

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 18- 363
: :
v. : Hon. John Michael Vazquez
: :
ROBERT AGRESTI : 18 U.S.C. § 1349

INFORMATION

The defendant having waived in open court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

1. Unless otherwise indicated, at all times relevant to this Information:

a. Defendant ROBERT AGRESTI was a resident of New Jersey and a medical doctor licensed to practice medicine in New Jersey.

b. CC-1 and CC-2, co-conspirators not charged herein, were residents of New Jersey involved in the sale of certain compounded medications marketed by Company A.

c. Company A, doing business in New York, was a "marketing" company for compounded medications, among other things. Company A marketed various compounded medications, such as, but not limited to, scar creams, pain creams, erectile dysfunction creams, and metabolic supplements/vitamins.

d. In New Jersey, the State Health Benefits Program ("SHBP") offered medical and prescription drug coverage to qualified state and local government

public employees, retirees, and eligible dependents. For example, New Jersey public employees in public school systems, universities, and colleges had medical and prescription drug coverage through the SHBP. New Jersey public employees who received health care benefits through the SHBP were referred to as SHBP beneficiaries.

e. The SHBP was a "health care benefit program" that affected commerce as defined in 18 U.S.C. § 24(b).

f. Prescription drug coverage offered by the SHBP included compounded medications marketed by Company A.

g. A pharmacy benefits manager (the "PBM") provided pharmacy benefit management services for SHBP beneficiaries pursuant to a contract with the State of New Jersey. On behalf of the SHBP, the PBM adjudicated claims for reimbursement from pharmacies and paid pharmacies for valid claims. The PBM then billed the State of New Jersey based on the amount paid to the pharmacies for claims on behalf of SHBP beneficiaries.

h. Victim Company, headquartered in New York with employees in New Jersey and elsewhere, had a wholly self-funded health insurance plan for its employees ("Victim Company's health insurance plan"), which offered medical and pharmacy drug coverage benefits to its employees. Individuals who received health care benefits through Victim Company's health insurance plan were referred to as Victim Company beneficiaries.

i. Victim Company's health insurance plan was a "health care benefit program" that affected commerce as defined in 18 U.S.C. § 24(b).

j. Prescription drug coverage offered by Victim Company's health insurance plan included compounded medications marketed by Company A.

k. The PBM also provided pharmacy benefit management services for Victim Company pursuant to a contract with Victim Company. On behalf of Victim Company, the PBM adjudicated claims for reimbursement from pharmacies and paid pharmacies for valid claims submitted for Victim Company beneficiaries. The PBM then billed Victim Company based on the amount paid to the pharmacies for claims on behalf of Victim Company beneficiaries.

l. In general, "compounding" is a practice in which a licensed pharmacist, or a licensed physician, combines, mixes or alters ingredients of a drug to create a medication tailored to the needs of an individual patient. Pharmacies engaging in the practice are referred to as "compounding pharmacies."

m. Compounded drugs are not approved by the Food and Drug Administration ("FDA"), that is, the FDA does not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs.

n. Generally, compounded drugs are prescribed by a physician when an FDA-approved drug does not meet the health needs of a particular patient. For example, if a patient is allergic to a specific ingredient in an FDA-approved medication, such as a dye or preservative, a compounded drug can be prepared excluding the substance that triggers the allergic reaction. Compounded drugs may also be prescribed when a patient cannot 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.

2. From at least as early as in or around November 2014 through in or around September 2017, in the District of New Jersey and elsewhere, defendant

ROBERT AGRESTI

did knowingly and intentionally conspire with others to knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, any of the money owned by, or under the custody or control of, a health care benefit program in connection with the delivery of or payment for health care benefits, items or services, contrary to Title 18, United States Code, Section 1347.

Object of the Conspiracy

3. It was an object of the conspiracy for defendant ROBERT AGRESTI and others to unlawfully enrich themselves by causing the submission of false and fraudulent insurance claims for medically unnecessary compounded prescription medications to various health insurance plans.

Manner and Means of the Conspiracy

4. It was part of the conspiracy and the scheme to defraud that marketing companies, such as Company A, had relationships with certain compounding pharmacies (the "Compounding Pharmacies"). Through these relationships, the marketing companies agreed to obtain and direct

prescriptions for compounded prescriptions to the Compounding Pharmacies. In exchange, the marketing company was paid a percentage of the reimbursement amount received for each successfully adjudicated claim referred by the marketing company.

5. It was also part of the conspiracy that marketing companies, such as Company A, recruited individuals, such as CC-1 and CC-2, to obtain prescriptions for compounded medications, regardless of medical necessity, and divert them to the Compounding Pharmacies. These individuals, referred to as “sales representatives,” were directed by the marketing companies to target individuals (“beneficiaries”) with certain health insurance plans known to pay for compounded medications (the “paying health plans”). For each prescription a sales representative obtained and directed to the Compounding Pharmacies, the marketing company shared with that sales representative a percentage of the reimbursement amount received.

6. It was further part of the conspiracy that to increase profits, marketing companies, such as Company A, encouraged sales representatives to recruit others. Marketing companies would not only pay each sales representative for every prescription they obtained, but also those their recruits obtained.

7. It was further part of the conspiracy that paying health plans were identified through the submission of claims. When a sales representative submitted a prescription to the Compounding Pharmacies, the Compounding Pharmacies would inform the marketing company and its sales representative

whether the claim was paid or denied. Through this information, marketing companies and its sales representatives identified which health insurance plans were paying health plans and which beneficiaries to target.

8. It was also part of the conspiracy that the compounded medications “marketed” by the marketing companies, such as Company A, and dispensed by the Compounding Pharmacies were specifically designed by the Compounding Pharmacies to maximize the adjudication amount and profit. Any therapeutic benefit of these compounded medications was a secondary consideration, if even considered.

9. It was further part of the conspiracy that when a paying health plan either stopped paying for a certain drug contained in the compounded medication or decreased the reimbursement amount, the Compounding Pharmacies reformulated the compounded medication to bypass the denial of the claim or to increase the reimbursement amount. Changes to the compounded medications were never made in response to the therapeutic needs of a patient.

10. It was further part of the conspiracy that marketing companies, such as Company A and its sales representatives, knew that the SHBP and Victim Company’s health insurance plan, among others, were paying health plans.

11. It was further part of the conspiracy that CC-1, CC-2, and their recruits targeted beneficiaries of paying health plans, specifically SHBP

beneficiaries and Victim Company beneficiaries, among others, and convinced them to obtain medically unnecessary compounded prescriptions.

12. For example, on many occasions, CC-1 and his recruits paid cash bribes to SHBP beneficiaries, and others, to obtain medically unnecessary compounded medications.

13. It was further part of the conspiracy that to obtain medically unnecessary prescriptions for compounded medications for SHBP beneficiaries and Victim Company beneficiaries, among others, CC-1 and CC-2 paid defendant ROBERT AGRESTI to prescribe compounded medications to these individuals regardless of medical necessity. CC-1 and CC-2 paid defendant ROBERT AGRESTI approximately \$300 in cash for every prescription defendant ROBERT AGRESTI authorized and that resulted in a paid claim.

14. It was further part of the conspiracy that CC-1 and/or CC-2 brought or directed SHBP beneficiaries, Victim Company beneficiaries, and others, to defendant ROBERT AGRESTI's medical office located in or around Nutley, New Jersey to see defendant ROBERT AGRESTI. Because defendant ROBERT AGRESTI was being paid by CC-1 and/or CC-2 to prescribe, defendant ROBERT AGRESTI prescribed compounded medications to these individuals regardless of medical necessity.

15. It was further part of the conspiracy that CC-1 and/or CC-2 also brought prescriptions to defendant ROBERT AGRESTI to sign without patients ever meeting defendant ROBERT AGRESTI. Defendant ROBERT AGRESTI

signed every prescription CC-1 and CC-2 brought to him, without regard to medical necessity, even for patients he never saw nor spoke with.

16. It was further part of the conspiracy that after a short time period, CC-1 and/or CC-2 stopped bringing or referring SHBP beneficiaries, Victim Company beneficiaries, and others, to see defendant ROBERT AGRESTI at his medical office and would only bring prescriptions to defendant ROBERT AGRESTI because defendant ROBERT AGRESTI would authorize every prescription CC-1 and/or CC-2 gave to defendant ROBERT AGRESTI without ever seeing or speaking with these individuals and regardless of medical necessity.

17. It was further part of the conspiracy that defendant ROBERT AGRESTI authorized medically unnecessary prescriptions for compounded medications knowing that claims for reimbursement would be submitted to paying health plans.

18. It was further part of the conspiracy that, from at least as early as in or around November 2014 through in or around September 2017, health benefit programs paid at least approximately \$8.9 million for prescriptions based on defendant ROBERT AGRESTI's fraudulent representations that the prescriptions were medically necessary. Defendant ROBERT AGRESTI personally obtained at least \$25,500 from the scheme.

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

FORFEITURE ALLEGATION

1. The allegations contained in Paragraphs 1 through 18 of this Information are hereby realleged and incorporated by reference for the purpose of alleging forfeiture, pursuant to 18 U.S.C. § 982(a)(7).

2. Upon conviction of the Federal health care offense (as defined in 18 U.S.C. § 24) alleged in this Information, defendant ROBERT AGRESE shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real or personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the offense, including but not limited to \$25,500.00 in United States currency, the amount of gross proceeds traceable to the commission of the Federal health care offense (as defined in 18 U.S.C. § 24) alleged in this Information.

Substitute Assets Provision

3. 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 person;
- (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 subdivided without difficulty;

the United States shall be entitled to forfeiture of substitute property, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b).



CRAIG CARPENITO
United States Attorney

CASE NUMBER: 18-

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

ROBERT AGRETI

INFORMATION FOR

18 U.S.C. § 1349

CRAIG CARPENITO

U.S. ATTORNEY

NEWARK, NEW JERSEY

ERICA LIU

ASSISTANT U.S. ATTORNEY

(973) 645-3989

**USA-48AD 8
(Ed. 1/97)**