

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 15-
 :
 v. : Hon. Joseph H. Rodriguez
 :
 JAMES MORALES : 18 U.S.C. § 371

INFORMATION

(Conspiracy to Pay Kickbacks and Commit Health Care Fraud)

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

1. At all times relevant to this Information:

a. Defendant JAMES MORALES, a physician licensed to practice medicine in New Jersey, operated Shore Sports Medicine, a medical practice located in Toms River, New Jersey.

b. Prescriptions R Us ("PRU") was a compounding pharmacy located in Lakewood, New Jersey. Pharmacy compounding involved the preparation of medication, using different types and dosages of drugs, in order to provide more personalized medications for patients. PRU, among other things, prepared and supplied a certain compound medication, namely, a topical cream that was prescribed to treat a variety of pain-related conditions (hereinafter "the Pain Cream"). The Pain Cream contained several ingredients, including gabapentin, ketamine (a Schedule III non-narcotic), lidocaine, diclofenac, and cyclobenzaprine.

c. Vladimir Kleyman was an owner of PRU, and routinely exerted direct control over various aspects of the operations of PRU that are relevant to this Information.

d. The Medicare Program (“Medicare”) was a federal program established by the Social Security Act of 1965 to assist qualified aged and disabled individuals in paying for the cost of health care. Medicare worked by reimbursing health care providers and suppliers for the costs of health care services and items at fixed rates. The Medicare program provided reimbursement only for those health care services and items that were: (i) medically necessary, (ii) ordered by a physician, and (iii) actually provided as billed. Medicare had an optional Part D program, which, for a monthly premium, provided coverage for the cost of prescription drugs for people on Medicare. This coverage was provided by insurance companies and other private companies approved by Medicare. 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).

e. The Medicaid program (“Medicaid”) was a program jointly funded by the federal government and individual states to assist low-income persons and other qualified persons in paying for the costs of health care. The Medicaid program worked by reimbursing hospitals, physicians and other health care suppliers, such as pharmacies, for providing health care services

and items to qualified individuals at fixed rates in a manner similar to the Medicare program.

f. PRU was an approved Medicare and Medicaid provider. Medicare and Medicaid paid PRU for products dispensed to patients enrolled in the Medicare and Medicaid programs.

g. PRU also billed, and was paid by, various health care insurance companies (“private payors”) in the business of providing health care insurance to individuals and entities under various insurance policies. Pursuant to these policies, private payors paid PRU for, among other things, filling prescriptions for medicine for patients who had been referred to PRU by physicians. Horizon Blue Cross Blue Shield, in conjunction with its contracted pharmacy benefit manager (collectively, “Horizon”), was one of various private payors billed by PRU and which paid PRU hundreds of thousands of dollars for filling prescriptions for individuals covered by Horizon’s health care insurance policies.

h. CC-1, a co-conspirator not named herein, was paid by PRU to, among other things, recruit physicians to refer their prescriptions to PRU.

2. From in and around January 2013 through in and around January 2014, in Ocean County, in the District of New Jersey and elsewhere, defendant

JAMES MORALES

did knowingly and intentionally conspire with others to commit offenses against the United States, that is:

a. to knowingly and willfully accept remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, from PRU in exchange for the furnishing and arranging for the furnishing of items and services, namely, referring prescriptions for patients to PRU for Pain Cream, for which payment was made in whole or in part under a Federal health care program, namely, Medicare and Medicaid, contrary to Title 42, United States Code, Section 1320a-7b(b)(1)(A); and

b. to knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud any health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, any of the money owned by, or under the custody or control of, any health care benefit program in connection with the delivery of or payment for health care benefits, items or services, contrary to Title 18, United States Code, Section 1347.

Objects of the Conspiracy

3. It was an object of the conspiracy for defendant JAMES MORALES and others to obtain additional revenue for PRU, and in turn, for himself and others, by referring prescriptions to PRU, which then billed various payors, including Medicare and Medicaid, for reimbursement and paid cash bribes to defendant JAMES MORALES for those prescription referrals.

4. It was a further object of the conspiracy for defendant JAMES MORALES and others to fraudulently obtain additional revenue for PRU, and in turn, for himself and others, by knowingly and willfully making false

representations to Medicare, Medicaid, and various private payors about certain health care items and avoiding detection by creating and maintaining documents that contained material omissions, such as dosage or quantity information on prescriptions for items that PRU dispensed to patients covered by these payors.

Manner and Means of the Conspiracy

5. It was a part of the conspiracy that defendant JAMES MORALES prescribed Pain Cream for patients and referred these prescriptions to PRU in exchange for tens of thousands of dollars in cash bribes from PRU.

6. It was further part of the conspiracy that PRU dispensed the prescribed Pain Cream to patients for whom it had been prescribed and fraudulently obtained hundreds of thousands of dollars in reimbursement for this item from Medicare, Medicaid, and other various private payors, by knowingly and willfully misrepresenting the nature and amount of the item that had been dispensed as well as the frequency with which the item had been dispensed.

7. It was further part of the conspiracy that defendant JAMES MORALES omitted quantity information on prescriptions for certain patients in order to enable PRU to submit false claims for reimbursement to Horizon, receive payment on those claims, and avoid detection.

Overt Acts

In furtherance of the conspiracy, and in order to effect the objects thereof, defendant JAMES MORALES and his co-conspirators committed or

caused the commission of the following overt acts in the District of New Jersey and elsewhere:

8. On or about November 26, 2013, defendant JAMES MORALES accepted \$5,000 in cash from CC-1, on behalf of PRU, as payment for having referred prescriptions to PRU, including prescriptions for which payment was made to PRU by Medicare or Medicaid.

9. On or about December 19, 2013, defendant JAMES MORALES accepted \$5,000 in cash from CC-1, on behalf of PRU, as payment for having referred prescriptions to PRU, including prescriptions for which payment was made to PRU by Medicare or Medicaid.

10. Between February 2013 and December 2013, defendant JAMES MORALES received at least \$60,000 from PRU as payment for having referred prescriptions to PRU, including prescriptions for which payment was made to PRU by Medicare or Medicaid.

11. On multiple dates between July 2013 and January 2014, Vladimir Kleyman fraudulently billed and obtained payment from Horizon by misrepresenting the quantity of and frequency with which Pain Cream was dispensed to many of defendant JAMES MORALES's patients, who then were insured by Horizon. Vladimir Kleyman avoided Horizon's reimbursement restrictions on dispensing 30-day supplies of Pain Cream and obtained payment from Horizon by falsely and fraudulently stating that he had dispensed 10-day supplies of Pain Cream on multiple occasions to these patients when he in fact had not done so.

12. On or about December 19, 2013, defendant JAMES MORALES met with Vladimir Kleyman and CC-1. During this meeting, Vladimir Kleyman told defendant JAMES MORALES that the physician should omit quantity information in his Pain Cream prescriptions to help PRU obtain insurance payments. Defendant JAMES MORALES agreed to omit such information.

13. Beginning on or about December 20, 2013, defendant JAMES MORALES began omitting quantity information on certain prescriptions for Pain Cream that he referred to PRU.

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


FORFEITURE ALLEGATION

1. As the result of conspiring to commit one or more of the Federal health care offenses, as defined in 18 U.S.C. § 24, as charged in the Information, defendant JAMES MORALES shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the conspiracy to violate 42 U.S.C. § 1320a-7b(1)(A) and 18 U.S.C. § 1347 charged in the Information, including but not limited to, a forfeiture money judgment in the amount of \$90,000, representing all property constituting or derived from gross proceeds traceable to the said conspiracy offense.

Substitute Assets Provision

2. 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 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;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the value of the above forfeitable property.



PAUL J. FISHMAN
United States Attorney

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JAMES MORALES

INFORMATION FOR

Title 18, United States Code, Section 371

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