

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

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

**INFORMATION**

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

1. Unless otherwise indicated, at all times relevant to this Information:
  - a. Defendant ENVER KALABA was a resident of New Jersey and employed by the Metropolitan Transportation Authority (“MTA”) as a bus driver.
  - b. Company A, a New Jersey company, marketed various compounded medications, such as, but not limited to, scar creams, pain creams, and metabolic supplements.
  - c. CC-1, a resident of New York, and CC-2, a resident of New Jersey owned and operated Company A.
  - d. Company B and Company C were New Jersey companies involved in the marketing of various compounded medications.
  - e. Company D, a New York company, was another marketing company for various compounded medications.

f. Christopher Frusci (“Frusci”), a resident of New York and a bus driver with the MTA, was recruited by CC-1 to become a “sales representative” of Company A. Frusci, in turn, recruited defendant ENVER KALABA.

g. The MTA was a New York public-benefit corporation responsible for public transportation in New York and Connecticut. The MTA provided its employees with health care benefits, including prescription drug benefits. Individuals who received health care benefits through the MTA’s health insurance plan were referred to as MTA beneficiaries. The MTA’s prescription drug benefit plan was administered by a pharmacy benefit management organization (the “PBM”). Under the agreement between the MTA and the PBM, the PBM processed pharmaceutical claims for beneficiaries through a network of retail pharmacies, among other places.

h. If a MTA beneficiary selected a network pharmacy, the pharmacy would collect any applicable copay from the beneficiary, dispense the drug to the beneficiary, and submit a claim for reimbursement to the PBM, which would in turn adjudicate the claim and reimburse the pharmacy. Later, the MTA would reimburse the PBM for all expenditures made on behalf of the MTA’s beneficiaries.

i. The MTA’s health insurance plan was a “health care benefit program,” as defined by 18 U.S.C. § 24(b), that affected commerce.

j. 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.”

k. 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.

l. 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 a 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.

m. Telemedicine allows health care providers, such as physicians, to evaluate, diagnose, and treat patients remotely—without the need for an in-person visit—by using telecommunications technology, such as the internet or telephone to interact with a patient. A physician who is employed by a telemedicine company and practices telemedicine is referred to as a telemedicine physician or doctor.

2. From at least as early as in or around April 2016 through in or around August 2017, in the District of New Jersey and elsewhere, defendant

ENVER KALABA

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 various marketing companies, such as, Company A, Frusci, defendant ENVER KALABA, and others to unlawfully enrich themselves by causing the submission of false and fraudulent insurance claims for medically unnecessary compounded prescription medications to private health insurance plans, including the MTA's health insurance plan.

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" whose role was to target beneficiaries of health insurance plans which covered compounded medications (the "paying health plans"), and convince these individuals to

obtain compounded medications, such as, but not limited to, pain creams, scar creams, and metabolic supplements, regardless of medical necessity.

5. It was further part of the conspiracy that in order for Company A to profit, it needed compounding pharmacies willing to submit claims to paying health plans regardless of medical necessity and share the insurance reimbursement amount received for the filling of these compounded medications.

6. It was further part of the conspiracy that in order for Company A to profit, it also needed physicians willing to prescribe compounded medications regardless of medical necessity.

7. It was further part of the conspiracy that to fulfill these objectives, at various times, Company A affiliated itself with other marketing companies, such as Company B, Company C, and Company D (collectively, the "Other Marketing Companies") because these Other Marketing Companies had relationships, either directly or indirectly, with various compounding pharmacies and hired and paid telemedicine companies and their physicians to prescribe compounded medications regardless of medical necessity. The various compounding pharmacies associated with the Other Marketing Companies were located in various states and would mail compounded medications to beneficiaries of paying health plans.

8. It was further part of the conspiracy that through its affiliations with the Other Marketing Companies, Company A had access to compounding pharmacies willing to pay Company A for the referral of prescriptions and

telemedicine physicians willing to prescribe compounded medications, regardless of medical necessity.

9. Specifically, in or around March 2015 through in or around November 2015, Company A was affiliated with Company B; in or around November 2015 through July 2016, Company A was affiliated with Company C; and in or around October 2015 through in or around February 2017, Company A was affiliated with Company D.

10. It was further part of the conspiracy that Company A encouraged its sales representatives to recruit others, or bring other individuals into the scheme “under” them. Any individual recruited would be considered a sales representative’s “downline.” Company A paid sales representatives a portion of the reimbursement amount it 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.

11. It was further part of the conspiracy that through the compounding pharmacies and the adjudication of claims, Company A and the Other Marketing Companies learned which health insurance plans were paying health plans, how much they reimbursed, and therefore, which beneficiaries to target.

12. It was further part of the conspiracy that CC-1 recruited Frusci to become a Company A sales representative. To increase his profit, Frusci recruited defendant ENVER KALABA.

13. It was further part of the conspiracy that defendant ENVER KALABA targeted MTA beneficiaries to obtain compounded prescriptions using telemedicine physicians because the MTA's health insurance plan was a paying health plan.

14. It was further part of the conspiracy that Frusci and defendant ENVER KALABA induced MTA beneficiaries to obtain medically unnecessary compounded prescriptions through the MTA's health plan by paying them monthly cash bribes. Specifically, defendant ENVER KALABA paid each MTA beneficiary approximately \$100 per compounded medication per month. For example, if a MTA beneficiary received a total of three compounded medications a month, defendant ENVER KALABA paid that MTA beneficiary \$300.

15. It was further part of the conspiracy that defendant ENVER KALABA recruited at least one MTA beneficiary residing in New Jersey to obtain medically unnecessary compounded medications (the "New Jersey MTA beneficiary"). The New Jersey MTA beneficiary and his/her spouse received compounded medications via the mail at their residence in New Jersey.

16. It was further part of the conspiracy that defendant ENVER KALABA received between approximately 10% to 20% of the reimbursement amount for each compounded medication he convinced a MTA beneficiary to obtain.

17. It was further part of the conspiracy that from at least as early as in or around April 2016 through in or around August 2017, defendant ENVER KALABA caused a loss of approximately \$2,892,000 for the billing of medically

unnecessary compounded medications to the MTA's health insurance plan and earned approximately \$138,629.73 for his role in the scheme to defraud.

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

## **FORFEITURE ALLEGATION**

1. The allegations contained in Paragraphs 1 through 16 of this Information are hereby realleged and incorporated by reference for the purpose of alleging forfeiture, pursuant to 18 U.S.C. § 982(a)(7).

2. Upon conviction of the Federal health care offense (as defined in 18 U.S.C. § 24) alleged in this Information, defendant ENVER KALABA shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real or personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the offense, including but not limited to \$138,629.73 in United States currency, the amount of gross proceeds traceable to the commission of the Federal health care offense (as defined in 18 U.S.C. § 24) alleged in this Information.

### **Substitute Assets Provision**

3. 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;

the United States shall be entitled to forfeiture of substitute property, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b).

  
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CRAIG CARPENITO  
United States Attorney

**CASE NUMBER: 18-**

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District of New Jersey**

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**INFORMATION FOR**

18 U.S.C. § 1349

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**CRAIG CARPENITO**

*U.S. ATTORNEY*

*NEWARK, NEW JERSEY*

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