COUNTS 1-7**  
**Health Care Fraud**  
**(18 U.S.C. § 1347)**

1. Paragraphs 1 through 10 of the General Allegations section of this Indictment are realleged and incorporated by reference as though fully set forth herein.

2. Beginning in or around November 2013, and continuing through in or around February 2014, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**TOMAS GARCIA TORRES a/k/a Tomas Garcia,**

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 health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, Blue Cross, United, Aegon and Wellcare, 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.

**Purpose of the Scheme and Artifice**

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

**The Scheme and Artifice**

4. **TOMAS GARCIA TORRES** submitted, and caused San Nicolas to submit, claims that falsely and fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and had been provided by San Nicolas to Medicare beneficiaries.

5. As a result of such false and fraudulent claims, Medicare prescription drug plan sponsors made over payments funded by Medicare to San Nicolas's corporate bank accounts, in the amount of at least approximately \$1,680,127.

6. **TOMAS GARCIA TORRES** used the proceeds from the false and fraudulent Medicare Part D claims for his own use and the use of others, and to further the fraud.

**Acts in Execution or Attempted Execution of the Scheme and Artifice**

7. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, **TOMAS GARCIA TORRES**, 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 health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, Blue Cross, United, Aegon and Wellcare, 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 the defendant submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that San Nicolas provided pharmaceutical items and services to Medicare beneficiaries pursuant to physicians' orders and prescriptions:

Count	Medicare Beneficiary	Approx. Claim Submission Date	Medicare Claim Number	Item Claimed; Approx. Amount Claimed	Medicare Drug Plan Sponsor
1	Individual A	01/19/2014	140133927630029999	Abilify 30MG; \$1,116	Blue Cross/ Blue Shield
2	Individual B	01/22/2014	193650704.- 1000018292792791	Calcipotrien Cream .005%; \$650	Wellcare
3	Individual B	01/31/2014	140063516260015999	Advair Diskus; \$151	Wellcare
4	Individual B	01/31/2014	140063512738019999	Celebrex 200MG; \$200	Wellcare

Count	Medicare Beneficiary	Approx. Claim Submission Date	Medicare Claim Number	Item Claimed; Approx. Amount Claimed	Medicare Drug Plan Sponsor
5	Individual C	03/06/2014	140582660917057999	Abilify 30MG; \$1,126	United
6	Individual C	03/06/2014	140582661220100999	Advair Diskus; \$291	United
7	Individual C	03/06/2014	140582659110014999	Calcipotrien Cream .005%; \$606	United

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

**FORFEITURE**  
**(18 U.S.C. § 982)**

1. The allegations contained in this Indictment are realleged 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, **TOMAS GARCIA TORRES**, has an interest.

2. Upon conviction of any violation of Title 18, United States Code, Section 1347, as alleged in Counts 1 through 7 of the Indictment, the defendant shall forfeit all of his right, title and interest to the United States of any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such violations, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property subject to forfeiture includes, but is not limited to, the sum of at least \$1,680,127.14 in United States currency, which is a sum of money equal in value to the gross proceeds traceable to the commission of the violation alleged in this Indictment, which the United States will seek as a forfeiture money judgment as part of the defendant's sentence.

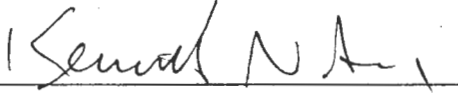
4. The property subject to forfeiture includes but is not limited to:


- a. all principal, deposits, interest, dividends and other amounts credited to JP Morgan Chase account number 522657217 in the name of San Nicolas;
- b. all principal, deposits, interest, dividends and other amounts credited to JP Morgan account number 133858950 in the name of **TOMAS GARCIA TORRES**;
- c. all principal, deposits, interest, dividends and other amounts credited to Wells Fargo Bank, N.A. account number 7225267652 in the name of **TOMAS GARCIA TORRES**;
- d. all principal, deposits, interest, dividends and other amounts credited to Wells Fargo Bank, N.A. account number 5087425772 in the name of **TOMAS GARCIA TORRES**; and
- e. all principal, deposits, interest, dividends and other amounts credited to Wells Fargo Bank, N.A. account number 6582779762 in the name of San Nicolas; and
- f. all principal, deposits, interest, dividends and other amounts credited to Wells Fargo Bank, N.A. account number 6582774250 in the name of San Nicolas.

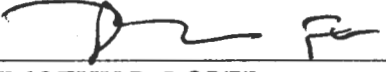
All pursuant to Title 18, United States Code, Section 982(a)(7); and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

A TRUE BILL,

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FOREPERSON

  
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WIFREDO A. FERRER  
UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF FLORIDA

  
\_\_\_\_\_  
GEJAA GOBENA  
DEPUTY CHIEF  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

  
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TIMOTHY P. LOPER  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE