

- ii. inherently owed a fiduciary duty to the public to make governmental decisions in the public's best interest rather than secretly make such decisions based on his own personal interests; and
- iii. owed a duty, pursuant to Article II, Section 2 of the Code of Ethics for the Tennessee State Senate, to refrain from: (a) accepting any compensation for performance of his official legislative duties other than his official salary and allowances; (b) asking for, receiving, or agreeing to receive anything of value upon any understanding that his vote, opinion, judgment or action would be influenced thereby; (c) accepting any remuneration, other than his legislative compensation, for his legislative advice or assistance; and (d) using or attempting to use improper means to influence a department, agency, board or commission of state government.

C Defendant Ford's Duties of Disclosure:

- i. Under Tennessee Code Section 8-50-502(1), defendant FORD was required to disclose to the registry of election finance his major source or sources of private income of more than one thousand dollars
- ii. Under Tennessee Code Section 8-50-502(2), defendant FORD was required to disclose to the registry of election finance any investment which he had in any corporation or other business organization in excess of ten thousand dollars or five percent (5%) of the total capital

- iii. Under Tennessee Code Section 8-50-502(6), defendant FORD was required to disclose to the registry of election finance any retainer fee which he received from any person, firm, or organization who was in the practice of promoting or opposing, influencing or attempting to influence, directly or indirectly, the passage or defeat of any legislation before the general assembly, the legislative committees, or the members to such entities.

- iv. Under the Code of Ethics for the Tennessee State Senate, Article II, Section 2(a)(1), and Rule 13 of the Rules of Order of the Senate, defendant FORD had a duty to refrain from voting on or influencing legislation in committee or on the floor of the Senate, in which he had a personal interest, unless he declared that “It may be considered that I have a degree of personal interest in the subject matter of the bill, but I declare that my argument and my ultimate vote answer only to my conscience and my obligation to my constituents and the citizens of the State of Tennessee.”

- v. Under the Code of Ethics for the Tennessee State Senate, Article II, Section 3(c)(1) and 3(c)(3), respectively, defendant FORD was required to disclose, in a statement of financial interests filed with the Chief Clerk of the Senate: (a) the nature of the business of any corporation, firm or enterprise in which he had a direct financial interest of a value in excess of five thousand dollars (\$5,000 00), excluding policies of insurance, and accounts in banks, savings and loan associations and credit unions; and (b) sources of income in excess of one thousand five hundred dollars (\$1500 00) received by him

D Applicable Criminal Laws and Other Statutory Prohibitions:

- i Under Tennessee Code Section 12-4-101(b), it was illegal for a person whose duty it was to vote for, let out, overlook, or in any manner to superintend any work or any contract in which the State of Tennessee may be interested, to be indirectly interested in any such contract unless the person publicly acknowledged such person's interest
- ii Under Tennessee Code Section 39-16-102(a)(2), it was a crime for a public servant to solicit, accept or agree to accept any pecuniary benefit upon an agreement or understanding that the public servant's vote, opinion, judgment, exercise of discretion or other action as a public servant would thereby be influenced.

- iii Under Tennessee Code Section 39-16-104(a), it was a crime for a public servant to request a pecuniary benefit for the performance of an official action knowing that the public servant was required to perform that action without compensation or at a level of compensation lower than that requested.
- iv. Under Tennessee Code Section 39-16-402(a)(2), it was a crime for a public servant, with intent to obtain a benefit or to harm another, intentionally or knowingly to commit an act under color of office or employment that exceeds the public servant's official power.
- v. Under Tennessee Code Section 39-16-402(a)(3), it was a crime for a public servant, with intent to obtain a benefit, intentionally or knowingly to refrain from performing a duty that is imposed by law or that is clearly inherent in the nature of the public servant's office or employment.
- vi. Under Tennessee Code Section 39-16-402(a)(4), it was a crime for a public servant, with intent to obtain a benefit or to harm another, to intentionally or knowingly violate a law relating to the public servant's office or employment.
- vii Under Tennessee Code Section 39-16-402(a)(5), it was a crime for a public servant, with intent to obtain a benefit, intentionally or knowingly to receive any benefit not otherwise authorized by law.

viii Under Tennessee Code Section 39-16-404(a), it was a crime for a public servant, by reason of information to which the public servant has access in the public servant's official capacity and which has not been made public, to attain or aid another to attain a benefit.

E. Bureau of TennCare: The Bureau of TennCare was an agency within the State of Tennessee Department of Finance and Administration ("F & A"). The Bureau of TennCare administered a program, known as TennCare, which facilitated the provision of health care and dental services to more than a million Tennesseans through a network of managed cared organizations ("MCOs"). Each year, TennCare was funded in part federally through the United States Department of Health and Human Services, which possessed certain supervisory and investigative authority related to public officials' possible conflicts of interest related to contracts awarded by the Bureau of TennCare.

F. Individual A: Individual A was a resident of Pennsylvania

G. Managed Care Services Group: Managed Care Services Group ("MCSG") was an association consisting of defendant FORD, Individual A, and Individual B. MCSG was formed on or about December 3, 2001 as a Pennsylvania corporation known as Managed Care Services Group, Inc., and then purported to become a Pennsylvania limited partnership known as Managed Care Services Group, L.P. not later than February 10, 2003, pursuant to a Certificate of Limited Partnership purportedly signed by defendant FORD as general partner on February 7, 2003. Notwithstanding its purported legal status as a corporation and then as a limited partnership, MCSG operated in essence as a general partnership. According to its partnership agreement purportedly effective October 1, 2002, MCSG was owned 40 percent by defendant FORD and 30 percent each

by Individual A and Individual B, and defendant FORD contributed 40 percent of MCSG's start-up capital.

H. Doral Tennessee: Doral Dental Services of Tennessee, Inc. and its successor, Doral Dental of Tennessee, LLC (collectively and individually referred to hereinafter as "Doral Tennessee") were for-profit companies engaged in the business of providing managed-care dental services. Doral Tennessee was wholly owned, at various times, by various parent companies including Doral Dental USA, LLC (hereinafter, the term "Doral" refers collectively to Doral Tennessee and any parent company of Doral Tennessee). Doral Tennessee provided managed care dental services as a subcontractor to TennCare MCOs, including Omnicare Health Plan, Inc., until in or about October 2002. Thereafter, Doral Tennessee became a TennCare MCO itself, pursuant to the TennCare dental contract described below, and received compensation directly from the Bureau of TennCare.

I. Omnicare: Omnicare Health Plan, Inc., which was renamed UAHC Health Plan of Tennessee, Inc. (referred to hereinafter as "Omnicare") in or about March 2005, was a health maintenance organization ("HMO"). As set forth below, Omnicare was the subsidiary of United American Healthcare Corporation's wholly-owned subsidiary, United American of Tennessee, Inc. Substantially all of Omnicare's revenues were derived from TennCare for providing managed-care services to TennCare enrollees assigned to Omnicare. Omnicare's revenues from TennCare were primarily based on, and proportional to, the number of enrollees that the Bureau of TennCare assigned to Omnicare.

J. United American Healthcare Corporation: United American Healthcare Corporation ("UAHC") was a Michigan corporation that purportedly provided management and

consulting services to Omnicare. After on or about November 1, 2002, substantially all of UAHC's revenues were derived from its ownership of, and provision of services to, Omnicare through UAHC's wholly-owned subsidiary, United American of Tennessee, Inc.

K. United American of Tennessee, Inc.: United American of Tennessee, Inc. ("UA-TN") was a wholly-owned subsidiary of UAHC, and owned 75 percent of Omnicare until sometime in 2004, after which UA-TN owned all of Omnicare.

L. Individual B: Individual B served as a high-level executive with UAHC, with UA-TN and with Omnicare, and also was a 30 percent owner of MCSG

M. The Omnicare-TennCare contract: Omnicare participated as an MCO in TennCare, pursuant to a contract with the Bureau of TennCare (the "Omnicare-TennCare contract") which became effective July 1, 2001 and was amended periodically thereafter. The Omnicare-TennCare contract, and amendments one through eight thereto, were signed on Omnicare's behalf by Individual B. Pursuant to the Omnicare-TennCare contract as amended, Omnicare, through Individual B, warranted:

- i. that no part of the funds paid Omnicare pursuant to the Omnicare-TennCare contract as amended would be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation or gifts in exchange for acting as Omnicare's officer, agent, employee, subcontractor or consultant in connection with any work contemplated or performed relative to the Omnicare-TennCare contract as amended, unless otherwise authorized by the Commissioner of F & A; and

- ii. that no elected or appointed official or employee of the State of Tennessee had benefitted, or would benefit, financially or materially from the Omnicare-TennCare contract as amended.

N. The Carve-out. After a period of consideration beginning not later than early 2001 and continuing until not later than March 2002, the Bureau of TennCare decided (1) to cease having all TennCare MCOs handle dental services for their respective assigned TennCare enrollees, and, instead, (2) to implement the “carve-out,” that is, have a single MCO (the “dental MCO”) handle dental services for all eligible TennCare enrollees.

O. The TennCare Dental Contract. Pursuant to a Request for Proposals (RFP) ultimately issued in or about March 2002 (the “dental MCO RFP”), the Bureau of TennCare solicited bids from companies interested in obtaining a contract (the “TennCare dental contract”) to serve as the dental MCO from September 2002 through June 2005. In or about May 2002, the Bureau of TennCare notified Doral Tennessee that it intended to award Doral Tennessee the TennCare dental contract. Doral Tennessee and the Bureau of TennCare subsequently entered into the TennCare dental contract, which went into effect on or about October 1, 2002.

The Scheme to Defraud

2. Beginning not later than about August 2001 and continuing until about February 2005, the exact dates being unknown to the Grand Jury, in the Middle District of Tennessee and elsewhere, defendant FORD, together with Individual B and others known and unknown to the Grand Jury, devised and intended to devise, and participated in, a scheme and artifice to defraud his constituents in Senate District 29, the people of the State of Tennessee, the State of Tennessee, and the Tennessee General Assembly out of the intangible right of defendant FORD's honest services, and in furtherance thereof used interstate wires, which scheme and artifice is further described in the following paragraphs.

3. It was part of the scheme and artifice that on or about August 15, 2001, at which time Doral believed the dental MCO RFP could be issued as early as approximately August 29, 2001, defendant FORD met with Doral officials in defendant FORD's office in Memphis, Tennessee and stated that he would assist Doral.

4. It was further part of the scheme and artifice that Individual A and defendant FORD caused MCSG to be formed for the purpose of obtaining payments from Doral.

5. It was further part of the scheme and artifice that MCSG and Doral Tennessee entered into a written contract of indefinite duration (the "MCSG contract"), which was purportedly effective December 21, 2001 and was subject to termination upon the "death of the principal legislator associated with" MCSG, that is, defendant FORD.

6. It was further part of the scheme and artifice that pursuant to the MCSG contract, if Doral Tennessee were to obtain the TennCare dental contract, then MCSG would receive fees from

Doral Tennessee in return for purported consulting services related to obtaining the TennCare dental contract, promoting Doral Tennessee, and otherwise expanding Doral Tennessee's business.

7. It was further part of the scheme and artifice that after Doral Tennessee was effectively awarded the TennCare dental contract, MCSG and Doral Tennessee amended the MCSG contract in writing, effective September 1, 2002, to provide that MCSG's fee would be paid monthly, and would be calculated as three cents per month for each TennCare enrollee assigned to Doral Tennessee

8. It was further part of the scheme and artifice that MCSG did no work for, and received no compensation from, any party other than Doral, and that MCSG did virtually no work for Doral unrelated to the TennCare dental contract.

9. It was further part of the scheme and artifice that for each month beginning with October 2002, Doral paid MCSG a portion of Doral Tennessee's monthly revenues derived from the TennCare dental contract, in accordance with the MCSG contract as amended

10. It was further part of the scheme and artifice that MCSG distributed approximately 40 percent of its net profits to defendant FORD, and approximately 30 percent of its net profits to both Individual A and Individual B.

11. It was further part of the scheme and artifice that the contract remained in effect until about February 2005, that Doral paid MCSG more than \$1,000,000.00 total from October 2002 until February 2005, and that defendant FORD in turn received more than \$400,000.00 total from MCSG.

12. It was further part of the scheme and artifice that defendant FORD attempted to advance Doral's interests, and also his own interests derivative of Doral's interests, by the following means, among others:

A. On or about April 3, 2002, speaking in favor of the notion of the carve-out at a meeting of the Senate General Welfare, Health and Human Resources Committee;

B. On or about April 23, 2002, at a meeting of the select oversight committee on TennCare, speaking in favor of the Illinois Medicaid program for providing dental managed care services, which had been and was then being administered by a subsidiary of Doral Dental USA, LLC;

C. On or about May 14, 2002, at a meeting of the Senate General Welfare, Health and Human Resource Committee, complaining about delays in the implementation of the TennCare dental contract, purportedly out of concern for the efficacy of the TennCare dental program and the children it serves;

D. Between approximately mid-2001 and not later than March 2002, calling a high-ranking Tennessee state official with authority over TennCare matters to defendant FORD's office for multiple meetings, at least one of which was attended by one or more Doral employees, at which meetings defendant FORD praised Doral.

E. In or about summer 2003, telling a representative of a Colorado company, which was then contemplating suing Doral Tennessee because the Colorado company had been excluded from the TennCare network of dental providers, in effect that the exclusion was not Doral Tennessee's fault

13. It was further part of the scheme and artifice that defendant FORD, in violation of his duties of disclosure set forth above, concealed and failed to disclose the fact that he was a partner in MCSG and was receiving money from MCSG as a consequence of and in connection with the TennCare dental contract. Defendant FORD, among other things:

- A. Concealed and failed to disclose his interest in MCSG, before or after speaking at committee meetings in the Tennessee General Assembly about matters directly affecting and relating to Doral;
- B. Concealed and failed to disclose his interest in MCSG, before or after otherwise speaking ostensibly in his capacity as a State Senator about matters directly affecting and relating to Doral;
- C. Concealed and failed to disclose, in his statement of financial interests filed with the Chief Clerk of the Senate, the nature of the business of MCSG, an enterprise in which defendant FORD had a direct financial interest of a value in excess of five thousand dollars (\$5,000.00) and a source of income for him in excess of one thousand five hundred dollars (\$1500.00);
- D. Concealed and failed to disclose to the registry of election finance the nature of his investment in MCSG, a business organization in which he had an investment in excess of ten thousand dollars or five percent (5%) of the total capital;
- E. Concealed and failed to disclose to the registry of election finance the fact that a major source of his private income of more than one thousand dollars was his purported consulting; and
- F. Otherwise failed to acknowledge and disclose his financial interest in the TennCare dental contract.

14. It was further part of the scheme and artifice that defendant FORD and others misrepresented and concealed, and caused to be misrepresented and concealed, the purposes of and acts done in furtherance of the scheme and artifice.

15. On or about March 24, 2004, in the Middle District of Tennessee and elsewhere, **JOHN FORD**, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly did cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, namely an electronic transfer of funds in the approximate amount of \$5,069,168.67 initiated from the Bureau of TennCare's bank account in Nashville, Tennessee, through the Federal Reserve Bank's Automated Clearing House (ACH) system in Atlanta, Georgia, to Doral Tennessee's bank account in Wisconsin, said funds representing payment purportedly due Doral Tennessee under the terms of the TennCare dental contract.

In violation of Title 18, United States Code, Sections 1343 and 1346.

COUNT TWO

THE GRAND JURY FURTHER CHARGES:

1. The allegations in paragraph 1 of Count One of this indictment are hereby realleged and incorporated as if fully set forth herein.

2. Beginning not later than about October 2002 and continuing until about February 2005, the exact dates being unknown to the Grand Jury, in the Middle District of Tennessee and elsewhere, **JOHN FORD** did knowingly and willfully conceal and cover up by a trick, scheme and device a material fact in a matter within the jurisdiction of the Department of Health and Human Services, an agency within the executive branch of the Government of the United States, when he intentionally failed to disclose, contrary to his duties of disclosure, the fact that he was a partner in MCSG.

In violation of Title 18, United States Code, Sections 1001(a)(1) and 2.

COUNT THREE

THE GRAND JURY FURTHER CHARGES:

1. The allegations in paragraph 1 of Count One of this indictment are hereby realleged and incorporated as if fully set forth herein.

2. Beginning not later than about October 2002 and continuing until about February 2005, the exact dates being unknown to the Grand Jury, in the Middle District of Tennessee and elsewhere, **JOHN FORD** did knowingly and willfully conceal and cover up by a trick, scheme and device a material fact in a matter within the jurisdiction of the Department of Health and Human Services, an agency within the executive branch of the Government of the United States, when he intentionally failed to disclose, contrary to his duties of disclosure, the fact that he was receiving money from MCSG as a consequence of and in connection with the TennCare dental contract.

In violation of Title 18, United States Code, Sections 1001(a)(1) and 2.

COUNT FOUR

THE GRAND JURY FURTHER CHARGES:

1. The allegations in paragraph 1 of Count One of this indictment are hereby realleged and incorporated herein as if fully set forth herein

The Scheme to Defraud

2. Beginning not later than about April 2001 and continuing until about February 2005, the exact dates being unknown to the Grand Jury, in the Middle District of Tennessee and elsewhere, defendant FORD, together with Individual B and others known and unknown to the Grand Jury, devised and intended to devise, and participated in, a scheme and artifice to defraud defendant FORD's constituents in Senate District 29, the people of the State of Tennessee, the State of Tennessee, and the Tennessee General Assembly out of the intangible right of defendant FORD's honest services, and in furtherance thereof used interstate wires, which scheme and artifice is further described in the following paragraphs

3. It was part of the scheme and artifice that defendant FORD, using and under the name "John Ford & Associates," entered into a consulting agreement with UAHC, effective April 1, 2001, whereby UAHC agreed to pay defendant FORD the below-described fees purportedly for consulting services "in connection with the business and operations of" UAHC

4. It was further part of the scheme and artifice that, pursuant to the consulting agreement, UAHC agreed to pay defendant FORD \$17,000.00 upon execution of the consulting agreement and \$8500.00 for each month the agreement was in effect.

5. It was further part of the scheme and artifice that UAHC raised defendant FORD's monthly consulting fee to \$10,000.00, effective on or about January 1, 2004.

6. It was further part of the scheme and artifice that UAHC paid defendant FORD more than \$400,000.00 until the payments stopped in about February 2005, and that Individual B was aware that such payments were being made to FORD.

7. It was further part of the scheme and artifice that, from not later than approximately November 2002 through February 2005, UAHC derived the funds to pay defendant FORD almost entirely from proceeds paid to Omnicare under the Omnicare-TennCare contract.

8. It was further part of the scheme and artifice that defendant FORD sought to assist, and assisted, Omnicare in connection with its business with TennCare, by means including the following:

- A. Asking various state officials, on multiple occasions over a period of time, to assist in causing the Bureau of TennCare to assign additional TennCare enrollees to Omnicare;
- B. Meeting with a high-ranking Tennessee state official with authority over TennCare matters, at some time prior to May 17, 2002, to address issues of specific concern to Omnicare, including certain issues reflected in the Omnicare Amendments described below;
- C. At the specific request of a known lobbyist for Omnicare, on or about June 12, 2002 sponsoring two amendments (the "Omnicare Amendments") to a bill then pending before the Tennessee Senate as Senate Bill 2624;
- D. Speaking in favor of the Omnicare Amendments during June 2002 in sessions of both the full Senate and the Senate Finance, Ways and Means Committee;

- E. On or about February 6, 2003, after the Omnicare Amendments had failed to become enacted into law, sponsoring a bill, namely Senate Bill 302, comprised of language identical to the language of one of the Omnicare Amendments;
- F. On or about April 15, 2003, speaking on behalf of Senate Bill 302 in a session of the Senate Commerce, Labor and Agriculture Committee;
- G. In approximately early 2004, attending a meeting with Individual B and high-level executives of a private medical center, and there asking the executives to settle the medical center's outstanding claims against Omnicare on terms satisfactory to Omnicare; and
- H. On or about January 31, 2005, causing a letter in his name to be sent to the director of the Bureau of TennCare, which letter complained that Omnicare had not received reimbursement of certain administrative costs Omnicare allegedly incurred on behalf of the State of Tennessee, and requested that defendant FORD be advised as to when reimbursement would be forthcoming.

9 It was further part of the scheme and artifice that defendant FORD, in violation of his duties of disclosure set forth above, concealed and failed to disclose the fact that he was receiving money from UAHC, by means including the following:

- A. Concealing and failing to declare his possible conflict of interest in sponsoring, and speaking on behalf of, the Omnicare Amendments and Senate Bill 302, as required by the Code of Ethics for the Tennessee State Senate, Article II, Section 2(a)(1);

- B. Concealing from, and failing to inform, persons to whom he spoke about matters directly affecting and relating to Omnicare and UAHC, ostensibly in his capacity as a Tennessee State Senator, the fact that he was receiving money from UAHC;
- C. Concealing and failing to disclose, in his statement of financial interests filed with the Chief Clerk of the Senate, the nature of his consulting business, which was a source of income for him from UAHC in excess of one thousand five hundred dollars (\$1500.00);
- D. Concealing and failing to disclose to the registry of election finance the fact that a major source of his private income of more than one thousand dollars was his purported consulting; and
- E. Concealing and otherwise failing to acknowledge and disclose his financial interest in the Omnicare-TennCare contract as amended.

10 It was further part of the scheme and artifice that Individual B concealed and failed to disclose, and caused Omnicare to conceal and fail to disclose, among other things:

- A. The fact that defendant FORD had been and would be paid money derived from the Omnicare-TennCare contract as amended in exchange for acting as Omnicare's consultant in connection with work contemplated or performed relative to the Omnicare-TennCare contract as amended; and
- B. The fact that defendant FORD had benefitted and would benefit financially and materially from the Omnicare-TennCare contract as amended.

11. It was further part of the scheme and artifice that defendant FORD and others misrepresented and concealed, and caused to be misrepresented and concealed, the purposes of and acts done in furtherance of the scheme and artifice

12. On or about May 11, 2004, in the Middle District of Tennessee and elsewhere, **JOHN FORD**, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly did cause to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, namely an electronic transfer of funds in the approximate amount of \$7,577,665.32 initiated from the Bureau of TennCare's bank account in Nashville, Tennessee, through the Federal Reserve Bank's Automated Clearing House (ACH) system in Atlanta, Georgia, to Omnicare's bank account in Tennessee, said funds representing payment purportedly due Omnicare under the terms of the Omnicare-TennCare contract.

In violation of Title 18, United States Code, Sections 1343 and 1346.

COUNT FIVE

THE GRAND JURY FURTHER CHARGES:

1. The allegations in paragraph 1 of Count One of this indictment are hereby realleged and incorporated as if fully set forth herein.

2. Beginning not later than on or about April 1, 2001 and continuing until about February 2005, the exact dates being unknown to the Grand Jury, in the Middle District of Tennessee and elsewhere, **JOHN FORD** did knowingly and willfully conceal and cover up by a trick, scheme and device a material fact in a matter within the jurisdiction of the Department of Health and Human Services, an agency within the executive branch of the Government of the United States, by concealing and intentionally failing to disclose the fact that defendant FORD had contracted to receive compensation from UAHC.

In violation of Title 18, United States Code, Sections 1001(a)(1) and 2.

COUNT SIX

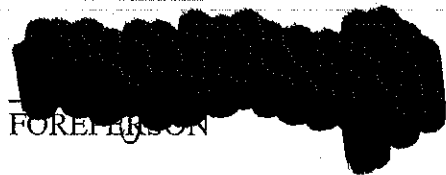
THE GRAND JURY FURTHER CHARGES:

1. The allegations in paragraph 1 of Count One of this indictment are hereby realleged and incorporated as if fully set forth herein.

2. Beginning not later than on or about April 1, 2001 and continuing until about February 2005, the exact dates being unknown to the Grand Jury, in the Middle District of Tennessee and elsewhere, **JOHN FORD** did knowingly and willfully conceal and cover up by a trick, scheme and device a material fact in a matter within the jurisdiction of the Department of Health and Human Services, an agency within the executive branch of the Government of the United States, by concealing and intentionally failing to disclose the fact that defendant FORD had received and was receiving compensation from UAHC

In violation of Title 18, United States Code, Sections 1001(a)(1) and 2.

A TRUE BILL



FOREPERSON


CRAIG S. MORFORD
UNITED STATES ATTORNEY