

IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

STATE OF OKLAHOMA, )  
Plaintiff, )  
 )  
vs. )  
 )  
 )  
MICHAEL JOHNEEL FENNER, JR., )  
Defendant. )

CF-2013- 0413

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY

JAN 17 2013

TIM RHODES  
COURT CLERK

12

*Reason*

CRIMINAL INFORMATION

E. SCOTT PRUITT, the duly elected, qualified and acting Attorney General of the State of Oklahoma, gives the District Court of Oklahoma County, State of Oklahoma, to know and be informed that:

**Count 1: Medicaid Fraud, a Felony**  
**Title 56 O.S. § 1005(A)(1)**

On or between September 20, 2010 and May 14, 2011, in Oklahoma County, Oklahoma, the defendant Michael Johnneel Fenner, Jr. committed the crime of **Medicaid Fraud, a felony**, in violation of Title 56 O.S. § 1005(A)(1), by willfully and knowingly causing to be submitted to the Oklahoma Medicaid Program through its fiscal agent, false claims for payment for counseling services which were not eligible for reimbursement due to failure to provide the counseling services to M. S., St. S., and Si. S.. The aggregate amount of the false claims is an amount greater than \$2,500.00.

Felony Medicaid Fraud is punishable by imprisonment not to exceed three years or a fine of not more than three times the amount of payments illegally claimed or received or \$10,000.00, whichever is greater, or by both such imprisonment and fine.

In violation of the Oklahoma Statutes and against the peace and dignity of the State of Oklahoma.

**Count 2: Medicaid Fraud, a Misdemeanor**  
**Title 56 O.S. § 1005(A)(1)**

On or between August 14, 2010 and December 29, 2010, in Oklahoma County, Oklahoma, the defendant Michael Johnneel Fenner, Jr. committed the crime of **Medicaid Fraud, a misdemeanor**, in violation of Title 56 O.S. § 1005(A)(1), by willfully and knowingly causing to be submitted to the Oklahoma Medicaid Program through its fiscal agent, false claims for

payment for counseling services which were not eligible for reimbursement due to failure to provide the counseling services to D. M.. The aggregate amount of the false claims is an amount less than \$2,500.00.

Misdemeanor Medicaid Fraud is punishable by imprisonment not to exceed one year or a fine of not more than three times the amount of payments illegally claimed or received or \$1,000.00, whichever is greater, or by both such imprisonment and fine.

All in violation of the Oklahoma Statutes and against the peace and dignity of the State of Oklahoma.

Dated this 15<sup>th</sup> day of January, 2013.

E. SCOTT PRUITT  
OKLAHOMA ATTORNEY GENERAL  
BY: *M. Hardcastle*  
Marianne Hardcastle, OBA # 15054  
Assistant Attorney General  
Medicaid Fraud Control Unit  
907 S Detroit, Suite 750  
Tulsa, Oklahoma 74120  
(918) 581-2745

State of Oklahoma            )  
County of Oklahoma        ) ss.

I, Samuel Heinen, being duly sworn upon oath, state I have read the above and foregoing Criminal Information and know the contents thereof, and the facts stated therein are true.

*Samuel Heinen*

Subscribed and sworn to before me this 17 day of January, 2013.

*Kristy Porter*  
Notary Public

My Commission Expires:  
12-20-14



**Witnesses for the State of Oklahoma**

Samuel Heinen  
Justin Etchieson  
Lawry Shabazz  
Marquetta Dickenson  
April Woodard  
David Williams  
Dan Prykryl  
Oklahoma Attorney General's Office  
Medicaid Fraud Control Unit  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105

Steven Johnson  
Oklahoma Attorney General's Office  
Medicaid Fraud Control Unit  
907 S Detroit, Suite 750  
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(918) 581-2885

Barbara Slater  
St. S.  
Si. S.  
M. S.  
6300 Mocella Center  
Noble, OK 73068

Angela Melhorn  
800 Lexinton Street, #89  
Norman, OK 73069

Byron Johnson  
3904 S.E. 10<sup>th</sup>  
Oklahoma City, OK 73115

Clyde Wafford  
933 NW 164<sup>th</sup>, Suite #3  
Edmond, OK 73013

Brandy Brown  
222 East Sheridan Avenue  
Oklahoma City, OK 73104

Tracy Alvarez  
900 North Klein  
Oklahoma City, OK 73106

Richard Pierson  
101 Northeast 51<sup>st</sup> Street  
Oklahoma City, OK 73105

Susan Lowery  
Paula Printup-Porter  
Beth Van Horn  
Fred Oraene  
2401 Northwest 23<sup>rd</sup> Street  
Oklahoma City, OK 73107



client's diagnosis and determines the appropriate treatment modality for them going forward. Counseling sessions are documented for treatment and billing purposes in a progress note. Progress notes are a chronological written description of services provided to a client and document the client's response related to the intervention plan or services provided. Progress notes are maintained by the counseling agency and must include the clinician's name, date of service, and session start and stop times. Payment is rendered from the OHCA to the provider for completed work by way of the claims process. The OHCA maintains a database of all provider claims submitted for payment. The OHCA can summarize a provider's billing history in a provider history report.

Your affiant received, reviewed, and analyzed a provider history report that included the billings submitted by YCO for several Medicaid recipients; including M.S. (age 18), St.S. (age 16), Si.S. (age 14), and D.M. (age 7).

On July 6, 2011, OAG Investigator Steven Johnson served a subpoena duces tecum to YCO for the complete client files of several YCO clients; including M.S., St.S., Si.S., and D.M.. Those client files contain, among other details, the progress notes with the dates, start and stop times, and electronic signatures of the counselor/therapist who performed each session and caused that claim to be submitted for billing to OHCA.

On April 11, 2012, your affiant interviewed M.S. regarding the counseling services that he received from Fenner in 2010 and 2011. M.S. was shown a picture of Fenner and he had a difficult time remembering his (Fenner) name at first. M.S. reported meeting with Fenner on only one occasion. Fenner picked M.S. up from his family's home and they drove to the campus of the University of Oklahoma in Norman where they walked around for several hours and then went to eat at a McDonald's. M.S. said that this occasion was the only time that he ever met with or talked to Fenner. Fenner's billings for M.S. contradict M.S.'s statements because he (Fenner) billed for a total of 35 different counseling sessions with M.S. on as many different dates.

On May 14, 2012, Investigator Heinen interviewed Si.S. regarding the counseling services that she received from YCO. Si.S. was shown a picture of Fenner and said that she had never met him before, even though Fenner had submitted a billing for a 90 minute counseling session with Si.S. on 9/26/2010.

On May 14, 2012, Investigator Heinen interviewed St.S. regarding the counseling services that she received from YCO. St.S. was shown a picture of Fenner and said that she had never met him before, even though Fenner had submitted a billing for a 90 minute counseling session with St.S. on 9/27/2010.

On May 21, 2012, your affiant interviewed Angela Melhorn regarding the counseling services that were billed for her child, D.M., by Fenner in 2010. Melhorn said that Fenner would come to the family's house and take D.M. elsewhere for his counseling. Melhorn agreed to allow Fenner to be one of D.M.'s counselors because Fenner is the former probation officer of Melhorn's

boyfriend. Fenner came to see D.M. for counseling about once a week and usually on the same day. Melhorn was firm in stating that Fenner never counseled D.M. on a weekend day, he never counseled D.M. before 4:30 P.M., and that Fenner definitely did not counsel D.M. at any point after Thanksgiving Day of that year (November 25, 2010). Fenner's billings for D.M. contradict Melhorn's statements because he billed for 2 sessions with start times before 4:00 P.M., 6 sessions on dates after Thanksgiving Day, and for 2 weekend days.

On July 27, 2012, OAG Investigators David Williams and April Woodard interviewed Fenner at the Office of Attorney General in Oklahoma City. The interview was recorded on video and your affiant watched the interview in its entirety on a television in a separate office. During the interview, Fenner confirmed that he provided counseling services to M.S., St.S., Si.S, and D.M.. According to Fenner, the counseling sessions with M.S. took place at several different locations, including at the family's residence. Fenner said that he also picked M.S. up from the family's residence in Noble, OK, and took him to the University of Oklahoma for a tour of the school's campus. He said that counseling usually lasted for 90 minutes at a time, but days like the one when they went to OU may have been more like 4 hours together. Fenner also mentioned taking M.S. to McDonald's and denied ever counseling him at M.S.'s school. Fenner claimed he only counseled M.S. after the family moved to Noble. Fenner reported never counseling M.S. or other family members while the family lived in Oklahoma City. In reference to Si.S. and St.S., Fenner said that he usually counseled them at the family's home. Fenner said that he was their counselor for only a short time and estimated counseling each of them a total of 8 times each.

Fenner also confirmed providing counseling services to D.M. an estimated total of 20-30 times over the course of 6-8 months. Fenner was the former probation officer for Melhorn's boyfriend. Fenner recommended YCO to the family as a place to receive the counseling services that they were seeking at the time. Fenner later became the counselor for D.M. when it was decided that he could also benefit from therapy. Fenner said that the counseling sessions with D.M. lasted for about 90 minutes at a time and took place either at the family's residence or outside of the home. Fenner did not counsel D.M. at his school. Fenner usually saw D.M. in the evenings, after he was done with work at DOC.

Fenner was asked if there could be overlap between the times he billed for services provided at YCO with the hours he was working for DOC as a Probation and Parole Officer; Fenner said, "Um, there could be. That could be just because of me not changing the times when I billed, and when I first started that was probably pretty frequently because I was getting used to the billing process." Fenner went on to say that he did not know how to make corrections if he made a mistake on a submitted progress note and he never asked for help from anyone at YCO to help correct any of those mistakes. Fenner does not keep a notebook with the dates and lengths of time that he spends with each of his clients. Fenner usually completes his progress notes from the previous week on the day that they are due (Tuesdays by noon), "Normally I do it the day that we're supposed to turn

them in. I do it at the last minute. Probably always." Throughout the interview, Fenner insisted that he has never billed for services he did not actually provide.

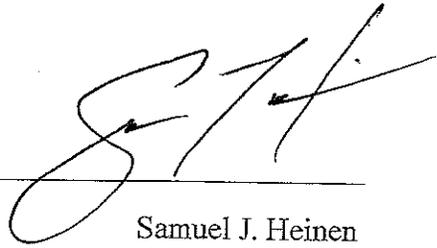
During the interrogation portion of the interview Fenner admitted it was possible that he may have made mistakes in his billings, "It could have just been me not checking the times. That would be the only reason that I could think of. But I have not billed for services that I did not provide." Fenner stated that he did not realize the importance of insuring each progress note was completely true and accurate in all areas before he submits that note for billing, "Well I mean I didn't know that it was that serious." Fenner was shown spreadsheets of the dates and times that he billed for services provided to several of his clients. Fenner went on to say that he could not be sure that all of the dates and times he billed for were completely correct and accurate.

Fenner was asked if it would be a fair statement to say that all of his billings could be incorrect. Fenner responded, "Not all of them." When asked how he could know that for certain when he does not keep a notebook of which clients he saw on each date and for what times, Fenner said, "No, I don't (know)." Fenner confirmed that it could be possible that he put the wrong date and/or time down for the progress notes he submitted for M.S. and D.M.. Fenner went on to acknowledge the fact that the statements Melhorn made about the counseling D.M. did and did not receive could actually be truthful and that his billings could be incorrect in some areas because he was in a rush to turn them in. Fenner was shown two progress notes that he submitted for Si.S. and St.S.. The two progress notes had nearly identical narratives and there were several of the same client quotes included in both of the notes; even though the two notes were for services provided to two different people on different dates. Fenner said that he may have copy and pasted progress notes when he first started at YCO. Fenner admitted that he has been told before that copying and pasting progress notes is not acceptable.

Your affiant has identified the total amount of Medicaid Fraud committed by Michael Fenner for M.S., St.S., and Si.S. from September, 2010, through May, 2011, is \$2,593.80. The total amount of Medicaid Fraud committed by Michael Fenner for D.M. from August, 2010, through December, 2010, is \$660.24.

I request upon probable cause, the court issue a warrant for the arrest of Michael Fenner on the charges of one (1) felony count and (1) misdemeanor count of Medicaid Fraud 56 O.S. § 1005.

Further, your affiant sayeth not.

  
\_\_\_\_\_  
Samuel J. Heinen

Subscribed and affirmed before me this 20 day of December, 2012.



  
\_\_\_\_\_  
Kristy Porter

My commission expires:

12-20-14