

1 MCGREGOR W. SCOTT
United States Attorney
2 DANIEL S. LINHARDT
Assistant U.S. Attorney
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Sacramento, California 95814
4 Telephone: (916) 554-2770

FILED

APR 18 2005

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____
DEPUTY CLERK

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.
ATTEST: VICTORIA C. MINOR
Clerk, U. S. District Court
Eastern District of California

By a. Kuo Deputy Clerk

10 UNITED STATES OF AMERICA,)
11)
12 Plaintiff,)
13)
14 v.)
15 DR. THOMAS M. HERIC,)
16 Defendant,)

CR-S-05-092 DFL

Dated 4/20/11

VIOLATIONS: 18 U.S.C. § 1035
- False Statements Relating
to Health Care Fraud;
18 U.S.C. § 2 - Aiding and
Abetting

18 SUPERSEDING INFORMATION

19 The United States Attorney charges:

20 DR. THOMAS M. HERIC,
21 defendant herein, as follows:

22 I. INTRODUCTION

23 At all times material herein:

24 A. The Social Security Act (Title 42, U.S.C. §§ 301 et
25 seq.) was in full force and effect and had established the
26 Medicare Part B Program (under subchapter XVIII of Chapter Seven
27 of that Act) which provided for supplementary medical insurance
28 benefits for individuals aged 65 years and older and certain

1 disabled individuals who were entitled to Social Security
2 benefits.

3 B. Medicare Part B reimbursed 80% of the reasonable charge
4 of most medically necessary services performed, ordered or
5 appropriately supervised by a licensed medical practitioner.
6 Medicare paid and processed claims and remitted payment from its
7 contractor in Chico, California and Los Angeles, California.

8 C. Licensed medical providers filled out an application
9 form with Medicare in order to be assigned a provider number. In
10 that application, providers agreed to abide by all Medicare laws,
11 regulations, and program instructions. It was that unique number
12 - the provider number - that identified the provider who rendered
13 services and was used to submit billings to Medicare for
14 reimbursement.

15 D. The remaining 20% of the charges referred to in
16 paragraph B were either paid by the Medicare enrollee, a
17 supplemental private insurer, or by the State of California's
18 Medi-Cal Program.

19 E. The Medi-Cal Provider Program was a federal and state
20 funded program which provided for certain medical needs of
21 eligible recipients. For a provider to participate in the Medi-
22 Cal Program, it had to sign an agreement with the State of
23 California to receive a Medi-Cal provider number. Upon being
24 accepted in the program, the provider agreed to submit to certain
25 regulations issued by the State of California.

26 F. Upon being accepted in the Medi-Cal Provider Program,
27 the provider received a number which allowed it to bill the State
28 of California, Department of Health Services, through its

1 contractor, Electronic Data Systems (EDS), located in the
2 Sacramento, California area. In turn, the State Controller's
3 Office remitted a payment to the provider from Sacramento for the
4 amount and type of procedure filled based on the claim form
5 submitted by the provider to EDS.

6 I. Medi-Cal also imposed certain restrictions on who can
7 and can not obtain provider numbers. For example, for certain
8 mobile diagnostic x-ray providers, Medi-Cal required that non-
9 physician owners, also known as "lay people," obtain prior
10 treatment authorization requests before performing and billing
11 for services.

12 J. The State of California prohibited the unlawful practice
13 of medicine without a license. Under both Medicare and Medi-Cal
14 rules, generally only the services of the individual who has a
15 provider number, or certain of his authorized employees or sub-
16 contractors, could bill using that provider number. Providers
17 could also establish a "group practice" whereby one number was
18 obtained and various individuals, who had been identified in the
19 group practice application, could practice and bill for services
20 rendered incident to the group practice.

21 II. MATERIAL FALSE STATEMENTS

22 A. Beginning on or about November 13, 2001, up to and
23 including in or about December 31, 2001, in the Eastern District
24 of California, and elsewhere, defendant HERIC within a matter
25 involving health care benefit programs, which programs affect
26 interstate commerce, knowingly and willfully made and allowed to
27 be made material false fictitious and fraudulent statements and
28 representations in connection with the delivery of or payment for

1 health care services, benefits or items; to wit defendant HERIC
2 made materially false statements in connection with his
3 applications for Medicare and Medi-Cal provider numbers. As a
4 result of the false statements by defendant HERIC, involving his
5 location at 13252 Hawthorne Blvd., Hawthorne, California, the
6 Medicare and Medi-Cal programs wrongfully paid approximately
7 \$50,000; all in violation of Title 18, United States Code,
8 Section 1035 and 2.

9 DATED: 4/18/05

McGREGOR W. SCOTT
United States Attorney

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12 By: 
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21

DANIEL S. LINHARDT
Assistant U.S. Attorney

22 copy to
23

24 Robert Moest, Esq.
25 2530 Wilshire Blvd., 2nd Floor
26 Santa Monica, CA 90403
27
28

PENALTY SLIP

DEFENDANT: DR. THOMAS M. HERIC

VIOLATION: 18 USC §§ 1035 and 2 - False Statements Relating to Health Care Matters and Aiding and Abetting.

PENALTY: Not more than \$250,000 fine;
Not more than 5 years imprisonment, or both; and
Term of 2 years supervised release.

ASSESSMENT: \$100 Mandatory Special Assessment

FILED

**United States District Court
Eastern District of California**

JUL -7 2006

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
v.
THOMAS M. HERIC

JUDGMENT IN A CRIMINAL CASE DEPUTY CLERK
(For Offenses Committed On or After November 1, 1987)
Case Number: 2:05CR00092 01

ROBERT MOEST, ESQ.
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count: 1 of the Superseding Information.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18 USC 1035 AND 2	FALSE STATEMENTS RELATING TO HEALTH CARE FRAUD, AIDING AND ABETTING	12/31/2001	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

Appeal rights waived.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

06/29/2006

Date of Imposition of Judgment

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office
ATTEST M. Matheny, Acting

Clerk, U. S. District Court
Eastern District of California

By [Signature]
Deputy Clerk

Date: 07/07/06

[Signature] USDT
Signature of Judicial Officer

[Signature] HON. DAVID F. LEVI, United States District Judge
Name & Title of Judicial Officer

7/7/2006
Date

CASE NUMBER: 2:05CR00092 01
 DEFENDANT: THOMAS M. HERIC

Judgment - Page 2 of 5

PROBATION

The defendant is hereby sentenced to probation for a term of 36 MONTHS.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of controlled substance. The defendant shall submit to one drug test within 15 days of release on probation and at least two periodic drug tests thereafter, not to exceed four (4) drug tests per month.

- The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall submit to the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow instructions of the probation officer;
- 4) the defendant shall support his or her dependants and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere, and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

CASE NUMBER: 2:05CR00092 01
DEFENDANT: THOMAS M. HERIC

Judgment - Page 3 of 5

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall submit to the search of his person, property, home, and vehicle by a United States Probation Officer, or any other authorized person under the immediate and personal supervision of the probation officer, based upon reasonable suspicion, without a search warrant. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
2. The defendant shall provide the probation officer with access to any requested financial information.
3. The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.
4. The defendant shall submit to the collection of DNA as directed by the probation officer.

CASE NUMBER: 2:05CR00092 01
 DEFENDANT: THOMAS M. HERIC

Judgment - Page 4 of 5

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 100	\$	\$ 50,000

The determination of restitution is deferred until __. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
California Dept. of Health & Human Services, Recovery Section Overpayment Unit, MS4720 P.O.B. 2946 Sacramento, CA 95812	\$50,000	\$25,000	50%
Center for Medicare and Medicaid Services Division of Accounting, Attn: Sharon Lewis P.O.B. 7520 Baltimore, MD 21207-0520	\$50,000	\$25,000	50%
<u>TOTALS:</u>	<u>\$ 50,000</u>	<u>\$ 50,000</u>	

Restitution amount ordered pursuant to plea agreement \$ __

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived for the fine restitution

The interest requirement for the fine restitution is modified as follows:

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

CASE NUMBER: 2:05CR00092 01
DEFENDANT: THOMAS M. HERIC

Judgment - Page 5 of 5

SCHEDULE OF PAYMENTS

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A Lump sum payment of \$ __ due immediately, balance due
 not later than __, or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal __ (e.g., weekly, monthly, quarterly) installments of \$ __ over a period of __ (e.g., months or years), to commence __ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal __ (e.g., weekly, monthly, quarterly) installments of \$ __ over a period of __ (e.g., months or years), to commence __ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within __ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate:

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:



SEP 29 2006

Thomas Heric, M.D.
13252 Hawthorne Blvd., Suite 100
Hawthorne, CA 90250

Dear Thomas Heric:

RE: OI File Number 9-04-40100-9

This is to notify you that you are being excluded from participation in any capacity in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) of the Social Security Act (Act) for the minimum statutory period of 5 years. The Act defines a Federal health care program as any plan or program that provides health benefits, whether directly, ~~through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the Federal Employees Health Benefits Program).~~ State health care programs are defined in section 1128(h) and include plans and programs under titles XIX, V, XX, and XXI of the Act. The scope of this exclusion is broad and will have a significant effect on your ability to work in the health care field.

This action is being taken under section 1128(a)(1) of the Act and is effective 20 days from the date of this letter. See 42 U.S.C. 1320a-7(a), 42 C.F.R. 1001.101(a). This exclusion is due to your conviction as defined in section 1128(i) (42 U.S.C. 1320a-7(i)), in the United States District Court for the Eastern District of California, of a criminal offense related to the delivery of an item or service under the Medicare or a State health care program, including the performance of management or administrative services relating to the delivery of items or services, under any such program.

We have considered the information you furnished to our regional office in response to its letter to you.

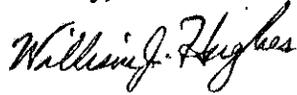
This exclusion will affect your ability to claim payment from these programs for items or services that you render; it will NOT affect your right to collect benefits under any Federal health care program such as Medicare, Medicaid, or Social Security. You may find more information regarding exclusions on the Office of Inspector General's (OIG) website, including Frequently Asked Questions and the Special Advisory Bulletin about the Effect of Exclusion. To access this site, go to <http://oig.hhs.gov>, click on EXCLUSIONS DATABASE, and then choose the item you would like to access.

A detailed explanation of the authority for this exclusion, its effect, and your appeal rights is enclosed and is incorporated as part of this notice by specific reference. You should read this document carefully, act upon it as necessary, and retain it for future reference.

Page 2 - Thomas Heric, M.D.

REINSTATEMENT IS NOT AUTOMATIC. You must apply to the OIG and be granted reinstatement. Obtaining a provider number from a Medicare contractor, a State agency, or a Federal health care program does not reinstate your eligibility to participate in those programs.

Sincerely,



William J. Hughes
Reviewing Official
Health Care Program Exclusions
~~Office of Counsel to the Inspector General~~

Enclosure

cc: Special Agent in Charge
San Francisco Regional Office



Please read carefully and retain; it contains important information about your exclusion

You are excluded from participation in any capacity in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) (42 U.S.C. 1320a-7b) of the Social Security Act.

This exclusion significantly limits your ability to work in any capacity in the health care field in the United States. No payment will be made by any Federal health care program (such as Medicare, Medicaid, Veterans Administration, TRICARE, etc.) for any items or services furnished, ordered, or prescribed by you in any capacity. For example, you are prohibited from submitting or causing claims to be submitted to Federal health care programs for items or services which you provide, and you are also prohibited from being employed to provide items or services which are billed to a Federal health care program. Such items or services could include administrative, clerical, and other activities that do not directly involve patient care or the provision of any health care related services.

An excluded person cannot be employed by a provider to perform functions paid for, in whole or in part, by any Federal health care program. Generally speaking, with rare exceptions, you may not be employed by a hospital, nursing home, or any other institutional provider that participates in Federal health care programs.

In addition, this exclusion may make you ineligible for Federally-insured loans, Federally-funded research grants, and other programs administered by other Federal agencies. This is because Federal government agencies are required by law not to contract with a person excluded or debarred by another Federal agency. (See Section 2455 of the Federal Acquisition Streamlining Act of 1994, P.L. 103-355.)

This exclusion does not affect your rights or the rights of your family members to collect benefits to which you or they may be entitled as a beneficiary under any Federal program such as Medicare, Medicaid, or Social Security.

Under 42 U.S.C. 1320a-7(a)(1)(D), the Office of Inspector General (OIG) is required to notify all applicable State agencies of your exclusion, and they are required to exclude you for the same period of time. The OIG's exclusion is in addition to any sanction an individual State or other Federal agency may impose under its own authority. Notice will be provided to the public and other parties in accordance with 42 U.S.C. 1320a-7.

Any service you provide is a non-covered service. Therefore, notwithstanding 42 U.S.C. 1395w-4(g)(4), you cannot submit claims or cause claims to be submitted for payment under any Federal health care program. Violations of the conditions of your exclusion may subject you to criminal prosecution and/or the imposition of civil monetary penalties and the denial of your reinstatement to the programs. (See 42 U.S.C. 1320a-7a(a)(1)(D) and 42 CFR 1001.3002(a)(2).)

If you disagree with this action, you may request a hearing before an administrative law judge in accordance with 42 CFR 1001.2007. Such a request must be made in writing within 60 days of your receiving the OIG's letter of exclusion and sent to the Chief, Civil Remedies Division, Departmental Appeals Board, MS 6132, Room G-644, Cohen Building, 330 Independence Avenue, SW, Washington, D.C. 20201. Your request must be accompanied by a copy of the OIG's letter, a statement as to the specific issues or findings with which you disagree, along with the basis for your contention that the specific issues and/or findings are incorrect.

YOUR REINSTATEMENT IS NOT AUTOMATIC. You will not be reinstated at the conclusion of the minimum period of exclusion, or anytime thereafter, **UNLESS YOU APPLY TO THE OIG AND ARE GRANTED REINSTATEMENT** to the Medicare and Federal health care programs under the provisions of 42 U.S.C. 1320a-7(g) and 42 CFR 1001.3001-3005. If you were excluded because you lost your license, you may not apply for reinstatement until your license has been restored by the licensing board or agency which originally took the disciplinary action against you. A request for reinstatement may be made to the OIG no earlier than 120 days prior to the expiration of the minimum period of exclusion. The request must be made in writing and should be sent to the Director, Exclusions Staff, Office of Investigations, Room N2-01-26, 7500 Security Boulevard, Baltimore, MD 21244-1850. Upon receipt of the request, the OIG will notify you of the information and documentation it requires to reach a decision on your reinstatement.

Obtaining a license, moving to another State, or obtaining a provider number from a Medicare contractor, a State agency, or a Federal health care program does not reinstate your eligibility to participate in those programs.



Washington, D.C. 20201

SEP 29 2006

Executive Director
Attn: Associate Governmental Program Analyst
Medical Board of California
1426 Howe Avenue, Suite 54
Sacramento, CA 95825

Dear Executive Director:

RE: Thomas Heric, M.D.
13252 Hawthorne Blvd., Suite 100
Hawthorne, CA 90250
License #: A22944
Authority: 1128(a)(1)
OI File Number: 9-04-40100-9

Physician & Surgeon
DOB: 11/03/36
SSN: 573-46-2740
UPIN: A82723
Medicaid Provider #: N/A
Medicare Provider #: A22944

The subject identified above is being excluded from participation in any capacity in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) of the Social Security Act (Act). These actions are effective 20 days from the date of this letter, and are the result of a conviction in the United States District Court for the Eastern District of California, of a criminal offense related to the delivery of an item or service under the Medicare or a State health care program.

Section 1128(e) of the Act requires that the appropriate licensing or certification authority be notified of such an exclusion, requested to make appropriate investigations and invoke sanctions in accordance with State law and policy, and asked to inform the Inspector General of this Department with respect to any actions taken in response to this request.

Accordingly, if you have not already done so, we request you to make appropriate investigations and invoke sanctions pursuant to applicable State law and policy. We also ask that you fully and currently inform us with respect to any action taken. The information to be supplied should be sent to the Special Agent in Charge, Office of Investigations, Office of Inspector General, 50 U.N. Plaza, Room 174, San Francisco, California 94102-4999. That office may be reached at (415) 437-7961.

Any questions you may have in this regard should be referred to that office.

Sincerely,

Maureen R. Byer
Director
Exclusions Staff
Office of Investigations

