

UNITED STATES DISTRICT COURT Eastern District of Kentucky  
EASTERN DISTRICT OF KENTUCKY FILED  
CENTRAL DIVISION  
FRANKFORT

APR 11 2019  
AT COVINGTON  
ROBERT R. CARR  
CLERK U.S. DISTRICT COURT

UNITED STATES OF AMERICA

V. INDICTMENT NO. 3:19-cr-23-GFVT-MAS

MOHAMMED A. H. MAZUMDER, M.D.

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**THE GRAND JURY CHARGES:**

At all times relevant to this Indictment:

**BACKGROUND ON MEDICARE AND MEDICAID**

1. The Medicare Program (“Medicare”) was a federal “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), that provided benefits to persons who were over the age of sixty-five or disabled. Medicare was administered by the United States Department of Health and Human Services (“HHS”) through its agency, the Centers for Medicare & Medicaid Services (“CMS”).

2. Individuals who qualified for Medicare benefits were commonly referred to as “beneficiaries.” Beneficiaries were eligible to receive a variety of services, including hospital services (“Part A”), physician services (“Part B”), and, at an additional cost, prescription drug coverage (“Part D”).

3. Part D subsidized the costs of prescription drugs for beneficiaries, and was administered by private insurance plans that were reimbursed by Medicare through CMS.

Generally, Medicare covered these costs if, among other requirements, the dispensed prescription drugs were medically necessary and ordered by a physician.

4. The Kentucky Medicaid Program (“Medicaid”) was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), that provided benefits to Kentucky residents who met certain eligibility requirements, including income requirements. Medicaid was jointly funded by federal and state sources and administered by CMS and by the Kentucky Cabinet for Health and Family Services, Department for Medicaid Services (“DMS”), located in Franklin County, Kentucky.

5. Individuals who qualified for Medicaid benefits were commonly referred to as “members,” and as members, they were eligible to receive a variety of goods and services. Among the services provided, Medicaid, through its fiscal intermediaries, reimbursed pharmacies for prescription drugs dispensed to members. Generally, Medicaid covered these costs if, among other requirements, the dispensed prescription drugs were medically necessary and ordered by a physician.

6. Medical service providers, including clinics, physicians, and pharmacies (“service providers”), meeting certain criteria, could provide medical services and items to beneficiaries and members, and subsequently submit claims, either electronically or in hardcopy, to Medicare and Medicaid, through fiscal intermediaries, seeking reimbursement for the cost of services and items provided, including prescription drugs.

7. Medicaid, through DMS, and through its fiscal intermediaries, ultimately reimbursed claims submitted by service providers, including pharmacies for dispensing prescription drugs to members, from Franklin County, Kentucky.

## **BACKGROUND ON CONTROLLED SUBSTANCES**

8. The Controlled Substances Act (“CSA”) governed the manufacture, distribution, and dispensing of controlled substances in the United States. The CSA and the Code of Federal Regulations (“CFR”) contained definitions relevant to this Indictment, some of which are set forth below.

9. The term “controlled substance” meant a drug or other substance, or immediate precursor, included in Schedule I, II, III, IV and V, as designated by Title 21, United States Code, Section 802(c)(6), and the CFR.

10. A “Schedule II” drug was a drug or other substance that had a high potential for abuse, and abuse of which may lead to severe psychological or physical dependence. *See* 21 U.S.C. § 812(b)(2).

11. A “Schedule III” drug was a drug or other substance that had a potential for abuse less than Schedule II drugs, and abuse of which may lead to moderate or low physical dependence or high psychological dependence. *See* 21 U.S.C. § 812(b)(3).

12. A “Schedule IV” drug was a drug or other substance that had a potential for abuse relative to Schedule III drugs, and abuse of which may lead to limited physical or psychological dependence. *See* 21 U.S.C. § 812(b)(4).

13. The term “practitioner” meant a physician, or other individual licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which she or he practices, to distribute or dispense a controlled substance in the course of professional practice. *See* 21 U.S.C. § 802(21).

14. The term “dispense” meant to deliver a controlled substance to an ultimate

user by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance.

15. The term “distribute” meant to deliver (other than by administering or dispensing) a controlled substance.

16. Under the CSA, because of their potential for abuse or dependence, their accepted medical use, and their accepted safety for use under medical supervision, the United States Drug Enforcement Administration (“DEA”) regulated, *inter alia*, the prescribing and dispensing of controlled substances.

17. The DEA issued registration numbers to qualifying practitioners, including physicians, which permitted them to prescribe and dispense Schedule II, III, IV, and V controlled substances consistent with the terms of that registration.

18. Generally, Schedule II drugs could only be dispensed by way of written prescriptions issued by licensed and registered practitioners. *See* 21 U.S.C. § 829(a).

19. Generally, Schedule III and IV drugs could only be dispensed by way of written or oral prescriptions issued by licensed and registered practitioners. *See* 21 U.S.C. § 829(b).

20. “A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 C.F.R. § 1306.04(a).

21. Prescriptions for controlled substances had to be dated as of, and signed on, the day when issued. *See* 21 C.F.R. § 1306.05.

22. Percocet, a brand name for oxycodone, was a Schedule II controlled

substance.

23. Norco, a brand name for hydrocodone, was a Schedule II controlled substance.

24. Tylenol 3, a combination pharmaceutical product containing acetaminophen and codeine, was a Schedule III controlled substance.

25. Klonopin, a brand name for clonazepam, was a Schedule IV controlled substance.

### **DEFENDANT AND RELEVANT ENTITIES**

26. Appalachian Primary Care, LLC (“APC”) was a Kentucky Limited Liability Company, formed in 2017 and located at 92 Pickett Lane, Prestonsburg, Kentucky, in the Eastern District of Kentucky. APC provided general physician services, including pain management services, to beneficiaries, members, and others.

27. **MOHAMMED A. H. MAZUMDER, M.D. (“MAZUMDER”)** was a Kentucky-licensed physician practicing in Prestonsburg, Kentucky. **MAZUMDER** was registered with the DEA, under registration number xxxxx5523, and was authorized to issue prescriptions for and dispense controlled substances for legitimate medical purposes when acting in the usual course of professional practice.

28. **MAZUMDER**, beginning in or around March 2017, and continuing through the return of this Indictment, owned APC and provided physician services, including pain management services, through APC.

29. Co-conspirator 1 was employed as a medical technician by APC, and was not a licensed medical professional or practitioner in Kentucky.

30. Co-conspirator 2 was employed as a receptionist by APC, and was not a licensed medical professional or practitioner in Kentucky.

31. Co-conspirator 3 was employed as a receptionist by APC, and was not a licensed medical professional or practitioner in Kentucky.

32. Clinic 1 was a Kentucky corporation, formed in 2005 and located in Prestonsburg, Kentucky. Clinic 1, beginning in 2005, and continuing through 2017, provided general physician services, including pain management services, to beneficiaries, members, and others.

33. Co-conspirator 4 owned and operated Clinic 1.

34. Beginning in 2011, and continuing through 2017, **MAZUMDER** was employed by and provided physician services, including pain management services, from Clinic 1.

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

**The Conspiracy and Its Object**

35. Paragraphs 1 through 34 of this Indictment are realleged and incorporated by reference as though fully set forth herein.

36. Beginning at least as early as in or around May 2018, and continuing through in or around January 2019, in Franklin and Floyd Counties, in the Eastern District of Kentucky, and elsewhere,

**MOHAMMED A. H. MAZUMDER, M.D.**

conspired and agreed 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 healthcare benefit program affecting commerce, as defined in 18 U.S.C. § 24(b), that is, Medicare and Medicaid, and to obtain, by means of material false and fraudulent pretenses, representations, and promises, money owned by and under the custody and control of Medicare and Medicaid, in connection with the delivery of and payment for health care benefits, items, and services, in violation of 18 U.S.C. § 1347.

**Purpose of the Conspiracy**

37. It was a purpose of the conspiracy for **MAZUMDER** and his co-conspirators to unlawfully enrich themselves and APC by, among other things, submitting and causing the submission of false and fraudulent claims to Medicare and Medicaid.

**Manner and Means**

38. The manner and means by which the defendant sought to accomplish the object of the scheme included, among others, the following:

- a. **MAZUMDER** formed, owned, and operated APC, through which he practiced family medicine, including pain management;
- b. **MAZUMDER**, through APC, employed individuals who were not licensed medical professionals or practitioners in Kentucky (“non-practitioner”);
- c. **MAZUMDER** provided instruction to non-practitioners on how to evaluate APC patients, including beneficiaries and members, although the non-practitioners were not qualified to receive these instructions and perform medical

evaluations;

d. **MAZUMDER** ordered and directed APC employees to open APC and receive patients, including beneficiaries and members, when **MAZUMDER** was not able to be present and treat patients at APC, or was otherwise unavailable;

e. With **MAZUMDER**'s knowledge and consent, Co-conspirator 1, although not a licensed medical professional or practitioner, saw APC patients, including beneficiaries and members, including when **MAZUMDER** was not present at APC, and performed unauthorized medical evaluations;

f. With **MAZUMDER**'s knowledge and consent, Co-conspirator 1, although not a licensed medical professional or practitioner, and without consulting **MAZUMDER**, indicated to other APC employees, including Co-conspirator 2 and Co-conspirator 3, which medications should be dispensed, including controlled substances, to patients, including beneficiaries and members, on APC forms;

g. With **MAZUMDER**'s knowledge and consent, Co-Conspirator 1, Co-conspirator 2, and Co-conspirator 3 called-in to pharmacies prescriptions, including prescriptions for controlled substances, for patients, including beneficiaries and members, purportedly seen by **MAZUMDER**, falsely indicating that **MAZUMDER** had made the medical decision to prescribe the medications ("fraudulent prescriptions");

h. At **MAZUMDER**'s order and direction, APC submitted claims to Medicare and Medicaid for purportedly providing beneficiaries and members with office visits by licensed medical professionals, when, in reality, beneficiaries and members did not see licensed medical professionals;



i. As a result of the fraudulent prescriptions called-in by Co-Conspirator 1, Co-conspirator 2, and Co-conspirator 3, all done with **MAZUMDER's** knowledge and consent, pharmacies dispensed medications, including controlled substances, to beneficiaries and members and subsequently submitted claims for reimbursement to Medicare and Medicaid for the medications dispensed; and

j. Medicare and Medicaid, through fiscal intermediaries, reimbursed APC and these pharmacies for the fraudulent claims submitted and the medications dispensed on the fraudulent prescriptions.

All in violation of 18 U.S.C. § 1349.

**COUNTS 2-5**  
**Health Care Fraud**  
**(18 U.S.C. § 1347)**

39. Paragraphs 1 through 34 and 38 of the Indictment are realleged and incorporated by reference as though fully set forth herein.

40. On or about the dates specified below, in Franklin and Floyd Counties, in the Eastern District of Kentucky, and elsewhere,

**MOHAMMED A. H. MAZUMDER, M.D.,**

aided and abetted by others known and unknown to the Grand Jury, 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 or artifice to defraud a health care benefit program affecting commerce, as defined in 18 U.S.C. § 24(b), that is, Medicare and Medicaid, and obtain, by means of materially false and fraudulent pretenses,

representations, and promises, money and property owned by, and under the custody and control of Medicare and Medicaid, in connection with the delivery of and payment for health care benefits, items, and services, that is, the defendant caused the following false and fraudulent claims to be submitted:

<b>Count</b>	<b>Bene- ficiary/ Member</b>	<b>Service Date</b>	<b>HCBP Claim Number</b>	<b>Item/ Service Billed</b>	<b>Approx. Process/ Claim Date</b>	<b>Claim Amount</b>
2	M.S.	01/07/19	Medicaid 7519029042102	CPT 99212- Office/ Outpatient Visit	01/18/19	\$65.00
3	J.C.	01/07/19	Medicaid 7519029049903	CPT 99212- Office/ Outpatient Visit	01/18/19	\$65.00
4	J.H.	01/07/19	Medicare 662819014761150	CPT 99212- Office/ Outpatient Visit	01/14/19	\$65.00
5	R.S.	01/07/19	Medicare 662819014761340	CPT 99212- Office/ Outpatient Visit	01/14/19	\$65.00

Each of the above in violation of 18 U.S.C. §§ 1347 and 2.

**COUNT 6**  
**Conspiracy to Distribute Controlled Substances**  
**(21 U.S.C. § 846)**

41. Paragraphs 1 through 34 and 38 of the Indictment are realleged and incorporated by reference as though fully set forth herein

42. Beginning in or around July 2015, and continuing through in or around

January 2019, in Floyd County, in the Eastern District of Kentucky, and elsewhere,

**MOHAMMED A. H. MAZUMDER, M.D.**

did knowingly and intentionally conspire, confederate, and agree with Co-conspirator 1, Co-conspirator 2, Co-conspirator 3, Co-conspirator 4, and other persons known and unknown to the Grand Jury to distribute and dispense, outside the scope of professional practice and not for a legitimate medical purpose, quantities of oxycodone and hydrocodone, Schedule II controlled substances, Tylenol 3, a Schedule III controlled substances, clonazepam, a Schedule IV controlled substance, and other controlled substances, in violation of 21 U.S.C. § 841(a)(1), all in violation of 18 U.S.C. § 846.

**COUNTS 7-10**

**Unlawful Distribution and Dispensing of a Controlled Substance  
(21 U.S.C. § 841(a)(1))**

43. Paragraphs 1 through 34 and 38 of the Indictment are realleged and incorporated by reference herein as though fully set forth herein.

44. On or about the dates identified below, in Floyd County, in the Eastern District of Kentucky, and elsewhere,

**MOHAMMED A. H. MAZUMDER, M.D.,**

aided and abetted by Co-conspirator 1, Co-conspirator 2, Co-conspirator 3, Co-conspirator 4, and others known and unknown to the Grand Jury, did knowingly and intentionally distribute and dispense, outside the scope of professional practice and not for a legitimate medical purpose, controlled substances, as set forth below:

Count	Date Filled	Beneficiary/ Member	Prescription Number	Schedule	Controlled Substance
7	07/22/15	D.Sl.	1835830	II	Oxycodone
8	03/01/16	D.Sh.	934722	II	Oxycodone
9	01/07/19	M.S.	799159	III	Tylenol #3
10	01/07/19	L.W.	4096394	IV	Clonazepam

Each of the above in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2.

**FORFEITURE ALLEGATIONS**

**18 U.S.C. § 981(a)(1)(C)**

**28 U.S.C. § 2461(c)**

**18 U.S.C. § 982(a)(7)**

**21 U.S.C. § 853**

1. Upon conviction of Count 1 contained in this Indictment, the Defendant, **MOHAMMED A. H. MAZUMDER, M.D.**, shall forfeit to the United States pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c) all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds of the violations, including but not limited to a sum of money equal to the amount of gross proceeds of the offenses.

2. Upon conviction of Counts 2 through 5 contained in this Indictment, the defendant, **MOHAMMED A. H. MAZUMDER, M.D.**, shall forfeit to the United States pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds of the violations, including but not limited to a sum of money equal to the amount of gross proceeds of the offenses.

3. Upon conviction of Counts 6 through 10 contained in this Indictment, the defendant, **MOHAMMED A. H. MAZUMDER, M.D.**, shall forfeit to the United States pursuant to 21 U.S.C. § 853, any property constituting, or derived from, proceeds obtained,

directly or indirectly, as a result of the violations, including but not limited to a sum of money equal to the amount of gross proceeds of the offenses and any property used, or intended to be used, in any manner or part to commit, or facilitate the commission of the offenses.

4. 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 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;

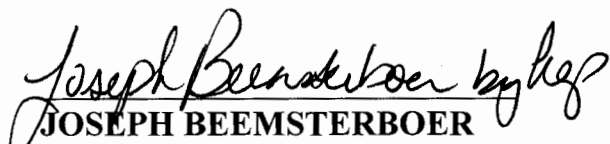
it is the intent of the United States, pursuant to 21 U.S.C. 853(p), as incorporated by 18 U.S.C. § 982(b) and 28 U.S.C. § 2461, to seek forfeiture of any other property of the

defendant up to the value of the forfeitable property described above.

A TRUE BILL



ROBERT M. DUNCAN, JR.  
UNITED STATES ATTORNEY



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

**PENALTIES**

**COUNT 1:** Not more than 10 years imprisonment, a fine of not more than \$250,000 or the greater of twice the gross gain or twice the gross loss, and supervised release of not more than 3 years.

**COUNTS 2-5:** Not more than 10 years imprisonment, a fine of not more than \$250,000 or the greater of twice the gross gain or twice the gross loss, and supervised release of not more than 3 years.

**COUNTS 6-8:** Not more than 20 years imprisonment, a fine of not more than \$1,000,000, and supervised release of at least 3 years.

**COUNT 9:** Not more than 10 years imprisonment, a fine of not more than \$500,000, and supervised release of at least 2 years.

**COUNT 10:** Not more than 5 years imprisonment, a fine of not more than \$250,000, and supervised release of at least 1 year.

**PLUS:** Mandatory special assessment of \$100 per count.

**PLUS:** Restitution, if applicable.

**PLUS:** Forfeiture as listed.