

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

CASE NO. 6:18-cr-137-DV1-37TBS

v.

CHRISTOPHER DEVINE

18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 2

~~SEALED~~

INDICTMENT

The Grand Jury charges:

INTRODUCTION

At all times material to this Indictment:

A. The TRICARE Program

1. TRICARE was a health care program of the United States Department of Defense (“DOD”) Military Health System that provided coverage for DOD beneficiaries worldwide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors. Individuals who received health care benefits through TRICARE were referred to as TRICARE beneficiaries. The Defense Health Agency (“DHA”), an agency of the DOD, was the military entity responsible for overseeing and administering the TRICARE program.

2. TRICARE was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), that affected commerce, and as that term is used in Title 18, United States Code, Section 1347.

3. TRICARE was a “health care benefit program,” as defined by Title 42, United States Code, Section 1320a-7b(t), that affected commerce, and as that term is used in Title 42, United States Code, Section 1320a-7b(b).

4. TRICARE provided coverage for certain prescription drugs, including certain compounded drugs that were medically necessary and prescribed by a licensed medical professional. Express Scripts, Inc. (“Express Scripts”) administered TRICARE’s prescription drug benefits.

5. TRICARE beneficiaries could fill their prescriptions through military pharmacies, TRICARE’s home delivery program, network pharmacies, and non-network pharmacies. If a beneficiary chose a network pharmacy, the pharmacy would collect any applicable co-pay from the beneficiary, dispense the drug to the beneficiary, and submit a claim for reimbursement to Express Scripts, which would in turn adjudicate the claim and reimburse the pharmacy directly or through a Pharmacy Services Administrative Organization (“PSAO”). To become a network pharmacy, a pharmacy agreed to be bound by, and comply with, all applicable State and Federal laws, specifically including those addressing fraud, waste, and abuse.

B. Compound Drugs Generally

6. In general, “compounding” was a practice in which a licensed pharmacist, a licensed physician, or, in the case of an outsourcing facility, a person under the supervision of a licensed pharmacist, combined, mixed, or altered ingredients of a drug or multiple drugs to create a drug tailored to the needs of an individual patient. Compounded drugs were not approved by the U.S. Food and Drug Administration (“FDA”); that is, the FDA did not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs. The Florida State Board of Pharmacy regulated the practice of compounding in the State of Florida.

7. Compounded drugs could be prescribed by a physician when an FDA-approved drug did not meet the health needs of a particular patient. For example, if a patient was allergic to a specific ingredient in an FDA-approved medication, such as a dye or a preservative, a compounded drug could be prepared excluding the substance that triggers the allergic reaction. Compounded drugs could also be prescribed when a patient could not consume a medication by traditional means, such as an elderly patient or child who cannot swallow an FDA-approved pill and needs the drug in a liquid form that is not otherwise available.

C. The Defendants, Related Companies and Individuals

8. QMedRX Inc. d/b/a Home Care Solutions was a Florida corporation located at 630 N. Wynmore Road, Suite 370, Maitland, Florida 32751.

9. Restore Health Pharmacy, LLC was a Wisconsin limited liability company located at 1289 Deming Way, Madison, Wisconsin 53717.

10. Individual A, a resident of Palm Beach County, was a sales representative for QMedRX Inc. and Restore Health Pharmacy, LLC, who paid kickbacks in return for information to be used to bill TRICARE.

11. Randy Papanek, a resident of Broward County, was an Air Force Reservist who received kickbacks in return for information to be used to bill TRICARE.

12. Defendant CHRISTOPHER DEVINE, a resident of Palm Beach County, was a physician licensed in the State of Florida.

COUNT ONE

**Conspiracy to Commit Health Care Fraud and Wire Fraud
(18 U.S.C. § 1349)**

1. Paragraphs 1 through 12 of the Introduction section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. Beginning in or around May 2013 and continuing through in or around April 2014, in the Middle District of Florida, and elsewhere, the defendant,

CHRISTOPHER DEVINE,

did willfully and knowingly combine, conspire, confederate, and agree with others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

a. to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18 United States Code, Section 1347; and

b. to knowingly and with the intent to defraud, devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations and promises were false and fraudulent when made, and for the purpose of executing the scheme

and artifice, did knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, certain writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to TRICARE for prescription compounded drugs that were not medically necessary and not eligible for TRICARE reimbursement; (b) concealing and causing the concealment of the submission of false and fraudulent claims to TRICARE; and (c) diverting fraud proceeds for their personal use and benefit, the use and benefit of others, and to further the fraud.

Manner and Means of the Conspiracy

4. The manner and means by which the defendant and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things:

a. It was part of the conspiracy that Individual A and other co-conspirators, including Randy Papanek, would and did identify TRICARE beneficiaries that agreed to receive prescription compounded drugs in return for payment.

b. It was further part of the conspiracy that CHRISTOPHER DEVINE would and did prescribed medically unnecessary compounded drugs for TRICARE beneficiaries without meeting with or conducting or causing the examination of the TRICARE beneficiaries.

c. It was further part of the conspiracy that thereafter, Individual A would and did pay CHRISTOPHER DEVINE cash kickbacks in return for prescribing the compounded drugs.

d. It was further part of the conspiracy that in order to facilitate and conceal the scheme, CHRISTOPHER DEVINE, Individual A, and others would and did schedule sham appointments for the purpose of creating a record for the prescriptions.

e. It was further part of the conspiracy that CHRISTOPHER DEVINE, Individual A, and their co-conspirators would and did cause pharmacies, including QMedRX Inc. and Restore Health Pharmacy, LLC, to submit false and fraudulent claims, via interstate wires, to TRICARE for prescription compounded drugs that were not medically necessary and not eligible for TRICARE reimbursement.

f. It was further part of the conspiracy that as a result of these false and fraudulent claims, CHRISTOPHER DEVINE, Individual A, and their co-conspirators caused TRICARE to make payments totaling

approximately \$1,640,363.98 to QMedRX Inc. and Restore Health Pharmacy, LLC.

g. It was further part of the conspiracy that the conspirators would and did perform acts and make statements to aide and conceal, and cause to be hidden and concealed, the purpose of the conspiracy and the acts committed in furtherance thereof.

All in violation of Title 18, United States Code, Section 1349.

COUNTS TWO AND THREE
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 12 of the Introduction section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. Beginning in or around May 2013 and continuing through in or around April 2014, in the Middle District of Florida, and elsewhere, the defendant,

CHRISTOPHER DEVINE,

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully, execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is,

Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program.

Purpose of the Scheme and Artifice

3. It was a purpose of the scheme and artifice for the defendant and his accomplices to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to TRICARE for prescription compounded drugs that were not medically necessary and not eligible for TRICARE reimbursement; (b) concealing and causing the concealment of the submission of false and fraudulent claims to TRICARE; and (c) diverting fraud proceeds for their personal use and benefit, the use and benefit of others, and to further the fraud.

The Scheme and Artifice

4. The allegations contained in paragraphs 4a through 4g of the Manner and Means section of Count One of this Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution or Attempted Execution of the Scheme and Artifice

5. On or about the dates set forth as to each count below, in the Middle District of Florida, and elsewhere, CHRISTOPHER DEVINE, in

connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud a health care benefit program affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, TRICARE, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of said health care benefit program, in that he submitted and caused the submission of false and fraudulent TRICARE claims seeking reimbursement for the cost of prescriptions for compounded drugs that were not medically necessary and provided as claimed:

Count	Pharmacy	Prescription Fill Date	Patient Initials	Approximate Amount Paid
Two	QMedRX Inc.	8/25/2013	R.P.	\$8,250.52
Three	QMedRX Inc.	7/30/2013	J.C.	\$10,963.48

In violation of Title 18, United States Code, Sections 1347 and 2.

FORFEITURE
(18 U.S.C. §§ 981(a)(1)(C) and 982)

1. The allegations contained in this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of certain property in which the defendant, CHRISTOPHER DEVINE, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Sections 1347 or 1349, as alleged in this Indictment, the defendant so convicted shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property subject to forfeiture includes a money judgment in the amount of approximately \$1,640,363.98 in United States currency, which sum represents the value of the gross proceeds traceable to the commission of the violations alleged in this Indictment.

4. If any of the property described above, 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 to seek forfeiture of substitute property

pursuant to Title 21, United States Code, Section 853(p).

All pursuant to Title 18, United States Code, Sections 982(a)(7) and 981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461(c), and the procedures set forth in Title 21, United States Code, Section 853.

A TRUE BILL,


FOREPERSON

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