

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

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AB
CAROL L. MICHELL
CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FELONY

INDICTMENT FOR
CONSPIRACY TO COMMIT HEALTH CARE FRAUD,
HEALTH CARE FRAUD, CONSPIRACY TO COMMIT MONEY
LAUNDERING, MONEY LAUNDERING AND FORFEITURE ALLEGATIONS

UNITED STATES OF AMERICA

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CRIMINAL NO. **20-00143**

VERSUS

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SECTION: **SECT. AMAG. 5**

DONALD PETER AUZINE, JR.
BONNIE JEAN LAWLESS DIAZ

*

VIOLATIONS: 18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 1956
18 U.S.C. § 1957
18 U.S.C. § 2

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The Grand Jury charges that:

COUNT 1

(Conspiracy to Commit Health Care Fraud)

A. AT ALL TIMES MATERIAL HEREIN:

1. Prime Pharmacy Solutions, LLC, ("Prime Pharmacy") was formed in 2014 and located in Slidell, Louisiana. It was primarily a closed door pharmacy focused on the production of compounded medications.

☒ Fee USA
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___ Doc.No. ___

2. When created properly, compounded medications were drugs combined, mixed, or altered by licensed pharmacists or other practitioners to meet the specialized needs of individual patients who could not receive FDA approved versions of the medications due to various medical conditions.

3. Defendant **DONALD PETER AUZINE, JR.** (“AUZINE”) served as the Marketing Manager of Prime Pharmacy.

4. Defendant **BONNIE JEAN LAWLESS DIAZ** (“DIAZ”) served as the Office Manager of Prime Pharmacy.

5. Co-conspirator 1 was the primary owner of Prime Pharmacy.

6. Co-conspirator 2 was the Pharmacist in Charge (“PIC”) of Prime Pharmacy.

7. Co-conspirator 3 served as the IT Director of Prime Pharmacy.

8. TRICARE, administered by the United States Department of Defense, provided health care benefits for United States military personnel and their families. TRICARE, like other health care benefit programs, was a health care benefit program within the meaning of Title 18, United States Code, Section 24(b).

9. Individuals who qualified for TRICARE benefits or the benefits of other health care benefit programs were commonly referred to as “beneficiaries.”

10. TRICARE and other health care benefit programs provided prescription drug coverage, including prescriptions for compounded medications, to eligible beneficiaries through its pharmacy program or similar drug plans.

11. TRICARE’s pharmacy program and other health care benefit programs’ drug plans were administered by Pharmacy Benefit Managers (“PBMs”), whose responsibility was to

adjudicate and process payment for prescription drug claims submitted by eligible pharmacies. Specifically, TRICARE's PBM was known as Express Scripts.

12. Prime Pharmacy contracted directly with PBMs, including Express Scripts. In contracting with PBMs, including Express Scripts, Prime Pharmacy agreed to adhere to the rules and regulations of the PBMs, which reserved the authority to refuse to reimburse any and all claims not submitted in accordance with its rules and regulations. PBMs also audited participating pharmacies to ensure compliance with its rules and regulations.

13. Most, if not all, PBMs, including Express Scripts, required participating pharmacies to collect copayments from beneficiaries, and specified that copayments could not be waived or reduced. Consistent copayment collection was necessary to prevent fraud, as copayments gave beneficiaries financial incentives to reject medications that were not medically necessary or had little to no value to beneficiaries' treatments. PBMs, including Express Scripts, relied upon participating pharmacies to collect copayments.

14. Prime Pharmacy, through its contracts with PBMs, including Express Scripts, represented that it would collect copayments, and not waive or reduce them. These representations by Prime Pharmacy were material to the PBMs, including Express Scripts.

15. On October 21, 2014, Co-conspirator 1, on behalf of Prime Pharmacy, contracted with Express Scripts, as well as with other health care benefit programs and PBMs, and further obligated Prime Pharmacy to follow the rules and regulations of Express Scripts and TRICARE, as well as the other health care benefit programs and PBMs.

16. In order to be reimbursed for prescription drugs provided to beneficiaries, pharmacies, including Prime Pharmacy, were required to first obtain prescriptions authorized by physicians or other qualified medical providers ("prescribers"). These prescriptions were supposed

to evidence that the prescribed drugs, including compounded medications, were medically necessary. TRICARE and other health care benefit programs, through their respective PBMs, would not reimburse claims for prescription drugs, including compounded medications, that were not medically necessary.

17. Upon receiving prescriptions, pharmacies, including Prime Pharmacy, submitted claims for prescription drugs to health care benefit programs or PBMs, such as Express Scripts. Health care benefit programs or PBMs, including Express Scripts, reimbursed pharmacies at specified rates, minus any copayments to be paid by beneficiaries.

18. TRICARE and other health care benefit programs, through its PBMs, reimbursed pharmacies, including Prime Pharmacy, for compounded medications per ingredient compounded into the medication. Thus, the more ingredients compounded into medications, the higher the reimbursement amounts.

B. THE CONSPIRACY:

Beginning in or around 2014, and continuing through in or around April 2016, in the Eastern District of Louisiana and elsewhere, the defendants, **AUZINE**, **DIAZ**, and other co-conspirators, known and unknown to the Grand Jury, did knowingly and willfully, combine, conspire, confederate, and agree, to commit health care fraud, that is to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, TRICARE and other health care benefit programs, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

C. THE SCHEME AND ARTIFICE TO DEFRAUD:

It was part of the scheme and artifice to defraud that **AUZINE**, **DIAZ**, and other co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to TRICARE and other health care benefit programs; and (b) concealing the submission of false and fraudulent claims to TRICARE and other health care benefit programs.

It was further part of the scheme and artifice to defraud that **AUZINE**, **DIAZ**, and other co-conspirators, acting on behalf of Prime Pharmacy, selected formulas for compounded medications, not based on scientific evaluations of effectiveness or individualized patient need but rather, to maximize reimbursement from TRICARE and other health care benefit programs (“High-Yield Compounded Medications”).

It was further part of the scheme and artifice to defraud that **AUZINE**, **DIAZ**, and other co-conspirators, acting on behalf of Prime Pharmacy, mass produced these High-Yield Compounded Medications and further collaborated with Co-conspirator 2 to create a series of preprinted prescription forms encouraging and directing prescribers to prescribe these High-Yield Compounded Medications.

It was further part of the scheme and artifice to defraud that as reimbursement opportunities changed for certain ingredients compounded into these High-Yield Compounded Medications, **AUZINE**, **DIAZ**, and other co-conspirators, either added ingredients to or deleted ingredients from these High-Yield Compounded Medications for the purpose of maximizing profit, not patient care, and accordingly, revised the preprinted prescription forms.

It was further part of the scheme and artifice to defraud that Prime Pharmacy contracted with marketers associated with Marketing Company 1 and Marketing Company 2 to solicit

prescribers to prescribe High-Yield Compounded Medications, and further paid kickbacks to marketers when they obtained signed prescriptions that were reimbursed by TRICARE and other health care benefit programs.

It was further part of the scheme and artifice to defraud that these marketers routinely induced prescribers to prescribe these High-Yield Compounded Medications by not only providing the preprinted prescription forms but also by paying kickbacks to the prescribers, after the High-Yield Compounded Medications had been dispensed by Pharmacist 1 and others at Prime Pharmacy and reimbursed by TRICARE and other health care benefit programs.

It was further part of the scheme and artifice to defraud that these marketers routinely induced beneficiaries of TRICARE and other health care benefit programs to receive High-Yield Compounded Medications by paying kickbacks to these beneficiaries.

It was further part of the scheme and artifice to defraud that to induce beneficiaries to receive these High-Yield Compounded Medications, **AUZINE**, **DIAZ**, and other co-conspirators, conspired to either waive copayments or pay copayments on behalf of beneficiaries, even though TRICARE and other health care benefit programs required copayments to be paid by beneficiaries and collected by Prime Pharmacy.

It was further part of the scheme and artifice to defraud that between approximately 2014 and approximately April 2016, Co-conspirator 2 and other co-conspirators dispensed prescriptions for High-Yield Compounded Medications to beneficiaries of TRICARE and other health care benefit programs that were not medically necessary, induced by kickback payments, or where copayments were either waived or paid by Prime Pharmacy, and accordingly, submitted or caused to be submitted false and fraudulent claims for reimbursement to health care benefit programs and PBMs, including Express Scripts.

It was further part of the scheme and artifice to defraud that TRICARE and other health care benefit programs, as well as PBMs, including Express Scripts, relied upon **AUZINE**, **DIAZ**, and other co-conspirators', false and fraudulent representations (a) that the medications dispensed were medically necessary and not induced by kickback payments; and (b) that copayments were properly collected.

It was further part of the scheme and artifice to defraud that in reliance on those and other false representations, TRICARE and other health care benefit programs reimbursed Prime Pharmacy approximately \$16 million for High-Yield Compounded Medications.

D. OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY:

1. On or about July 23, 2015, Co-conspirator 2 and certain co-conspirators known and unknown to the Grand Jury, dispensed a prescription for a High-Yield Compounded Medication to J.V., a TRICARE beneficiary, which was not medically necessary.

2. On or about July 23, 2015, Co-conspirator 2 and certain co-conspirators known and unknown to the Grand Jury, dispensed a prescription for a High-Yield Compounded Medication to C.M., a TRICARE beneficiary, which was not medically necessary.

3. On or about February 26, 2016, **AUZINE** sent an email with a pre-printed prescription pad attached to Co-conspirator 3.

4. On or about February 26, 2016, **DIAZ** sent an email with a pre-printed prescription pad attached to Co-conspirator 1.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2 - 3
(Health Care Fraud)

A. AT ALL TIMES MATERIAL HEREIN:

The allegations contained in Parts A, C, and D of Count 1 are hereby re-alleged and incorporated herein by reference.

B. THE OFFENSE:

On or about the dates and in the approximate amounts listed below, in the Eastern District of Louisiana and elsewhere, the defendant, **DONALD PETER AUZINE, JR.**, for the purpose of executing the scheme and artifice to defraud set forth in Part C of Count 1, 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 Title 18, United States Code, Section 24(b), that is, TRICARE and other health care benefit programs, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money owned by, and under the custody and control of, TRICARE and other health care benefit programs, that is the defendants, caused the billing, shipment, and delivery of medically unnecessary Medications to beneficiaries; and further submitted false and fraudulent claims to TRICARE, which claims indicated that TRICARE beneficiaries paid copays for Medications, that the Medications were medically necessary, that they were procured through the payment of illegal kickbacks and bribes, and they were not actually supplied to the beneficiaries, with each transaction set forth below forming a separate count:

Count	Prescription Number	Beneficiary	Claim Date	Description of Prescription	Amount Billed	Amount Paid
2	103157	J.V.	7/23/2015	DERMACINRX SILAPAK (TOPICAL ANTI- INFLAMMATORY STEROIDAL)	\$5,229.23	\$4,337.86
3	103154	C.M.	7/23/2015	DERMACINRX SILAPAK (TOPICAL ANTI- INFLAMMATORY STEROIDAL)	\$5,229.23	\$4,317.86

All in violation of Title 18, United States Code, Sections 1347 and 2.

COUNT 4

(Conspiracy to Commit Money Laundering)

A. AT ALL TIMES MATERIAL HEREIN:

1. The allegations contained in Counts 1 through 3 are reincorporated herein by reference.

2. Regions Bank and Capital One Bank were financial institutions within the meaning of Title 18, United States Code, Section 20, the deposits of which were insured by the Federal Deposit Insurance Corporation.

3. Regions Bank and Capital One Bank maintained branch locations throughout the Eastern District of Louisiana.

4. Between approximately 2014 and continuing until at least October 2016, Prime Pharmacy held two accounts at Regions Bank, including but not limited to account No. x8257 (“Business Account 1”) and account No. x9288 (“Business Account 2”).

5. Between approximately 2014 and continuing until at least October 2016, Individual 1, a close family relative of AUZINE’s, maintained two bank accounts at Regions Bank bearing

account No. x0315 (“Regions Bank Account 1”) and account No. x8234 (“Regions Bank Account 2”).

6. Between approximately 2014 and continuing until at least October 2016, **DIAZ** maintained a bank account at Capital One Bank bearing account No. x3202 (“Capital One Bank Account 1”) and account No. x7467 (“Capital One Bank Account 2”).

7. A specified unlawful activity as defined in Title 18, United States Code, Sections 1956(c)(7)(F) and 1961(1) includes health care fraud in violation of Title 18, United States Code, Section 1347.

B. THE CONSPIRACY:

Beginning at a time unknown, but before March 2014, and continuing through on or about October 2016, in the Eastern District of Louisiana and elsewhere, defendants **DONALD PETER AUZINE, JR. and BONNIE JEAN LAWLESS DIAZ**, did knowingly and willfully combine, conspire, confederate and agree with others to engage and attempt to engage in a monetary transaction by, through, and to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, in violation of Title 18, United States Code, Section 1957; all in violation of Title 18 United States Code, Section 1956(h).

C. OVERT ACTS:

1. On or about July 22, 2015, **AUZINE** knowingly engaged in a monetary transaction with the proceeds of health care fraud in an amount greater than \$10,000, to wit: Individual 1, a close family member of **AUZINE**, issued a check in the amount of \$19,433.70 from Regions Bank Account 1 to the US Treasury and the memo line read “MFT55 Civ Pen Donald Auzine 200809”. This check was funded by a transfer from Regions Bank Account 2. Regions Bank Account 2 was

solely funded by a single transfer from Regions Bank Account 1. Regions Bank Account 1 was funded by “Commission payments” from Business Account 2.

2. On or about April 5, 2016, **DIAZ** knowingly engaged in a monetary transaction with the proceeds of health care fraud in an amount greater than \$10,000, to wit: **DIAZ** transferred \$45,000 from Capital One Bank Account 1 to Capital One Bank Account 2.

All in violation of Title 18, United States Code, Section 1956(h).

COUNT 5
(Money Laundering)

On or about the date and in the approximate amount indicated below, in the Eastern District of Louisiana and elsewhere, defendant, **DONALD PETER AUZINE, JR.**, did knowingly engage and attempt to engage in monetary transactions by, through, or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is the deposit, withdrawal, and transfer of funds in the amounts indicated below, such property having been derived from a specified unlawful activity, that is health care fraud in violation of Title 18, United States Code, Section 1347 involving fraudulent transactions with a financial institution in furtherance of the scheme:

COUNT	DATE	TYPE	PAYOR	PAYEE	AMOUNT
5	7/22/2015	Check –Regions Bank Account 1 to US Treasury	Individual 1 – close family member of AUZINE	US Treasury of behalf of AUZINE	\$19,433.70

All in violation of Title 18, United States Code, Sections 1957 and 2.

COUNT 6
(Money Laundering)

On or about the dates indicated below, in the Eastern District of Louisiana and elsewhere, defendant, **BONNIE JEAN LAWLESS DIAZ**, did knowingly engage and attempt to engage in

monetary transactions by, through, or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than \$10,000, that is the deposit, withdrawal, and transfer of funds in the amounts indicated below, such property having been derived from a specified unlawful activity, that is health care fraud in violation of Title 18, United States Code, Section 1347 involving fraudulent transactions with a financial institution in furtherance of the scheme:

COUNT	DATE	TYPE	PAYOR	PAYEE	AMOUNT
6	4/5/2016	Online Transfer – Capital One Bank Account 1 to Capital One Bank Account 2	DIAZ	DIAZ	\$45,000.00

All in violation of Title 18, United States Code, Sections 1957 and 2.

NOTICE OF FORFEITURE

1. The allegations of Counts 1 through 6 of this Indictment are incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States.

2. As a result of the offenses alleged in Counts 1 through 6, the defendants, **DONALD PETER AUZINE, JR.** and **BONNIE JEAN LAWLESS DIAZ**, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a), any property, real or personal, involved in said offenses, which constitutes or is derived from proceeds traceable to such offense.

3. If any of the property described above as being subject to forfeiture, 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 person;
- 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 subdivided
without difficulty;

the United States shall seek a money judgment and, pursuant to Title 21, United States Code,
Section 853(p), forfeiture of any other property of the defendant up to the value of said property.

A TRUE BILL:



FOREPERSON

PETER G. STRASSER
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read 'K Mchugh', written over a horizontal line.

KATHRYN MCHUGH
Assistant United States Attorney

New Orleans, Louisiana
December 11, 2020