

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

UNITED STATES OF AMERICA)

v.)

KENNETH B. BEVERLY,)

Defendant.)

THE GRAND JURY CHARGES:)

VIOLATIONS: *7:10-CR-8-WLS*

18 U.S.C. § 1519

18 U.S.C. § 1512(b)(1)

18 U.S.C. § 1512(b)(3)

A. Introduction:

At all times relevant to this Indictment:

1. Defendant Kenneth B. Beverly (“Kenneth Beverly”) was the Chief Executive Officer of Archbold Medical Center, Thomasville, Georgia.

2. J. William Sellers (“William Sellers”) was the Chief Financial Officer of Archbold Medical Center.

3. The City of Thomasville Hospital Authority (the “Hospital Authority”) was a governmental entity established in 1981 under the Georgia Hospital Authority Act, a provision of state law.

4. Archbold Medical Center operated Archbold Memorial Hospital (“Archbold Memorial”).

5. The Hospital Authority had no control over the day-to-day operations of Archbold Memorial.

6. The Hospital Authority board of directors met only one time from 2000 through 2004. That meeting, held January 13, 2003, was for the purpose of approving a financing matter, not to discuss any operational issues related to Archbold Memorial.

7. The Georgia Medicaid program was administered by the Department of Community Health (“DCH”). The Georgia Medicaid program was intended to provide an array of health care services to those who cannot afford them.

8. The Georgia Medicaid program was jointly funded with state and federal funds.

9. The Georgia Medicaid program was a health care benefit program as defined under Title 18, United States Code, Section 24(b).

10. The Centers for Medicare and Medicaid Service (“CMS”) is an agency and department of the United States.

11. Beginning in about 2002, hospitals designated as “public hospitals” became eligible for supplemental Medicaid funds known as Upper Payment Limits (“UPLs”). Private hospitals would not be eligible for UPLs. In 2002 Archbold Memorial began receiving UPLs.

12. Beginning in about 2002 and continuing thereafter, federal and state officials began examining whether hospital authorities and the hospitals they operated were governmental (“public”) or private entities.

13. Medicaid officials directed DCH to review and determine whether Archbold Memorial was a public or private hospital under Medicaid guidelines.

14. DCH requested that Archbold Memorial provide certain documentation, including the Hospital Authority meeting minutes, which would demonstrate that the Hospital Authority maintained operational control over Archbold Memorial.

15. Defendant Kenneth Beverly and William Sellers knew that the Hospital Authority did not maintain operational control over Archbold Memorial, and therefore, did not meet the criteria to be classified as a public hospital under Medicaid guidelines. Thus, Archbold Memorial was not eligible to receive UPL funding.

16. Based on the false representation that it was a public hospital, Archbold Memorial received in excess of four million dollars in UPL funds to which it was not entitled.

17. The Indigent Care Trust Fund (“ICTF”) is a federal program established to expand Medicaid eligibility. Archbold Memorial was entitled to receive certain ICTF funds as a private hospital. As a public hospital, Archbold Memorial would

be entitled to a larger amount of ICTF funds.

18. Based on the false representation that it was a public hospital, Archbold Memorial received in excess of five million dollars in ICTF funds to which it was not entitled.

19. Paragraphs 1-18 of the Introduction are incorporated herein by reference into counts one through six below.

COUNT ONE
U.S.C. § 1519 & § 371
Conspiracy to Falsify Records

1. From on or about January 1, 2003, and continuing until on or about November 13, 2007, in the Valdosta Division of the Middle District of Georgia, the defendant,

KENNETH B. BEVERLY,

did combine, conspire, confederate, agree and have a tacit understanding with William Sellers, to knowingly falsify and make a false entry into any record, document, and tangible object with the intent to impede, obstruct, and influence the proper administration of any matter within the jurisdiction of any department or agency of the United States.

A. Object of the Conspiracy:

2. It was an object of the conspiracy to obtain Medicaid funds for Archbold

Memorial to which it was not entitled.

B. Manner & Means:

3. It was part of the manner and means of the conspiracy that defendant Kenneth Beverly and William Sellers would and did falsely represent that Archbold Memorial was a “public hospital,” thereby making it eligible for certain Medicaid funds.

4. It was further part of the manner and means of the conspiracy that defendant Kenneth Beverly and William Sellers would and did create false, fictitious and fraudulent documents and submit them to DCH.

5. It was further part of the manner and means of the conspiracy that defendant Kenneth Beverly and William Sellers would and did create false, fictitious and fraudulent “Attestations of Public Status” and send the same to DCH.

C. Overt Acts:

6. In furtherance of the conspiracy, defendant Kenneth Beverly and William Sellers committed the following overt acts:

7. Beginning in about September 2003, defendant Kenneth Beverly discussed with William Sellers the creation of a set of false, fictitious and fraudulent Hospital Authority meeting minutes which they would submit to state and federal authorities in order to obtain supplemental Medicaid funds for

Archbold Memorial.

8. On February 9, 2004, William Sellers, with defendant Kenneth Beverly's knowledge and agreement, sent by facsimile to the DCH, Atlanta, Georgia, false, fictitious and fraudulent documents, to wit, fictitious Hospital Authority meeting minutes which they represented to be authentic. The representations in the minutes were then forwarded to CMS.

9. On or about December 14, 2004, William Sellers with defendant Kenneth Beverly's knowledge and agreement, caused to be sent by facsimile to the DCH, Atlanta, Georgia, a false, fictitious and fraudulent document, to wit, an "Attestation of Public Status," which falsely claimed that the Hospital Authority retained ultimate authority for the operations of the hospital. The representations in the Attestation were then forwarded to CMS.

10. On February 27, 2005, William Sellers with defendant Kenneth Beverly's knowledge and agreement, caused to be sent by facsimile to the DCH, Atlanta, Georgia, a false, fictitious and fraudulent document, to wit, an "Attestation of Public Status," which falsely claimed that the Hospital Authority retained ultimate authority for the operations of the hospital. The representations in the Attestation were then forwarded to CMS.

All in violation of Title 18, United States Code, Sections 371 & 1519.

COUNT TWO
18 U.S.C. § 1519
Falsification of Records

1. On or about December 14, 2004, in the Valdosta Division of the Middle District of Georgia, the defendant,

KENNETH B. BEVERLY,

and William Sellers, aided, abetted, counseled, commanded, induced and procured by one another, knowingly falsified and made a false entry into any record, document, and tangible object with the intent to impede, obstruct, and influence the proper administration of any matter within the jurisdiction of any department or agency of the United States.

All in violation of Title 18, United States Code, Sections 1519 and 2.

COUNT THREE
18 U.S.C. § 1519
Falsification of Records

1. On or about February 27, 2005, in the Valdosta Division of the Middle District of Georgia, the defendant,

KENNETH B. BEVERLY,

and William Sellers, aided, abetted, counseled, commanded, induced and procured by one another, knowingly falsified and made a false entry into any record, document, and tangible object with the intent to impede, obstruct, and influence the proper administration of any matter within the jurisdiction of any department or agency of the United States.

All in violation of Title 18, United States Code, Sections 1519 and 2.

COUNT FOUR
18 U.S.C. § 1512(b)(1)
Witness Tampering

1. On or about January 6, 2008, in the Valdosta Division of the Middle District of Georgia, the defendant,

KENNETH B. BEVERLY,

did knowingly use intimidation, did threaten, and did corruptly persuade another person, William Sellers, and did attempt to do so, with intent to influence, delay and prevent the testimony of any person, William Sellers, in an official proceeding, Mark G. Wood, et al. v. Archbold Medical Center, et al. 6:05-cv-53, a civil lawsuit then pending in the United States District Court for the Middle District of Georgia, Valdosta Division, and in a future federal criminal prosecution which had not yet been instituted.

2. To wit, the defendant Kenneth Beverly (“KB”) had a conversation with William Sellers (“WS”), excerpted in part as follows, in which he discussed the Hospital Authority fictitious meeting minutes, benefits William Sellers hoped to receive under his employment contract if William Sellers did not implicate defendant Kenneth Beverly, and false statements defendant Kenneth Beverly would make to investigators.

WS: Uh, let’s just make sure if they approach me to discuss this with me, I understand from my talks and your talks before with me, that if I keep my mouth

shut about any knowledge you have, about those minutes, that you'll do your best to take care of me on my contract. Is that . . .

KB: I'll do, I'll do my dead level best.

WS: OK, I mean we talked about it a couple of times, and we have talked about it, I was . . .

KB: They're going to ask me if we discussed the case, and I'll tell them, 'No we hadn't.'

All in violation of Title 18, United States Code, § 1512(b)(1).

COUNT FIVE
18 U.S.C. § 1512(b)(1)
Witness Tampering

1. On or about January 30, 2008, in the Valdosta Division of the Middle District of Georgia, the Defendant,

KENNETH B. BEVERLY,

did knowingly use intimidation, did threatened, and did corruptly persuade another person, to wit, William Sellers, and did attempt to do so, with intent to influence, delay and prevent the testimony of any person, to wit, William Sellers, in an official proceeding, to wit, Mark G. Wood, et al. v. Archbold Medical Center, et al. 6:05-cv-53, a civil lawsuit then pending in the United States District Court for the Middle District of Georgia, Valdosta Division, and in a future federal prosecution which had not yet been instituted.

2. In particular, defendant Kenneth Beverly (“KB”) telephoned William Sellers (“WS”) at approximately 4 a.m., asked to meet him at 6 a.m., and did meet William Sellers at his residence and had a conversation lasting approximately 1 hour and 38 minutes, which is excerpted in pertinent part as follows, in which defendant Kenneth Beverly attempted to keep William Sellers from implicating him (defendant Kenneth Beverly) in criminal conduct, to wit, the offenses set forth in Counts One-Three above.

KB: DG [a person whose identity is known to the grand jury] doesn't want you talking, (ui) self-incrimination (ui) that would be his first concern, I would guess. Uh, there, there is a bigger thing, and it's not just the survival of me. It is better to have me on the inside spitting out, than the outside spitting in.

[...]

KB: The report is going to show that, that you accused me of being involved from day one to the end of time on the whole thing (ui). That part, uh, we don't need to try to destroy each other. That's (ui) I mean, I told you, uh, I appreciate what you have done.

KB: Well, I think you've got a, I think you've got a fighting chance on your contract if, I don't know, I mean, the damn thing is what it is . . .

WS: They'll never understand that it wasn't intended (ui).

KB: They will understand if you say that I conspired with you and that I was involved from the beginning to the end, I mean, that's, that's the point.

All in violation of Title 18, United States Code, Section 1512(b)(1).

COUNT SIX
18 U.S.C. § 1512(b)(3)
Misleading Statements

1. On or about May 30, 2008, in the Valdosta Division of the Middle District of Georgia, and elsewhere within the jurisdiction of this Court, the defendant,

KENNETH B. BEVERLY,

did knowingly engage in misleading conduct towards another person with intent to hinder, delay and prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense: to wit, the defendant gave the following misleading answers to attorneys and the court reporter, under oath in a deposition in a civil lawsuit then pending in the United States District Court for the Middle District of Georgia, Mark G. Wood, et al. v. Archbold Medical Center, et al. 6:05-cv-53.

Q: Are you aware of anybody prior to the time that Dr. Simms filed his Open Records lawsuit ever stating that the hospital was operated by a Hospital Authority?

A: No. (p. 105)

[...]

Q: Were you aware prior to time Dr. Simms filed his Open Records lawsuit that the hospital was receiving federal funds because someone had represented that the hospital was owned and operated by a Hospital Authority?

A: No. (p. 105)

Q: Did you ever tell anyone prior to the time Dr. Simms filed his Open Records lawsuit that the Hospital Authority of the City of Thomasville retained ultimate authority for the operations of the hospital?

A: No.

Q: Are you aware of anybody ever taking that position?

A: No. (p. 106)

[...]

Q: Okay. And I'm asking you, though, sitting here today, do you think those minutes reflect meetings that never occurred? (p.130)

A: I do.

Q: You do think that they did not occur?

A: Right.

Q: What's the basis for that?

A: Well, just the investigation by King & Spalding. (p. 130)

[...]

Q: Anything else other than the investigation from - that was done by King & Spalding provide the basis for your conclusion that you don't think these meetings ever occurred? (p. 131)

A: Well, I don't think I was at that - at those meetings, and I don't think they occurred.

Q: Okay. Did you ever talk to Mr. Sellers about the fact that he prepared minutes of meetings that never occurred? (p.131)

A: Not in detail.

Q: How about generally?

[...]

A: These drafts of these minutes came up when - when the electronic search was done and the - the drafts were very primitive drafts, and Bill did not know what they were, and Bill was the keeper of the records and everything. (p. 132)

And when, you know, I said to Bill a couple of times - I don't know if I need to go into what I speculated the minutes were, but the minutes needed to - there need to be some kind of explanation. There had not been a final, complete copy of the minutes that surfaced and - to anybody's knowledge. (p. 132)

[...]

A: They were meeting with the attorneys the next morning, King & Spalding and - and others, Mr. Sellers, prepping him for his deposition; and I said, 'Bill, show these - show these documents to the attorneys.' (p.133)

[...]

Q: Did you instruct him [William Sellers] to put those draft documents in final form? (p. 137)

A: No.

Q: Did you ask him if he'd put them in final form?

A: Well, no, I - I mean, we didn't - we didn't have a detailed discussion. I just said this makes no sense.

Q: When he brought you the final minutes that were no longer in draft form, it still didn't make sense to you?

A: Uh, huh.

Q: And you communicated that to Mr. Sellers?

A: I told him give them to the lawyers the next morning. They were meeting at 8:00 o'clock or so, and give them to them.

Q: Did you ask him where he obtained the minutes that appeared to be in final form when he came into your office and showed you those?

[...]

A: No. I did not ask him that. (p. 137)

[. . .]

Q: Okay. And at some time in time, did you learn that these documents were submitted to the Georgia Department of Community Health in exchange for certain payments of Medicare monies to the hospital? (p. 219)

A: At some point in time, I learned that and - but not before the Simms lawsuit. (p. 220)

[. . .]

Q: Do you know if Mr. Sellers was submitting these minutes that we talked about earlier to the Georgia Department of Community Health in order to participate in some sort of program? (p. 224)

A: I did not know that.

Q: Today sitting here, are you aware that he did that? (p. 225)

A: Well, you've said that and the - maybe the Thomasville paper said that or whatever. I mean I've heard that several places.

When in truth and in fact as the defendant then and there well knew and believed, the fictitious minutes purporting to show that the hospital was public were submitted to the Georgia DCH by William Sellers in 2004 at the defendant's direction for the express purpose of obtaining federal funds to which the hospital

was not entitled; the defendant and William Sellers had detailed conversations about the fictitious minutes, both in 2004, when they devised the scheme, and again from November 2007 through January 2008, when the minutes were uncovered during civil litigation.

All in violation of 18 U.S.C. § 1512(b)(3).

A TRUE BILL.

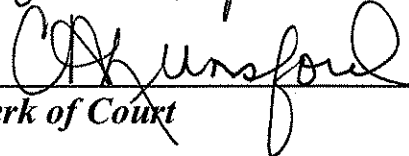
/S/ _____
FOREPERSON OF THE GRAND JURY

Presented by:



JIM CRANE
ASSISTANT U.S. ATTORNEY

Filed in open court .
this 8th day of April A.D. 2010



Dep. Clerk of Court