

EAG:SMH  
F.#2011R01808

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

I N D I C T M E N T

- against -

Cr. No. \_\_\_\_\_  
(T. 18, U.S.C., §§ 982(a)(7),  
982(b), 1347, 2 and 3551 et  
seq.)

EMMA POROGER, D.O.,

Defendant.

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THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless otherwise indicated:

I. Background

A. The Medicare Program

1. The Medicare program ("Medicare") was a federal health care program providing benefits to individuals aged 65 and over and to certain disabled persons. Medicare was administered by the Centers for Medicare and Medicaid Services, a federal agency under the United States Department of Health and Human Services. An individual who received benefits under Medicare was referred to as a Medicare "beneficiary." The physician who provided a service to a beneficiary or ordered that a service be provided to a beneficiary was referred to as a "rendering physician."

2. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b).

3. Medicare provided coverage under several components, including hospital insurance ("Part A") and medical insurance ("Part B"). Medicare Part B covered the costs of physicians' services and outpatient care, including diagnostic tests. Medicare Part B covered these costs only if, among other requirements, they were medically necessary and ordered by a physician.

4. A medical provider certified to participate in Medicare, whether a clinic or an individual, was assigned a provider identification number ("PIN") for billing purposes. A medical provider rendering a service was required to use its assigned PIN when submitting a claim for reimbursement to Medicare.

5. Each medical provider was permitted to submit claims to Medicare only for services actually rendered and was required to maintain patient records verifying the provision of services.

6. To receive reimbursement for a covered service from Medicare, a medical provider was required to submit a claim, either electronically or in writing. The claim had to include information identifying the medical provider, the rendering physician, the patient and the services rendered. By submitting

the claim, the provider certified, among other things, that the services were rendered to the patient and were medically necessary.

7. Medicare provider claims included "billing codes," which were numbers that referred to specific descriptions of medical services provided to beneficiaries. Medicare reimbursed medical providers a set fee based on the billing codes.

B. The Defendant and Her Medical Clinic

8. North Austin Medical, PC ("North Austin") was a New York State professional corporation doing business at 68-60 Austin Street, Suite 209, Forest Hills, New York. North Austin was certified to participate in Medicare. It purported to provide, among other things, IV vitamin infusion therapy, sleep studies, nerve conduction tests and duplex scans to Medicare beneficiaries.

9. The defendant EMMA POROGER, D.O., was a Doctor of Osteopathy and the Medical Director and Chief Executive Officer of North Austin.

II. The Fraudulent Scheme

10. From approximately October 2006 to March 2010, the defendant EMMA POROGER, D.O., together with others, executed a fraudulent scheme in which North Austin submitted false and fraudulent claims for medical services that were never provided to beneficiaries and were not medically necessary.

11. As part of the fraudulent scheme, the defendant EMMA POROGER, D.O., repeatedly prescribed medically unnecessary services and tests, including IV vitamin infusion therapy, sleep studies, nerve conduction tests and duplex scans, for Medicare beneficiaries at North Austin. Through North Austin, the defendant and others then submitted, and caused the submission of, false and fraudulent claims to Medicare seeking reimbursement for these medically unnecessary services and tests.

12. As a further part of the fraudulent scheme, the defendant EMMA POROGER, D.O., and others submitted, and caused the submission of, false and fraudulent claims to Medicare seeking reimbursement for services and tests that were never provided.

13. From approximately November 2006 to March 2009, the defendant EMMA POROGER, D.O., and others caused North Austin to submit approximately \$13 million in claims to Medicare for services that were prescribed and/or rendered solely by the defendant EMMA POROGER, D.O. Medicare paid approximately \$4.4 million for these claims. Medicare deposited all such reimbursements into North Austin's bank account, established by the defendant.

14. The defendant EMMA POROGER, D.O., then dispersed monies from the North Austin bank account she controlled to herself and others.

COUNTS ONE THROUGH FOURTEEN  
(Health Care Fraud)

15. The allegations contained in paragraphs 1 through 14 are realleged and incorporated as if fully set forth in this paragraph.

16. On or about the dates identified below, within the Eastern District of New York and elsewhere, the defendant EMMA POROGER, D.O., together with others, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud 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, Medicare, in connection with the delivery of and payment for health care benefits, items and services, as indicated below:

<u>Count</u>	<u>Claim Number</u>	<u>Medicare Beneficiary</u>	<u>Approx. Claim Date</u>	<u>Description of Services (Billing Code)</u>	<u>Approx. Amount Billed</u>
ONE	43110718 4074290	La. B.	6/7/2007	EDTA treatment (J3520)	\$50
TWO	43110720 0060160	Y.O.	6/18/2007	EDTA treatment (J3520)	\$50
THREE	43110730 5078890	R.I.	10/17/2007	EDTA treatment (J3520)	\$50
FOUR	43110733 1068430	Y.R.	11/6/2007	EDTA treatment (J3520)	\$50

<u>Count</u>	<u>Claim Number</u>	<u>Medicare Beneficiary</u>	<u>Approx. Claim Date</u>	<u>Description of Services (Billing Code)</u>	<u>Approx. Amount Billed</u>
FIVE	43110829 6074180	Li. B.	10/1/2008	EDTA treatment (J3520)	\$50
SIX	43110803 9092420	Y.O.	1/26/2008	Sleep Study (95810)	\$1,500
SEVEN	43110813 4132920	Li. B.	4/28/2008	Sleep Study (95810)	\$1,500
EIGHT	43110813 4132950	La. B.	4/28/2008	Sleep Study (95810)	\$1,500
NINE	43110729 0054550	Y.R.	9/27/2007	EEG for Epileptic (95957)	\$500
TEN	43110803 9092420	Y.O.	1/26/2008	EEG for Epileptic (95957)	\$500
ELEVEN	43110813 4132920	Li. B.	4/28/2008	EEG for Epileptic (95957)	\$500
TWELVE	43110813 4132410	L.K.	5/1/2008	EEG for Epileptic (95957)	\$500
THIRTEEN	43110722 7071700	La. B.	7/16/2007	Intravenous Infusion (90765)	\$150
FOURTEEN	43110805 2064690	Li. B.	1/22/2008	Intravenous Infusion (90765)	\$150

(Title 18, United States Code, Sections 1347, 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

17. The United States hereby gives notice to the defendant that upon conviction of the offenses charged in the Indictment, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982(a)(7), which requires any person convicted of such offenses to forfeit any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses, including, but not limited to, a sum of money in United States currency, in an amount to be determined at trial.

18. If any of the above-described forfeitable property, 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, pursuant to Title 18, United States Code, Section 982(b), to seek forfeiture of any

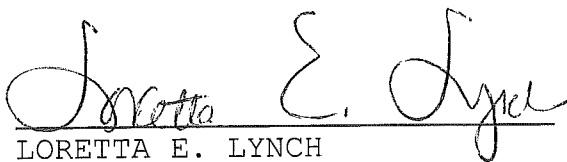
other property of the defendant up to the value of the  
forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Sections 982(a)(7) and  
982(b))

A TRUE BILL

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FOREPERSON



LORETTA E. LYNCH  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

Hank Bond Walter by SUH w/ permission

HANK BOND WALTER  
DEPUTY CHIEF  
CRIMINAL DIVISION, FRAUD SECTION  
UNITED STATES DEPARTMENT OF JUSTICE