

CRIMINAL COMPLAINT

UNITED STATES DISTRICT COURT		CENTRAL DISTRICT OF CALIFORNIA	
UNITED STATES OF AMERICA v. JOHN KOSOLCHAROEN		DOCKET NO.	FILED CLERK, U.S. DISTRICT COURT JUN 20 2016
		MAGISTRATE'S CASE NO.	CENTRAL DISTRICT OF CALIFORNIA DEPUTY
SA 16-325M			
Complaint for violation of Title 42, United States Code, Section 1320a-7b(b)(2)(A): Illegal Remuneration Involving A Federal Health Care Program			
NAME OF MAGISTRATE JUDGE HONORABLE KAREN E. SCOTT		UNITED STATES MAGISTRATE JUDGE	LOCATION Santa Ana, California
DATE OF OFFENSE On or about June 19, 2015	PLACE OF OFFENSE Orange County	ADDRESS OF ACCUSED (IF KNOWN)	
COMPLAINTANT'S STATEMENT OF FACTS CONSTITUTING THE OFFENSE OR VIOLATION: <p style="text-align: center;">[42 U.S.C. § 1320a-7b(b)(2)(A)]</p> On or about June 19, 2015, in Orange County, within the Central District of California, defendant JOHN KOSOLCHAROEN, together with others known and unknown, knowingly and willfully, paid remuneration, that is, approximately \$44,500 in the form of a check, number 1003 drawn on Bank of America account ending in 7421, bearing the notation "consulting work," to A.M.D., in return for A.M.D. referring individuals to seek compounded medication prescriptions for which payment could be made in whole and in part under a Federal health care program, namely Tricare.			
BASIS OF COMPLAINTANT'S CHARGE AGAINST THE ACCUSED: (See attached Affidavit which is incorporated herein by this reference as part of this Complaint)			
MATERIAL WITNESSES IN RELATION TO THIS CHARGE: N/A			
Being duly sworn, I declare that the foregoing is true and correct to the best of my knowledge.	SIGNATURE OF COMPLAINTANT MONICA PANDIS <i>[Signature]</i>		
	OFFICIAL TITLE Special Agent – Federal Bureau of Investigation		
Sworn to before me and subscribed in my presence,			
SIGNATURE OF MAGISTRATE JUDGE ⁽¹⁾ <i>[Signature]</i>		KAREN E. SCOTT	DATE June 20, 2016

⁽¹⁾ See Federal Rules of Criminal Procedure 3 and 54

AFFIDAVIT

I, MONICA PANDIS, being duly sworn, declare and state as follows:

I. AFFIANT'S BACKGROUND

1. I am a Special Agent ("SA") of the Federal Bureau of Investigation ("FBI"). I have been so employed since approximately June 2002. I am currently assigned to the white collar crime squad of the Orange County Resident Agency of the Los Angeles FBI Field Division, which investigates allegations of Public Corruption and Health Care Fraud. Over that past 14 years I have been assigned to investigate Health Care Fraud. As an FBI SA, I have investigated over 50 health care fraud and other white-collar cases including cases involving the payment of illegal kickbacks affecting federal health care programs. Before becoming an FBI SA, I was a medical social worker assigned to hospice and pediatric HIV patients. I have a Master's Degree in Social Work, a Bachelor's Degree in Behavioral Science and a Minor in Criminal Justice and Corrections.

II. PURPOSE OF AFFIDAVIT

2. This affidavit is made in support of a complaint and request for the issuance of an arrest warrant charging JOHN KOSOLCHAROEN ("KOSOLCHAROEN") with Illegal Remunerations for Health Care Referrals, in violation of 42 U.S.C. § 1320a-7b(b) (2) (A).

3. The facts set forth in this affidavit are based upon my personal observations, my training and experience, documents

obtained from various sources including financial institutions, information obtained from various law enforcement personnel, and from witnesses. This affidavit is intended to show only that there is probable cause to support the referenced complaint and request for issuance of an arrest warrant for KOSOLCHAROEN. It does not purport to set forth all of my knowledge of or investigation into this matter, nor is it intended to provide all of the information obtained in connection with the investigation. Also, unless specifically indicated otherwise, all conversations and statements described in this affidavit are related in substance and in part only, and are not *verbatim*.

III. SUMMARY OF PROBABLE CAUSE

4. Based upon the evidence and information stated herein, I have probable cause to believe that KOSOLCHAROEN paid illegal remuneration in connection with soliciting individuals to seek prescription compounded medications covered by Tricare, the U.S. military's health care program. Specifically, KOSOLCHAROEN received more than \$600,000 in a matter of a few months from a pharmacy located in Irvine, California, that paid KOSOLCHAROEN and others referral fees for steering prescriptions to pharmacies for compounded medications in the form of topical creams. KOSOLCHAROEN then recruited others to help him secure referrals, paying at least one of them to solicit service members to seek prescriptions for compounded medications. He characterized those referral fees as "consulting work," "consulting fees," or "marketing fees," but, in fact, one payee functionally did nothing to earn the fees and the other merely

directed interested fellow soldiers to a website at KOSOLCHAROEN's instruction. During the relevant time, Tricare saw a huge uptick in claims for reimbursement for dispensing similar types of medications for which Tricare was billed several thousand dollars per prescription. A substantial number of the prescriptions had been issued through telemedicine and other online sites rather than as a result of traditional, face-to-face doctor-patient exams. In addition to the individuals noted above, KOSOLCHAROEN also paid a telemedicine site to promote the prescriptions.

IV. STATEMENT OF PROBABLE CAUSE

A. BACKGROUND

TRICARE¹

5. "In 1994, Tricare replaced CHAMPUS as the health care program for active-duty military personnel, retirees, and their families. See [http:// www.Tricare.mil/faqs/question](http://www.Tricare.mil/faqs/question) . . . ,"
U.S. ex rel. Nowak v. Medtronic, Inc., 806 F. Supp. 2d 310, 318, note 5 (D. Mass. 2011), as a "comprehensive managed health care program for the delivery and financing of health care services in the Military Health System," see 32 C.F.R. § 199.17(a). Tricare is applicable to all of the uniformed services. 32 C.F.R. § 199.17(a)(3). "[A]ll CHAMPUS-eligible beneficiaries who are not Medicare eligible on the basis of age are eligible

¹ Statutory and case citations and legal analysis have been prepared by the Assistant U.S. Attorney with whom I am working on this investigation. I have relied upon those citations and that analysis in support of this affidavit.

to enroll in" a Tricare program. 32 C.F.R. § 199.17(c). Tricare is a "health care benefit program" as defined by 18 U.S.C. § 24(b), that affects commerce, see Taylor v. United States, 89 F.Supp.3d 766, n. 1 (E.D.N.C. 2014), and as that term is used in 18 U.S.C. § 1347. Tricare is administered by the Defense Health Agency ("DHA").

Compounded Medications

6. During the course of this investigation, I have learned from reviewing documents, witness interviews, and speaking with other investigators involved in the investigation, that:

a. In general, "compounding" is a practice in which a licensed pharmacist, a licensed physician, or, in the case of an outsourcing facility, a person under the supervision of a licensed pharmacist, combines, mixes, or alters ingredients of a drug or multiple drugs to create a drug tailored to the needs of an individual patient.

b. Compounded drugs are not FDA-approved, that is, the FDA does not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs. The California Board of Pharmacy regulates the practice of compounding in the State of California.

c. Compounded drugs may be prescribed 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 a 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.

d. The compounded medication prescriptions in this case were ostensibly prescribed for the treatment of pain, scarring, stretch marks, erectile dysfunction, or for "general wellness." The prescriptions were based on substantially similar 8 1/2" x 11" forms with check-the-box sections that described the chemical compounds for each of these conditions. Although it may be possible, I have reviewed hundreds of these forms, and discussed well over a thousand of these forms with other agents involved in this and related investigations, and I am not aware of any instances in which a prescribing physician altered the pre-formulated prescriptions to suit the individual needs of any patient.

Anti-Kickback Statute

7. The federal health care anti-kickback statute, at 42 U.S.C. § 1320a-7(b)(2)(A), ("AKS") prohibits the offer or payment of any remuneration (including any kickback, bribe, or rebate) for referrals in connection with federal health care programs such as Tricare. To prove a violation of the AKS statute, the government must prove each of the following elements beyond a reasonable doubt:

(1) The defendant knowingly and willfully offered or paid remuneration, directly or indirectly, overtly or covertly;

(2) Referred an individual to a person for the furnishing or arranging for the furnishing of any item or service; and

(3) Payment was or would be made in whole or in part under a federal health care program.

See, e.g., United States v. Patel, 17 F.Supp.3d 823, 824 (N.D.Ill. 2014).

8. The government need not prove that a defendant had actual knowledge of the AKS or a specific intent to violate it. 42 U.S.C. § 1320a-7(b)(h); United States v. St. Junius, 739 F.3d 193, 210 (5th Cir. 2013) ("Section 1320a-7b(h) clarifies that the Government is not required to prove actual knowledge of the Anti-Kickback Statute or specific intent to violate it. Instead, the Government must prove that the defendant willfully committed an act that violated the Anti-Kickback Statute."). "The [AKS] is not a highly technical tax or financial regulation that poses a danger of ensnaring persons engaged in apparently innocent conduct. Rather, the giving or taking of kickbacks for medical referrals is hardly the sort of activity a person might expect to be legal." United States v. Vernon, 723 F.3d. 1234, 1259 (11th Cir. 2013), citing United States v. Starks, 157 F.3d 833, 838 (11th Cir. 1998). The AKS may be violated even where the referral payment has multiple purposes, so long as at least one purpose was to induce referrals (as opposed, for example, to compensate for advertising expense). United States v. McClatchey, 217 F.3d 823, 835 (10th Cir. 2000); United States v. Kats, 871 F.2d 105, 108 (9th Cir. 1989). Evidence that an

individual engaged in illegal kickbacks may include that the kickback payor deliberately mischaracterized a kickback as a seemingly legitimate expense. See, e.g., United States v. Moran, 778 F.3d 942, 953 (11th Cir. 2015) (kickback payor "initiated the plan to have the patient recruiters [kickback payees] sign fraudulent "case manager" contracts" to create appearance of legitimacy for kickbacks).

Telemedicine

9. During the course of this investigation, I have learned from interviewing and reviewing reports of interviews of a pharmacist, pharmacy technicians, pharmacy owners and others that, although a prescription is typically delivered to a pharmacy by the patient for whom the prescription is written, or phoned-in or otherwise communicated directly by the prescribing physician's office to the pharmacy for fulfillment, an enormous number of compounded medications prescriptions - in the thousands during a few-month period of time in early to mid-2015 - were not delivered to pharmacies in that manner. Instead, they were generated through online "telemedicine" sites and then faxed to a pharmacy for fulfillment; the prescription was not sent to the patient who, in turn, delivered the prescription to the pharmacy of his/her choice for fulfillment.² A telemedicine site is ostensibly designed to assist individuals in obtaining low-cost, easy access to health care for minor ailments. A

² In fact, I have learned that dozens, if not hundreds, of patients who received these prescriptions knew nothing about them until the prescriptions showed up on their doorsteps.

patient is supposed to pay a small fee and complete an online questionnaire whereby the patient describes his/her symptoms and provides some health history. A doctor under contract with the telemedicine site operator then receives and reviews the questionnaire and, at least in theory, exercises independent judgment to determine a course of treatment that may, or may not, include prescription medication.

10. Through interviews of doctors under contract with telemedicine sites, and others, as well as discussions with others involved in this investigation, I have learned that telemedicine site operators accepted payment from third parties to advertise compounded medications. More specifically, for a fee, telemedicine site operators sent to their contract doctors blank compounded medications prescription forms, or at times, such forms with "boxes checked" for the prescription of specific compounded medications, before the doctors had even reviewed a patient's questionnaire answers. The site operators encouraged their contract doctors to prescribe these medications. At least two telemedicine site contract doctors told investigators that they were not paid unless they prescribed these medications or that, with few exceptions that did not relate to their view of medical necessity, they always prescribed these medications. One other telemedicine site contract doctor whom agents interviewed told the agents that she was pressured by the site operator to prescribe these medications and, after refusing to do so, learned that the telemedicine site operator and fulfilling pharmacy had used her identity and medical

credentials, without her permission, to fill dozens of prescriptions for these medications worth thousands of dollars in Tricare reimbursements. The doctor told me that the telemedicine site operator offered her \$200,000 to remain silent and, if she refused, the site operator threatened to ruin her practice.

B. CRIMINAL INVESTIGATION

Tricare Beneficiary Complaints

11. Based upon my discussion with agents of the Defense Criminal Investigation Service ("DCIS"), I learned the following:

a. In 2015, DHA made a criminal referral to the DCIS based, in part, on complaints that DHA had received from Tricare beneficiaries. Among other things, beneficiaries had complained about prescriptions for compounded medications. For example, on or about April 14, 2015, Tricare beneficiary M.H. complained to DHA that M.H. had received an "Explanation of Benefits" form from Tricare stating that M.H. received a prescription for compounded medications for which the dispensing pharmacy had charged Tricare \$59,362.33; that the beneficiary had never received the medication; that the beneficiary did not know the prescribing physician; and that the beneficiary had received no phone calls about the medication. Tricare paid the dispensing pharmacy \$46,981.59 on that claim.³

³ I reviewed Tricare claims data and noticed that it was not uncommon for Tricare to reimburse for less than the amount of a claim.

b. At least twenty Tricare beneficiaries made similar complaints to DHA around this same period of time.

Surge in Irvine Wellness Pharmacy Compounded Medications
Claims

12. I have learned from reviewing Tricare claims data and documents provided by DHA, and from investigators of the Defense Criminal Investigation Service (federal agents co-involved in this investigation), that:

a. Irvine Wellness Pharmacy ("IWP") is a pharmacy located at 113 Waterworks Way, Irvine, CA.

b. During calendar year 2013, IWP submitted zero claims to Tricare for reimbursement for filling compounded medications prescriptions.

c. During calendar year 2014, IWP submitted approximately 163 claims to Tricare for reimbursement for filling compounded medications prescriptions, for a total amount of approximately \$1,254,978, that resulted in approximately \$1,077,478 paid by Tricare on those claims, yielding an average of approximately \$7,699 claimed per prescription.

d. During calendar year 2015, IWP submitted approximately 998 claims to Tricare for reimbursement for filling compounded medications prescriptions, for a total amount of approximately \$13,762,457, that resulted in approximately \$11,351,405 paid by Tricare on those claims, yielding an average of approximately \$13,790 claimed per prescription.

e. Tricare data for claims for reimbursement by pharmacies include the name of the prescribing physician-

provider for each prescription for which Tricare receives and pays a claim. Of the total claims paid on IWP's Tricare claims for 2014-2015 for filling compounded medications prescriptions, described above, approximately \$9,321,978 in claims was attributed to compounded medications prescriptions ostensibly authorized by only ten doctors, only half of whom practiced in California.

KOSOLCHAROEN's Kickback Payments to M.C.

13. On June 7, 2016, I telephonically interviewed M.C., who stated the following:

a. She met KOSOLCHAROEN in August 2013 through a dating website and they began dating in January 2014. They dated until around October 2015 when she "cut him off" because he was a "smooth talker" who was dishonest to her.

b. In or around April 2015, KOSOLCHAROEN told her that he was working with IWP to find individuals who would seek "creams" prescriptions that would be covered by Tricare. KOSOLCHAROEN told M.C. that she would "get a cut" of whatever he earned from promoting the prescriptions and that she would "be able to pay off [her] house." (M.C. had earlier told KOSOLCHAROEN that she owed approximately \$125,000 on her home mortgage.) KOSOLCHAROEN asked her whether she knew anyone that he could speak to about soliciting individuals to seek compounded medications prescriptions. M.C. told him that he might want to talk to A.D. (mentioned above). KOSOLCHAROEN had already met A.D. and already knew that A.D. was in the military

and was in a position to solicit fellow soldiers to seek the prescriptions.

c. In or around April 2015 KOSOLCHAROEN suggested that M.C. form her own business entity in order to help stop being a "corporate slave." KOSOLCHAROEN arranged for the formation of Mirabella Consulting LLC ("Mirabella"). M.C. paid the fees for forming that entity and opened a bank account in the name of Mirabella.

d. In May 2015, KOSOLCHAROEN deposited approximately \$11,450.34 into the Mirabella bank account. (As more fully discussed below under the section regarding KOSOLCHAROEN's bank records, this deposit was in the form of a check written in handwriting that matched KOSOLCHAROEN's California Driver's License, and bore the notation "marketing fees.") In June 2015, KOSOLCHAROEN deposited approximately \$74,244.47 into the Mirabella bank account. (As more fully discussed below under the section regarding KOSOLCHAROEN's bank records, this deposit was in the form of a check written in handwriting that matched KOSOLCHAROEN's California Driver's License, and bore the notation "consulting fees.") KOSOLCHAROEN told M.C. that the deposits were her referral fee for giving him A.D.'s name.

e. M.C. performed no marketing, advertising, consulting, or any other work in consideration for the "referral" fee other than mentioning that KOSOLCHAROEN might want to contact A.D., whom KOSOLCHAROEN already knew was a service member.

f. KOSOLCHAROEN told her that he earned approximately a million dollars as his "cut" for signing-up individuals for compounded medications prescriptions, and that he had used his "cut" to pay-off the mortgage on his home.

g. Mirabella has never done any work and M.C. has not used Mirabella to do any work. M.C. has used the Mirabella bank account, into which the two deposits, above, were made, as a personal savings account.

h. M.C. used the approximately \$85,000 received from KOSOLCHAROEN to pay personal bills and purchase personal items.

i. KOSOLCHAROEN was introduced to promote the "creams" by "Andre" (see below) who was recruiting for IWP and another pharmacy that was located in Vero Beach, Florida.

14. M.C. also told me that she had documents relating to KOSOLCHAROEN and the "creams," including a spreadsheet that contained a break-down of referral fees.

15. Following my interview of M.C., M.C. provided (through her lawyer) a spreadsheet and related emails from KOSOLCHAROEN. I reviewed the spreadsheet and observed the following:

a. KOSOLCHAROEN had gross referral fees of \$908,415.80 based on TRICARE reimbursements, at a "cost" (which I believe refers to the cost of the dispensed pharmaceuticals) of \$223,837.30, yielding net referral fees of \$684,578.50. Another column on the spreadsheet is entitled "20% Net" and yields an amount of \$136,915.70, which I believe represents the

gross amount of the referral fee purportedly due M.C. for essentially doing nothing.

b. From the latter figure, \$4,600 was deducted for "doctor fees" and \$44,500 for "Statia," whom I believe was short for "A." of A.D.

16. I have compared the patient/beneficiary names on the above-referenced spreadsheet that M.C. received from KOSOLCHAROEN with Tricare claims records, and learned that IWP submitted claims for reimbursement for dispensing prescription compounded medications for all or substantially all of those patients/beneficiaries.

KOSOLCHAROEN's Kickback Payment to A.D.

17. On December 11, 2015, and again on April 14, 2016, I interviewed A.D. who told me the following, in substance:

a. She is an active member of the U.S. Navy at Camp Pendleton, CA, assigned to a Marine Corp unit. She is the equivalent of a full-time combat medic and in mid-2015 earned approximately \$4,500 per month.

b. In or about January 2015, A.D. traveled to Arizona to visit a long-time friend, M.C. At that time, M.C. had been dating KOSOLCHAROEN. During A.D.'s visit to M.C., KOSOLCHAROEN was also present and offered to pay A.D. to solicit fellow soldiers to seek prescriptions for compounded medications in the form of topical creams for pain or similar minor ailments. KOSOLCHAROEN told A.D. to tell interested soldiers to enter their Tricare benefit and health information on a website called "mediapharmaceutical.form.stack.com." KOSOLCHAROEN told

A.D. to instruct the soldiers to use the code "JKMCAD" where required. KOSOLCHAROEN told A.D. that the code would ensure that A.D. received credit for each soldier that she had referred to the website. A.D. stated that, according to KOSOLCHAROEN, the code stood for "John Kosolcharoen, Marine Corp, [A.D.]."⁴ KOSOLCHAROEN did not ask A.D. to do any type of advertising or marketing and A.D. did not have any experience in advertising or marketing. A.D. did not do any advertising, or marketing following her discussion with KOSOLCHAROEN. A.D. was at all relevant times busy with her work as a combat medic and did not intend to spend much time soliciting fellow soldiers as KOSOLCHAROEN had requested.

c. Ultimately, A.D. merely told approximately 30 to 40 fellow soldiers that, if they were interested in pain medications, they could seek them through the website identified by KOSOLCHAROEN.

d. On or about June 19, 2015 A.D. noticed a \$44,500 credit to her checking account. A.D. was surprised to learn of the credit. A.D. obtained from her bank a copy of the deposit item, a check from KOSOLCHAROEN to A.D. A.D. in the amount of \$44,500, and then contacted KOSOLCHAROEN. KOSOLCHAROEN stated that the payment was for referring soldiers to the website.

⁴ As discussed below, a chart that KOSOLCHAROEN gave to his ex-girlfriend, M.C., decoded the same or similar information as identifying himself, M.C. (as opposed to "Marine Corp"), and A.D.

e. The check from KOSOLCHAROEN bore the notation "consulting work" in handwriting. (As discussed below, a copy of the same check was part of the bank records obtained from KOSOLCHAROEN's bank as part of this investigation.) Despite the notation on the check, A.D. never did any "consulting work" for KOSOLCHAROEN or for anyone else regarding compounded medications prescriptions. A.D. did not tell KOSOLCHAROEN how to fill-out the check or how to notate the check.

IWP Cappers

18. I interviewed former Tricare beneficiary M.R. who told me the following:

a. In April or May 2015, M.R. was approached by C.H., his roommate's girlfriend.

b. C.H. told M.R. that she (C.H.) worked for a pharmacy in Irvine and that M.R. could receive a prescription for pain medication for which "you don't even need to see a doctor." C.H. further stated that M.R. might receive a doctor's phone call. M.R. never received a call from a doctor regarding the medications C.H. had mentioned. C.H. asked M.R. if he had insurance. M.R. replied that he was a Tricare beneficiary, to which C.H. replied, "perfect." While M.R. was suspicious, C.H. told M.R. that "there's nothing wrong with it, I've been doing it for friends and family."

c. M.R. gave C.H. his name, date of birth, and Social Security number. About two to four weeks later, C.H. delivered ten to twelve bottles of compounded medications prescriptions that had been filled by IWP. C.H. also gave M.R.

\$6,000 in cash, stating that "here's your cut if you want it. Our company gets a cut, here's your cut."

d. M.R. was never contacted by IWP. M.R. never sought the medications and never signed anything about them. M.R. never provided any online information to seek the prescriptions. M.R. was never examined by a physician or contacted about the prescriptions.

e. About two to three months after receiving the prescriptions, C.H. told M.R. that "our company's not doing this anymore."

19. I reviewed Tricare claims data for IWP and learned that IWP submitted claims to Tricare and on those claims was reimbursed (paid) approximately \$164,339 for dispensing five prescriptions to M.R. that had been filled on May 7 and May 8, 2015. Tricare claims data showed that each prescription was purportedly authorized by N.G., M.D. Tricare data show that Dr. N.G. did not bill for any office visit or services rendered on behalf of M.R.

Analysis of KOSOLCHAROEN-connected Bank Accounts and Related Information

20. I reviewed bank records for accounts connected to KOSOLCHAROEN, and other records, and learned the following:

a. On or about March 30, 2015, KOSOLCHAROEN signed a signature card to open a Bank of America account ending in 7421 in the name of Finanstra LLC. The signature card identified KOSOLCHAROEN as a "manager" and further identified Finanstra LLC as a Nevada limited liability corporation. This is the same

account from which the deposits or checks flowed to A.D. and M.C., as mentioned above.

b. State of Nevada public records show that Finanstra LLC was incorporated in 2014, and that L.C. was an owner. L.C.'s name appears as a signatory along with KOSOLCHAROEN on the Bank of America bank accounts in the name of Finanstra LLC described herein.

c. Finanstra LLC has a website that describes Finanstra LLC as a financial advisory firm of which Tran is the CEO. The website also describes Tran as holding a Ph.D.

d. According to the Finanstra LLC bank records, the account was opened with a \$100 deposit and that on or about June 4, 2015 the account was credited with a wire transfer from "Epistemic RI 8306 Wilshire . . ." in the amount of \$662,337.88.

e. As stated above, A.D.'s bank account was credited with \$44,500 in the form of a deposited check, no. 1003, from the Finanstra LLC Bank of America account ending in 7421 and dated June 19, 2015. That check bears the notation "consulting work" even though, as stated above, A.D. stated that she did not do any consulting work for KOSOLCHAROEN. I also noted that the spreadsheet that KOSOLCHAROEN sent to M.C., discussed above, identified the check to "Statia" (whom I believe is A.D.) by the same check number (1003).

f. The same bank records also show two other checks drawn against the same account, mentioned above, as one check payable to "Mirabella LLC," for \$11,450.34 and dated May 19,

2015, that bears the notation "marketing fees," and another check, on the same date as the check to A.D. (June 19, 2015), for \$74,244.47 and payable to Mirabella with the notation "consulting fees."

g. I queried online records for "Mirabella Consulting LLC" and found public filings listed by the Arizona Corporation Commission that show that Mirabella Consulting LLC was incorporated in Arizona on April 20, 2015. Its registered agent is identified as M.C., mentioned above. I compared this date to the checks in the Finanstra LLC bank account, discussed above, and to M.C.'s statements, and believe that Mirabella was formed solely, or at least primarily, to serve as an account to capture and disburse kickbacks.

h. Bank records from the same Finanstra LLC bank, account ending in 7421 also include a check, with handwriting matching that of KOSOLCHAROEN (based on my comparison of an exemplar of his handwriting from his California Driver's License), and which is consistent with all other checks discussed herein, for \$3,475 dated April 10, 2015 and made payable to "24 HOUR MD ONLINE" with the notation "TELE-MED FEES." Another check from the same account, in similar handwriting, was for \$940.00 dated May 26, 2015, and made payable to "24 HOUR MD ONLINE" with the notation "DR FEES THROUGH 5-15-15." I believe, based on the evidence and information gathered in this case and other cases that involve payments to telemedicine site operators to promote compounded medication prescriptions to their contract doctors, that these

two checks represented KOSOLCHAROEN's payment to a telemedicine site operator to promote compounded medications prescriptions on KOSOLCHAROEN's behalf, for fulfillment by IWP and, in turn, to generate kickbacks to KOSOLCHAROEN and others.

Epistemic Research Group, Inc. and Andre Ezidore

21. As indicated above, on June 4, 2015, the Finanstra LLC bank account, which I believe was controlled by KOSOLCHAROEN, received a deposit, in the form of a wire transfer of approximately \$662,338, from an account in the name of Epistemic Research Group, Inc. ("Epistemic"). I queried public records and learned that Epistemic was incorporated in Nevada on June 13, 2013, and that its president is M.Y. and its secretary is Leslie Andre Ezidore ("Ezidore").

22. I queried the address of 8306 Wilshire Blvd., Beverly Hills, California, on the Internet and learned that that address corresponds with a retail business that rents the equivalent of post office boxes, commonly called a "drop box" business.

23. On June 10, 2016, DCIS and IRS-CI agents interviewed M.Y. who stated the following, among other things:

- a. She formerly had a romantic relationship with Ezidore who goes by "Andre."
- b. Ezidore supports M.Y., who does not work.
- c. M.Y. did not know that she was the president of Epistemic and never authorized Ezidore to use her identity to operate Epistemic. M.Y. knows nothing about Epistemic. M.Y. knows nothing about the drop-box that is used as Epistemic's

business address except that she had been to that location with Ezidore to pick up a package.

d. In 2015, Ezidore talked about doing "pharmacy compound business." M.Y. does not know KOSOLCHAROEN.

e. Ezidore visits Florida often.

f. M.Y. described Ezidore as a tall male of Jamaican descent.

24. On April 28, 2015, I interviewed L.T., whose name appears on the Finanstra LLC website as its CEO. L.T. told me the following:

a. She knows KOSOLCHAROEN through various business contacts.

b. KOSOLCHAROEN asked her to help him form Finanstra LLC. She was never its CEO, was never the signatory of any of its bank accounts, and never owned or operated any part of Finanstra LLC.

c. L.C., shown on the Finanstra LLC bank records, described above, is KOSOLCHAROEN's mother and lives in Wisconsin and resides part-time in Southern California.

d. Finanstra LLC's address that is listed on the Finanstra LLC website was just a "satellite office" that was used to get mail.

e. She was surprised to learn that the Finanstra LLC website showed her as its CEO. She also denied, contrary to the representation on the Finanstra LLC website, that she had a Ph.D.

f. In or about December 2014 or January 2015, KOSOLCHAROEN mentioned that he was working to sign-up people to receive "creams" from IWP and pitched that L.T. should do the same. L.T. declined because she thought it was "shady."

g. IWP's owner also owned a pharmacy in Florida named "Clearwater Pharmacy." The owners of both pharmacies are Andre Isidore, a wealthy, tall African-American male who lived in Beverly Hills, and Chris LNU.

h. In December 2014 IWP flew in their top marketers from all over the country to attend a special dinner at Mastro's Steak House in Malibu.

i. KOSOLCHAROEN had a dispute with Isidore and another individual, L.J., about his commissions due from pitching compound creams and stopped pitching the creams in May or June 2015 because of "changes in the system." KOSOLCHAROEN told L.T. that the "system is fucked up."

C. KOSOLCHAROEN'S CONDUCT DOES NOT FALL WITHIN ANY AKS SAFE HARBOR

25. The AKS has several safe harbors as well as an implied safe harbor that results from either getting or to some extent relying on advisory opinions from the U.S. Department of Health and Human Services ("HHS"). 42 C.F.R. § 1001.952. The first safe harbor is a "referral service." A payment to a "referral service" may be exempt from AKS liability if it meets four requirements, set forth in 42 C.F.R. § 1001.952(f), including that payments must be based on the cost of operating the referral service, and not on the volume or value of any

referrals to or business otherwise generated. I know from the evidence gathered in this and related investigations that dispensing pharmacies claimed thousands of dollars per prescription in seeking reimbursement from Tricare and, in turn, paid large amounts of those reimbursements to cappers that had referred the prescriptions to the pharmacies. Based on that evidence, and upon the large amount of money that KOSOLCHAROEN disbursed as referral fees to individuals who functionally did nothing in exchange, I believe there is probable cause to believe that KOSOLCHAROEN's activities did not meet the test for the "referral service" exemption described above because the payments to him appeared to be based solely on the volume and value of the business he generated by his referrals, not on the actual or legitimate cost of operating a bona fide referral service.

26. I further believe that KOSOLCHAROEN cannot claim the employee exemption either, 42 C.F.R. § 1001.952(i), that exempts payments in a bona fide employment relationship. At least under Medicare AKS case law, "the safe-harbor provision relies on 26 U.S.C. § 3121(d)(2) for the definition that an employee is 'any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.'" United States v. Robinson, 505 F.App'x. 385, 387 (5th Cir. 2013). The evidence that has been gathered in this and related investigations shows that cappers, such as KOSOLCHAROEN, operated independently of the pharmacies that filled the referred prescriptions, and not as true employees.

27. Based on my discussions with others involved in this investigation, I have learned that KOSOLCHAROEN had not sought, nor was he identified as the subject of, an HHS advisory opinion. I therefore believe there is probable cause to believe that KOSOLCHAROEN's offense conduct, as described herein, would not exempt him from criminal liability based upon, or reliance on, an HHS advisory opinion.

IV. CONCLUSION

28. For all of the reasons described above, I believe there is probable cause to believe that JOHN KOSOLCHAROEN paid illegal remuneration, in violation of Title 42, United States Code, Section 1320a-7b(b) (2) (A).

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Monica Pandis, Special Agent
Federal Bureau of Investigation

Subscribed to and sworn before me
this 20 day of June, 2016.

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HONORABLE
UNITED STATES MAGISTRATE JUDGE

KAREN E. SCOTT