

JET/CDM/NSG/DBL: July 2018
(by information)

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

UNITED STATES OF AMERICA)
)
 v.)
)
DAWN WHITTEN)

Case No. _____
18 U.S.C. §§ 371, 1347, 1028A

INFORMATION

The United States Attorney charges that:

At all times relevant to this Information:

INTRODUCTION

I. PHARMACEUTICAL SERVICES

1. Pharmacies may dispense pre-manufactured and traditionally compounded (hereafter “compounded”) medications.
2. A pre-manufactured medication is mass-produced for use by a large population of patients. A pre-manufactured medication is purchased by a pharmacy in the same form in which the pharmacy dispenses it to patients.
3. Compounded medications are a customized combination of medicines initiated and prescribed by a licensed prescriber based upon the prescriber-patient relationship and taking into consideration the particular patient’s diagnoses, medical

condition, individual health factors, and reaction to other medications.

4. The U.S. Food and Drug Administration (“FDA”) offers the following examples of when drugs would be compounded: **(a)** if a patient has an allergy and needs a medication to be made without a certain dye preservative; and **(b)** if an elderly patient or child cannot swallow a pill and needs a medicine in a liquid form that is not otherwise available.

5. Because compounded pharmaceuticals are custom made to fit the unique needs of each patient, the FDA does not pre-approve compounded medications and therefore does not verify the safety or effectiveness of compounded drugs prior to dispensing. In Alabama, the Alabama Board of Pharmacy regulates the practice of pharmacy, including traditional pharmacy compounding.

II. INSURANCE PLANS

6. Various entities, government and private, offer prescription drug benefits as part of health insurance plans. A beneficiary in such an insurance plan can fill a prescription at a pharmacy and use her or his plan to pay for some or all of the prescription.

7. Blue Cross Blue Shield of Alabama (“BCBSAL”) was a private insurance company providing medical and drug insurance coverage in Alabama and elsewhere.

8. Medicare is a federally funded program that provides free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare programs covering different types of benefits are separated into different program “parts.” Part D subsidizes the costs of certain prescription drugs.

9. BCBSAL and Medicare are “health care benefit programs” as that term is defined by Title 18, United States Code, Section 24(b), and used in Title 18, United States Code, Section 1347.

III. THIRD PARTY ADMINISTRATORS

10. A Pharmacy Benefit Manager (“PBM”) is a third party administrator of prescription drug programs, including privately or government insured drug plans, and acts on behalf of one or more prescription drug plans.

11. A Pharmacy Services Administrative Organization (“PSAO”) is also a third party entity, which provides various services such as contract negotiation and communication to pharmacies. Pharmacies may contract with PSAOs, which in turn contract with PBMs, such that PSAO member pharmacies may participate in a PBM network.

12. A pharmacy could participate in a privately or government insured plan directly by entering an agreement with the insured plan, or indirectly by joining a PBM’s pharmacy network through an agreement with a PBM or a PSAO.

13. Prime Therapeutics (“Prime”) is a PBM for BCBSAL and other insurance plans.

14. Prime is a “health care benefit programs” as defined by Title 18, United States Code, Section 24(b), and as that term is used in Title 18, United States Code, Section 1347.

15. AmerisourceBergen Elevate Provider Network (formerly Good Neighbor Pharmacy Provider Network) (“Good Neighbor”) and others are PSAOs through which pharmacies could enter PBMs’ pharmacy networks.

16. To become a PBM network pharmacy, a pharmacy agrees to be bound by, and comply with, all applicable State and Federal laws, specifically including those addressing fraud, waste, and abuse. A pharmacy also agrees to be bound by the PBM’s rules and regulations. These rules include prohibitions against fraudulent conduct, including submitting claims for invalid prescriptions, submitting claims in a way that bypasses PBM billing safeguards, paying kickbacks, and waiving patient co-pays. PBMs require pharmacies to collect co-pays, typically a fixed amount, from patients, in part so that the patient has “skin in the game” and is motivated to decline medically unnecessary or otherwise fraudulent prescriptions.

17. When a pharmacy receives a prescription from a privately or government insured beneficiary, the pharmacy is to collect any applicable co-pay

from the beneficiary, dispense the drug to the beneficiary, and submit a claim for reimbursement to the PBM that represents the beneficiary's insured drug plan. The pharmacy periodically receives payment for submitted claims from the Plan, PBM, or a PSAO. If payment is made by a PBM or PSAO, those entities are ultimately reimbursed, directly or indirectly, by the insured plan.

IV. THE DEFENDANT, CO-CONSPIRATORS, & PHARMACIES

18. Northside Pharmacy d/b/a Global Compounding Pharmacy ("Global") was an Alabama company that provided pharmaceutical services. It operated from two locations. It compounded and shipped its pre-manufactured and compounded products from its pharmacy location, 922 20th Street, Haleyville, Alabama. It processed prescriptions, including initial receipt, billing, and patient contact, from its billing center located at 4700 140th Avenue North, Suites 111 and 112, Clearwater, Florida. The billing center was referred to as the "Clearwater Call Center."

19. Global employed pharmacists, pharmacy technicians, and other employees who worked from Global in Haleyville, Alabama. Additionally, Global hired outside sales representatives, who worked from various locations throughout the United States, were primarily responsible for generating prescriptions from licensed prescribers, and reported to regional district managers. Global also hired

inside sales representatives, sometimes also referred to as “pharmacy technicians,” who worked at the Clearwater Call Center, and who were generally responsible for billing and patient contact.

20. The following were among the individuals who worked at Global:

21. **MANAGEMENT PERSON #1** was an owner, President, and Chief Executive Officer of Global.

22. **MANAGEMENT PERSON #2** was an owner, Vice President, and Chief Operating Officer of Global. **MANAGEMENT PERSON #2** resigned from Global on or about July 21, 2015.

23. **MANAGEMENT PERSON #3** was Global’s Regional Sales Director, then National Sales Director and Vice President of Sales. District managers, who supervised outside sales representatives, reported to **MANAGEMENT PERSON #3**.

24. **MANAGEMENT PERSON #4** was Global’s Inside Sales Manager, and supervised the inside sales representatives at the Clearwater Call Center.

25. **DISTRICT MANAGER #6** was a district manager for a region that included Southwest Georgia and Southeast Alabama.

26. Defendant **DAWN WHITTEN** was an outside sales representative for Global. From in or about January 2015 until in or about April 2016, she was an

outside sales representative for Global in Southwest Georgia and Southeast Alabama. Global paid defendant **WHITTEN** a base salary and varying commissions for each prescription she generated, including refills.

27. **MANAGEMENT PERSON #1** and other co-conspirators caused Global to engage with multiple affiliate pharmacies, which Global managers used to fill and bill for prescriptions when Global could not bill for them directly. One such affiliate was Carrollton Pharmacy d/b/a The Prescription Shop (“TPS”), located at 41254 Highway 195, Haleyville, Alabama. In or about August 2015, **MANAGEMENT PERSON #1** and other co-conspirators caused TPS to obtain Prime coverage and caused Global to begin transferring prescriptions for Prime beneficiaries to TPS. The decision to transfer these prescriptions occurred after **MANAGEMENT PERSON #1** and other co-conspirators were informed on or about May 29, 2015 by Prime that Global would be terminated from the Prime network effective September 4, 2015 for failing to comply with Prime’s terms and conditions. At **MANAGEMENT PERSON #1**’s direction, two Global employees became the listed owners of TPS, thus concealing Global and **MANAGEMENT PERSON #1**’s involvement in TPS’s operations from Prime. TPS operated using many of Global’s processes and employees.

28. **MANAGEMENT PERSON #1** and other co-conspirators caused Global and TPS to contract with BCBSAL to provide health insurance to employees and their dependents, who were located in Alabama and elsewhere in the United States.

29. **MANAGEMENT PERSON #1** and other co-conspirators caused Global and TPS to contract, including through PSAOs, to participate in the pharmacy networks of various PBMs, including Prime. Global billed for prescription drugs through its contracts with these PBMs and PSAOs.

Count One
Conspiracy
18 U.S.C. § 371

30. Paragraphs 1 to 29 of the Introduction of this Information are fully incorporated as though set forth herein.

THE CONSPIRACY

31. From in or about January 2015, and continuing until in or about April 2016, the exact dates being unknown, within Winston County in the Northern District of Alabama, and elsewhere, defendant

DAWN WHITTEN,

knowingly and willfully conspired, combined, and agreed with others known and unknown to the United States:

- a. to execute a scheme and artifice to defraud health care benefit programs affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is Medicare, BCBSAL, Prime, and others, 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 programs, in connection with the delivery and payment for health care benefits, items and services, in violation Title 18, United States Code, Section 1347;
- b. to devise and intend to devise a scheme and artifice to defraud Medicare, BCBSAL, Prime, and others, and to obtain money and property belonging to others by means of materially false and fraudulent pretenses, representations, and promises by use of interstate wire transmissions, in violation of Title 18, United States Code, Section 1343; and
- c. to devise and intend to devise a scheme and artifice to defraud Medicare, BCBSAL, Prime, and others, and to obtain money and property belonging to others by means of materially false and fraudulent pretenses, representations, and promises, by use of United States mail and private and commercial interstate carrier, in violation of Title 18 United States Code, Section 1341.

MANNER AND MEANS OF THE CONSPIRACY

32. It was a part of the conspiracy that to generate sales, **MANAGEMENT PERSON #1** and others sought out and hired as outside sales representatives, individuals: **(a)** with marital and other close familial relationships to individuals with prescribing authority, including physicians, physician assistants and nurse practitioners, (hereafter “Prescribers”) and **(b)** who were Prescribers or worked in Prescribers’ offices.

33. It was a further part of the conspiracy that to generate sales, **MANAGEMENT PERSON #1** and other co-conspirators directed and encouraged Global outside sales representatives to work, typically without pay, in Prescribers' offices, including by reviewing patient files and pushing and promoting Global's products to the Prescribers' patients.

34. It was a further part of the conspiracy that **MANAGEMENT PERSON #3** and other co-conspirators regularly instructed Global employees to obtain prescriptions for Global's highest reimbursing products for themselves and their family members regardless of medical necessity.

35. It was a further part of the conspiracy that some of these high reimbursing prescription drugs included:

- a. Medi-Patch, which is a medicated pain relief patch that is placed on the skin and delivers medication through a transdermal process.
- b. Pain Cream #4, which is compounded topical pain cream for inflammation/muscle pain.
- c. Silapak, also referred to as PharmaPak, a product Global's marketing flyer described as a "topical Skin Repair Complex . . . designed to provide relief for irritating skin conditions caused by numerous etiologies such as eczema, allergic reactions, irritating keloid and hypertrophic scars, psoriasis, and allergic reactions." The flyer further stated that "Silapak is not indicated for pregnant women or children."

36. It was a further part of the conspiracy that to incentivize its employees to obtain prescriptions for these high-reimbursing drugs,

MANAGEMENT PERSON #1 and other co-conspirators paid outside sales representatives a commission of varying percentages for prescriptions they obtained for themselves and their family members.

37. It was a further part of the conspiracy that defendant **WHITTEN** sent to Global prescriptions for herself and her family members for these high-reimbursing and other medications that were obtained, not to meet her and her family members' legitimate medical needs, but rather to obtain commission payments on each of those prescriptions and to maximize Global and its affiliate pharmacies' profits.

38. It was a further part of the conspiracy that inside sales representatives and other co-conspirators would add and delete ingredients from prescribed compounded drugs, add drugs to prescriptions, and substitute a different drug from that listed on the prescription, in order to maximize profit, and not to meet patients' medical needs.

39. It was a further part of the conspiracy that inside sales representatives and other co-conspirators would and did automatically refill patient prescriptions, including those of Global employees and their family members, regardless of whether patients needed or requested refills.

40. It was a further part of the conspiracy that to incentivize patients,

including employees and their family members to obtain or retain Global's prescription drugs, **MANAGEMENT PERSON #1** and other co-conspirators would regularly waive patients' co-pays.

41. It was a further part of the conspiracy that in responding to PBM audits, **MANAGEMENT PERSON #3** and other co-conspirators provided false and misleading documents and statements to PBMs to conceal Global's fraudulent billing practices, including co-pay waivers and changes made to prescriptions.

42. It was a further part of the conspiracy that **MANAGEMENT PERSON #1** and other co-conspirators used multiple pharmacies to bill for and dispense prescription drugs in order to conceal **MANAGEMENT PERSON #1's** and Global's involvement in these pharmacies from PBM's. These affiliate pharmacies included TPS.

43. It was a further part of the conspiracy that Global and TPS employees shipped many of Global and TPS pre-manufactured and compounded drugs from its Haleyville, Alabama location to customers within and outside Alabama via United States Postal Service ("USPS") and private and commercial interstate carriers such as United Parcel Service ("UPS").

44. It was a further part of the conspiracy that Global, TPS and other affiliate pharmacies received payments from Prime and other PBMs for

prescriptions. These payments were sometimes made through PSAOs.

45. It was a further part of the conspiracy that between in or about January 2015, and in or about April 2016, Global and its affiliate pharmacies would and did pay defendant **WHITTEN** over \$120,000 into her bank account number *651-7 at Columbus Bank and Trust. These monies included her base salary and commission payments for prescriptions she generated, including refills.

OVERT ACTS

In furtherance of the conspiracy and to achieve the objects thereof, defendant **WHITTEN** and others known and unknown to the United States committed and caused to be committed the following overt acts, among others, in the Northern District of Alabama and elsewhere:

46. In or about January 2015, **MANAGEMENT PERSON #1** hired defendant **WHITTEN** as an outside sales representative covering Southwest Georgia and Southeast Alabama.

47. On or about April 13, 2015, **DISTRICT MANAGER #6** sent an email to defendant **WHITTEN** and other outside sales representatives asking them to get prescriptions for pain patches that week. Defendant **WHITTEN** responded saying: “I’ll give it my best shot!”

48. On or about April 17, 2015, **WHITTEN** submitted three separate prescriptions to Global for Medi-Patch, which is a pain patch; one prescription for herself; one prescription for **PATIENT #13**, a family member; and one prescription for **PATIENT #14**, another family member. Each of the three prescriptions contained an identical photocopied signature of **PRESCRIBER #13**.

49. On or about April 17, 2015, defendant **WHITTEN** caused Global to bill Prime, and be paid by Prime \$6,555.30 for these three prescriptions.

50. In or about May 2015, Global paid **WHITTEN** a commission of approximately \$6,167.00 for prescriptions she obtained in April 2015, including the above prescriptions.

51. On or about May 11, 2015, Global mailed and caused to be mailed by UPS a shipment of a refill of defendant **WHITTEN**'s Medi-Patch prescription to her at her home address.

52. On or about July 9, 2015, **DISTRICT MANAGER #6** sent an email to defendant **WHITTEN** and other outside sales representatives asking them to get prescriptions for SilaPak, Medi-Derm, and another prescription for themselves, their spouse, and their family members.

53. On or about July 10, 2015, defendant **WHITTEN** submitted two separate prescriptions to Global for Silapak; one prescription for herself and one

prescription for **PATIENT #13**, a family member. Each of the two prescriptions contained an identical photocopied signature of **PRESCRIBER #14**.

54. On or about July 11, 2015, defendant **WHITTEN** caused Global to bill Prime, and be paid by Prime \$8,686.90 for these two prescriptions.

55. On or about July 26, 2015, defendant **WHITTEN** caused Global to bill a Medicare Part D plan, and be paid by Medicare approximately \$480 for the prescription for pain cream #4 for **PATIENT #15**.

56. In or about August 2015, Global paid defendant **WHITTEN** a commission of approximately \$5060.86 for prescriptions she obtained in July 2015, including the above prescriptions.

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

Counts Two through Five
Health Care Fraud
18 U.S.C. § 1347

57. Paragraphs 1 to 29 of the Introduction of this Information are fully incorporated as though set forth herein.

58. Beginning in or about January 2015, and continuing until in or about April 2016, within Winston County in the Northern District of Alabama, and elsewhere, the defendant,

DAWN WHITTEN,

did knowingly and willfully execute and attempt to 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, BCBSAL, Prime, Medicare, and others, 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 BCBSAL, Prime, Medicare, and others, in connection with the delivery of and payment for health care benefits, items, and services.

PURPOSE OF THE SCHEME AND ARTIFICE

59. It was the purpose of the scheme and artifice for defendant **WHITTEN** and others known and unknown to the United States to unlawfully enrich themselves through the submission of false and fraudulent claims to BCBSAL, Prime, Medicare, and others.

THE SCHEME AND ARTIFICE

60. Paragraph 32 of this Information is hereby incorporated by reference as though fully set forth herein, with the words “It was a part of the scheme and artifice” replacing “It was a part of the conspiracy” at the beginning of the paragraph. Paragraphs 33 to 45 are hereby incorporated by reference as though fully set forth herein, with the words, “It was a further part of the scheme and artifice” replacing “It was a further part of the conspiracy” at the start of each paragraph.

ACTS IN EXECUTION OF THE SCHEME AND ARTIFICE

61. On or about the dates specified below, each such date constituting a separate count of this Information, in Winston County within the Northern District of Alabama, and elsewhere, the defendant,

DAWN WHITTEN,

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, that is, BCBSAL, Prime, Medicare, and others, 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.

62. The allegations of paragraphs 60 to 61 above are realleged for each of Counts 1 through 5 below, as though fully set forth therein, when on or about the dates set forth below, defendant **WHITTEN** did cause the billing to and payment by, BCBSAL, Prime, Medicare, and resulting shipment of, the following fraudulent prescription drugs:

Count	Drug	Beneficiary	Approximate Date Billed	Amount Billed	Amount Paid	Payor
2	Silapak	Defendant WHITTEN	July 11, 2015	\$5,184.22	\$4,343.45	BCBS/ Prime
3	Silapak	PATIENT #13	July 11, 2015	\$5,184.22	\$4,343.45	BCBS/ Prime
4	Silapak	PATIENT #14	July 14, 2015	\$5,184.22	\$4,343.45	BCBS/ Prime
5	Pain Cream #4	PATIENT #15	July 14, 2015	\$483.74	\$483.74	Medicare

All in violation of Title 18, United States Code, Section 1347.

COUNT SIX
Aggravated Identity Theft
18 U.S.C. § 1028A

63. Paragraphs 1 to 29 of the Introduction to this Information are fully incorporated as though set forth herein.

64. On or about July 10, 2015, within Winston County in the Northern District of Alabama, and elsewhere, the defendant,

DAWN WHITTEN,

knowingly transferred and possessed and used, without lawful authority, the signature of **PRESCRIBER #14**, an individual whose initials are B.B., knowing that it was a means of identification of another actual person, during and in relation to committing health care fraud, as charged in Count Three of this Information.

All in violation of Title 18, United States Code, Section 1028A.

NOTICE OF FORFEITURE

1. The allegations in COUNT ONE through COUNT FIVE of this Information are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(7) and Title 28, United States Code, Section 2461(c),

2. Upon conviction of the offenses set forth in COUNT ONE through COUNT FIVE of this Information, in violation of Title 18, United States Code, Sections 371, 1341, 1343, and 1347, the defendant

DAWN WHITTEN,

shall forfeit to the United States of America:

- a. Pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses of wire fraud in, violation of Title 18 United States Code, Section 1343, and mail fraud, in violation of Title 18, United States Code Section 1341; and
- b. 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 health care fraud offense, in violation of Title 18, United States Code, Section 1347.

3. The property to be forfeited includes, but is not limited to **\$122,222**, which represents the amount defendant personally obtained, controlled, and benefitted from as a result of her criminal offenses.

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,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(7) and 28 U.S.C. § 2461(c).

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/s/ _____
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/s/ _____
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/s/ _____
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