

APR 04 2018

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION


DEPUTY CLERK

UNITED STATES OF AMERICA)	No. <u>3:18-00077</u>
)	
v.)	18 U.S.C. § 371
)	42 U.S.C. § 1320a-7b(b)(2)(A)
)	42 U.S.C. § 1320a-7b(b)(2)(B)
)	42 U.S.C. § 1320a-7b(b)(1)(A)
JOHN DAVIS)	42 U.S.C. § 1320a-7b(b)(1)(B)
BRENDA MONTGOMERY)	18 U.S.C. § 2
)	18 U.S.C. § 982

INDICTMENT

THE GRAND JURY CHARGES:

General Allegations

At all times relevant to this Indictment:

The Defendants and Relevant Entities

1. Anesthesia Services Associates, PLLC d/b/a Comprehensive Pain Specialists ("CPS") was a Tennessee Professional Limited Liability Company headquartered in Franklin and Brentwood, Tennessee. CPS was a large regional pain management company. CPS operated as many as sixty pain management clinics across twelve states, including Alabama, Arkansas, Illinois, Indiana, Kansas, Kentucky, Missouri, Mississippi, North Carolina, Ohio, South Carolina, and Tennessee. CPS employed approximately 250 healthcare providers over time, including medical doctors, nurse practitioners, physician assistants and chiropractors, among other provider types.

2. CCC Medical Equipment ("CCC Medical") was a privately-held Tennessee corporation specializing in the sale and service of durable medical equipment ("DME"), including

back braces, knee braces, wrist braces, and TENS devices. CCC Medical had five locations across the state of Tennessee and was headquartered in Camden, Tennessee.

3. PROMED SOLUTIONS, LLC, ProMed Solutions of Middle Tennessee, LLC, and ProMed Solutions, LLC (collectively “ProMed”) were purportedly formed and operated as single member, member-managed Tennessee Limited Liability Companies (“LLC”). PROMED SOLUTIONS, LLC was created in 2008 and administratively dissolved in 2009. ProMed Solutions of Middle Tennessee, LLC was created in 2011 and administratively dissolved in 2013. ProMed Solutions, LLC was created in 2014 and administratively dissolved in 2016. ProMed purported to be a DME Company headquartered in Brentwood, Tennessee.

4. Defendant **JOHN DAVIS** served as Chief Executive Officer (“CEO”) of CPS from approximately June 2011 until June 2017.

5. Defendant **BRENDA MONTGOMERY** was the founder and served as CEO of CCC Medical from at least June 2011 until June 2017.

6. Individual A was the purported “President” and sole member of ProMed.

The Medicare Program

7. The Medicare program (“Medicare”) was a federal health care program providing benefits to persons who were age 65 or over 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”). Medicare was a “Federal health care program” as defined in Title 42, United States Code, Section 1320a-7b(f) and a “health care benefit program” as defined in Title 18, United States Code, Section 24(b).

8. Part B of the Medicare Program was a medical insurance program that covered, among other things, certain durable medical equipment (“DME”).

9. For Tennessee beneficiaries, Medicare Part B insurance covering DME and related health care benefits, items, and services was administered by CGS Administrators, LLC (“CGS”) pursuant to a contract with HHS. Among CGS’ responsibilities, it received, adjudicated, and paid the claims submitted to it by Medicare beneficiaries, physicians, and suppliers of healthcare items and services.

10. DME companies, physicians, and other health care providers, including Nurse Practitioners and Physician Assistants, that sought to participate in Medicare Part B and bill Medicare for the cost of DME and related benefits, items, and services were required to apply for and receive a “supplier number.” The supplier number allowed a DME company to submit bills, known as “claims,” to Medicare to obtain reimbursement for the cost of DME and related health care benefits, items, and services that a DME company had supplied to beneficiaries. In applying for its supplier number, a DME company must sign certifications, including, among other things that:

I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions (including, but not limited to, the Federal anti-kickback statute).

11. To receive payment from Medicare, a DME company, using its supplier number, would submit a health insurance claim form, either the 837P if submitted electronically or the Form CMS-1500 if submitted in paper. Whether submitted electronically or in paper, the claim form required DME companies to provide certain information, including: (a) the Medicare beneficiary’s name; (b) the Medicare beneficiary’s identification number; (c) the name and identification number of the doctor who ordered the item or service that was the subject of the claim; (d) the health care benefits, items, or services that were supplied or provided to the

beneficiary; (e) the billing codes for these benefits, items, or services and corresponding codes for the patient's diagnosis; and (f) the date upon which the benefits, items, or services were provided.

12. Medicare would generally pay a substantial portion of the cost of the DME or related health care benefits, items, and services if they were medically necessary and ordered by licensed doctors or other licensed, qualified health care providers, including nurse practitioners and physician assistants.

13. Payments under Medicare Part B were often made directly to the DME company. For this to occur, the beneficiary would assign the right of payment to the DME company or other health care provider. Once such an assignment took place, the DME company or other health care provider would assume the responsibility for submitting claims to, and receiving payment from, Medicare.

The Anti-Kickback Statute

14. The Anti-Kickback Statute, Title 42, United States Code, Section 1320a-7b(b), prohibits knowingly and willfully offering, paying, soliciting, or receiving a kickback or bribe to induce or reward referrals or the arranging for referrals of items or services reimbursable by a Federal health care program. The Anti-Kickback Statute attaches criminal liability to parties on both sides of an impermissible "kickback" transaction. In doing so, it ensures that patient care is based on what is best for the patient and not upon the financial interest of the person or entity making or arranging for, or receiving the referral.

COUNT 1
Conspiracy to Defraud the United States and
Pay and Receive Kickbacks in Connection with a
Federal Health Care Program
(18 U.S.C. § 371)

15. Paragraphs 1 through 14 of the General Allegations are re-alleged and incorporated by references as though fully set forth herein.

16. From at least June 2011, and continuing through in or around June 2017, in the Middle District of Tennessee and elsewhere, the defendants,

JOHN DAVIS
and
BRENDA MONTGOMERY,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with each other and others known and unknown to the Grand Jury:

a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of the Medicare program, in violation of Title 18, United States Code, Section 371, and to commit certain offenses against the United States, that is:

b. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(A), by knowingly and willfully offering and paying remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item or service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare;

c. to violate Title 42, United States Code, Section 1320-7b(b)(1)(A), by knowingly and willfully soliciting and receiving remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the furnishing of an item or service for which payment may be made in whole and in part under a Federal health care program, that is Medicare;

d. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(B), by knowingly and willfully offering and paying remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to any person to induce such person to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare; and

e. to violate Title 42, United States Code, Section 1320-7b(b)(1)(B) by knowingly and willfully soliciting and receiving remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing and ordering any good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare.

Purpose of the Conspiracy

17. It was a purpose of the conspiracy for **JOHN DAVIS** and **BRENDA MONTGOMERY**, and their co-conspirators, including Individual A, to unlawfully enrich and benefit CCC Medical, ProMed, and themselves.

Manner and Means

The manner and means by which the defendants and their co-conspirators sought to accomplish the purpose of the conspiracy included, among others, the following:

18. **BRENDA MONTGOMERY** offered, paid and caused to be paid kickbacks and bribes to **JOHN DAVIS** in exchange for **JOHN DAVIS** referring and arranging for referrals of DME ordered by CPS providers for Medicare beneficiaries to CCC Medical.

19. **JOHN DAVIS** solicited, accepted, and caused to be accepted kickbacks and bribes from **BRENDA MONTGOMERY** in exchange for referring and arranging for referrals of DME ordered by CPS providers for Medicare beneficiaries to CCC Medical.

20. From at least June 2011 until approximately May 2015, in order to conceal the payment of kickbacks and bribes from **BRENDA MONTGOMERY** to **JOHN DAVIS**, **BRENDA MONTGOMERY** offered, paid and caused to be paid kickbacks and bribes, including by check, to **JOHN DAVIS**, through a nominee, Individual A. Individual A signed and deposited these checks into ProMed's and Individual A's accounts, for the benefit and personal use of Individual A and **JOHN DAVIS**.

21. From at least June 2011 until approximately May 2015, **BRENDA MONTGOMERY** and **JOHN DAVIS** generally agreed that **BRENDA MONTGOMERY** would determine the amount of the kickbacks and bribes paid to **JOHN DAVIS** through Individual A by determining: (a) the total Medicare reimbursement paid to CCC Medical for all CPS DME referrals to CCC Medical; (b) subtracting CCC Medical's actual costs of any DME dispensed; and (c) then splitting the remaining profit, with 60% going to **JOHN DAVIS** and 40% going to **BRENDA MONTGOMERY**.

22. From at least June 2011 until approximately June 2017, **JOHN DAVIS** and **BRENDA MONTGOMERY** took the following actions, among others, to conceal their unlawful relationship from CPS' owners and employees, and from Medicare:

a. **BRENDA MONTGOMERY** issued annual 1099 tax forms in the name of Individual A in the amounts paid as kickbacks and bribes to **JOHN DAVIS** purporting to be for services that were never in fact provided by Individual A. This was done: (1) to keep **JOHN DAVIS'** name off of tax records associated with payments from CCC Medical to avoid detection of the unlawful relationship by CPS' owners and employees; and (2) so that **BRENDA MONTGOMERY** could provide the falsified 1099s to Medicare auditors to avoid detection of the unlawful relationship; and

b. **JOHN DAVIS** took steps to prevent CPS from obtaining Medicare DME billing numbers for its clinics, which would have allowed them to provide and bill Medicare for DME directly.

23. Beginning in approximately May 2015 and continuing through approximately November 2015, **BRENDA MONTGOMERY** and **JOHN DAVIS** negotiated the sham sale of ProMed Solutions, LLC ("ProMed"), a shell company purportedly owned and operated by Individual A. Despite the fact that ProMed had no business operations, facilities, property, employees or assets, **BRENDA MONTGOMERY** agreed to pay **JOHN DAVIS** \$200,000 in eight installments of \$25,000, paid to ProMed, for the purported purchase of ProMed. The true purpose of these payments was to continue paying kickbacks and bribes to **JOHN DAVIS** for arranging for CPS DME referrals, while further obscuring the purpose of the kickback and bribe payments, and to avoid detection of the unlawful relationship by CPS' owners and employees and Medicare. In or around September 2015, **JOHN DAVIS** and **BRENDA MONTGOMERY**

amended their agreement regarding the sham sale of ProMed to require a new purchase price of \$150,000 because **BRENDA MONTGOMERY** complained of a lower number of DME referrals from CPS providers than anticipated when the agreement was originally made.

24. **JOHN DAVIS** ensured that **BRENDA MONTGOMERY** had access to CPS' electronic medical records database, which contained CPS' patients' private health records and personal information, to facilitate CCC Medical's billing of DME claims referred by CPS providers to Medicare. Such access also allowed **BRENDA MONTGOMERY** to identify to **JOHN DAVIS** those CPS providers who were not referring Medicare DME orders to CCC Medical.

25. In total, **BRENDA MONTGOMERY** paid, directly and indirectly, at least \$770,000 in illegal kickbacks and bribes to **JOHN DAVIS**, through Individual A and ProMed, for arranging for CPS DME orders and referrals.

26. **BRENDA MONTGOMERY** unlawfully billed and caused others at CCC Medical to fraudulently bill at least \$4.6 million to the Medicare program for CPS DME orders and referrals. CCC Medical fraudulently received at least \$2.6 million on these claims.

Overt Acts

27. In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one of the co-conspirators committed and caused to be committed in the Middle District of Tennessee, and elsewhere, at least one of the following overt acts, among others:

a. On or about January 11, 2013, **BRENDA MONTGOMERY** caused CCC Medical to issue an \$8,496.28 check made payable to Individual A.

b. On or about January 14, 2013, **JOHN DAVIS** and Individual A caused an \$8,496.28 check from CCC Medical to be deposited into ProMed's First Tennessee account #7336.

c. On or about May 6, 2014, **BRENDA MONTGOMERY** sent an email to **JOHN DAVIS** that stated in part: “Yes but Medicare doesn’t have to know that as long as I have the ‘contract’ in hand they won’t dig any further other than a surprise visit to CPS. I don’t think it will happen but I don’t want to pay back the money if they do. . .”

d. On or about July 3, 2014, **BRENDA MONTGOMERY** caused CCC Medical to issue a \$25,037.86 check made payable to Individual A.

e. On or about July 9, 2014, **JOHN DAVIS** and Individual A caused a \$25,037.86 check from CCC Medical to be deposited into ProMed’s First Tennessee account #7336.

f. On or about July 12, 2014, **JOHN DAVIS** sent an email to a CPS employee directing him to provide **BRENDA MONTGOMERY** with access to CPS’ electronic medical records database, which contained patients’ private health records and personal information, stating:

Will you communicate with Brenda Montgomery with CCC Medical. She has had some issues with her ECW access. She is our DME vendor and is under HIPPA/NDA [sic] etc. she [sic] needs this access to gather patient data to support our DME program.

g. On or about April 9, 2015, **BRENDA MONTGOMERY** caused CCC Medical to issue a \$17,426.95 check made payable to Individual A.

h. On or about April 17, 2015, **JOHN DAVIS** and Individual A caused a \$17,426.95 check from CCC Medical to be deposited into ProMed’s First Tennessee account #7336.

i. On or about April 27, 2015, **BRENDA MONTGOMERY** sent an email to **JOHN DAVIS** stating: “John, I have gone through all the figures from last year. Excluding the

payment to CPS for fitters fees and bracing this is what I have. Your 1099 was approximately 250,000.00 My part was 165,947.00 This leaves 20,743.39 over the next 8 months. . .”

j. On or about May 21, 2015, **BRENDA MONTGOMERY** caused CCC Medical to issue a \$25,000 check made payable to ProMed.

k. On or about November 2, 2015, **BRENDA MONTGOMERY** caused CCC Medical to issue a \$25,000 check made payable to ProMed.

l. On or about January 22, 2016, **BRENDA MONTGOMERY** sent an email to a CPS employee stating, in part: “I have talked with John via email. He is understanding that I am not supplying what you are asking me to. This was a personal contract with John on a 60/40 split with Promed. When John’s position changed at CPS, I bought out his account. This is giving me 100% to bill Medicare only claims. . . .Usually the fees are 50/50 with my other outside reps, because there is no incentive for the provider to write scripts. . .”

m. On or about January 31, 2016, **JOHN DAVIS** sent an email to **BRENDA MONTGOMERY** stating in part: “Correct, there are no restrictions on CCC as of now. Orders should continue now.”

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

COUNTS 2-8
Payment of Kickbacks in Connection
with a Federal Health Care Program
(42 U.S.C. §§ 1320a-7b(b)(2) & 18 U.S.C. § 2)

28. The allegations in paragraphs 1 through 27 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

29. On or about the dates set forth below, with respect to each count, in the Middle District of Tennessee, and elsewhere, the defendant,

BRENDA MONTGOMERY,

did knowingly and willfully offer and pay remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, as set forth below, to a person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program, that is, Medicare; and to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, facility, service and item for which payment may be made in whole and in part under a Federal health care program, that is, Medicare, as set forth below:

COUNT	APPROXIMATE DATE OF PAYMENT	APPROXIMATE AMOUNT	DESCRIPTION
2	July 12, 2013	\$5,796.25	Check No. 3527 from the CCC Medical bank account ending in 1298 made payable to Individual A and deposited into ProMed bank account ending in 7336
3	July 3, 2014	\$25,037.86	Check No. 5564 from the CCC Medical bank account ending in 1298 made payable to Individual A and deposited into ProMed bank account ending in 7336.
4	December 19, 2014	\$14,665.42	Check No. 6479 from the CCC Medical bank account ending in 1298 made payable to Individual A and

			deposited into ProMed bank account ending in 7336.
5	March 23, 2015	\$16,138.41	Check No. 6939 from the CCC Medical bank account ending 1298 made payable to Individual A and deposited into ProMed bank account ending in 7336.
6	April 9, 2015	\$17,426.95	Check No. 7060 from the CCC Medical bank account ending in 1298 made payable to Individual A and deposited into ProMed bank account ending in 7336.
7	May 21, 2015	\$25,000.00	Check No. 7219 from the CCC Medical bank account ending 1298 made payable to ProMed and deposited into ProMed bank account ending in 7336.
8	November 2, 2015	\$25,000.00	Check No. 7839 from the CCC Medical bank account ending 1298 made payable to ProMed and deposited into ProMed bank account ending in 7336.

All in violation of Title 42, United States Code, Sections 1320a-7b(b)(2)(A) and (b)(2)(B) and Title 18, United States Code, Section 2.

COUNTS 9-15
Receipt of Kickbacks in Connection
with a Federal Health Care Program
(42 U.S.C. §§ 1320a-7b(b)(1) & 18 U.S.C. § 2)

30. The allegations in paragraphs 1 through 27 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

31. On or about the dates set forth below, with respect to each count, in the Middle District of Tennessee, and elsewhere, defendant

JOHN DAVIS

did knowingly and willfully solicit and receive remuneration, specifically kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check, as set forth below, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under a Federal health care program; and in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service and item for which payment can be made in whole and in part under a Federal health care program, that is, Medicare, as set forth below:

COUNT	APPROXIMATE DATE OF PAYMENT	APPROXIMATE AMOUNT	DESCRIPTION
9	July 12, 2013	\$5,796.25	Check No. 3527 from the CCC Medical bank account ending 1298 made payable to Individual A and deposited into Promed account ending in 7336.
10	July 3, 2014	\$25,037.86	Check No. 5564 from the CCC Medical bank account ending 1298 made payable to Individual A and deposited into ProMed account ending in 7336.
11	December 19, 2014	\$14,665.42	Check No. 6479 from the CCC Medical bank account ending 1298 made payable to Individual A and deposited into ProMed bank account ending in 7336.

12	March 23, 2015	\$16,138.41	Check No. 6939 from the CCC Medical bank account ending 1298 made payable to Individual A and deposited into ProMed bank account ending in 7336.
13	April 9, 2015	\$17,426.95	Check No. 7060 from the CCC Medical bank account ending 1298 made payable to Individual A and deposited into ProMed bank account ending in 7336.
14	May 21, 2015	\$25,000.00	Check No. 7219 from the CCC Medical bank account ending 1298 made payable to ProMed and deposited into ProMed bank account ending in 7336.
15	November 2, 2015	\$25,000.00	Check No. 7839 from the CCC Medical bank account ending 1298 made payable to ProMed and deposited into ProMed bank account ending in 7336.

All in violation of Title 42, United States Code, Sections 1320a-7b(b)(1)(A) and (b)(1)(B) and Title 18, United States Code, Section 2.

FORFEITURE
(18 U.S.C. § 982(a)(7))

32. The allegations contained in Paragraphs 1-31 of this Indictment are re-alleged and fully incorporated herein for the purpose of alleging forfeiture to the United States of certain property in which the defendants,

**JOHN DAVIS and
BRENDA MONTGOMERY**

have an interest.

33. Upon conviction of a Federal health care offense, as defined in Title 18, United States Code, Section 24 and alleged in Counts 1 through 15 of the Indictment, the defendants shall each forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, pursuant to Title 18, United States Code, Section 982(a)(7).

34. The property subject to forfeiture pursuant to Title 18, United States Code, Section 982(a)(7) includes, but is not limited to, a sum of money equal in value to any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the offenses alleged in Counts 1 through 15 of this Indictment, which may be sought as a money judgment against the defendants.

35. If the property described above as being subject to forfeiture, as a result of any act or omission of the defendants:

- 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 that cannot be divided without difficulty;


the United States shall be entitled to forfeiture of substitute property, and it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) to seek forfeiture of any other property of the defendants up to the value of said property listed above as being subject to forfeiture.

All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth in Title 21, United States Code, Section 853, as incorporated by Title 18, United States Code, Section 982(b)(1).

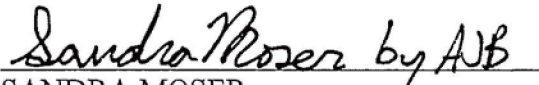
A TRUE BILL


FOREPERSON


DONALD Q. COCHRAN
UNITED STATES ATTORNEY
MIDDLE DISTRICT OF TENNESSEE




RYAN R. RAYBOULD
ASSISTANT UNITED STATES ATTORNEY
UNITED STATES ATTORNEY'S OFFICE
MIDDLE DISTRICT OF TENNESSEE




SANDRA MOSER
ACTING CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE



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



SALLY B. MOLLOY
ASSISTANT CHIEF
CRIMINAL DIVISION, FRAUD SECTION
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ANTHONY J. BURBA
TRIAL ATTORNEY, FRAUD SECTION
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE