



UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

February 2018 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARMEN POGOSSIAN,

Defendant.

No. 18-cr-00360-PA

I N D I C T M E N T

[18 U.S.C. § 1347: Health Care Fraud; 18 U.S.C. § 2(b): Causing an Act to be Done; 18 U.S.C. § 1343: Wire Fraud; 18 U.S.C. § 1035: False Statements Relating to Health Care Matters; 18 U.S.C. §§ 982(a)(7) and 981(a)(1)(C) and 28 U.S.C. § 2461(c): Criminal Forfeiture]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. §§ 1347, 2(b)]

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

1. L.A. Nova Pharmacy, Inc. ("Nova Pharmacy") was a pharmacy located at 290 N. Hill Avenue #4, Pasadena, California 91106, within the Central District of California.

2. Defendant ARMEN POGOSSIAN ("POGOSSIAN") was a resident of Los Angeles County and the owner of Nova Pharmacy from August

1 2000 through the present.

2 3. Confidential Cooperating Witness ("CW") purported to
3 be the owner of a prescription drug wholesaler, International
4 Pharmaceutical Services ("IPS"), located in San Mateo,
5 California.

6 The Medicare Program

7 4. Medicare was a federal health care benefit program,
8 affecting commerce, that provided benefits to individuals who
9 were 65 years and older or disabled. Medicare was administered
10 by the Centers for Medicare and Medicaid Services ("CMS"), a
11 federal agency under the United States Department of Health and
12 Human Services.

13 5. Individuals who qualified for Medicare benefits were
14 referred to as Medicare "beneficiaries." Each beneficiary was
15 given a unique health insurance claim number ("HICN").

16 6. Medicare programs covering different types of benefits
17 were separated into different program "parts." Part D of
18 Medicare (the "Medicare Part D Program") subsidized the costs of
19 prescription drugs for Medicare beneficiaries in the United
20 States. The Medicare Part D Program was enacted as part of the
21 Medicare Prescription Drug, Improvement, and Modernization Act
22 of 2003 and went into effect on January 1, 2006.

23 7. In order to receive Medicare Part D program benefits,
24 a beneficiary had to enroll in a Medicare drug plan. Medicare
25 drug plans were operated by private companies approved by
26 Medicare. Those companies were often referred to as drug plan
27 "sponsors." A beneficiary in a Medicare drug plan could fill a
28 prescription at a pharmacy and use his or her plan to pay for

1 some or all of the prescription.

2 8. A pharmacy could participate in the Medicare Part D
3 program by entering into a retail network agreement directly
4 with a drug plan; with one or more Pharmacy Benefit Managers
5 ("PBMs"); or with a Pharmacy Services Administration
6 Organization ("PSAO"), which would, in turn, contract with PBMs
7 on behalf of the pharmacy. A PBM acted on behalf of one or more
8 drug plans. Through a plan's PBM, a pharmacy could join the
9 drug plan's network. When a Medicare Part D program beneficiary
10 presented a prescription to a pharmacy, the pharmacy submitted a
11 claim either directly to the drug plan or to a PBM that
12 represented the beneficiary's Medicare drug plan. The drug plan
13 or PBM determined whether the pharmacy was entitled to payment
14 for each claim and periodically paid the pharmacy for
15 outstanding claims. The drug plan's sponsor reimbursed the PBM
16 for its payments to the pharmacy.

17 9. A pharmacy could also submit claims to a Medicare drug
18 plan to whose network the pharmacy did not belong. Submission
19 of such out-of-network claims was not common and often resulted
20 in smaller payments to the pharmacy by the drug plan sponsor.

21 10. Medicare, through CMS, compensated Medicare drug plan
22 sponsors. Medicare paid the sponsors a monthly fee for each
23 Medicare beneficiary of the sponsors' plans. Such payments were
24 called capitation fees. The capitation fee was adjusted
25 periodically based on various factors, including the
26 beneficiary's medical conditions. In addition, in some cases
27 where a sponsor's expenses for a beneficiary's prescription
28 drugs exceeded that beneficiary's capitation fee, Medicare

1 reimbursed the sponsor for a portion of those additional
2 expenses.

3 11. Humana Insurance Company ("Humana") sponsored a
4 Medicare drug plan.

5 12. Medicare and Medicare drug plans were health care
6 benefit programs, as defined by Title 18, United States Code,
7 Section 24(b).

8 B. THE SCHEME TO DEFRAUD

9 13. Beginning no later than in or around June 2014, and
10 continuing through at least in or around March 2017, in Los
11 Angeles County, within the Central District of California, and
12 elsewhere, defendant POGOSSIAN, together with others known and
13 unknown to the Grand Jury, knowingly, willfully, and with intent
14 to defraud, executed and attempted to execute a continuing
15 scheme and artifice: (a) to defraud health care benefit
16 programs, namely, Medicare and Medicare drug plans, as to
17 material matters in connection with the delivery of and payment
18 for health care benefits, items, and services; and (b) to obtain
19 money from Medicare and Medicare drug plans by means of
20 materially false and fraudulent pretenses and representations
21 and the concealment of materials facts in connection with the
22 delivery of and payment for health care benefits, items, and
23 services.

24 C. MANNER AND MEANS TO ACCOMPLISH THE SCHEME TO DEFRAUD

25 14. The fraudulent scheme operated, in substance, as
26 follows:

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1 a. Defendant POGOSSIAN knowingly and willfully
2 submitted and caused to be submitted to Medicare drug plans
3 false and fraudulent claims for drugs, which claims falsely
4 represented that Nova Pharmacy dispensed prescription drugs to
5 Medicare Part D program beneficiaries when, in fact, defendant
6 POGOSSIAN did not purchase these drugs from prescription drug
7 wholesalers and Nova Pharmacy did not dispense these drugs to
8 Medicare beneficiaries.

9 b. As a result of the submission of such false and
10 fraudulent claims, Medicare drug plans made payments funded by
11 Medicare to Nova Pharmacy's Bank of America bank account ending
12 in -2222 and Nova Pharmacy's JPMorgan Chase bank account ending
13 in -5899.

14 c. From June 2014 to March 2017, Medicare and
15 Medicare drug plans paid Nova Pharmacy approximately
16 \$12,153,152. At least approximately \$2,953,784 of these
17 payments were caused by and resulted from this fraudulent
18 scheme.

19 d. In or around October 2016, defendant POGOSSIAN
20 contacted CW to request false wholesale invoices for certain
21 prescription drugs in order to conceal the fact that defendant
22 POGOSSIAN had not purchased the prescription drugs from
23 prescription drug wholesalers but had submitted false and
24 fraudulent claims to health care benefit programs, including
25 Medicare drug plans. The purpose of these false wholesale
26 invoices was to support the false and fraudulent pretense that
27 Nova Pharmacy had purchased the prescription drugs that it
28 represented it had dispensed to beneficiaries.

1 e. On or about October 21, 2016, defendant POGOSSIAN
2 sent an email to CW with a list of prescription drugs for which
3 defendant POGOSSIAN was requesting false wholesale invoices.

4 f. On or about March 17, 2017, defendant POGOSSIAN
5 contacted CW and requested another false wholesale invoice,
6 which defendant POGOSSIAN planned to submit to the California
7 Board of Pharmacy.

8 g. On or about March 24, 2017, defendant POGOSSIAN
9 contacted CW and requested that the false wholesale invoice
10 defendant POGOSSIAN had asked CW to provide cover the time
11 period June 1, 2014 through March 15, 2017. Defendant POGOSSIAN
12 sent an email to CW with a list of prescription drugs that
13 defendant POGOSSIAN requested be billed on the false wholesale
14 invoice.

15 h. On or about March 29, 2017, defendant POGOSSIAN
16 sent an email to CW with a revised list of prescription drugs
17 that defendant POGOSSIAN requested be billed on the false
18 wholesale invoice.

19 i. On or about March 30, 2017, in response to
20 defendant POGOSSIAN's request, CW sent an email to defendant
21 POGOSSIAN with the subject line, "REPORT REQUESTED," attaching a
22 false wholesale invoice that purported to reflect the purchase
23 of prescription drugs from CW's prescription drug wholesale
24 company.

25 j. On or about March 30, 2017, in response to an
26 inspection request, defendant POGOSSIAN submitted the false
27 wholesale invoice he received from CW to the California Board of
28 Pharmacy.

1 k. On or about April 14, 2017, defendant POGOSSIAN
2 sent the California Board of Pharmacy an email attaching false
3 dispensing reports that purported to log the dates that Nova
4 Pharmacy dispensed the prescription drugs listed on the false
5 wholesale invoice to beneficiaries, including Medicare
6 beneficiaries.

7 l. On or about July 17, 2017, in response to an
8 audit, defendant POGOSSIAN submitted to Humana a signed
9 disclosure statement falsely naming CW's prescription drug
10 wholesale company, IPS, as one of Nova Pharmacy's prescription
11 drug wholesalers despite knowing that Nova Pharmacy had never
12 purchased prescription drugs from IPS.

13 m. On or about July 18, 2017, defendant POGOSSIAN
14 sent a text message to CW with a picture of a list of
15 prescription drugs that defendant POGOSSIAN requested be billed
16 on another false wholesale invoice, which defendant POGOSSIAN
17 intended to submit to the drug plan sponsored by Humana.

COUNTS TWO THROUGH FOUR

[18 U.S.C. § 1343]

15. The Grand Jury incorporates by reference and re-alleges paragraphs 1 through 12 and 14 of this Indictment as though set forth in their entirety herein.

A. THE SCHEME TO DEFRAUD

16. Beginning no later than in or about October 2016, and continuing through in or about April 2017, in Los Angeles County, within the Central District of California, and elsewhere, defendant POGOSSIAN, together with others known and unknown to the Grand Jury, knowingly and with the intent to defraud, devised, participated in, and executed a scheme to defraud Medicare and Medicare drug plans as to material matters, and to obtain money and property from Medicare and Medicare drug plans by means of material false and fraudulent pretenses, representations, and promises, and the concealment of material facts, as described in paragraph 14 of this Indictment.

B. USE OF THE WIRES

17. On or about the dates set forth below, within the Central District of California and elsewhere, defendant POGOSSIAN, for the purpose of executing and attempting to execute the above-described scheme to defraud, transmitted and caused the transmission of the following items by means of wire communication in interstate commerce:

COUNT	DATE	ITEM
TWO	October 21, 2016	Email from defendant POGOSSIAN, via computer servers outside the State of California, to CW, located within the State of California, with lists of prescription drugs attached.
THREE	March 24, 2017	Email from defendant POGOSSIAN, via computer servers outside the State of California, to CW, located within the State of California, containing a list of prescription drugs.
FOUR	April 14, 2017	Email from defendant POGOSSIAN, via computer servers outside the State of California, to the California Board of Pharmacy, located within the State of California, with dispensing logs attached.

COUNT FIVE

[18 U.S.C. §§ 1035(a)(1) and (a)(2)]

18. The Grand Jury incorporates by reference and re-alleges paragraphs 1 through 12 and 14 above as though set forth in their entirety herein.

19. On or about July 17, 2017, in Los Angeles County, within the Central District of California and elsewhere, in a matter involving a health care benefit program, defendant POGOSSIAN knowingly and willfully (a) falsified, concealed, and covered up by trick, scheme and device material facts, (b) made a materially false, fictitious, and fraudulent statement and representation, and (c) made and used a materially false writing and document knowing the same to contain materially false, fictitious, and fraudulent statements and entries, in connection with the delivery of and payment of health care benefits, items and services. Specifically, on that date, in response to the instruction to "provide the names of each wholesaler from which you purchased medications from 12/16/2016 through 6/15/2017" on Humana's Wholesaler Information Form, defendant POGOSSIAN represented that Nova Pharmacy purchased prescription drugs from CW's wholesale company, IPS. In truth and fact, as defendant POGOSSIAN then well knew, Nova Pharmacy never purchased prescription drugs from IPS.

FORFEITURE ALLEGATION

[18 U.S.C. §§ 982(a)(7) and 981(a)(1)(C) and 28 U.S.C.
§ 2461(c)]

20. Pursuant to Rule 32.2(a), Fed. R. Crim. P., notice is hereby given to defendant ARMEN POGOSSIAN ("defendant") that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Sections 982(a)(7) and 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), in the event of defendant's conviction under any of Counts One through Five of this Indictment.

21. Defendant shall forfeit to the United States the following property:

a. All right, title, and interest in any and all property, real or personal, that constitutes or is derived, directly or indirectly, from the gross proceeds traceable to the commission of any offense set forth in any of Counts One through Five of this Indictment; and

b. A sum of money equal to the total value of the property described in subparagraph a. above.

22. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982(b), defendant shall forfeit substitute property, up to the total value of the property described in the preceding paragraph if, as a result of any act or omission of defendant, the property described in the preceding paragraph, or any portion thereof (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to or deposited with a third

1 party; (c) has been placed beyond the jurisdiction of the Court;
2 (d) has been substantially diminished in value; or (e) has been
3 commingled with other property that cannot be divided without
4 difficulty.

5 A TRUE BILL

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Foreperson

8 NICOLA T. HANNA
9 United States Attorney

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11 LAWRENCE S. MIDDLETON
12 Assistant United States Attorney
Chief, Criminal Division

13 RANEE A. KATZENSTEIN
14 Assistant United States Attorney
15 Chief, Major Frauds Section

16 STEPHEN A. CAZARES
17 Assistant United States Attorney
Deputy Chief, Major Frauds Section

18 JOSEPH BEEMSTERBOER
19 Deputy Chief, Fraud Section
United States Department of Justice

20 DIIDRI ROBINSON
21 Assistant Chief, Fraud Section
United States Department of Justice

22 ALEXIS GREGORIAN
23 Trial Attorney, Fraud Section
24 United States Department of Justice
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