

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. **18 - 60167**

18 U.S.C. § 1349  
18 U.S.C. § 1347  
18 U.S.C. § 2  
18 U.S.C. § 982(a)(7)

**CR-MIDDLEBROOKS**

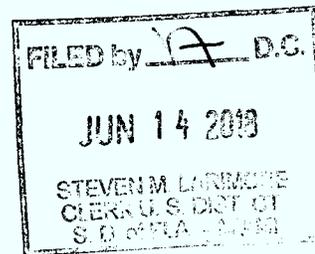
**/HUNT,**

UNITED STATES OF AMERICA

v.

**CHRISTOPHER LIVA,  
ELAINA LIVA, and  
STEPHEN CHALKER,**

**Defendants.**



**INDICTMENT**

The Grand Jury charges that:

**GENERAL ALLEGATIONS**

At all times material to this Indictment:

**The Medicare Program**

1. The Medicare program (“Medicare”) was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services (“CMS”), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare “beneficiaries.”

2. Medicare programs covering different types of benefits were separated into different program “parts.” Part D of Medicare (the “Medicare Part D Program” or “Part D”)

subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. The Medicare Part D Program was enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and went into effect on January 1, 2006.

3. In order to receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies approved by Medicare. Those companies were often referred to as drug plan “sponsors.” A beneficiary in a Medicare drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

4. A pharmacy could participate in Part D by entering a retail network agreement directly with a plan or with one or more Pharmacy Benefit Managers (“PBMs”). A PBM acted on behalf of one or more drug plans. Through a plan’s PBM, a pharmacy could join the plan’s network. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim either directly to the plan or to a PBM that represented the beneficiary’s Medicare drug plan. The plan or PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

5. A pharmacy could also submit claims to a Medicare drug plan to whose network the pharmacy did not belong. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

6. Medicare, through CMS, compensated the Medicare drug plan sponsors. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors’ plans. Such payments were called capitation fees. The capitation fee was adjusted periodically based on various factors, including the beneficiary’s medical conditions. In addition, in some cases where a sponsor’s expenses for a beneficiary’s prescription drugs exceeded that beneficiary’s capitation

fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

7. Medicare 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.

8. Express Scripts, Inc. (“Express Scripts”) was a Medicare drug plan sponsor.

### **The TRICARE Program**

9. 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.

10. 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.

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

12. 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 copayment 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.

### **The Medicaid Program**

13. The Medicaid program (“Medicaid”) was a jointly funded program between federal and state governments that provided medical assistance and health coverage for categories of individuals whose income and resources were insufficient to meet the costs of medical services.

14. The Florida Medicaid Program was authorized by Chapter 409, Florida State Statutes, and Chapter 59G, Florida Administrative Code. Medicaid was administered by CMS and the State of Florida Agency for Health Care Administration (“AHCA”).

15. In Florida, Medicaid contracted with a private company to pay claims. This company was referred to as the Medicaid fiscal agent. The fiscal agent also performed a variety of other functions for Medicaid, including enrollment of providers and management of the recipient eligibility system. In addition, it provided management of pharmacy benefits through the PBM vendor. On July 1, 2008, Electronic Data Systems (EDS) became the fiscal agent for the Medicaid program in Florida. On March 12, 2010, EDS changed its name to HP Enterprises Services, LLC.

16. Medicaid reimbursement for prescribed drug services was on a fee-for-service basis. The Florida Point of Sale (“POS”) System was the system that processed drug claims. Pharmacies which did not use POS processing could submit Medicaid claims via electronic media (batch) to take advantage of speed and accuracy in processing. Pharmacies submitted electronic claims themselves or chose a billing agent that offered electronic claim submission services.

17. Medicaid also offered an electronic funds transfer system to pay claims submitted by pharmacies. Any pharmacy which utilized the electronic funds transfer system was certifying with each use of the electronic funds transfer system that the claim(s) for which the pharmacy was being paid was/were in compliance with the provisions found on the claim form and with all federal and state laws.

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

### **Compounded Drugs Generally**

19. 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. However, the ingredients in compounded drugs could be FDA approved individually. The Florida State Board of Pharmacy regulated the practice of compounding in the State of Florida.

20. 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 triggered 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 could not swallow an FDA-approved pill and needed the drug in a liquid form that was not otherwise available.

### **Copayments Generally**

21. Health care benefit payors – including Medicare, TRICARE, and Medicaid – set copayments for many of the products and services they covered. Copayments were a portion of the cost of the product or service that had to be paid by the patient or beneficiary.

22. Copayments were set based upon the payor’s evaluation of the efficacy of the product or service, the cost of the product or service, and the availability of alternatives. Copayments were used to prevent or mitigate fraud in the case of expensive medications with limited evidence of effectiveness. That is, if a patient or beneficiary did not need or want a medication, he or she would be unlikely to pay a high copayment, the medication should not be dispensed, and the pharmacy should not make a claim to the payor.

23. Therefore, copayment collection requirements were prominently set forth in PBM contracts with pharmacies, such requirements were material to PBMs, and PBMs audited pharmacies’ copayment collection practices. A pharmacy’s failure to collect copayments in good faith could result in the PBM’s refusal to pay the claims and even termination of the contract with the PBM.

### **The Defendants and Related Companies**

24. Pop’s Pharmacy, LLC (“Pop’s Pharmacy”) was a Florida limited liability company that had a registered principal place of business at 20 N.E. 2nd Avenue, Deerfield Beach, Florida, and purportedly provided compounded drugs and other prescription medications to Medicare, TRICARE, and Medicaid beneficiaries.

25. Pop’s Neighborhood Pharmacy, LLC (“Pop’s Neighborhood”) was a Florida limited liability company that had a registered principal place of business at 20 N.E. 2nd Avenue, Deerfield Beach, Florida, and purportedly operated Pop’s Pharmacy.

26. Defendant **CHRISTOPHER LIVA**, a resident of Palm Beach County, was a true owner and the primary operator of Pop's Neighborhood and Pop's Pharmacy.

27. Defendant **ELAINA LIVA**, a resident of New Jersey and then of Broward County, was an owner and operator of Pop's Neighborhood and Pop's Pharmacy.

28. Defendant **STEPHEN CHALKER**, a resident of Palm Beach County, was the pharmacist in charge at Pop's Pharmacy.

**COUNT 1**  
**Conspiracy to Commit Health Care Fraud**  
**(18 U.S.C. § 1349)**

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around September 2014, through in or around October 2016, in Broward County, in the Southern District of Florida, and elsewhere, the defendants,

**CHRISTOPHER LIVA,**  
**ELAINA LIVA, and**  
**STEPHEN CHALKER,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly, combine, conspire, confederate, and agree with each other and with others, known and unknown to the Grand Jury, to commit certain offenses against the United States, that is, 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), 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.

**Purpose of the Conspiracy**

3. It was a purpose and object of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare, TRICARE, and Medicaid; (b) concealing the submission of such false and fraudulent claims; (c) concealing the receipt and transfer of proceeds of the fraud; and (d) diverting proceeds of the fraud for their personal use and benefit, the use and benefit of others, and to further the fraud.

**Manner and Means of the Conspiracy**

The manner and means by which the defendants and their co-conspirators sought to accomplish the purpose and objects of the conspiracy included, among other things:

4. On or about September 19, 2014, **ELAINA LIVA** incorporated and became the registered agent of Pop's Neighborhood, which **CHRISTOPHER LIVA, ELAINA LIVA, STEPHEN CHALKER**, and their co-conspirators used to obtain control of and operate Pop's Pharmacy.

5. In or around September 2014, **STEPHEN CHALKER** became the pharmacist in charge at Pop's Pharmacy.

6. **CHRISTOPHER LIVA, ELAINA LIVA, STEPHEN CHALKER**, and their co-conspirators took steps to conceal **CHRISTOPHER LIVA'S** ownership interest in, and operation of, Pop's Pharmacy.

7. For example, on or about December 23, 2015, **STEPHEN CHALKER** signed and caused to be submitted an Express Scripts provider certification and pharmacy disclosure form on behalf of Pop's Pharmacy in which he: (a) failed to disclose the ownership interest and managing control of **CHRISTOPHER LIVA**; (b) falsely and fraudulently represented, among other things,

that the pharmacy had never undergone a change in ownership and that the pharmacy's owner(s)/principal(s) had not been the subject of a criminal prosecution involving fraud; and (c) certified that such information was true and correct. As a result of the submission of these false and fraudulent documents, Express Scripts allowed Pop's Pharmacy to continue participating in the Express Scripts pharmacy provider network.

8. **CHRISTOPHER LIVA, ELAINA LIVA, STEPHEN CHALKER**, and their co-conspirators caused Pop's Pharmacy to submit false and fraudulent claims to Medicare, TRICARE, and Medicaid for compounded drugs and other prescription medications, including expensive pain and scar creams, that were not medically necessary and/or were never provided.

9. To induce beneficiaries to accept medically unnecessary medications, **CHRISTOPHER LIVA, ELAINA LIVA, STEPHEN CHALKER**, and their co-conspirators oftentimes did not collect copayments.

10. As a result of these false and fraudulent claims, Pop's Neighborhood received payments from Medicare, TRICARE, and Medicaid totaling nearly \$5 million.

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

**COUNTS 2-4**  
**Health Care Fraud**  
**(18 U.S.C. § 1347)**

1. The General Allegations section of this Indictment is re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around September 2014, through in or around August 2016, in Broward County, in the Southern District of Florida, and elsewhere, the defendant,

**STEPHEN CHALKER,**

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), 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 unjustly enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare, TRICARE, and Medicaid; (b) concealing the submission of such false and fraudulent claims; (c) concealing the receipt and transfer of proceeds of the fraud; and (d) diverting proceeds of the fraud for their personal use and benefit, the use and benefit of others, and to further the fraud.

**Manner and Means of the Scheme and Artifice**

4. The allegations contained in paragraphs 4 through 10 in the Manner and Means section of Count 1 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**

7. On or about the dates set forth below as to each count, in Broward County, in the Southern District of Florida, and elsewhere, the defendant, **STEPHEN CHALKER**, 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, 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 the defendant submitted and caused the submission of false and fraudulent claims to Medicare and Medicaid, representing that Pop's Pharmacy had provided pharmaceutical items and services to beneficiaries pursuant to physicians' valid orders and prescriptions.

Count	Beneficiary	Claim Number	Approximate Date of Service	Item Billed	Approximate Amount Paid
2	V.W.	153493167113049998	12/15/2015	DICLOFENAC SODIUM	\$2,405
3	C.C.	164141530361 0000502098977	1/14/2016	DICLOFENAC SODIUM	\$2,755
4	S.A.	7316139094978	5/5/2016	LIDOCAINE	\$1,262

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

**FORFEITURE**  
**(18 U.S.C. § 982(a)(7))**

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 defendants, **CHRISTOPHER LIVA**, **ELAINA LIVA**, and **STEPHEN CHALKER**, have an interest.

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

3. The property to be forfeited by **CHRISTOPHER LIVA** includes, but is not limited to, a sum of money equal in value to the gross proceeds traceable to the commission of the offense

alleged in this Indictment, approximately \$416,725, which the United States will seek as a forfeiture money judgment as part of the defendant's sentence.

4. The property to be forfeited by **ELAINA LIVA** includes, but is not limited to, a sum of money equal in value to the gross proceeds traceable to the commission of the offense alleged in this Indictment, approximately \$773,663, which the United States will seek as a forfeiture money judgment as part of the defendant's sentence.

5. The property to be forfeited by **STEPHEN CHALKER** includes, but is not limited to, a sum of money equal in value to the gross proceeds traceable to the commission of the offense alleged in this Indictment, approximately \$275,738, which the United States will seek as a forfeiture money judgment as part of the defendant's sentence.

6. If any of the property described above, as a result of any act or omission of the defendants:

- 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,

the United States shall be entitled to forfeiture of substitute property, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable by Title 18, United States Code, Section 982(b).

A TRUE BILL

  
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BENJAMIN G. GREENBERG  
UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF FLORIDA

JOSEPH BEEMSTERBOER  
DEPUTY CHIEF  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

  
\_\_\_\_\_  
LESLIE WRIGHT  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE