

ABS/JN:MGD
F. #2019R00578

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

RENE OMAR ACEVEDO,

Defendant.

----- X

THE UNITED STATES CHARGES:

INFORMATION

Cr. No. 20-392 (MKB) (SJB)
(T. 18, U.S.C., §§ 982(a)(7), 982(b)(1),
1349, 2 and 3551 et seq.; T. 21, U.S.C.,
§ 853(p); T. 42, U.S.C., § 1320a-
7b(b)(2)(A))

INTRODUCTION

At all times relevant to this Information, unless otherwise indicated:

I. The Medicare Program

1. The Medicare program (“Medicare”) was a federal health care program providing benefits to persons who were at least 65 years old or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services (“CMS”), a federal agency under the United States Department of Health and Human Services. Individuals who received benefits under Medicare were referred to as Medicare “beneficiaries.”

2. Medicare was subdivided into multiple parts: Part A, Part B, Part C and Part D. Certain prescription drug costs for Medicare beneficiaries were covered through Medicare Part D. Medicare Part D was enacted as part of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

3. CMS assigned pharmacies a National Provider Identification (“NPI”) number. A pharmacy dispensing medications used its assigned NPI number when submitting a claim for reimbursement under Medicare Part D. A pharmacy was permitted to submit claims for reimbursement under Part D only for those medications actually dispensed and was required to maintain records verifying that it dispensed the medications.

4. Medicare Part D was administered by private insurance plans that were reimbursed by Medicare through CMS. Medicare Part D subsidized the costs of prescription drugs by prospectively paying private insurers monthly payments to provide Medicare-covered benefits to Medicare beneficiaries.

5. Medicare beneficiaries obtained Part D benefits in two ways: (a) by joining a Prescription Drug Plan, which covered only prescription drugs; or (b) by joining a Medicare Advantage Plan, which covered both prescription drugs and medical services (collectively, “Part D Plans”). Part D Plans were operated by private companies approved by Medicare and were often referred to as drug plan “sponsors.”

6. Pharmacies could participate in Medicare Part D through Part D Plans or through one or more Pharmacy Benefit Managers (“PBMs”). A PBM acted on behalf of one or more Part D Plans. Through a Part D Plan’s PBM, pharmacies could join Part D Plan networks. Typically, a Medicare beneficiary enrolled in a Part D Plan obtained his or her prescription medications from a pharmacy authorized by the beneficiary’s Part D Plan. After a Medicare Part D beneficiary presented a prescription to a pharmacy and the pharmacy dispensed the medication, the pharmacy would submit a reimbursement claim either directly to the Part D Plan or to a PBM that represented the beneficiary’s Part D Plan for payment under the beneficiary’s Medicare Part D Plan identification number, as well as

the pharmacy NPI number. The Part D Plan or the PBM determined whether the pharmacy was entitled to payment and sent the reimbursement to the pharmacy, either by check or by electronic transfer of funds.

7. Each Part D Plan submitted to CMS a record of each prescription drug claim it received from a pharmacy. This record was commonly referred to as a prescription Drug Event (“PDE”). All PDE records accepted by CMS were stored in CMS’s Integrated Data Repository for use in calculating expected Part D costs for the following year.

8. Under Title 42, Part 423 of the Code of Federal Regulations, Part D plans were required to ensure that pharmacies that submitted prescription drug claims for reimbursement under Part D were contractually required to maintain records for ten years.

9. Medicare and Part D Plan sponsors were “health care benefit programs” as defined by Title 18, United States Code, Section 24(b).

II. The Defendant, Relevant Entities and Individuals

10. Since approximately November 1, 2007, the defendant RENE OMAR ACEVEDO was a licensed pharmacist in New York State.

11. Pharmacy-1, an entity the identity of which is known to the United States, was a New York State corporation located in Ridgewood, New York. Pharmacy-1 operated as a pharmacy and was open to the public. Between approximately November 2011 and February 2019, the defendant RENE OMAR ACEVEDO was a pharmacist at Pharmacy-1. Pharmacy-1 was owned by Individual-1 and Individual-2, individuals whose identities are known to the United States.

12. Pharmacy-1 maintained a bank account at, among others, Bank-1, an entity the identity of which is known to the United States, with a bank account number ending in 2403 (the "Pharmacy-1 Account").

13. Pharmacy-1 was enrolled as an authorized provider in the Medicare Program, and was authorized to bill Medicare for drugs dispensed to Medicare beneficiaries, including compounded pharmaceutical products. Pharmacy-1 obtained the drugs it dispensed from various drug wholesalers. Medicare reimbursements were sent to the Pharmacy-1 Account by PBMs.

14. Physician-1, an individual whose identity is known to the United States, was a physician licensed by the State of New York and practicing within the Eastern District of New York. During the relevant period, Physician-1 referred Medicare beneficiaries to Pharmacy-1 for the fulfilment of prescription medication orders.

15. Physician-2, an individual whose identity is known to the United States, was a physician licensed by the State of New York and practicing within the Eastern District of New York. During the relevant period, Physician-2 referred Medicare beneficiaries to Pharmacy-1 for the fulfilment of prescription medication orders.

III. The Fraudulent Schemes

A. The Kickback Scheme

16. Between approximately February 2015 and May 2017, the defendant RENE OMAR ACEVEDO, together with others, paid kickbacks to Physician-1 in order to induce Physician-1 to refer patients to Pharmacy-1.

17. As part of the scheme, Individual-1, Individual-2 and the defendant RENE OMAR ACEVEDO paid for a series of expensive dinners attended by Physician-1

and others. Each dinner was also attended by an individual associated with Pharmacy-1, including ACEVEDO. ACEVEDO paid for the dinners using his personal credit card and was reimbursed by checks drawn on the Pharmacy-1 Account. At the end of each dinner, Physician-1 handed ACEVEDO a stack of prescriptions for certain medications. Thereafter, ACEVEDO caused Pharmacy-1 to bill Medicare for dispensing these medications which had been prescribed by Physician-1.

18. For example, on or about September 1, 2016, the defendant RENE OMAR ACEVEDO used his personal credit card at Restaurant-1, a restaurant in Manhattan, New York. On September 8, 2016, ACEVEDO deposited a check drawn on the Pharmacy-1 Account in the amount of \$1,394.50 into his personal bank account. The memo line on the check bore the name of Physician-1. The name was crossed out and replaced with the word "Expenses." On the same day that he deposited this check, ACEVEDO made a payment of approximately \$1,394.50 toward his personal credit card balance.

19. Between approximately February 2015 and May 2017, the defendant RENE OMAR ACEVEDO caused Pharmacy-1 to bill Medicare and receive payment of approximately \$589,735.53 in total for prescription medications prescribed by Physician-1.

20. The defendant RENE OMAR ACEVEDO, together with others, also paid cash bribes to Physician-2 in order to induce Physician-2 to provide prescriptions for certain medications and to refer Medicare beneficiaries to Pharmacy-1.

21. In particular, on at least two occasions, the defendant RENE OMAR ACEVEDO went to the office of Physician-2 and handed Physician-2 approximately \$2,000 in cash, which ACEVEDO had taken from cash held on the premises of Pharmacy-1. In exchange for the cash, Physician-2 handed ACEVEDO a number of prescriptions for certain

medications. Thereafter, ACEVEDO caused Pharmacy-1 to bill Medicare and receive payment for prescription medications prescribed by Physician-2.

B. The False Billing Scheme

22. In or about and between January 2012 and June 2017, the defendant RENE OMAR ACEVEDO failed to purchase sufficient levels of pharmaceutical medications from wholesalers for the prescriptions purportedly filled by Pharmacy-1. As part of the scheme, ACEVEDO regularly billed health insurance plans, including Medicare Part D, for pharmaceutical products purportedly dispensed by Pharmacy-1, which were in fact never purchased or dispensed by Pharmacy-1. These claims included, but were not limited to, claims for prescription drug refills that had not been requested by the beneficiaries to whom the refills were purportedly dispensed.

23. Additionally, as the pharmacist at Pharmacy-1, the defendant RENE OMAR ACEVEDO was responsible for preparing compounded medications. Compounded medications consisted of various individual pharmaceutical ingredients blended by the pharmacist into a single product (typically a syrup or a cream) according to a specific formula. As part of the scheme, ACEVEDO regularly caused Pharmacy-1 to bill Medicare for pharmaceutical ingredients that were more expensive than those ACEVEDO actually used to create the compounded medications.

COUNT ONE
(Conspiracy to Commit Health Care Fraud)

24. The allegations contained in paragraphs one through 23 are realleged and incorporated as if fully set forth in this paragraph.

25. In or about and between January 2012 and June 2017, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RENE OMAR ACEVEDO, together with others, did knowingly and intentionally conspire to execute a scheme and artifice to defraud one or more health care benefit programs, as defined in Title 18, United States Code, Section 24(b), to wit: Medicare, and to obtain, by means of one or more materially false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of, Medicare, in connection with the delivery of and payment for health care benefits, items and services, contrary to Title 18, United States Code, Section 1347.

(Title 18, United States Code, Sections 1349 and 3551 et seq.)

COUNT TWO
(Health Care Kickbacks)

26. The allegations contained in paragraphs one through 23 are realleged and incorporated as if fully set forth in this paragraph.

27. In or about and between 2015 and 2018, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant RENE OMAR ACEVEDO did knowingly and willfully offer and pay kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to one or more persons to induce such persons to refer one or more Medicare beneficiaries to ACEVEDO for the furnishing of, and arranging for the furnishing of, items and services for which payment may have been made in whole and in part under Medicare.

(Title 42, United States Code, Section 1320a-7b(b)(2)(A); Title 18, United States Code, Sections 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

28. The United States hereby gives notice to the defendant that, upon his conviction of either of the offenses charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982(a)(7), which requires any person convicted of a federal health care offense to forfeit property, real or personal, that constitutes, or is derived directly or indirectly from, gross proceeds traceable to the commission of such offense.

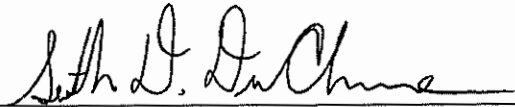
29. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (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 Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any

other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Sections 982(a)(7) and 982(b)(1); Title 21, United States Code, Section 853(p))



SETH D. DUCHARME
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ACTING CHIEF, FRAUD SECTION
CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE

F #: 2019R00578
FORM DBD-34
JUN. 85

No. _____

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EASTERN District of NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

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U.S.C., § 853(p); T. 42, U.S.C., § 1320a-7b(b)(2)(A))

A true bill.

Foreperson

Filed in open court this _____ *day,*

of _____ *A.D. 20* _____

Clerk

Bail, \$ _____

Miriam L. Glaser Dauermann, Trial Attorney (718) 254-7575