

ABS/JN:MGD  
F. #2019R00454

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
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UNITED STATES OF AMERICA

I N F O R M A T I O N

- against -

Cr. No. \_\_\_\_\_  
(T. 18, U.S.C., §§ 982(a)(7), 982(b)(1),  
1349, 2 and 3551 et seq.; T. 21, U.S.C.,  
§ 853(p); T. 26, U.S.C., § 7602(1))

NISHA DILER,

Defendant.

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THE UNITED STATES CHARGES:

I N T R O D U C T I O N

At all times relevant to this Information, unless otherwise indicated:

I. Background

A. The Medicaid Program and New York State Medicaid Rules

1. The Medicaid Program (“Medicaid”) in New York State was a federally and state-funded health care program providing benefits to individuals and families who met specified financial and other eligibility requirements and certain other individuals who lacked adequate resources to pay for medical care. The Centers for Medicare and Medicaid Services (“CMS”) together with the New York State Department of Health were responsible for overseeing the Medicaid program in participating states, including New York. Individuals who received benefits under Medicaid were referred to as “beneficiaries.”

2. In New York State, the Medicaid program provided coverage to its beneficiaries for prescription drugs. Medicaid beneficiaries could obtain their prescription

drug benefits from pharmacies either through “fee-for-service” enrollment or through Medicaid Managed Care plans, which were administered by private insurance companies that were paid by Medicaid.

3. To submit a claim for payment to Medicaid, pharmacies were required to maintain a standing certification (“Medicaid Standing Certification”), which applied to all claims submitted electronically or on paper using the pharmacy’s National Provider Identifier that stated, inter alia, “the persons providing services, care and supplies have the necessary licensing, certification, training and experience to perform the claimed services.”

4. The Medicaid Standing Certification further provided, in all capital letters, that:

All statements, data and information are true, accurate and complete to the best of my knowledge; no material fact has been omitted; I understand that payment and satisfaction of this claim will be from federal, state and local public funds and that I may be fined and/or prosecuted under applicable federal and state laws for any violation of the terms of this certification, including but not limited to false claims, statements or documents, or concealment of a material fact . . .

5. Medicaid was a “health care benefit program,” as defined by 18 U.S.C. § 24(b).

B. The Medicare Program

6. The Medicare program (“Medicare”) was a federal health care program providing benefits to persons who were at least 65 years old or disabled. Medicare was administered by CMS. Individuals who received benefits under Medicare were likewise referred to as Medicare “beneficiaries.”

7. Medicare was divided into multiple parts. Medicare Part D provided prescription drug coverage to persons who were eligible for Medicare.

8. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

C. New York State Regulations Governing the Provision of Pharmacy Services

9. The provision of pharmacy services in New York State was governed by Article 137 of the New York Education Law, Article 33 of the New York Public Health Law and the Rules of Professionalism set by the New York State Board of Regents, among others.

10. Article 137 of the New York Education Law provided, inter alia, the following:

- (a) All prescription drugs must be dispensed by a licensed pharmacist;
- (b) Only a licensed person may practice pharmacy or use the title “pharmacist” (with a limited number of exceptions not applicable here); and
- (c) If the owner of a pharmacy is not a licensed pharmacist and thereby capable of personally supervising the pharmacy, the licensed pharmacist who has personal supervision of the pharmacy (the “Supervising Pharmacist”) must be named on the pharmacy registration. If such licensed pharmacist no longer has personal supervision of the pharmacy, the owner must notify the Department of Education of that fact and provide information for a new Supervising Pharmacist.

11. The New York State Public Health Law and the Board of Regents’ Rules of Professionalism provided that, among other responsibilities, a Supervising Pharmacist of a New York State-registered pharmacy, must:

(a) ensure that either the Supervising Pharmacist or another licensed pharmacist is physically on the premises of the pharmacy at all times that the pharmacy is open for business;

(b) not delegate professional responsibilities to a person whom the licensee knows is not qualified to perform them; and

(c) notify the New York State Board of Pharmacy (the “Board of Pharmacy”) within seven days of any change in the identity of the Supervising Pharmacist.

D. The Defendant and Relevant Entity

12. The defendant NISHA DILER was a resident of Hicksville, New York, and was a naturalized citizen of the United States. DILER was a licensed pharmacist in New York State.

13. New Moon Pharmacy Inc. (“New Moon”) was an active New York State corporation incorporated on or about October 24, 2013. New Moon was located at 109-14 Liberty Avenue, Richmond Hill, New York. New Moon was owned and operated by Harris Hussnain (“Hussnain”), who was not a licensed pharmacist.

14. The defendant NISHA DILER was the purported Supervising Pharmacist of New Moon between approximately July 2016 and December 2019.

II. The Fraudulent Schemes

A. The Health Care Fraud Scheme

15. In or about and between July 2016 and December 2019, the defendant NISHA DILER knowingly and intentionally conspired with others, including Hussnain, to engage in a fraudulent scheme to submit false and fraudulent claims for reimbursement to Medicaid and Medicare for prescription drugs purportedly provided to patients by New

Moon that were not, in fact, eligible for payment because they were not dispensed by a licensed pharmacist, in exchange for kickbacks from Hussnain and others.

16. On or about July 25, 2016, the defendant NISHA DILER and Hussnain notified the Board of Pharmacy that DILER had become the Supervising Pharmacist of New Moon.

17. Both the defendant NISHA DILER and Hussnain were aware that the Board of Pharmacy required the Supervising Pharmacist to work at New Moon at least 32 hours per week and that New Moon was not permitted to operate outside the presence and supervision of a licensed pharmacist. Nevertheless, DILER worked at New Moon only part-time, and Hussnain paid DILER a commensurate salary that was significantly below the market rate for a licensed pharmacist.

18. Between approximately July 2016 and December 2019, the defendant NISHA DILER was normally present at New Moon for only a few hours per month. During some months, DILER was not present at New Moon at all. There was no other licensed pharmacist working at New Moon during the time that DILER served as its nominal Supervising Pharmacist.

19. During the course of the scheme, with the knowledge and consent of the defendant NISHA DILER, Hussnain regularly filled and dispensed prescriptions to patients without the supervision of DILER or any other licensed pharmacist. During that time, Hussnain held himself out to patients as the pharmacist at New Moon, even though that was DILER's purported role.

20. During the course of the scheme, the defendant NISHA DILER and Hussnain filed paperwork with the Board of Pharmacy that falsely stated DILER was the

Supervising Pharmacist at New Moon and that she worked 45 hours per week. Hussnain also regularly renewed New Moon's Medicaid Standing Certification, in which he falsely certified that services at New Moon were being performed by a licensed pharmacist and omitted the material fact that DILER was not personally supervising New Moon's operations.

21. New Moon was not entitled to bill Medicaid and Medicare for dispensing prescription drugs because it was operating without a Supervising Pharmacist, and therefore was not in compliance with New York State law. Accordingly, New Moon's claims for dispensed prescription drugs during the pendency of the scheme were entirely false and fraudulent.

B. Subscribing to False Tax Return

22. Between approximately January 2018 and December 2018, Hussnain paid the defendant NISHA DILER approximately \$18,000 for her role in the scheme. The payments from Hussnain to DILER were purportedly for her work at New Moon.

23. The defendant NISHA DILER was required to report and pay federal income taxes on her income from New Moon.

24. On or about February 27, 2019, the defendant NISHA DILER filed with the Internal Revenue Service a joint U.S. Personal Income Tax Return, IRS Form 1040, for the calendar year 2018. On that tax return, DILER falsely stated that she had earned \$3,000 from her work at New Moon in 2018. DILER signed the 2018 tax return under penalty of perjury.

COUNT ONE  
(Conspiracy to Commit Health Care Fraud)

25. The allegations contained in paragraphs one through 24 are realleged and incorporated as if fully set forth in this paragraph.

26. In or about and between July 2016 and December 2019, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant NISHA DILER, together with others, did knowingly and intentionally conspire to execute a scheme and artifice to defraud one or more health care benefit programs, as defined in Title 18, United States Code, Section 24(b), to wit: Medicaid and Medicare, and to obtain, by means of one or more materially false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of, said health care benefit programs, in connection with the delivery of and payment for health care benefits, items and services, contrary to Title 18, United States Code, Section 1347.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNT TWO  
(Making and Subscribing a False Tax Return)

27. The allegations contained in paragraphs one through 24 are realleged and incorporated as if fully set forth in this paragraph.

28. On or about February 27, 2019, within the Eastern District of New York and elsewhere, the defendant NISHA DILER did willfully make and subscribe a joint U.S. Personal Income Tax Return, IRS Form 1040, for the calendar year 2018, which was verified by a written declaration that it was made under penalty of perjury and was filed with the Internal Revenue Service, and which DILER did not believe to be true and correct as to

every material matter in that, as DILER then and there well knew and believed, the tax return falsely underreported income by approximately \$15,000.

(Title 26, United States Code, Section 7206(1); Title 18, United States Code, Sections 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION  
AS TO COUNT ONE

29. The United States hereby gives notice to the defendant that, upon her conviction of the offense charged in Count One, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982(a)(7), which requires any person convicted of a federal health care offense to forfeit any property, real or personal, that constitutes, or is derived directly or indirectly from, gross proceeds traceable to the commission of such offense.

30. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be

divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any

other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 982(a)(7) and 982(b)(1); Title 21, United States Code, Section 853(p))

  
\_\_\_\_\_  
SETH D. DUCHARME  
ACTING UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

*Acting*  
  
\_\_\_\_\_  
~~ROBERT ZINK~~ Daniel Kahn  
CHIEF, FRAUD SECTION  
CRIMINAL DIVISION  
U.S. DEPARTMENT OF JUSTICE

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FORM DBD-34  
JUN. 85

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**INFORMATION**

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*A true bill.*

\_\_\_\_\_  
*Foreperson*

*Filed in open court this* \_\_\_\_\_ *day,*

*of* \_\_\_\_\_ *A.D. 20* \_\_\_\_\_

\_\_\_\_\_  
*Clerk*

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*Bail, \$* \_\_\_\_\_

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*Miriam L. Glaser Dauermann, Trial Attorney (718) 254-7575*