

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

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

UNITED STATES OF AMERICA)
)
 v.)
)
PHILLIP NATHAN MARKS)

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

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. TRICARE is a health care program of the United States Department of Defense (“DOD”) Military Health System that provides coverage for DOD beneficiaries worldwide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors. TRICARE provides coverage for certain prescription drugs.

10. BCBSAL, Medicare, and TRICARE 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

11. 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.

12. 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.

13. 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.

14. Prime Therapeutics ("Prime") is a PBM for BCBSAL and other insurance plans.

15. CVS/Caremark is a PBM for various insurance plans.

16. Express Scripts Inc. ("ESI") is a PBM for various insurance plans.

17. Prime, CVS/Caremark, and ESI are "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.

18. AmerisourceBergen Elevate Provider Network (formerly Good Neighbor Pharmacy Provider Network) ("Good Neighbor") and others are PSAOs through which pharmacies could enter PBMs' pharmacy networks.

19. 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.

20. 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

21. 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.”

22. 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 (starting in August 2015, these individuals began obtaining pharmacy technicians licenses in Alabama and Florida). These inside sales representatives worked at the Clearwater Call Center, and were generally responsible for billing and patient contact.

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

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

25. **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.

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

27. **PHARMACIST #1** was a pharmacist located in Global's Haleyville, Alabama location from at least November 2014 to June 2015.

28. **DISTRICT MANAGER #1** was a district manager for the region including Mississippi.

29. **DISTRICT MANAGER #5** was a district manager for the regions including New York and Pennsylvania.

30. Defendant **PHILLIP NATHAN MARKS** served as Global's Vice President of Sales for the majority of his tenure with Global. He was hired as a district manager in or about November 2014; became Regional Sales Director on or about January 16, 2015; and became Vice President of Sales at least as of February 16, 2015. He was located in Winter Park, Florida. District managers, who supervised outside sales representatives, reported to him.

31. **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.

32. **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.

33. **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 and CVS/Caremark. Global billed for prescription drugs through its contracts with these PBMs and PSAOs.

Count One
Conspiracy
18 U.S.C. § 371

34. Paragraphs 1 to 33 of the Introduction of this Information are fully

incorporated as though set forth herein.

THE CONSPIRACY

35. From in or about November 2014, and continuing until in or about at least June 2016, the exact dates being unknown, within Winston County in the Northern District of Alabama, and elsewhere, defendant

PHILLIP NATHAN MARKS

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, BCBSAL, Prime, CVS/Caremark, 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 BCBSAL, Prime, CVS/Caremark, 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 BCBSAL, Prime, CVS/Caremark, 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

36. It was a part of the conspiracy that to generate sales, **MANAGEMENT PERSON #1**, defendant **MARKS**, and other co-conspirators sought out and hired as outside sales representatives, individuals who were: (a) married or otherwise closely related to individuals with prescribing authority, including physicians, physician assistants and nurse practitioners, (hereafter “Prescribers”); (b) Prescribers or worked in Prescribers’ offices; and (c) married to individuals employed by companies that **MANAGEMENT PERSON #1** and others had identified as having insurance plans with high reimbursement rates.

37. It was a further part of the conspiracy that to generate sales, **MANAGEMENT PERSON #1**, defendant **MARKS**, 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.

38. It was a further part of the conspiracy that defendant **MARKS** 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.

39. It was a further part of the conspiracy that some of these high

reimbursing prescription drugs included:

- a. 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."
 - b. Active Prep Kit II ("APK II"), advertised as an in office compounding kit for anti-inflammatory and analgesic treatment.
 - c. Lidocin, advertised as a pain cream for cuts, scrapes, and minor skin irritations.
 - d. Medi-Derm, advertised as a topical pain cream.
 - e. Pain sprays including Camphomex and Mentholix.
 - f. Ortho D, advertised as a Vitamin D supplement.
 - g. Surgical Combo Pak, a pre-operative wash and post-operative wound medication.
 - h. Inflammatrol Pak, comprising of an anti-inflammatory tablet and cream.
40. It was a further part of the conspiracy that to incentivize its employees to obtain prescriptions for these high-reimbursing drugs, **MANAGEMENT PERSON #1**, defendant **MARKS**, and other co-conspirators paid outside sales representatives a commission of varying percentages for prescriptions they obtained for themselves and their family members.
41. It was a further part of the conspiracy that defendant **MARKS** sent to

Global prescriptions for himself for these high-reimbursing and other medications that were obtained, not to meet his legitimate medical needs, but rather to obtain commission payments on each of those prescriptions and to maximize Global and its affiliate pharmacies' profits.

42. It was a further part of the conspiracy that with defendant **MARKS'** knowledge, 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.

43. It was a further part of the conspiracy that with defendant **MARKS'** knowledge, 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.

44. 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**, defendant **MARKS**, and other co-conspirators would regularly waive patients' co-pays.

45. It was a further part of the conspiracy that in responding to PBM audits, defendant **MARKS** 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.

46. 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.

47. 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").

48. 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.

49. It was a further part of the conspiracy that between in or about November 2014, and in or about June 2016, Global and its affiliate pharmacies would and did pay defendant **MARKS** over \$410,000 into his bank account *2625 at Commerce National Bank. These monies included his base salary and

commission payments for prescriptions sales representatives generated.

OVERT ACTS

In furtherance of the conspiracy and to achieve the objects thereof, defendant **MARKS** 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:

50. In or about November 2014, **MANAGEMENT PERSON #1** hired defendant **MARKS** as a district manager.

51. On or about December 15, 2014, **MANAGEMENT PERSON #4** emailed various Global employees, including defendant **MARKS** “We are only sending monthly refills for patients now, instead of weekly or bi-weekly orders, because they were getting overstocked & complaining. . . . We can send refills within the month for our sales reps & family or friends that are ok with this. WE MUST KNOW WHO THESE PEOPLE ARE ASAP!!! We do not know everyone's cousins names, etc., so if reps want as much commission as possible on those people, we need their names on our list!”

52. On or about January 16, 2015, defendant **MARKS** became Regional Sales Director for Global.

53. On or about February 27, 2015, **MANAGEMENT PERSON #1** and

other co-conspirators caused a deposit of \$8,018.01 to be made into defendant **MARKS'** bank account *2625 at Commerce National Bank.

54. On or about May 4, 2015, defendant **MARKS** sent an email to various Global employees, including outside sales representatives. The email stated “We are in the middle of an audit and need to show that we are collecting copays. We need to receive a copay payment from you this week. We will then need another one toward the end of the month. You do not have to pay it all but we do need to show collection.”

55. On or about May 7, 2015, defendant **MARKS** sent an email to district managers addressing what was included in drug shipments to patients and stating in part “I was asked on a couple of calls today if we are sending bills with the patients prescriptions and we are NOT!!”

56. On or about June 6, 2015, defendant **MARKS** emailed district managers “We need 100 patches today no questions asked. Whatever you have to do make it happen.”

57. On or about July 7, 2015, defendant **MARKS** emailed district managers “We are looking at a new product called Pharmapak [/Silapak]. Right now we know it is covered by BCBS of AI, our insurance. The profit on this is \$2700. We need every rep to get a script for themselves for this. . . . Please reach out to your reps.”

58. On or about September 25, 2015, **MANAGEMENT PERSON #1** and other co-conspirators caused a deposit of \$13,437.13 to be made into defendant **MARKS'** bank account *2625 at Commerce National Bank.

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

Counts 2 through 13
Health Care Fraud
18 U.S.C. § 1347

59. Paragraphs 1 to 33 of the Introduction of this Information are fully incorporated as though set forth herein.

60. Beginning in or about November 2014, and continuing until at least in or about June 2016, within Winston County in the Northern District of Alabama, and elsewhere, the defendant,

PHILLIP NATHAN MARKS,

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, Medicare, TRICARE, 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 BCBSAL, Medicare, TRICARE, Prime, and others, in connection with the delivery of and payment for health care benefits, items, and services.

PURPOSE OF THE SCHEME AND ARTIFICE

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

THE SCHEME AND ARTIFICE

62. Paragraph 34 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 35 to 49 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

63. 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,

PHILLIP NATHAN MARKS,

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, Medicare, TRICARE, 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 program.

64. The allegations of paragraphs 59 to 63 above are realleged for each of Counts 2 through 13 below, as though fully set forth therein, when on or about the dates set forth below, defendant **MARKS** did cause the billing to and payment by, BCBSAL, Medicare, TRICARE, Prime, and others, and resulting shipment of, the following fraudulent prescription drugs:

Count	Drug	BCBSAL/Prime Beneficiary	Approx. Date Billed/Dispensed	Amount Billed	Amount Paid
2	Silapak	Patient B.H. (born 2013)	July 14, 2015	\$5,184.23	\$4,343.45
3	Silapak	Patient B.H. (born 2013)	August 11, 2015	\$5,184.23	\$4,343.45
4	Silapak	Patient B.H. (born 2013)	September 11, 2015	\$5,186.23	\$4,349.71
5	Silapak	Patient A.N. (born 2011)	July 14, 2015	\$5,184.23	\$4,343.45
6	Silapak	Patient A.N. (born 2011)	August 7, 2015	\$5,184.23	\$4,343.45
7	Silapak	Patient C.M. (born 2010)	July 20, 2015	\$5,184.23	\$4,403.45
8	Silapak	Patient C.M. (born 2009)	July 20, 2015	\$5,184.23	\$4,403.45
9	Silapak	Patient M.D.	August 18, 2015	\$5,184.23	\$4,343.45

		(born 2009)			
10	Silapak	Patient M.D. (born 2009)	September 18, 2015	\$5,186.23	\$4,349.71
11	Silapak	Defendant MARKS	July 13, 2015	\$5,184	\$4,343
12	APK II	Defendant MARKS	July 27, 2015	\$2,418	\$1,992
13	Lidocin	Defendant MARKS	July 27, 2015	\$2,431	\$2,003

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

NOTICE OF FORFEITURE

1. The allegations in COUNT 1 through COUNT 13 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 1 through COUNT 13 of this Information, in violation of Title 18, United States Code, Sections 371, 1341, 1343, and 1347, the defendant

PHILLIP NATHAN MARKS,

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 **\$433,935**, which represents the amount defendant personally obtained, controlled, and benefitted from as a result of his 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).

JAY E. TOWN
United States Attorney

/s/ _____
CHINELO DIKÉ-MINOR
Assistant United States Attorney

/s/ _____
DON B. LONG
Assistant United States Attorney

/s/ _____
NICOLE GROSNOFF
Assistant United States Attorney