

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

)
UNITED STATES OF AMERICA)
)
v.)
)
TIMOTHY GARCIA)
)
_____)

CRIMINAL NO. *15cr10310*
VIOLATION:
18 U.S.C. § 1349 – Conspiracy
to Commit Health Care Fraud

18 U.S.C. § 981(a)(1)(C) &
28 U.S.C. § 2461(c)
Criminal Forfeiture

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
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INFORMATION

The United States Attorney charges that:

BACKGROUND

1. The defendant **TIMOTHY GARCIA** (“**GARCIA**”), a resident of California, was an employee of Warner Chilcott.
2. Warner Chilcott was a pharmaceutical company incorporated in Ireland with headquarters in Rockaway, NJ. Warner Chilcott manufactured and distributed a number of pharmaceuticals, including Actonel and Atelvia, which were drugs taken to prevent and treat osteoporosis.
3. **GARCIA** worked at Warner Chilcott between 2009 and 2013. From 2010 to 2011, **GARCIA** was a District Manager in Warner Chilcott’s Osteoporosis Division, which sold Actonel and Atelvia. **GARCIA** supervised a team of 10-12 sales representatives covering portions of northern California.

4. In 1965, Congress enacted Title XVIII of the Social Security Act (“Medicare” or “the Medicare Program”) to pay for the cost of certain medical services and care for persons aged 65 and older, and for persons with disabilities. The funds set aside by Congress to pay for the necessary medical care of these older Americans, and any premiums paid by such persons, were referred to as the Medicare Program Trust Funds.

5. Medicare Part C (also known as Medicare Advantage Plans) and Medicare Part D provide for the coverage of prescription pharmaceutical drugs.

6. Health insurance companies, including the Medicare Program, typically identified the drugs that they paid for on behalf of their members (“covered”) in a list called a formulary. Insurance companies typically allocated covered drugs into three or four specified tiers within the formulary. Generally, Tier 1 contained generic drugs, which were the most inexpensive. In each ascending tier, the insurance company contributed less, and the member contributed more, to the cost of the drug.

7. If a patient needed a drug that was not covered on formulary, many insurance companies would only pay for the drug if the patient’s physician submitted a prior authorization (“PA”) for the drug. The physician was required to explain in the PA, among other information, why the drug was medically necessary for the patient. Because the PA requires both medical judgment and specific knowledge of a patient’s medical condition, the PA must be prepared by the patient’s physician, or a member of the physician’s staff at the physician’s direction. As Garcia knew and understood, no one outside of the physician’s office, including a sales representative from a pharmaceutical company, was permitted to have any involvement in the preparation of a PA.

COUNT 1

18 U.S.C. § 1349 (Conspiracy to Commit Health Care Fraud)

The United States Attorney further charges that:

8. The allegations in paragraphs one through seven are herein re-alleged and incorporated in full.

9. From in or about January 2011 to in or about December 2011, in the Northern District of California and elsewhere, the defendant

TIMOTHY GARCIA

knowingly and willfully conspired and agreed with others known and unknown to the United States Attorney to execute a scheme and artifice to defraud, 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, the Medicare program, a health care benefit program as defined under Title 18, United States Code, Section 24(b), 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, as set forth below.

10. In 2011, Warner Chilcott began marketing Atelvia, a drug that was designed to prevent and treat osteoporosis. Atelvia belonged to a class of drugs called bisphosphonates. When Warner Chilcott introduced Atelvia, there were at least three additional bisphosphonates in the market, including Fosamax, which was available in generic form.

11. Throughout 2011, most insurance companies in **GARCIA's** district (including the Medicare program) covered generic Fosamax at Tier 1 in their formularies. Atelvia either was not covered at all or was placed within a more expensive tier in the formulary. By and large,

insurance companies in the district only covered Atelvia if a physician submitted a PA for the patient that included a medical justification explaining why the patient needed Atelvia.

12. In January and early February 2011, Warner Chilcott instructed managers, including **GARCIA**, to ensure that PAs for Atelvia were being submitted and to do so by becoming highly involved with the PA process. **GARCIA**, in turn, instructed the sales representatives in his district to become highly involved with the PA process. **GARCIA** encouraged his sales representatives to provide PA forms to physicians and staff, give physicians and staff “canned” medical justifications that would most likely result in a successful PA, and provide free meals, drinks and snacks for physicians’ employees who were responsible for preparing the PAs. In addition, **GARCIA** instructed his sales representatives to fill out Atelvia PAs themselves if the physicians or staff would not do so. **GARCIA** frequently stressed to the sales representatives in the district that involvement with Atelvia PAs was crucial to achieving success.

13. On or about February 11, 2011, Warner Chilcott disseminated a memorandum concerning PAs (the “February 2011 memo”). The memorandum stated, among other things, that a sales representative cannot “be involved with any aspect of the completion or submission of a Coverage Determination and/or Prior Authorization request, nor should you see any patient information, pursuant to HIPAA.”

14. **GARCIA** reviewed the memo, understood its contents, and disseminated the memo to the sales representatives in his district.

15. Even after receiving the February 2011 memo, **GARCIA** continued to instruct the sales representatives in his district to manipulate Atelvia PAs. **GARCIA** continued to instruct his

sales representatives to share PA medical justifications with physicians and staff. **GARCIA** continued to instruct the sales representatives to fill out the PAs themselves if the physicians or staff would not do so.

16. Numerous sales representatives in the district followed **GARCIA**'s instructions. These sales representatives frequently provided physicians and their staff with "canned" medical justifications for Atelvia PAs, even though they had no idea if the justification applied to the patient. **GARCIA**'s sales representatives also filled out numerous Atelvia PAs themselves—again, using false, "canned" medical justifications. Upon learning that one physician had unsuccessfully submitted an Atelvia PA using a legitimate medical justification, one sales representative simply submitted a second PA, using a false medical justification, to an insurance company, which was allowed. One sales representative even submitted Atelvia PAs to an insurance company over the phone, falsely posing as a member of the physician's staff.

17. **GARCIA** was fully aware of these activities; indeed, he encouraged them. **GARCIA** told his sales representatives that they should spend as much time as possible in physicians' offices working on PAs. **GARCIA** kept close track of the PAs that the sales representatives submitted, holding competitions and asking them to fax to him successful PAs.

18. **GARCIA** was often present when his sales representatives filled out PAs in physicians' offices. On some occasions, **GARCIA** assisted them in filling out PAs. On other occasions, **GARCIA** would leave the office while the sales representative was preparing the PA, saying "I shouldn't see this."

19. **GARCIA** frequently told his sales representatives to conceal their PA activities, telling them to "be careful" and to "keep it on the down low." He also told his sales

representatives to use different medical justifications and alter their handwriting to avoid detection.

20. **GARCIA**'s PA scheme was successful. Insurance companies, including the Medicare program, paid hundreds of thousands of dollars for Atelvia based on falsified PAs.

21. As a result of his scheme, **GARCIA**'s district was one of the most successful districts at Warner Chilcott. **GARCIA** received a large bonus and a promotion, largely because of the PA scheme.

All in violation of 18 U.S.C. § 1349.

CRIMINAL FORFEITURE ALLEGATION
(18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c))

The United States Attorney further charges that:

22. The allegations set forth in paragraphs 1 through 21 are herein incorporated in full.

23. Upon conviction of the offense set forth in Count One of this Information, the defendant,

TIMOTHY GARCIA,

shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the commission of the offense, including but not limited to:

- a. a sum of money equal to \$21,500 in United States currency, representing the amount of gross proceeds traceable to the offense.

24. If any of the property described in paragraph 23 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 this Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

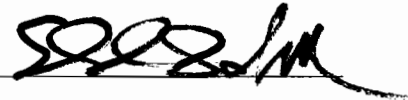
it is the intention of the United States, pursuant to 28 U.S.C. § 2461(c), incorporating 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendant up to the value of the property described in paragraph 23 above.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, 2461(c).

CARMEN M. ORTIZ

United States Attorney

By:

A handwritten signature in black ink, appearing to read "DS Schumacher", written over a horizontal line.

DAVID S. SCHUMACHER

MIRANDA HOOKER

Assistant U.S. Attorneys

Dated: October 6, 2015

Criminal Case Cover Sheet

U.S. District Court - District of Massachusetts

Place of Offense: _____ Category No. III Investigating Agency OPM

City San Francisco, CA Related Case Information: 15CR10310

County _____ Superseding Ind./ Inf. _____ Case No. _____
Same Defendant _____ New Defendant _____
Magistrate Judge Case Number _____
Search Warrant Case Number _____
R 20/R 40 from District of _____

Defendant Information:

Defendant Name Timothy Garcia Juvenile: Yes No

Is this person an attorney and/or a member of any state/federal bar: Yes No

Alias Name _____

Address (City & State) Los Gatos, CA

Birth date (Yr only): 1980 SSN (last4#): 7464 Sex M Race: Caucasian Nationality: _____

Defense Counsel if known: Tom Butters Address Butters Brazilian ...

Bar Number _____ One Exeter Plaza, 12th Floor
Boston, MA 02116

U.S. Attorney Information:

AUSA David Schumacher Bar Number if applicable 647917

Interpreter: Yes No List language and/or dialect: _____

Victims: Yes No If yes, are there multiple crime victims under 18 USC§3771(d)(2) Yes No

Matter to be SEALED: Yes No

Warrant Requested Regular Process In Custody

Location Status:

Arrest Date _____

Already in Federal Custody as of _____ in _____

Already in State Custody at _____ Serving Sentence Awaiting Trial

On Pretrial Release: Ordered by: _____ on _____


Charging Document: Complaint Information Indictment

Total # of Counts: Petty _____ Misdemeanor _____ Felony 1

Continue on Page 2 for Entry of U.S.C. Citations

I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.

Date: October 6, 2015

Signature of AUSA: 

FILED
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2015 OCT 6 AM 10:42
U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

District Court Case Number (To be filled in by deputy clerk): _____

Name of Defendant Timothy Garcia

U.S.C. Citations

	<u>Index Key/Code</u>	<u>Description of Offense Charged</u>	<u>Count Numbers</u>
Set 1	<u>18 USC 1349</u>	<u>Conspiracy to Commit Health Care Fraud</u>	<u>1</u>
Set 2	<u>18 USC 981, 28 USC 2461</u>	<u>Criminal Forfeiture</u>	<u>2</u>
Set 3	_____	_____	_____
Set 4	_____	_____	_____
Set 5	_____	_____	_____
Set 6	_____	_____	_____
Set 7	_____	_____	_____
Set 8	_____	_____	_____
Set 9	_____	_____	_____
Set 10	_____	_____	_____
Set 11	_____	_____	_____
Set 12	_____	_____	_____
Set 13	_____	_____	_____
Set 14	_____	_____	_____
Set 15	_____	_____	_____

ADDITIONAL INFORMATION: _____

