

APR 13, 2007

CLARENCE MADDOX
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S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
07-20256-CR-LENARD/TORRES
Case No.

18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 982
18 U.S.C. § 2

UNITED STATES OF AMERICA

vs.

EDUARDO MORENO and
HARLEY S. FERNANDEZ,
a/k/a "Harley Santana,"

Defendants.

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

The Medicare Program

1. The Medicare Program ("Medicare") was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare are prescribed by statute and by federal regulations under the auspices of the United States Department of Health and Human Services ("HHS"), through its agency, the Centers for Medicare and Medicaid Services ("CMS"). Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."

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

3. Part B of the Medicare Program was a medical insurance program that covered, among other things, certain physician and outpatient services, and other health care benefits, items, and services, including durable medical equipment (“DME”), that were medically necessary and ordered by licensed medical doctors or other qualified health care providers. DME is equipment that is designed for repeated use and for a medical purpose, such as prosthetic limbs, back braces, knee braces, and wheelchairs.

4. For Florida beneficiaries, Medicare Part B’s insurance concerning DME and related health care benefits, items, and services, was administered by Palmetto Government Benefits Administrators (“Palmetto GBA”), pursuant to a contract with HHS. Among Palmetto GBA’s responsibilities, it received, adjudicated, and paid the claims of authorized DME suppliers that were seeking reimbursement for the cost of DME and other health care benefits, items, or services supplied or provided to Medicare beneficiaries.

Medicare Billing Procedures

5. A DME company that sought to participate in Medicare Part B and bill Medicare for the cost of DME and related benefits, items, and services was required to apply for and receive a “supplier number.” The supplier number allowed a DME company to submit bills, known as “claims,” to Medicare to obtain reimbursement for the cost of DME and related health care benefits, items, and services that a DME company had supplied to beneficiaries.

6. To receive payment from Medicare, a DME company, using its supplier number, would submit a health insurance claim form, known as a CMS-1500. Medicare permitted DME companies to submit CMS-1500 electronically or by way of paper claim forms. The CMS-1500 required DME companies to provide certain important information, including:

- a. the Medicare beneficiary's name;
- b. the Medicare beneficiary's identification number;
- c. the name and identification number of the doctor who ordered the item or service that was the subject of the claim;
- d. the health care benefits, items, or services that were supplied or provided to the beneficiary;
- e. the billing codes for these benefits, items, or services; and
- f. the date upon which the benefits, items, or services were provided.

7. Medicare, through Palmetto GBA, generally would pay a substantial portion of the cost of the DME or related health care benefits, items, and services that were medically necessary and ordered by licensed doctors or other licensed, qualified health care providers.

8. Payments under Medicare Part B were often made directly to the DME company rather than to the patient/beneficiary. For this to occur, the beneficiary would assign the right of payment to the DME company or other health care providers. Once such an assignment took place, the DME company would assume the responsibility for submitting claims to, and receiving payments from, Medicare.

The Defendants and Related Entities

9. **EDUARDO MORENO** and **HARLEY S. FERNANDEZ** were Miami-Dade County residents.

10. Brenda Medical Supply, Inc. (hereinafter "Brenda Medical"), and Faster Medical Equipment, Inc. (hereinafter "Faster Medical") were purportedly DME companies located in Miami-Dade County. In or around October 2006, at the direction of **EDUARDO MORENO, HARLEY S. FERNANDEZ** became the "straw" owner, that is, the nominal owner, of both companies, which

subsequently billed Medicare for health care benefits, items, and services supposedly provided or rendered to patients.

COUNT 1
(Health Care Fraud Conspiracy: 18 U.S.C. § 1349)

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. From in or around October 2006, and continuing through in or around November 2006, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

EDUARDO MORENO
and
HARLEY S. FERNANDEZ,
a/k/a “Harley Santana,”

did willfully, that is, with the specific intent to further the unlawful purpose, and knowingly combine, conspire, confederate, and agree with each other and with others, known and unknown to the Grand Jury, to commit an offense against the United States, that is: to violate Title 18, United States Code, Section 1347, by knowingly and willfully executing a scheme and artifice to defraud Medicare, a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), 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.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for **EDUARDO MORENO, HARLEY S. FERNANDEZ** and their co-conspirators to unlawfully enrich themselves by submitting, and causing

the submission, of false and fraudulent claims to Medicare for the cost of various health care benefits, items, and services.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

4. The ownership of Brenda Medical and Faster Medical was placed in the name of a nominee, **HARLEY S. FERNANDEZ**, in order to conceal the fact that the companies were being controlled by **EDUARDO MORENO**.

5. **HARLEY S. FERNANDEZ** obtained and maintained signature authority for Brenda Medical's corporate account, Washington Mutual Bank account number xxxxxxx577.

6. **HARLEY S. FERNANDEZ** obtained and maintained signature authority for Faster Medical's corporate account, Washington Mutual Bank account number xxxxxxx653.

7. The conspirators caused Brenda Medical and Faster Medical to submit approximately \$281,906 of Medicare claims that falsely and fraudulently represented that various health care benefits, items, and services were medically necessary and had been provided to Medicare beneficiaries.

8. As a result of the submission of such false and fraudulent claims, from in or about October 2006 through in or about November 2006, the conspirators caused Medicare to make payments to Brenda Medical in the amount of \$5,040.48, and to Faster Medical in the amount of \$2,834.75, and such amounts were deposited into Brenda Medical and Faster Medical's corporate bank accounts.

9. **EDUARDO MORENO** transferred and disbursed, and caused to be transferred and

disbursed, monies from Brenda Medical's corporate account to himself, and to pay for his personal expenses.

10. **EDUARDO MORENO** transferred and disbursed, and caused to be transferred and disbursed, monies from Faster Medical's corporate account to himself.

11. **HARLEY S. FERNANDEZ** transferred and disbursed, and caused to be transferred and disbursed, monies from Brenda Medical and Faster Medical's corporate accounts to himself.

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

COUNTS 2-6
(Health Care Fraud: 18 U.S.C. §§ 1347 and 2)

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. From in or around October 2006, and continuing through in or around November 2006, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

EDUARDO MORENO
and
HARLEY S. FERNANDEZ,
a/k/a "Harley Santana,"

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 Medicare, a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), 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, that is: the defendant submitted, and caused the submission of, false and fraudulent claims to Medicare for the cost of various items of DME and related health care benefits, items, and services.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme for **EDUARDO MORENO, HARLEY S. FERNANDEZ** and others to unlawfully enrich themselves by submitting, and causing the submission, of false and fraudulent claims to Medicare for the cost of various health care benefits, items, and services.

MANNER AND MEANS OF THE SCHEME AND ARTIFICE

4. Paragraphs 4 through 11 of the Manner and Means section of Count 1 of this Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the manner and means of the scheme and artifice.

EXECUTIONS OF THE SCHEME AND ARTIFICE

On or about the dates specified as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, **EDUARDO MORENO** and **HARLEY S. FERNANDEZ**, 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 a health care benefit program, that is 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 said health care benefit program:

Count	Patient	Approximate Date of Claim	Medicare Claim Number	Item Claimed; Approximate Amount Billed	Company
2	E.H.	10/22/06	106305703524000	Non-powered pressure mattress; \$706.00	Brenda Medical
3	A.R.	11/09/06	106313713426000	Powered pressure-reducing air mattress; \$868.85	Brenda Medical
4	E.D.	11/20/06	106328715978000	Powered pressure-reducing air mattress; \$868.85	Brenda Medical
5	J.S.	11/20/06	106328716031000	Powered pressure-reducing air mattress; \$868.85	Faster Medical
6	J.D.	11/20/06	106328716056000	Powered pressure-reducing air mattress; \$868.85	Faster Medical

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

FORFEITURE

(18 U.S.C. § 982)

1. The allegations contained in Counts 1 through 6 of 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 defendants, **EDUARDO MORENO** and **HARLEY S. FERNANDEZ**, have an interest pursuant to the provisions of Title 18, United States

Code, Section 982.

2. Pursuant to Title 18, United States Code, Section 982, upon conviction of **EDUARDO MORENO** and **HARLEY S. FERNANDEZ** for any of the offenses charged in this Indictment, the defendants 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; or any property, real or personal, which was involved in the offense or any property traceable to such property. Such forfeiture shall include, but not be limited to:

- (a) a money judgment in the amount of \$7,875.23, which represents the gross proceeds of the fraud; and
- (b) all funds on deposit and interest accrued thereto at Washington Mutual Bank account number xxxxxxx577, in the name of Brenda Medical.
- (c) all funds on deposit and interest accrued thereto at Washington Mutual Bank account number xxxxxxx653, in the name of Faster Medical.
- (d) one (1) Rolls-Royce Phantom vehicle, 2004 model year, vehicle identification number 5CA1568474UX07370.
- (e) one single family residence located at 15060 SW 33rd Terrace, Miami Florida, 33185-4913, Folio Number 30-4916-017-0930.

3. If the property described above as being subject to forfeiture, as a result of any act or omission of **EDUARDO MORENO** or **HARLEY S. FERNANDEZ**,

- (a) cannot be located upon the exercise of due diligence;

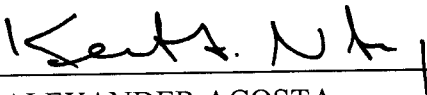
- (b) has been transferred or sold to or deposited with a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as made applicable through Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of **EDUARDO MORENO** and **HARLEY S. FERNANDEZ** up to the value of the above forfeitable property.

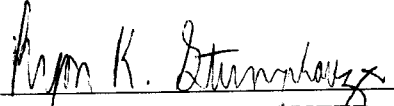
All pursuant to Title 18, United States Code, Section 982 and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b)(1).

A TRUE BILL

FOREPERSON



R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY



RYAN K. STUMPHÄUZER
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

EDUARDO MORENO and
HARLEY S. FERNANDEZ,
Defendants. /

Superseding Case Information:

Court Division: (Select One)
x Miami ___ Key West
___ FTL ___ WPB ___ FTP

New Defendant(s) Yes ___ No ___
Number of New Defendants ___
Total number of counts ___

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) Yes ___
List language and/or dialect Spanish

4. This case will take 5 days for the parties to try.

5. Please check appropriate category and type of offense listed below:
(Check only one) (Check only one)

I	0 to 5 days	5	Petty	___
II	6 to 10 days	___	Minor	___
III	11 to 20 days	___	Misdem.	___
IV	21 to 60 days	___	Felony	x
V	61 days and over	___		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:
Judge: _____ Case No. _____

(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) Yes

If yes:
Magistrate Case No. 07-02416-JJO; 07-02413-JJO

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of 4/03/07 (Fernandez), 4/6/06 (Moreno)

Defendant(s) in state custody as of _____

Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the U.S. Attorney's Office prior to April 1, 2003? ___ Yes x ___ No

8. Does this case originate from a matter pending in the U. S. Attorney's Office prior to April 1, 1999? ___ Yes x ___ No
If yes, was it pending in the Central Region? ___ Yes ___ No

9. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? ___ Yes No x

10. Does this case originate from a matter pending in the Narcotics Section (Miami) prior to May 18, 2003? ___ Yes x ___ No

Ryan K. Stumphauzer
RYAN K. STUMPHAUZER
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No. 0012176

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: EDUARDO MORENO

Case No: _____

Count #: 1

Conspiracy to Commit Health Care Fraud

Title 18, United States Code, Section 1349

***Max. Penalty:** Ten years' imprisonment

Counts #: 2 - 6

Health Care Fraud

Title 18, United States Code, Section 1347

***Max. Penalty:** Ten years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: HARLEY S. FERNANDEZ

Case No: _____

Count #: 1

Conspiracy to Commit Health Care Fraud

Title 18, United States Code, Section 1349

***Max. Penalty:** Ten years' imprisonment

Counts #: 2 - 6

Health Care Fraud

Title 18, United States Code, Section 1347

***Max. Penalty:** Ten years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**