

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No. 17-
	:	
v.	:	Hon. John Michael Vazquez
	:	
JASON CERGE	:	18 U.S.C. § 1349

INFORMATION

(Conspiracy to Commit Health Care Fraud)

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

1. At all times relevant to this Information:

a. TRICARE is a health care program of the United States Department of Defense (“DoD”) Military Health System that provides coverage for DoD beneficiaries worldwide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors. Individuals who receive health care benefits through TRICARE are referred to as TRICARE beneficiaries. The Defense Health Agency (“DHA”), an agency of the DoD, is the military entity responsible for overseeing and administering the TRICARE program.

b. TRICARE is a “health care benefit program,” as defined by 18 U.S.C. § 24(b), that affects commerce, and as that term is used in 18 U.S.C. § 1347.

c. TRICARE is a “Federal health care program,” as defined by 42 U.S.C. § 1320a-7b(f), that affects commerce, and as that term is used in 42 U.S.C. § 1320a-7b(b).

d. TRICARE provides coverage for certain prescription drugs, including certain compounded drugs, which are medically necessary and prescribed by a licensed physician. Express Scripts, Inc. (“Express Scripts”) is a pharmacy benefit manager who administers TRICARE’s prescription drug benefits.

e. TRICARE beneficiaries can fill their prescriptions through military pharmacies, TRICARE’s home delivery program, network pharmacies, and non-network pharmacies. If a TRICARE beneficiary chooses a network pharmacy, the pharmacy collects any applicable co-pay from the TRICARE beneficiary, dispenses the drug to the beneficiary, and submits a claim for reimbursement to Express Scripts, which, in turn, adjudicates the claim and reimburses the pharmacy on behalf of TRICARE. To become a network pharmacy, a pharmacy agrees to be bound by and comply with all applicable State and Federal laws, specifically including those addressing fraud, waste, and abuse.

Compounding

f. In general, “compounding” is a practice in which a licensed pharmacist, or a licensed physician, combines, mixes or alters ingredients of a drug to create a medication tailored to the needs of an individual patient. Pharmacies engaging in the practice are referred to as “compounding pharmacies.”

g. Compounded drugs are not approved by the Food and Drug Administration (“FDA”), that is, the FDA does not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs.

h. Generally, compounded drugs may be prescribed by a physician when a 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 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 a FDA-approved pill and needs the drug in a liquid form that is not otherwise available.

Company A and Co-Conspirators

i. Company A, a New York corporation owned by CC-1, was a marketing company for various compounding pharmacies throughout the United States.

j. Peter Pappas (“Pappas”), a resident of Pennsylvania, was a former employee of a pharmaceutical company located in New Jersey (the “NJ Pharmaceutical Company”) who was recruited by Company A to become a sales representative for Company A.

k. Pappas recruited defendant JASON CERGE, a resident of Pennsylvania, and others, to become a sales representative for Company A.

1. Defendant JASON CERGE recruited CC-2, an uncharged co-conspirator residing in New Jersey, to become a sales representative for Company A.

2. From in or around September 2014 through in or around May 2015, in the District of New Jersey and elsewhere, defendant

JASON CERGE

did knowingly and intentionally conspire with others to knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a 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, a 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.

Object of the Conspiracy

3. It was an object of the conspiracy for Company A, CC-1, Pappas, defendant JASON CERGE, CC-2, and others: (1) to identify health plans that covered certain compounded prescriptions marketed by Company A (the “paying health plans”); and (2) unlawfully enrich themselves by causing the submission of false and fraudulent insurance claims for medically unnecessary compounded prescription medications to paying health plans, such as TRICARE.

Manner and Means of the Conspiracy

4. It was part of the conspiracy and the scheme to defraud that Company A recruited individuals as sales representatives to target beneficiaries of paying health plans to obtain prescription compounded medications Company A marketed, such as, but not limited to, pain creams, scar creams, and metabolic supplements. Company A informed its sales representatives which health plans were paying health plans, and therefore, which beneficiaries to target. For instance, Company A informed its sales representatives that TRICARE was a paying health plan.

5. It was also part of the conspiracy that Company A provided its sales representatives with preprinted prescription forms which listed several compounded medications Company A was marketing ("Company A Prescription Forms"). Company A sales representatives supplied Company A Prescription Forms to physicians and/or telemedicine companies for authorization. To prescribe a certain compounded medication marketed by Company A, the physician would only have to check a box corresponding to the compounded medication. Because several compounded medications were listed on Company A Prescription Forms, a physician could use one prescription form to prescribe multiple compounded medications for a patient.

6. It was further part of the conspiracy that after obtaining a physician's signature on a Company A Prescription Form, Company A sales representatives either directly or indirectly diverted Company A Prescription Forms to certain compounding pharmacies designated by Company A.

7. It was further part of the conspiracy that Company A, either directly or indirectly, entered into agreements with certain compounding pharmacies (the “pharmacies”), wherein Company A would send the pharmacies Company A Prescription Forms obtained by Company A’s sales representatives; the pharmacies would fill the prescriptions and submit claims to the paying health plans, and, if a claim was adjudicated successfully, the pharmacies would share a portion of the reimbursement amount received from the paying health plan with Company A. Company A would then distribute a portion of the money received from the pharmacies to its sales representatives.

8. It was further part of the conspiracy that Company A had a multi-level marketing payment structure. Company A encouraged its sales representatives to recruit other sales representatives, or bring other individuals into the scheme “under” them. Any individual a sales representative recruited would be considered a sales representative’s “downline.” Company A paid sales representatives a portion of the reimbursement amount received for: (1) each prescription the sales representative directly caused to be filled, and (2) for each prescription attributable to those in the sales representative’s downline. If a sales representative was also a beneficiary of paying health plan and received his/her own compounded medication (“self-prescriptions”) or compounded medications for his/her family members (“family prescriptions”), Company A would also pay that sales representative a portion of the reimbursement amount received for self-prescriptions and family prescriptions.

9. It was further part of the conspiracy that, for monetary gain, Company A sales representatives received medically unnecessary self-prescriptions and/or family prescriptions, and/or convinced other beneficiaries of paying health plans to receive medically unnecessary compounded medications through a paying health plan. Compensation in the scheme to defraud was directly related to the amount reimbursed by the paying health plan.

a. For instance, the NJ Pharmaceutical Company's health plan was a paying health plan. Therefore, Company A and Pappas targeted employees of the NJ Pharmaceutical Company. Specifically, Pappas recruited several employees of the NJ Pharmaceutical Company into the scheme to defraud. Like Pappas, these employees became sales representatives for Company A and, for monetary gain, obtained medically unnecessary self-prescriptions and/or family prescriptions. Company A paid each individual a portion of the reimbursement amount received for each self-prescription and/or family prescription obtained through the NJ Pharmaceutical Company's health plan, and also paid Pappas a portion of the reimbursement amount because the individuals were in Pappas's downline.

10. It was further part of the conspiracy that, in addition to recruiting employees of the NJ Pharmaceutical Company, Pappas also recruited defendant JASON CERGE into the scheme to defraud. In turn, defendant JASON CERGE, with the purpose of receiving monetary compensation,

recruited CC-2 and another individual into the scheme. CC-2, a veteran of the United States armed services, had access to TRICARE beneficiaries.

11. It was further part of the conspiracy that under the direction of defendant JASON CERGE, CC-1, and Pappas, CC-2 knowingly targeted friends who were TRICARE beneficiaries to obtain prescription compounded medications because TRICARE was a paying health plan.

12. It was further part of the conspiracy that CC-2 knowingly paid cash bribes to TRICARE beneficiaries residing in New Jersey, Colorado, Virginia, and elsewhere, to induce them to obtain medically unnecessary prescriptions for compounded medications through TRICARE. Specifically, in exchange for cash bribes, these TRICARE beneficiaries (“CC-2’s TRICARE beneficiaries”) provided CC-2 with certain information, such as name, address, date of birth, and insurance information (“personal information”), for the purpose of obtaining various prescription compounded medications through TRICARE. The personal information was used by CC-2 and others to submit claims to TRICARE, through Express Scripts, for the filling of medically unnecessary prescription compounded medications.

13. It was further part of the conspiracy that CC-2 informed CC-2’s TRICARE beneficiaries that they did not need to take the compounded medications they received, and could throw the medications away.

14. It was further part of the conspiracy that defendant JASON CERGE knew CC-2 was paying cash bribes to induce CC-2’s TRICARE beneficiaries to obtain medically unnecessary compounded prescriptions

through TRICARE, and that CC-2 instructed these individuals that they could throw the medications away.

15. It was further part of the conspiracy that CC-2 provided the personal information of CC-2's TRICARE beneficiaries to defendant JASON CERGE. Defendant JASON CERGE would then place the personal information on Company A Prescription Forms, and bring these completed Company A Prescription Forms to a New Jersey physician, licensed to practice medicine in New Jersey and Pennsylvania ("Physician-1").

a. Specifically, on multiple occasions, knowing that CC-2's TRICARE beneficiaries were not patients of Physician-1 and that Physician-1 would not contact CC-2's TRICARE beneficiaries, defendant JASON CERGE presented Physician-1 with completed Company A Prescription Forms for CC-2's TRICARE beneficiaries.

b. Physician-1, in the presence of defendant JASON CERGE, immediately signed each completed Company A Prescription Form defendant JASON CERGE presented. Physician-1 authorized compounded prescriptions for CC-2's TRICARE beneficiaries, including those residing in Colorado and Virginia, and elsewhere, without conducting a medical evaluation or determining medical need.

16. It was further part of the conspiracy that defendant JASON CERGE then forwarded, or caused to be forwarded, Company A Prescription Forms for CC-2's TRICARE beneficiaries, signed by Physician-1, to pharmacies

designated by Company A. The pharmacies then filled the prescriptions and submitted claims to TRICARE through Express Scripts.

17. It was further part of the conspiracy that for CC-2's TRICARE beneficiaries, Express Scripts, on behalf of TRICARE, reimbursed the pharmacies anywhere between approximately \$2,500 and \$18,800 for each compounded medication filled.

18. It was further part of the conspiracy that from in or around September 2014 through in or around May 2015, defendant JASON CERGE caused TRICARE a loss of approximately \$204,198.11 for the billing of medically unnecessary compounded medications.

19. It was further part of the conspiracy that Company A paid defendant JASON CERGE for prescription compounded medications CC-2 caused to be filled through TRICARE.

20. It was further part of the conspiracy that from in or around September 2014 through in or around May 2015, Company A paid defendant JASON CERGE a total of approximately \$12,816.24 for the filling of medically unnecessary prescription compounded medications through paying health plans, including TRICARE.

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

FORFEITURE ALLEGATION

1. As the result of committing one or more of the Federal health care offenses as defined in 18 U.S.C. § 24 alleged in this Information, defendant JASON CERGE 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 offense, including but not limited to a sum of money equal to the amount of any and all proceeds traceable to the commission of the Federal health care offenses (as defined in 18 U.S.C. § 24) to which defendant JASON CERGE is pleading guilty.

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.


WILLIAM E. FITZPATRICK
Acting United States Attorney

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