

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. **16-20474** MIDDLEBROOKS

18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 371
18 U.S.C. § 2
18 U.S.C. § 982(a)(7)

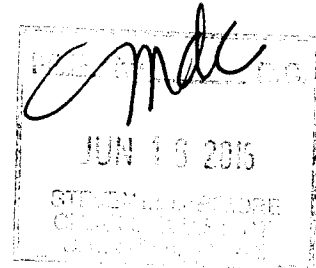
MAGISTRATE JUDGE
GARBER

UNITED STATES OF AMERICA

vs.

ANDY ARMAS,
a/k/a "Andy Armas Nunez,"

Defendant.



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 (the “Medicare Part D Program”) 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 either directly to the plan or 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 fees were 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) and Federal health care program[s], as defined by Title 42, United States Code, Section 1320a-7b(f).

Medicare Drug Plan Sponsor

8. United HealthCare Insurance Company ("United") was a Medicare drug plan sponsor.

The Defendant, Related Companies and A Co-Conspirator

9. Millenium Pharmacy, Inc. ("Millenium") was incorporated on or about December 3, 2010, with its principal place of business in Miami-Dade County, in the Southern District of Florida. Millenium was a pharmacy that purportedly provided prescription drugs to Medicare beneficiaries.

10. Marlins Pharmacy, Corp. ("Marlins Corp.") was incorporated on or about August, 2012, with its principal place of business in Miami-Dade County, in the Southern District of Florida. Marlins Corp. was a pharmacy that purportedly provided prescription drugs to Medicare beneficiaries.

11. Defendant **ANDY ARMAS, a/k/a "Andy Armas Nunez,"** a resident of Miami-Dade County, was the owner, operator, and president of Millenium and Marlins Corp.

12. Co-conspirator A, a resident of Miami-Dade County, was a physician licensed to practice medicine in the State of Florida.

COUNT 1
Conspiracy to Commit Health Care Fraud and Wire Fraud
(18 U.S.C. § 1349)

1. Paragraphs 1 through 12 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around December of 2010, and continuing through in or around March of 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ANDY ARMAS,
a/k/a “Andy Armas Nunez,”

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with others known and unknown to the Grand Jury, including Co-conspirator A, to commit offenses against the United States, that is:

a. to knowingly and willfully 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 Medicare drug plan sponsors, 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 connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347; and

b. to knowingly and with the intent to defraud, devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations and promises were false and fraudulent when made, and for the purpose of executing the scheme and artifice, did knowingly transmit and cause to be transmitted, by means of wire communication in

interstate commerce, certain writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

3. It was a purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves 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 their personal use and benefit, the use and benefit of others, and to further the fraud.

MANNER AND MEANS OF THE CONSPIRACY

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

4. **ANDY ARMAS** offered and paid kickbacks and bribes to individuals, including Co-conspirator A, in return for writing prescriptions and referring Medicare beneficiaries to serve as patients at Millenium and Marlins Corp.

5. **ANDY ARMAS** and his co-conspirators submitted and caused the submission of claims via interstate wires, that falsely and fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, prescribed by a doctor, and had been provided to Medicare beneficiaries by Millenium and Marlins Corp.

6. As a result of such false and fraudulent claims, Medicare and Medicare drug plan sponsors, through their PBMs, made over-payments funded by the Medicare Part D Program to Millenium and Marlins Corp. in the approximate amount of \$5,768,390.

7. **ANDY ARMAS** and his co-conspirators, including Co-conspirator A, used the proceeds from the false and fraudulent Medicare Part D claims for their own use, the use of others, and to further the fraud.

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

COUNTS 2-5
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 9, and 11 through 12 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around December of 2010, and continuing through in or around March of 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ANDY ARMAS,
a/k/a “Andy Armas Nunez,”

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 a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare and Medicare drug plan sponsors, 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 and his accomplices to unlawfully enrich themselves 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 their personal use and benefit, the use and benefit of others, and to further the fraud.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 7 of the Manner and Means section of Count 1 of this Indictment are re-alleged 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 set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant, **ANDY ARMAS**, 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 and Medicare drug plan sponsors, 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 Millenium 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
2	A.L.	04/01/2013	130914824614098997	Celebrex; \$316	United

Count	Medicare Beneficiary	Approx. Claim Submission Date	Medicare Claim Number	Item Claimed; Approx. Amount Claimed	Medicare Drug Plan Sponsor
3	A.L.	05/02/2013	131224789584090999	Celebrex; \$316	United
4	A.L.	05/02/2013	131224788833082999	Crestor; \$166	United
5	A.L.	02/25/2014	140564843239073989	Lidoderm; \$245	United

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

COUNT 6

**Conspiracy to Defraud the United States and Pay Health Care Kickbacks
(18 U.S.C. § 371)**

1. Paragraphs 1 through 12 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.
2. From in or around December of 2010, and continuing through in or around March of 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

**ANDY ARMAS,
a/k/a “Andy Armas Nunez,”**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with others known and unknown to the Grand Jury, including Co-conspirator A, to commit certain offenses against the United States, that is:

- a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of the Medicare program, in violation of Title 18, United States Code, Section 371; and to commit certain offenses against the United States, that is:

- b. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part by a Federal health care program, that is, Medicare and Medicare drug plan sponsors; and
- c. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(B), by knowingly and willfully offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part by a Federal health care program, that is, Medicare and Medicare drug plan sponsors.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by: (1) offering and paying kickbacks and bribes in return for writing prescriptions and referring Medicare beneficiaries to serve as patients at Millenium and Marlins Corp.; and (2) submitting and causing the submission of claims to Medicare and Medicare drug plan sponsors for medical items and services, primarily prescription drugs, that Millenium and Marlins Corp. purportedly provided to those beneficiaries.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

4. **ANDY ARMAS** offered and paid kickbacks and bribes to individuals, including Co-conspirator A, in return for writing prescriptions and referring Medicare beneficiaries to serve as patients at Millenium and Marlins Corp.

5. Co-conspirator A solicited and received kickbacks and bribes in return for writing prescriptions and referring Medicare beneficiaries to serve as patients at Millenium.

6. **ANDY ARMAS** and his co-conspirators, caused Millenium and Marlins Corp. to submit claims to Medicare and Medicare drug plan sponsors for medical items and services, primarily prescription drugs, purportedly provided to Medicare beneficiaries by Millenium and Marlins Corp.

7. Medicare and Medicare drug plan sponsors paid Millenium and Marlins Corp. based upon claims for medical items and services purportedly provided to Medicare beneficiaries by Millenium and Marlins Corp.

OVERT ACTS

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one co-conspirator committed and caused to be committed, in the Southern District of Florida, at least one of the following overt acts, among others:

1. On or about December 3, 2010, **ANDY ARMAS**, caused corporate paperwork to be filed with the Florida Department of State for the purpose of incorporating Millenium.

2. On or about January 10, 2011, **ANDY ARMAS**, opened a corporate bank account at Bank of America for Millenium, ending in x8001 for the purposes of receiving Medicare funds.

3. On or about July 25, 2011, **ANDY ARMAS**, as the owner and President of Millenium, signed a retail network agreement with Express Scripts, Inc. ("ESI"), a PBM, in order to bill the Medicare Part D program.

4. On or about August 5, 2011, **ANDY ARMAS**, as the owner and President of Millenium, signed a retail network agreement with Caremark, L.L.C. (“Caremark”), a PBM, in order to bill the Medicare Part D program.

5. On or about September 12, 2012, **ANDY ARMAS**, caused corporate paperwork to be filed with the Florida Department of State listing himself as the President, Director, and Registered Agent of Marlins Corp.

6. On or about January 30, 2014, **ANDY ARMAS**, as the owner and President of Marlins, signed a retail network agreement with ESI, a PBM, in order to bill the Medicare Part D program.

7. On or about August 26, 2014, **ANDY ARMAS**, as the owner of Millenium, cashed a check from ESI in the approximate amount of \$21,894, with Pro Checks Online, LLC, a check cashing store.

8. On or about March 14, 2015, **ANDY ARMAS**, as the owner of Millenium, cashed a check from Caremark in the approximate amount of \$39,495, with Pro Checks Online, LLC, a check cashing store.

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

FORFEITURE
(18 U.S.C. § 982(a)(7))

1. The allegations contained in 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, **ANDY ARMAS**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Sections 371, 1347, or 1349, as alleged in this Indictment, the defendant shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable

to the commission of the offense pursuant to Title 18, United States Code, Section 982(a)(7).

3. Upon conviction of a conspiracy to violate Title 18, United States Code, Section 1343, as alleged in this Indictment, the defendant shall forfeit to the United States any property, real or personal, which constitutes or is derived from proceeds traceable to the commission of the offense pursuant to Title 18, United States Code, Section 981(a)(1)(C).

4. The property subject to forfeiture includes a money judgment in the amount of approximately \$5,768,390 in United States currency, which sum represents the value of the gross proceeds traceable to the commission of the violations alleged in this Indictment.

5. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States of America to seek forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p).

All pursuant to Title 18, United States Code, Sections 982(a)(7) and 981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461(c), and the procedures set forth in Title 21, United States Code, Section 853.

A TRUE BILL,

FOREPERSON

Wifredo Ferrer

WIFREDO A. FERRER
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

Gejaa Gobena

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