

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JUN 21 AM 11:21
US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES OF AMERICA

v.

OMAR ZOABI and
GREGORY SIKORSKI

CASE NO. 6:18-cr-145-M-18DCI

18 U.S.C. § 1349

18 U.S.C. § 1347

18 U.S.C. § 371

42 U.S.C. § 1320a-7b(b)(2)(A)

42 U.S.C. § 1320a-7b(b)(1)(A)

SEALED

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times material to this Indictment:

A. 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 the Medicare Program subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. It was enacted as a 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 the Part D Program 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 Medicare 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 and Medicare drug plan sponsors were "health care benefit program[s]," as defined by 18 U.S.C. § 24(b).

B. Medicare Drug Plan Sponsors

8. Humana, Humana CarePlus Health Plans Inc. (“CarePlus”), Wellcare Health Plans Inc. (“Wellcare”), OptumRX, United Healthcare Insurance Company (“United”), Cigna Pharmacy Management (“Cigna”), CVS Caremark (“Caremark”), Prime Therapeutics (“Prime”), and Blue Cross and Blue Shield Inc. (“Blue Cross”) were Medicare drug plan sponsors.

C. Compounded Drugs Generally

9. 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.

10. 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 is not otherwise available.

D. The Defendants and Related Companies

11. Metro Pharmacy LLC (“Metro”) was a Florida Limited Liability Company located at 318 W. Colonial Drive, Orlando, Florida, purportedly providing prescription drugs to Medicare beneficiaries.

12. Metro RX LLC (“Metro RX”) was a Florida Limited Liability Company located at 320 W. Colonial Drive, Orlando, Florida, purportedly providing prescription drugs to Medicare beneficiaries.

13. Ashraf Badr, a resident of Lake County, was a pharmacist licensed in the State of Florida and an owner of Metro and Metro RX.

14. Defendant **OMAR ZOABI**, a resident of Orange County, was a pharmacist licensed in the State of Florida and an owner of Metro and Metro RX.

15. Defendant **GREGORY SIKORSKI**, a resident of Hillsborough County, was a physician assistant licensed in the State of Florida.

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

Introduction

1. Paragraphs 1 through 15 of the Introduction section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

The Conspiracy

2. Beginning in or around January 2012 and continuing through in or around February 2018, in the Middle District of Florida, and elsewhere, the Defendants,

OMAR ZOABI and
GREGORY SIKORSKI,

did willfully and knowingly combine, conspire, confederate, and agree with each other and 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 18 U.S.C. § 24(b), that is, Medicare and various Medicare drug plan sponsors,

including Humana, CarePlus, Wellcare, OptumRX, United, Cigna, Caremark, Prime, and Blue Cross, 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 18 U.S.C. § 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 18 U.S.C. § 1343.

Purpose of the Conspiracy

3. It was a purpose 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 and Medicare PBMs for prescribing drugs that were medically unnecessary, not eligible for reimbursement, and not provided; (b) diverting

fraud proceeds for the personal use and benefit of themselves and others, and to further the fraud; and (c) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds.

Manner and Means of the Conspiracy

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

a. It was part of the conspiracy that GREGORY SIKORSKI would and did prescribe medically unnecessary compounded drugs for Medicare beneficiaries, in some cases without conducting or causing the examination of the Medicare beneficiaries.

b. It was further part of the conspiracy that thereafter, OMAR ZOOBI, Ashraf Badr, and their co-conspirators would and did pay and cause the payment of kickbacks and bribes to GREGORY SIKORSKI in return for prescribing the medically unnecessary compounded drugs.

c. It was further part of the conspiracy that OMAR ZOOBI, Ashraf Badr, and their co-conspirators would and did cause prescriptions for compounded drugs to be filled and provided to Medicare beneficiaries that

included less than the required quantity of drugs, as required by the prescriptions for the compounded drugs.

d. It was further part of the conspiracy that OMAR ZOABI, Ashraf Badr, and their co-conspirators would and did falsify, alter, or attempt to falsify or alter invoices to wholesalers and others to disguise and conceal the fact that they did not purchase prescription drugs billed to Medicare and Medicare PBMs.

e. It was further part of the conspiracy that OMAR ZOABI, GREGORY SIKORSKI, Ashraf Badr, and their co-conspirators would and did submit and cause the submission of claims to Medicare and Medicare PBMs, via interstate wires, that falsely and fraudulently represented various health care benefits, primarily prescription compounded drugs, were medically necessary, validly prescribed by a doctor, and provided to Medicare beneficiaries by Metro and Metro RX.

f. It was further part of the conspiracy that as a result of such false and fraudulent claims, Medicare prescription drug plan sponsors, through their PBMs, made overpayments funded by the Medicare Part D Program to Metro and Metro RX, in the approximate amount of \$5,511,963.53.

g. It was further part of the conspiracy that the conspirators would and did perform acts and make statements to hide 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 18 U.S.C. § 1349.

COUNTS TWO THROUGH FIVE
Health Care Fraud
(18 U.S.C. § 1347)

Introduction

1. Paragraphs 1 through 15 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

The Scheme and Artifice

2. Beginning in or around January 2012 and continuing through in or around February 2018, in the Middle District of Florida, and elsewhere, the Defendants,

OMAR ZOObI and
GREGORY SIKORSKI,

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 18 U.S.C. § 24(b), that is, Medicare and various Medicare drug plan sponsors, including Humana, CarePlus, Wellcare, OptumRX, United, Cigna, Caremark, Prime, and Blue Cross, 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 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 and Medicare PBMs for prescription drugs that were medically unnecessary, not eligible for reimbursement, and not provided; (b) diverting fraud proceeds for the personal use and benefit of themselves and others, and to further the fraud; and (c) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds.

Manner and Means of 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.

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, the defendants, OMAR ZOABI and GREGORY SIKORSKI, 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 18 U.S.C. § 24(b), that is, Medicare and various Medicare drug plan sponsors, including Humana, CarePlus, Wellcare, OptumRX, United, Cigna, Caremark, Prime, and Blue Cross, 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 they submitted and caused the submission of false and fraudulent Medicare claims seeking reimbursement for the cost of prescriptions for compounded drugs that were not medically necessary and provided as claimed:

Count	Medicare Beneficiary Initials	Approx. Date of Service of Claim	Claim Number	Medicare Drug Plan Sponsor	Item Claimed; Approx. Amount Paid
TWO	A.M.	01/26/2016	164265729951 0000502516754	CarePlus	Lidocaine Ointment 5%; \$2,143.74
THREE	A.M.	03/21/2016	164813001881 0000503073195	CarePlus	Lidocaine Ointment 5%; \$1,346.92

Count	Medicare Beneficiary Initials	Approx. Date of Service of Claim	Claim Number	Medicare Drug Plan Sponsor	Item Claimed; Approx. Amount Paid
FOUR	C.V.	03/25/2015	150844515110033997	WellCare	Lidocaine Ointment 5%; \$1,347.51
FIVE	C.V.	03/01/2016	1606132669781139998866	WellCare	Lidocaine Ointment 5%; \$1,523.83

In violation of 18 U.S.C. § 1347 and 18 U.S.C. § 2.

COUNT SIX

Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks (18 U.S.C. § 371)

Introduction

1. Paragraphs 1 through 15 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

The Conspiracy

2. Beginning in or around January 2015 and continuing through in or around May 2017, in the Middle District of Florida, and elsewhere, the defendants,

OMAR ZOABI and
GREGORY SIKORSKI,

did willfully and knowingly combine, conspire, confederate and agree with each other and others known and unknown to the Grand Jury to:

a. to defraud the United States by impairing, impeding, obstructing and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services, in its administration and oversight of the Medicare program; and

b. to commit offenses against the United States, that is:

(i) to violate 42 U.S.C. § 1320a-7b(b)(1)(A), by knowingly and willfully soliciting and receiving remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, in return for referring an individual to a person for the furnishing and arranging for the furnishing of prescription compounded drugs, for which payment may be made in whole and in part by a Federal health care program, that is, Medicare; and

(ii) to violate 42 U.S.C. § 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, to a person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of prescription compounded drugs, for which payment may be made in whole and in part by a Federal health care program, that is, Medicare.

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) offering, paying, soliciting, and receiving kickbacks and bribes in return for prescribing compounded drugs to Medicare beneficiaries and referring Medicare beneficiaries for prescription compounded drugs; and (b) causing the submission of claims to Medicare for prescription compounded drugs that the co-conspirators purported to provide to those beneficiaries.

Manner and Means of the Conspiracy

4. The manner and means by which the Defendants and their co-conspirators sought to accomplish the purpose and object of the conspiracy included, among others, the following:

a. It was part of the conspiracy that OMAR ZOABI, Ashraf Badr, and their co-conspirators would and did operate Metro and Metro RX, and cause the submission to Medicare of claims for prescription compounded drugs, purportedly provided to Medicare beneficiaries, that were procured by paying kickbacks and not legitimately prescribed, resulting in receipt of approximately \$623,485.19 in reimbursement payments;

b. It was further part of the conspiracy that GREGORY SIKORSKI and co-conspirators would and did receive kickbacks and bribes from OMAR ZOObI, Ashraf Badr, and their co-conspirators in exchange for referring Medicare beneficiaries to Metro and Metro RX, for prescription compounded drugs.

c. It was further part of the conspiracy that OMAR ZOObI, Ashraf Badr, and their co-conspirators would and did pay kickbacks and bribes to GREGORY SIKORSKI, and co-conspirators, in exchange for prescriptions for compounded drugs for Medicare beneficiaries.

Overt Acts

5. In furtherance of the conspiracy, and to accomplish its object and purpose, at least one co-conspirator committed and caused to be committed, in the Middle District of Florida, at least one of the following overt acts, among others:

a. On or about March 9, 2015, OMAR ZOObI and Ashraf Badr caused a cash payment to be made to Gregory Sikorski in the amount of approximately \$200.

b. On or about March 9, 2015, GREGORY SIKORSKI prescribed a compounded cream consisting of Diclofenac Gel 3% for Medicare beneficiary V.L. that was reimbursed by Medicare to Metro for approximately \$1,897.58.

c On or about February 11, 2016, OMAR ZOABI and Ashraf Badr caused a cash payment to be made to GREGORY SIKORSKI in the amount of approximately \$200.

d. On or about February 11, 2016, GREGORY SIKORSKI prescribed a compounded cream consisting of Lidocaine 5% for Medicare beneficiary M.C.C. that was reimbursed by Medicare to Metro for approximately \$1,735.80.

e. On or about March 7, 2016, OMAR ZOABI and Ashraf Badr caused a cash payment to be made to GREGORY SIKORSKI in the amount of approximately \$200.

f. On or about March 7, 2016, GREGORY SIKORSKI prescribed a compounded cream consisting of Lidocaine 5% for Medicare beneficiary M.M.C. that was reimbursed by Medicare to Metro for approximately \$1,735.80.

g. On or about March 21, 2016, OMAR ZOObI and Ashraf Badr caused a cash payment to be made to GREGORY SIKORSKI in the amount of approximately \$200.

h. On or about March 21, 2016, GREGORY SIKORSKI prescribed a compounded cream consisting of Lidocaine 5% for Medicare beneficiary C.C. that was reimbursed by Medicare to Metro for approximately \$1,735.80.

All in violation of 18 U.S.C. § 371.

COUNTS SEVEN AND EIGHT
(Payment of Kickbacks in Connection with a
Federal Health Care Program)
(42 U.S.C. § 1320a-7b(b)(2)(A))

1. Paragraphs 1 through 15 of the Introduction section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates set forth below in each count, in the Middle District of Florida, and elsewhere, the Defendant,

OMAR ZOObI,

acting in concert with others, did knowingly and willfully offer and pay, any remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to a person to induce such person to refer an individual for the furnishing and arranging for the furnishing of any item and

service for which payment may be made in whole and in part under a Federal health care program, that is Medicare, as set forth below:

Count	Initials of Medicare Beneficiary Referred	Approximate Date of Referral and Kickback	Approximate Kickback Amount
SEVEN	M.M.C.	02/11/2016	\$200
EIGHT	C.C.	03/09/2015	\$200

In violation of 42 U.S.C. § 1320a-7b(b)(2)(A) and 18 U.S.C. § 2.

COUNTS NINE AND TEN
(Receipt of Kickbacks in Connection with a
Federal Health Care Benefit Program)
(42 U.S.C. § 1320a-7b(b)(1)(A))

1. Paragraphs 1 through 15 of the Introduction section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. On or about the dates set forth below in each count, in the Middle District of Florida, and elsewhere, the Defendant,

GREGORY SIKORSKI,

acting in concert with others, did knowingly and willfully solicit and receive, and attempt to solicit and receive, any remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, in return for referring an individual to a pharmacy for the furnishing and arranging for the furnishing of prescription compounded drugs,

for which payment may be made in whole and in part by Medicare, as set forth below:

Count	Initials of Medicare Beneficiary Referred	Approximate Date of Referral and Kickback	Approximate Kickback Amount
NINE	M.M.C.	01/03/2017	\$200
TEN	C.C.	02/22/2016	\$200

In violation of 42 U.S.C. § 1320a-7b(b)(1)(A) and 18 U.S.C. § 2.

FORFEITURE

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, ASHRAF BADR, OMAR ZOABI, and GREGORY SIKORSKI, have an interest.

2. Upon conviction of a violation of 18 U.S.C. § s 1347 or 1349, or 42 U.S.C. § 1320, as alleged in this Indictment, the Defendants 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 18 U.S.C. § 982(a)(7).

3. The property subject to forfeiture includes a money judgment in the amount of approximately \$5,511,963.53 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 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;

it is the intent of the United States to seek forfeiture of substitute property pursuant to 21 U.S.C. § 853(p).

All pursuant to 18 U.S.C. § 982(a)(7) and 981(a)(1)(C), as incorporated
by 28 U.S.C. § 2461(c), and the procedures set forth in 21 U.S.C. § 853.

A TRUE BILL,

FOREPERSON ✓

MARIA CHAPA LOPEZ
United States Attorney

By:



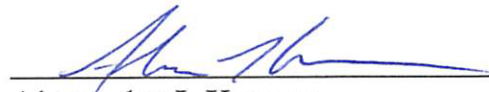
Roger B. Handberg
Assistant United States Attorney
Chief, Orlando Division

By:



Joseph S. Beemsterboer
Deputy Chief
Criminal Division, Fraud Section
U.S. Department of Justice

By:



Alexander J. Kramer
Trial Attorney
Criminal Division, Fraud Section
U.S. Department of Justice