

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * **CRIMINAL NO. 20-148**
v. * **SECTION: "H"**
MARIO DELUCA *
* * *

FACTUAL BASIS

The Defendant, **MARIO DELUCA** (hereinafter, the "Defendant" or "**DELUCA**"), has agreed to enter a plea of guilty pursuant to a plea agreement. **DELUCA** has agreed to plead guilty to conspiracy to commit health care fraud in violation of Title 18, United States Code, Section 1349 as charged in Count One of the Bill of Information.

Should this matter have proceeded to trial, the Defendant stipulates that the Government would have proven, through the introduction of credible testimony from witnesses and from Special Agents from the United States Department of Defense – Office of the Inspector General and Homeland Security Investigations, and admissible, tangible exhibits, the following facts, beyond a reasonable doubt, to support the allegations in the Bill of Information now pending against the Defendant. Both the Government and the Defendant do hereby stipulate and agree that the following facts set forth a sufficient factual basis for the crime to which the Defendant is pleading guilty. Unless stated otherwise, the following acts occurred within the jurisdiction of the Eastern District of Louisiana.

Beginning in or around March 2014, and continuing through in or around October 2016, in the Eastern District of Louisiana and elsewhere, the Defendant did knowingly and willfully, that is, with the intent to further the objects of the conspiracy, combine, conspire, confederate, and agree with Co-conspirators 1, 2, 3 and 4 and other persons to knowingly and willfully execute a

scheme and artifice to defraud TRICARE, a federal health care benefit program affecting commerce, and other health care benefit programs (in violation of Title 18, United States Code, Section 1347), in violation of Title 18, United States Code, Section 1349.

Prime Pharmacy was located in Slidell, Louisiana and was established on or around March 2014. Prime Pharmacy was primarily a closed door pharmacy whose primary business focus was the production of compounded medication, which, when created properly, were drugs combined, mixed, or altered by licensed pharmacists or other practitioners to meet the specialized needs of individual patients.

Co-conspirator 1, was the owner of Prime Pharmacy, and, ran the day to day operations of the pharmacy along with the Pharmacist-in-Charge (“PIC”), Co-conspirator 2. The PIC was responsible for supervision, management, and compliance with all federal and state pharmacy laws and regulations pertaining to Prime Pharmacy’s pharmacy practice.

Co-conspirator 1, on behalf of Prime Pharmacy, contracted with various entities, including Pharmacy Benefit Managers (“PBMs”), obligating Prime Pharmacy to collect copayments from beneficiaries in order to be reimbursed by various health care benefit programs, including TRICARE. Additionally, the Defendant, marketed the compounded medications produced by Prime Pharmacy.

Beginning in or around March 2014, at the direction of co-conspirators 1 and 3, Defendant and other co-conspirators, acting on behalf of Prime Pharmacy, discussed the selection of 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”). Prime Pharmacy then mass produced these High-Yield Compounded Medications at Prime Pharmacy.

Defendant, Co-conspirator 1, Co-conspirator 2, Co-conspirator 3 (the Marketing Manager of Prime Pharmacy) and Co-conspirator 4 (the office manager of Prime Pharmacy) created a series of preprinted prescription forms for Prime Pharmacy's marketers which encouraged and directed prescribers (doctors) to prescribe these High-Yield Compounded Medications to TRICARE beneficiaries. These Medications were determined by the co-conspirators and others by running "soft adjudications" through a pharmacy software, to determine what Medications would provide the highest reimbursement rates and were therefore not what was medically necessary for a patient. Prime Pharmacy paid the co-conspirators and others when signed prescriptions from doctors were obtained that were reimbursed by TRICARE and other health care benefit programs.

Defendant created a software database called "the portal" that allowed the Defendant and his co-conspirators to track profits. Defendant's co-conspirators then used this data to calculate kickbacks due to be paid out to marketers. The marketers further disbursed their commissions/kickbacks to doctors and beneficiaries. Defendant attended meetings with Co-conspirator 3 with marketing companies where Co-conspirator 3 described Defendant's software and attempted to make agreements to receive new prescriptions. One of those meetings occurred in California, and Co-conspirator 3 was given a \$50,000 check. Defendant was offered, but refused to accept a \$50,000 check from Co-conspirator 3.

Beginning in or around March 2014, and continuing through in or around April 2016, Prime 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 TRICARE, other health care benefit programs, and PBMs.

For example, on or about July 23, 2015, Prime dispensed a prescription for a High-Yield Compounded Medication to J.V., a TRICARE beneficiary, which was not medically necessary. J.V. never saw a doctor before receiving the compounded medications.

On or about July 23, 2015, Prime dispensed a prescription for a High-Yield Compounded Medication to C.M., a TRICARE beneficiary, which was not medically necessary. C.M. did not see a doctor.

TRICARE and other health care benefit programs, as well as PBMs, relied upon Prime Pharmacy's false and fraudulent representations (a) that the medications dispensed were medically necessary; 2) not induced by kickback payments; or (c) that copayments were properly collected. 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. Defendant is responsible for approximately \$200,000 of that loss.

Defendant received bonuses from Prime Pharmacy's profits in 2014-2015. The Government would introduce evidence at trial that during 2014-2015, Prime Pharmacy received reimbursements paid by TRICARE and other health care benefit programs, which were procured through fraud.

In sum, the evidence would establish that **DELUCA** conspired with Co-conspirators 1, 2, 3, and 4 and others to commit health care fraud.


Limited Nature of Factual Basis

This proffer of evidence is not intended to constitute a complete statement of all facts known by **DELUCA** and/or the Government. Rather, it is a minimum statement of facts intended to prove the necessary factual predicate for his guilty plea. The limited purpose of this proffer is to demonstrate that there exists a sufficient legal basis for the plea of guilty to the charged offense

by DELUCA.

The above facts come from an investigation conducted by, and would be proven at trial by credible testimony from, *inter alia*, Special Agents from the United States Department of Defense – Office of the Inspector General and Homeland Security Investigations, other witnesses, and admissible, tangible exhibits.


READ AND APPROVED:



MARIO DELUCA
Defendant

2/22/21


DATE



WALTER BECKER
Counsel for Defendant

2/22/21

DATE



KATHRYN MCHUGH
Assistant United States Attorney

2/23/21

DATE