

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA**

SOUTHERN DIVISION

UNITED STATES OF AMERICA)
)
v.) CR
)
WESTON L. SMITH,)
Defendant)

INFORMATION

The United States Attorney charges, that at all times material to this Information:

Count 1
Conspiracy to Commit Wire Fraud and Securities Fraud
Title 18, United States Code, Section 371

INTRODUCTION

1. Defendant **WESTON L. SMITH** was employed at HealthSouth, Inc. (“HealthSouth”) since 1987 in various capacities. He served as Controller from in or about March 2000 to in or about August 2001 and as Chief Financial Officer (CFO) from in or about August 2001 to in or about August 2002. Defendant **SMITH** is licensed as a certified public accountant.

2. HealthSouth was a corporation organized under the laws of the State of Delaware with its headquarters in Birmingham, Alabama. HealthSouth claims to be the nation’s largest provider of outpatient surgery, diagnostic imaging and rehabilitative healthcare services with approximately 1600 locations in all 50 states, Puerto Rico, the United Kingdom, Australia, and Canada. At all times relevant to this Information, HealthSouth's common stock was listed on the New York Stock Exchange (“NYSE”).

3. HealthSouth is an issuer of a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (Title 15, United States Code, Section 781) and is required to file periodic financial reports under Section 15(d) of the Securities Exchange Act of 1934 (Title 15, United States Code, Section 78o(d)). From 1986, when HealthSouth issued its initial public offering, it filed reports such as Form 10-K and Form 10-Q with the United States Securities and Exchange Commission (“SEC”), which is located in Washington D.C.

CERTAIN RELEVANT ACCOUNTING PRINCIPLES

4. Public companies, such as HealthSouth, typically report the financial results of their operations in financial statements that include both an Income Statement and a Balance Sheet. A company's Income Statement reports, among other things, revenue recognized, expenses incurred, and income earned during a stated period of time – usually for a fiscal quarter or fiscal year. Within an Income Statement, expenses are generally subtracted from revenues to calculate net income. A company's Balance Sheet reports, among other things, the assets and liabilities of a company at a point in time, usually at the end of a fiscal quarter or the end of a fiscal year.

5. In preparing and maintaining the company's books and records, HealthSouth's accounting staff employed certain accounting principles and financial statement line items specific to healthcare services providers. One such Income Statement line item was "contractual adjustments." The contractual adjustments account is a revenue allowance account that estimates the difference between the gross amount charged to the patient and the amount that various healthcare insurers will pay for a specific treatment. HealthSouth deducted this amount from gross revenues to derive net revenues, which were reported on HealthSouth's periodic

reports filed with the SEC. Since Generally Accepted Accounting Principles (“GAAP”) generally require that any increase in revenue or decrease in expenses be matched with either an increase in assets or decrease in liabilities on the Balance Sheet, any manipulation of the contractual adjustment account resulting in an increase in revenues would require a corresponding entry on the Balance Sheet.

HEALTHSOUTH'S COMMUNICATIONS WITH INVESTORS

6. The management of many public companies including HealthSouth provided "guidance" to the investing public regarding anticipated earnings per share for upcoming reporting periods. Relying in part on a company's "guidance," many professional securities analysts then disseminated to the public their own estimates of the company's expected performance. These "earnings estimates" or "analyst expectations" were closely followed by investors. Often, if a company announces earnings that fail to either meet or exceed analyst expectations, the price of the company's securities will decline.

7. Numerous analysts of major Wall Street investment firms followed HealthSouth's performance and issued "guidance" estimates regarding its expected earnings. These analysts considered, among other things, HealthSouth management's "guidance" concerning estimated revenue, income and earnings per share, to gauge HealthSouth's performance, financial condition, and to predict HealthSouth's expected earnings. Similarly, market participants and members of the investing public considered and relied upon HealthSouth's periodic financial statements and guidance concerning actual operating results.

THE SECTION 1350 CERTIFICATION

8. Beginning on or about July 30, 2002, Title 18, United States Code, Section 1350 required certain financial reports filed with the SEC by companies like HealthSouth to be accompanied by a statement, signed by the CEO and the CFO, certifying that the financial statements (Income Statement and Balance Sheet) fairly present, in all material respects, the financial condition and results of the company ("1350 statement").

HEALTHSOUTH'S EARNINGS SHORTFALLS

9. Beginning at least in or about 1997, defendant **SMITH** and HealthSouth's current Chief Executive Officer (the "CEO") and another Senior Executive (the "Senior Executive") (collectively, the "Senior Officers") and others recognized that HealthSouth's financial results were failing to produce sufficient earnings per share to meet or exceed Wall Street "earning expectations" or "analyst expectations." The difference between HealthSouth's true and correct earnings per share and the Wall Street expectations was referred to internally at HealthSouth as the "gap" or the "hole." The Senior Officers, defendant **SMITH**, and others recognized that the earnings shortfall created a substantial risk that, unless HealthSouth's earnings per share were artificially inflated, HealthSouth's earnings would fail to meet analyst expectations and the market price of HealthSouth's securities would therefore decline.

THE CONSPIRACY

10. Beginning in or about January 1997, and continuing until the present, within the Northern District of Alabama and elsewhere, the defendant, **WESTON L. SMITH**, and others, knowingly and willfully conspired and agreed with each other, to commit an offense against the

United States, to wit:

(1) to devise and attempt to devise a scheme and artifice to defraud and to obtain money and property by means of material false and fraudulent pretenses, representations and promises and to knowingly transmit and cause to be transmitted, by means of wire communication, in interstate and foreign commerce, writings, signs, signals and sounds for the purpose of executing such scheme and artifice in violation of Title 18, United States Code, Section 1343; and

(2) to willfully and knowingly make and cause to be made false and misleading statements of material fact in applications, reports and documents required to be filed under the Securities and Exchange Act of 1934 and the rules and regulations thereunder in violation of Title 15, United States Code, Sections 78m(a) and 78(ff) and Title 17, Code of Federal Regulations, Section 240.13a-1; 13a-13 and 13b2-2.

THE PURPOSE OF THE CONSPIRACY

11. The purpose of the conspiracy was for the defendant, **WESTON L. SMITH**, the Senior Officers and others to fraudulently enrich themselves by inflating artificially HealthSouth's publicly reported earnings and earnings per share and by fraudulently enhancing its reported financial condition.

THE MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendant and others sought to accomplish the conspiracy included, among other things, the following:

12. It was part of the conspiracy that the Senior Officers, defendant **SMITH** and

others engaged in an illegal scheme to inflate artificially HealthSouth's publicly reported earnings and earnings per share and falsify reports of HealthSouth's financial condition.

13. It was further part of the conspiracy that the Senior Executive would provide the CEO with monthly and quarterly preliminary reports showing HealthSouth's true and actual financial results.

14. It was further part of the conspiracy that after reviewing the preliminary reports on HealthSouth's monthly and quarterly actual earnings numbers, the Senior Officers would direct members of HealthSouth's accounting staff to find ways to ensure that HealthSouth's earnings per share number met or exceeded Wall Street analysts' expectations.

15. It was further part of the conspiracy that after the Senior Officers issued instructions as to the desired earnings per share number, HealthSouth's accounting staff, including defendant **SMITH**, would meet to discuss ways to inflate artificially HealthSouth's earnings in order to meet the Wall Street earnings expectations. These meetings were known as "family" meetings and the attendees were known as the "family." At the meetings the "family" members discussed how members of the accounting staff would falsify HealthSouth's books to fill the "gap" or "hole" and meet the desired earnings. The fraudulent postings used to fill the "gap" or "hole" were referred to as the "dirt."

16. It was further part of the conspiracy that defendant **SMITH**, the Senior Officer and others, made and caused to be made false and fraudulent entries in HealthSouth's books and records for the purpose of inflating artificially HealthSouth's earnings. Methods for artificially inflating HealthSouth's earnings included falsifying the "contractual adjustment" account and

decreasing other expenses. After manipulating the "contractual adjustment" and other expense accounts to artificially inflate revenue on the Income Statement, corresponding fraudulent adjustments were made to increase assets and decrease liabilities shown on HealthSouth's Balance Sheet. Thus, false and fraudulent entries were made to accounts in HealthSouth's books and records including, but not limited to, the: (1) Property, Plant and Equipment ("PP&E") account; (2) cash account; (3) inventory account; and (4) intangible asset (goodwill) accounts. Each of these accounts were reported in HealthSouth's Balance Sheets. As defendant **SMITH** and his co-conspirators well knew, there was no justification in fact, or under GAAP, for these entries.

17. It was further part of the conspiracy that HealthSouth's accounting personnel designed the fictitious accounting entries to avoid their detection. For example, if the accounting staff decided to increase inventories, it would increase inventory accounts at various HealthSouth facilities by different false amounts because they knew that if amounts were increased uniformly, suspicions of the auditors might be raised. In addition, since the HealthSouth audit staff knew that auditors questioned additions to the PP&E account which exceeded a certain threshold, the bogus additions to PP&E at a particular facility were kept below the threshold.

18. It was further part of the conspiracy that defendant **SMITH**, the Senior officers and their co-conspirators made and caused to be made false and fraudulent journal entries in HealthSouth's books and records knowing, and intending (1) that such journal entries would ultimately be reflected in HealthSouth's financial statements, public filings with the SEC; (2) that

HealthSouth's financial statements and public filings would falsely overstate HealthSouth's revenue, earnings and earnings per share; and (3) that the investing public would rely upon such fraudulently overstated earnings and earnings per share.

19. It was further part of the conspiracy that the Senior Officers, defendant **SMITH**, the Senior Officers and others caused HealthSouth to file publicly with the SEC annual reports and quarterly reports that materially misstated, among other things, HealthSouth's net income, revenue, earnings per share, assets, and liabilities from at least 1999 until the present. As a result of the scheme, HealthSouth's revenue and earnings were inflated by hundreds of millions of dollars on publicly filed reports. For example, the Balance Sheet included in HealthSouth's 10-Q for the second quarter of 2002, overstated PP&E by approximately \$1 billion or approximately 33% of the total PP&E reported. The amount of Cash on the same 10-Q was overstated by more than \$300 million and HealthSouth's total assets were overstated by approximately \$1.5 billion.

20. It was further part of the conspiracy that in or about August 2002, in order to cover up and conceal the materially false and misleading financial information which HealthSouth had provided to the SEC and the public in the past, the Senior Officers and defendant **SMITH**, met and discussed the need for defendant **SMITH** to sign and file with the SEC a statement in which he falsely certified that HealthSouth's financial statements fairly presented in all material respects the financial condition and results of operations of HealthSouth.

21. It was further part of the conspiracy that the Senior Officers and defendant **SMITH** agreed that defendant **SMITH** and the CEO would sign and cause to be filed with the

SEC, a statement certifying that HealthSouth's 10-Q for the second quarter of 2002 fairly presented, in all material respects, the financial condition and results of HealthSouth, when in truth and fact, the Senior Officers and defendant **SMITH** knew that the 10-Q contained materially false and misleading information.

OVERT ACTS

22. In furtherance of the conspiracy and to achieve the objects thereof, defendant **SMITH** the Senior Officers and others committed and caused to be committed various acts in the Northern District of Alabama and elsewhere:

(a) On or about November 13, 2001, defendant **SMITH** signed HealthSouth's 10-Q for the third Quarter of 2001 knowing that it did not fairly present, in all material respects, the financial condition and results of operations of HealthSouth.

(b) On or about August 14, 2002, the CEO signed HealthSouth's 10-Q for the second quarter of 2002, representing that it fairly presented, in all material respects, the financial condition and results of HealthSouth.

(c) On or about August 14, 2002, the CEO caused to be transmitted by wire from Birmingham, Alabama to the SEC, in Washington D.C., HealthSouth's 10-Q for the second quarter of 2002 signed by the CEO and defendant **SMITH**.

(d) On or about August 14, 2002, the CEO signed the 1350 statement certifying that

HealthSouth's 10-Q for the second quarter of 2002 fairly presented, in all material respects, the financial condition and results of operations of HealthSouth.

(e) On or about August 14, 2002, the CEO caused to be transmitted by wire from Birmingham, Alabama to the SEC, in Washington D.C., the 1350 statement certifying that HealthSouth's 10-Q for the second quarter of 2002 fairly presented, in all material respects, the financial condition and results of operations of HealthSouth signed by defendant **SMITH** and the CEO.

(f) On or about November 14, 2002, the Senior Officers caused to be transmitted by wire from Birmingham, Alabama to the SEC, in Washington D.C., the 1350 statement certifying that HealthSouth's 10-Q for the second quarter of 2002 fairly presented, in all material respects, the financial condition and results of operations of HealthSouth.

All in violation of Title 18, United States Code, Section 371.

Count 2
False Certification of Financial Information Filed with the SEC
Title 18, United States Code, Sections 1350 & 2

1. The allegations contained in ¶¶ 1 through 9 of Count 1 are repeated and realleged as though set forth in full in this Count.

2. The allegations contained in ¶¶ 12 through 22 of Count 1 are repeated and realleged as though set forth in full in this Count as describing the falsification of HealthSouth's financial condition.

3. On or about August 14, 2002, in the Northern District of Alabama, defendant

WESTON L. SMITH and others knowingly certified and caused to be certified a statement required to be filed by Title 18, United States Code, Section 1350, knowing that the periodic report accompanying the statement did not comport with all the requirements set forth in Title 18, United States Code, Section 1350 and further knowing that the information contained in the periodic report did not fairly present, in all material respects, the financial condition and results of operations of HealthSouth, to wit: the certification of HealthSouth's 10-Q for the second quarter of 2002 which overstated HealthSouth's year to date earnings by more than \$150 million and overstated HealthSouth's assets by more than \$1 billion.

All in violation of Title 18, United States Code, Sections 1350 and 2.

Count 3
Filing False Reports with the SEC
Title 15, United States Code, Sections 78m(a) and 77(ff) and
Title 17, Code of Federal Regulations, Sections 240.13a-1; 13a-13 and 13b2-2

1. The allegations contained in ¶¶ 1 through 9 of Count 1 are repeated and realleged as though set forth in full in this Count.
2. The allegations contained in ¶¶ 12 through 22 of Count 1 are repeated and realleged as though set forth in full in this Count and describing the falsification of HealthSouth's financial condition.
3. On or about November 13, 2001, in the Northern District of Alabama, defendant **WESTON L. SMITH** willfully and knowingly made and caused to be made false and misleading statements of material fact in applications, reports and documents required to be filed under the Securities and Exchange Act of 1934 and the rules and regulations thereunder, to wit:

signing and submitting to the SEC in Washington D.C. HealthSouth's 10-Q for the third quarter of 2001 knowing that the report materially misstated information required to be filed and omitted material information about HealthSouth's results of operations and financial condition.

All violation of Title 15, United States Code, Sections 78m(a) and 77(ff) and Title 17, Code of Federal Regulations, Sections 240.13-1; 13a-13 and 13b2-2.

Count 4
Forfeiture
Title 18, United States Code, Section 981(a)(1)(C) &
Title 28, United States Code, Section 2461(c)

The United States Attorney further charges:

1. That Counts One and Two of this Information are incorporated by reference herein for the purpose of alleging criminal forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).
2. As a result of the foregoing offenses alleged in Counts One and Two of this Information, the defendant, **WESTON L. SMITH**, shall forfeit to the United States any property constituting or derived from proceeds traceable to said violations committed by the defendant, **WESTON L. SMITH**. Such forfeitable interests include, but are not limited to, and all interest and proceeds derived therefrom.

3. If any of the property described above as being subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), as a result of any act or omission of the defendant, **WESTON L. SMITH**—

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred to, sold to, or deposited with a third person;
- (3) has been placed beyond the jurisdiction of the Court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property that cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant, **WESTON L. SMITH**, up to the value of the above forfeitable property.

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

ALICE H. MARTIN
United States Attorney
Northern District of Alabama

JOSHUA R. HOCHBERG
Chief, Fraud Section
Criminal Division
United States Department of Justice

by: _____

GEORGE A. MARTIN
Assistant United States Attorney
Northern District of Alabama

RICHARD SMITH
Deputy Chief, Fraud Section
Criminal Division
United States Department of Justice

MIKE RASMUSSEN
Assistant United States Attorney
Northern District of Alabama

RICHARD N. WIEDIS
Senior Trial Attorney, Fraud Section
Criminal Division
United States Department of Justice