

FILED IN OPEN COURT
U.S.D.C. Atlanta

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FEB 20 2007

JAMES N. HATTEN, Clerk
By *pmw* Deputy Clerk

UNITED STATES OF AMERICA :
 :
 v. :
 :
 WILLIAM STEARNS :
 STEVEN LEVINE :
 :
 THE GRAND JURY CHARGES THAT :

CRIMINAL INDICTMENT

NO. **1:07-CR-0621**

COUNTS ONE THROUGH ELEVEN
(Health Care Fraud Scheme Relating To VAX-D,
Against Both Defendants)

1. From in or about April 2003 through in or about December 2004, in the Northern District of Georgia and elsewhere, defendants WILLIAM STEARNS and STEVEN LEVINE, aided and abetted by others known and unknown to the grand jury, knowingly and willfully executed and attempted to execute a scheme and artifice to defraud Blue Cross and Blue Shield of Georgia, Inc. (hereinafter "BCBS-Ga"), a health care benefit program as defined in Title 18, United States Code, Section 24(b), and to obtain, by means of false and fraudulent pretenses and representations, monies and property owned by and under the custody and control of BCBS-Ga, in connection with the delivery of and payment for health care benefits, items and services, to wit, a procedure known as Vertebral Axial Decompression ("VAX-D"), as set forth below.

BACKGROUND OF THE SCHEME

2. At all times relevant to this Indictment:

a. Defendant WILLIAM STEARNS was a chiropractor licensed to practice in the State of Georgia and who operated a back pain clinic in Smyrna, Georgia.

b. Defendant STEVEN LEVINE was a chiropractor licensed to practice in the State of Georgia and who operated a back pain clinic in Forest Park, Georgia along with Partner A.

c. In 2003, Defendant STEARNS introduced a procedure known as Vertebral Axial Decompression ("VAX-D") at his Smyrna clinic, with the assistance of and in association with Defendant LEVINE. Defendant LEVINE had previously performed VAX-D at his Forest Park clinic.

d. In 2004, Defendants STEARNS and LEVINE, along with Partner A, formally combined their clinics into Defendant STEARNS's existing business, Comprehensive Care Management Group ("CCMG"). CCMG included the Forest Park clinic and the Smyrna clinic. CCMG also acquired another clinic in Chamblee, Georgia in 2004. Defendants STEARNS, LEVINE and Partner A maintained an equal one-third ownership interest in CCMG, and split the profits of CCMG accordingly.

The Procedures Performed at CCMG

e. A principal part of CCMG's business was the provision of VAX-D services to patients. VAX-D is a non-invasive, non-surgical

procedure used in the treatment of lower back pain. The VAX-D procedure was administered to patients with the use of a motorized therapeutic table, which alternates periods of traction with periods of rest.

f. The typical protocol for patients at CCMG would be to receive approximately 30 minutes of VAX-D treatment, followed by electrical stimulation by way of a device called "Hako-Med," and physical therapy. Typically, patients would have these sessions five days per week for a total of 20 sessions, with VAX-D and Hako-Med performed at each session.

Medical Insurance Billing

g. BCBS-Ga is a private insurance company providing medical insurance for various persons residing in the state of Georgia and elsewhere.

h. BCBS-Ga entered into contractual agreements, known as Preferred Physician Provider Agreements (hereinafter "provider agreements"), with providers of medical services who wished to register as participating physicians with BCBS-Ga. Pursuant to the terms of the provider agreement, participating physicians were reimbursed by BCBS-Ga for covered services administered to patients who were BCBS-Ga subscribers, i.e., who had health insurance policies with BCBS-Ga. Also pursuant to the terms of the provider agreement, participating physicians agreed to submit to BCBS-Ga, on standard claim forms, all information required to properly process

and adjudicate claims, including complete and accurate descriptions of the health care services performed.

i. The three CCMG Partners - Defendants STEARNS and LEVINE and Partner A - hired medical doctors who worked at the back pain clinics as employees. These medical doctors served as the participating physicians with BCBS-Ga.

j. Medical providers such as the medical directors and other medical doctors billed insurance companies for services using a standard form known as a HCFA 1500. These forms can be submitted either electronically or mailed in hard copy form. Among other things, the HCFA 1500 required the medical provider to identify the dates on which services were rendered, the specific services provided, identified by a Current Procedural Terminology (CPT) code or a Healthcare Common Procedure Coding System (HCPCS) code, and the identity of the medical provider performing the services.

k. The *Physicians' Current Procedural Terminology Manual* (the "CPT Manual"), a publication of the American Medical Association, contained a listing of descriptive terms and identifying codes for reporting and billing medical services and procedures, which had to be included in each claim to designate the particular service provided to a patient on a particular date. The CPT Manual provided a uniform language of medical services to allow reliable nationwide communication among medical providers, patients and insurers. It assigned numeric codes, commonly known as CPT codes,

for virtually all medical, surgical and diagnostic services, to be used in identifying for the insurance company the nature and level of the service being performed.

l. HCPCS is a standardized coding system that includes the CPT codes, and also includes additional codes to identify products, supplies, and services not included in the CPT codes. These additional codes were developed because insurers cover a variety of services, supplies and equipment that are not identified by CPT codes. These additional codes consist of a single alphabetical letter followed by four numeric digits. The HCPCS codes with the alphabetical letter "S" are used by private insurers to report drugs, services, and supplies for which there are no national codes, but for which codes are needed by the private sector to implement policies, programs, or claims processing. HCPCS codes, like CPT codes, identify for the insurance company the nature and level of the service being performed.

m. It is the responsibility of the medical provider submitting a HCFA 1500 to select the CPT code or HCPCS code that describes the procedure performed to the highest level of specificity.

n. In order to obtain reimbursement for medical services provided at CCMG clinics, employees placed codes for each service provided on a HCFA 1500, which was then submitted to the health care benefit programs such as BCBS-Ga, which relied on those CPT

codes when paying the claims. The HCFA 1500 was submitted to BCBS-Ga under the names of various physicians hired by defendants STEARNS and LEVINE and Partner A. CCMG staff prepared and submitted the bills under the direction of Defendants STEARNS and LEVINE. During most of the relevant period, the CCMG insurance department was located at Defendant STEARNS's office in Smyrna, Georgia.

o. BCBS-Ga contracted with Dependable Mail Service ("DMS"), which handled the bulk mailing of all checks for payment of claims submitted by medical providers to BCBS-Ga. All BCBS-Ga checks for payment of claims were issued in Columbus, Georgia and transported by DMS to Atlanta, Georgia, and were mailed by DMS from its Atlanta, Georgia mail distribution center to the medical providers. Hence, all checks for claims based on HCFA 1500 forms submitted by CCMG to BCBS-Ga were mailed to CCMG from Atlanta, Georgia.

Coding For VAX-D

p. BCBS-Ga did not provide coverage or reimburse participating physicians for procedures that it deemed "investigational/not medically necessary." BCBS-Ga medical policy 2.07.05, made available to medical providers and the public via an internet website, stated that BCBS-Ga considered the VAX-D procedure investigational/not medically necessary. This policy has been in place and has been publicized by BCBS-Ga during the entire relevant period, and for several years previously.

q. The HCPCS code assigned to the VAX-D procedure was S9090 - Vertebral Axial Decompression, per session. BCBS-Ga did not reimburse participating physicians on the basis of HCFA 1500 forms that identified S9090 as the procedure that was performed.

r. CPT code 64722 is a surgical code, found in the "Surgery/Nervous system" section of the CPT Manual, and applies to decompression of unspecified nerves. The AMA has specifically instructed against using this code for noninvasive traction-type therapies such as VAX-D. The AMA has issued guidance stating that the proper CPT code for noninvasive decompression therapies such as VAX-D is the code for "traction," 97012.

DESCRIPTION OF THE SCHEME

3. It was part of and in furtherance of the scheme to defraud that the Defendants WILLIAM STEARNS and STEVEN LEVINE, along with Partner A, would seek and obtain reimbursement from BCBS-Ga for providing VAX-D services, even though BCBS-Ga did not cover VAX-D, by submitting false and misleading bills and taking other steps to misrepresent to BCBS-Ga that CCMG was performing VAX-D, as follows:

a. The Defendants WILLIAM STEARNS and STEVEN LEVINE, along with Partner A, caused CCMG to submit numerous HCFA 1500 forms to BCBS-Ga seeking reimbursement for performing VAX-D procedures. The Defendants used CPT code 64722 to identify the procedure being billed. The Defendants submitted these bills knowing that 64722 was not the appropriate code for VAX-D. CCMG did not perform any

surgical or invasive decompression procedures.

b. Indeed, in early 2004, the Defendants, along with Partner A, specifically discussed whether to use the S9090 billing code for VAX-D services. The partners decided to keep using the 64722 code instead, because BCBS-Ga would reimburse for claims submitted under the 64722 code and not the S9090 code.

c. In total, from in or about April 2003 through in or about December 2004, the Defendants billed BCBS-Ga for approximately \$1,864,783 and received approximately \$1,087,256 for services identified using the inappropriate CPT code 64722.

EXECUTIONS OF THE SCHEME

4. Beginning in or about at least April 2003 and continuing until in or about December 2004, in the Northern District of Georgia and elsewhere, Defendants WILLIAM STEARNS and STEVEN LEVINE, aided and abetted by others known and unknown to the grand jury, knowingly and willfully executed and attempted to execute a scheme and artifice to defraud BCBS-Ga, a health care benefit program as defined in Title 18, United States Code, Section 24(b), and to obtain, by means of false and fraudulent pretenses and representations, monies and property owned by and under the custody and control of BCBS-Ga, in connection with the delivery of and payment for health care benefits, items and services, by submitting the following claims to BCBS-Ga for VAX-D services under the CPT code 64722:

COUNT	CLAIM SUBMITTED	PATIENT INITIALS	DATE PAID	AMOUNT BILLED	AMOUNT PAID
1	4-28-04	D.H.	5-21-04	\$295.00	\$250.75
2	6-25-04	H.D.	7-9-04	\$295.00	\$295.00
3	7-2-04	S.C.	7-16-04	\$295.00	\$200.60
4	7-12-04	D.M.	7-23-04	\$295.00	\$263.00
5	8-9-04	T.H.	8-20-04	\$295.00	\$177.00
6	8-20-04	R.I.	9-10-04	\$295.00	\$295.00
7	10-18-04	A.J.	11-12-04	\$295.00	\$295.00
8	10-18-04	L.E.	11-18-04	\$295.00	\$265.50
9	11-3-04	J.G.	11-19-04	\$295.00	\$265.50
10	11-5-04	R.H.	11-29-04	\$295.00	\$236.00
11	11-17-04	W.J.	12-3-04	\$295.00	\$295.00

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

COUNTS TWELVE THROUGH NINETEEN

**(Health Care Fraud Scheme Relating To Hako-Med,
Against Defendant STEARNS)**

1. The allegations of Paragraphs One through Three of Counts One through Ten are incorporated by reference as if fully re-alleged herein.

2. From in or about January 2002 through in or about December 2004, in the Northern District of Georgia and elsewhere, defendant WILLIAM STEARNS, aided and abetted by others known and unknown to the grand jury, knowingly and willfully executed and attempted to execute a scheme and artifice to defraud BCBS-Ga, a health care benefit program as defined in Title 18, United States

Code, Section 24(b), and to obtain, by means of false and fraudulent pretenses and representations, monies and property owned by and under the custody and control of BCBS-Ga, in connection with the delivery of and payment for health care benefits, items and services, to wit, Hako-Med, as set forth below.

BACKGROUND OF THE SCHEME

3. At all times relevant to this Indictment:

a. Hako-Med is an "electro-medical" device. The device includes electrodes that attach to a patient's skin and which are designed to relieve pain through the topical emission of electrical impulses. Hako-Med does not involve an injection or any other invasive procedure.

b. CCMG began using Hako-Med at its clinics in approximately January 2002. After CCMG began providing VAX-D treatments, it typically applied Hako-Med to every VAX-D patient, at each of the typical patient's 20 VAX-D sessions.

c. The CPT code that the AMA instructs medical providers to use for electrical stimulation devices such as Hako-Med is 64550, which covers "application of a surface (transcutaneous) neurostimulator".

d. CPT Code 64475 is a code for an invasive nerve block anesthetic procedure expressly involving an "injection" of anesthesia into the "paravertebral facet joint" or "facet joint nerve." The AMA has instructed medical providers against using

this CPT code for topical electrical procedures such as Hako-Med.

DESCRIPTION OF THE SCHEME

4. It was part of and in furtherance of the scheme to defraud that the Defendant WILLIAM STEARNS would seek and obtain excessive reimbursement from BCBS-Ga for providing Hako-Med services, and attempt to do so, by submitting false and misleading bills and taking other steps to misrepresent to BCBS-Ga what procedures were actually being performed, as follows:

a. Defendants WILLIAM STEARNS caused CCMG to submit numerous HCFA 1500 forms to BCBS-Ga seeking reimbursement for performing Hako-Med procedures. CCMG, with Defendant STEARNS'S knowledge and at his direction, used the injection-based CPT code 64475 to identify the procedure being billed. Defendant STEARNS submitted these bills knowing that 64475 was not the appropriate code for the non-invasive Hako-Med procedure. During the relevant time, CCMG did not perform any surgical or invasive nerve blocks.

b. In total, from in or about January 2002 through in or about February 2005, CCMG billed BCBS-Ga for approximately \$1,512,970.00 and received approximately \$816,989.00 for Hako-Med services identified using the CPT code 64475.

EXECUTIONS OF THE SCHEME

5. Beginning in or about at least February 2003 and continuing until in or about December 2004, in the Northern District of Georgia and elsewhere, Defendant WILLIAM STEARNS, aided

and abetted by others known and unknown to the grand jury, knowingly and willfully executed and attempted to execute a scheme and artifice to defraud BCBS-Ga, a health care benefit program as defined in Title 18, United States Code, Section 24(b), and to obtain, by means of false and fraudulent pretenses and representations, monies and property owned by and under the custody and control of BCBS-Ga, in connection with the delivery of and payment for health care benefits, items and services, by submitting the following claims to BCBS-Ga for Hako-Med services under the CPT code 64475:

COUNT	CLAIM SUBMITTED	PATIENT INITIALS	DATE PAID	AMOUNT BILLED	AMOUNT PAID
12	7-1-04	D.M.	10-8-04	\$245.00	\$166.60
13	7-27-04	T.H.	8-13-04	\$245.00	\$147.00
14	8-19-04	R.I.	9-10-04	\$245.00	\$245.00
15	9-9-04	S.C	9-17-04	\$245.00	\$166.60
16	9-14-04	A.J.	9-23-04	\$245.00	\$166.60
17	9-23-04	D.H.	10-15-04	\$245.00	\$245.00
18	9-23-04	L.E.	10-21-04	\$245.00	\$220.50
19	11-2-04	J.G.	11-12-04	\$245.00	\$220.50

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

COUNT TWENTY THROUGH TWENTY-FOUR
(Money Laundering, against Defendant STEARNS)

1. The allegations of Paragraphs One through Three of Counts One through Eleven are incorporated by reference as if fully re-

alleged herein.

2. On or about the dates listed below, in the Northern District of Georgia, Defendant WILLIAM STEARNS knowingly engaged in and attempted to engage in monetary transactions in criminally derived property of a value greater than \$10,000, listed below, consisting of the withdrawal, transfer and exchange, in and affecting interstate commerce, of funds and monetary instruments by, through and to a financial institution, specifically, SouthTrust Bank, such property having been derived from specified unlawful activity, as more particularly described in Counts One through Eleven of this Indictment and incorporated herein.

3. Said monetary transactions included the withdrawals by checks in the following amounts, on or about the dates set forth below, from the Comprehensive Care Medical Group bank account at Southtrust Bank, account number XX-XXX-384, which checks were signed by defendant WILLIAM STEARNS, and were for the benefit of defendant STEVEN LEVINE, in that the checks were made out to the defendant STEVEN LEVINE, and were deposited into Peachtree Bank, Account Number XXXXX2914, which defendant STEVEN LEVINE controlled.

COUNT	DATE	SOUTHTRUST ACCOUNT	CHECK NUMBER	AMOUNT
20	06-23-04	XX-XXX-384	7615	\$40,000.00
21	07-28-04	XX-XXX-384	7859	\$30,000.00
22	08-31-04	XX-XXX-384	7986	\$30,000.00
23	09-28-04	XX-XXX-384	8141	\$30,000.00

COUNT	DATE	SOUTHTRUST ACCOUNT	CHECK NUMBER	AMOUNT
24	10-27-04	XX-XXX-384	8434	\$30,000.00

All in violation of Title 18, United States Code, Section 1957.

COUNT TWENTY-FIVE THROUGH TWENTY-NINE
(Money Laundering, against Defendant LEVINE)

1. The allegations of Paragraphs One through Three of Counts One through Eleven are incorporated by reference as if fully re-alleged herein.

2. On or about the dates listed below, in the Northern District of Georgia, Defendant STEVEN LEVINE knowingly engaged in and attempted to engage in the transactions in criminally derived property of a value greater than \$10,000, listed below, consisting of the withdrawal, transfer and exchange, in and affecting interstate commerce, of funds and monetary instruments by, through and to a financial institution, specifically, SouthTrust Bank, such property having been derived from specified unlawful activity, as more particularly described in Counts One through Eleven of this Indictment and incorporated herein.

3. Said monetary transactions included the withdrawals by checks in the following amounts, on or about the dates set forth below, from the Comprehensive Care Medical Group bank account at Southtrust Bank, account number XX-XXX-384, which checks were signed by defendant WILLIAM STEARNS, and were for the benefit of

defendant WILLIAM STEARNS, in that the checks were made out to the defendant WILLIAM STEARNS, and were deposited into SouthTrust Bank, Account Number XX-XXX-845, which defendant WILLIAM STEARNS controlled.

COUNT	DATE	SOUTHTRUST ACCOUNT	CHECK NUMBER	AMOUNT
25	06-23-04	XX-XXX-384	7613	\$40,000.00
26	07-28-04	XX-XXX-384	7857	\$30,000.00
27	08-31-04	XX-XXX-384	7984	\$30,000.00
28	09-28-04	XX-XXX-384	8139	\$30,000.00
29	10-27-04	XX-XXX-384	8445	\$30,000.00

All in violation of Title 18, United States Code, Section 1957.

ASSET FORFEITURE

1. The allegations of Counts One through Twenty-Nine of this Indictment are realleged and incorporated by reference for the purpose of alleging forfeitures to the United States of America pursuant to the provisions of Title 18, United States Code, Section 982.

2. Upon conviction of any offenses alleged against them in Counts One through Twenty-Nine, Defendants WILLIAM STEARNS and STEVEN LEVINE shall forfeit to the United States, pursuant to Title 18, United States Code, Sections 982(a)(1)&(7), all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the

Federal health care offense set forth above in violation of Title 18, United States Code, Section 1347, as defined in Title 18, United States Code, Section 24.

3. The types of property which may be forfeited to satisfy the claim include, but are not limited to, the foregoing property, any property, real or personal, traceable to the foregoing property and any "substitute" property, as defined in Title 18, United States Code, Section 982(b), of a value equal to any and all assets identified specifically, which a) has or have been transferred, sold or deposited with a third party; b) which cannot be located by due diligence; c) which has or have been placed beyond the jurisdiction of this court; d) which has or have been substantially diminished in value; or e) which has or have been co-mingled with other property and cannot be divided without difficulty.

A True BILL

[Signature]
FOREPERSON

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