



**ATTACHMENT A**

From at least as early as in or around January 2013 through in or around February 2016, in the District of New Jersey, and elsewhere, defendant

**BERNARD OGON**

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, as defined under Title 18, United States Code, Section 24(b), and to obtain, by means of false and fraudulent pretenses, representations, and promises, any money and property owned by, and under the custody and control of, any health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, contrary to Title 18, United States Code, Section 1347.

In violation of Title 18, United States Code, Section 1349.

## ATTACHMENT B

I, Eric Eccleston, am a Special Agent with the Federal Bureau of Investigation. I have knowledge of the facts set forth herein based on my own investigation, my conversations with other law enforcement officers and others, and my review of reports, documents, and other evidence. Because this Complaint is being submitted for a limited purpose, I have not set forth every fact that I know concerning this investigation. Where statements of others are related herein, they are related in substance and in part. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

1. At all times relevant to this Complaint:

a. Defendant BERNARD OGON ("OGON") resided in Burlington, New Jersey, was a medical doctor licensed to practice in New Jersey, Pennsylvania, and Illinois, and was a telemedicine doctor at various telemedicine companies, as described below.

b. Telemedicine Company-1 was a telemedicine company located in or around Georgia; Telemedicine Company-2 was a telemedicine company located in or around Texas; and Telemedicine Company-3, Telemedicine Company-4, and Telemedicine Company-5 were telemedicine companies located in or around Florida (collectively, the "OGON Telemedicine Companies").

### Compounding

c. In general, compounding was a practice in which a licensed pharmacist combined, mixed, or altered ingredients of one or more drugs in response to a prescription to create a medication tailored to the medical needs of an individual patient. Compounded drugs were not approved by the United States Food and Drug Administration ("FDA"); that is, the FDA did not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs.

d. Compounded drugs could be appropriately prescribed by a physician when an FDA-approved medication did not meet the health needs of a particular patient. For example, if a patient was allergic to a specific ingredient in an FDA-approved medication, such as a dye or preservative, a compounded drug could be prepared excluding the ingredient that triggered the allergic reaction. Compounded drugs could also be prescribed when a patient could not consume a medication by traditional means, such as an

elderly patient or child who could not swallow a FDA-approved pill and needed the drug in a liquid form that was not otherwise available.

e. Pharmacies engaged in the practice of compounding were referred to as “compounding pharmacies.”

#### Telemedicine

f. Telemedicine allowed health care providers, such as doctors, 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.

g. Telemedicine companies provided telemedicine services to individuals by hiring doctors, such as OGON, and other health care providers. Doctors engaged in the practice of telemedicine were referred to as “telemedicine doctors.”

h. Prior to in or around June 2017, the practice of telemedicine was illegal in New Jersey. That is, without an established doctor-patient relationship, a doctor treating and prescribing medications to patients for the first time through telemedicine—without conducting an in-person physical examination—was violating New Jersey regulations concerning the practice of medicine. N.J.A.C. § 13:35-7.1A(a)(1).

#### TRICARE

i. TRICARE was 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.

j. TRICARE was 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.

#### The Compounding Fraud Scheme

k. At least as early as in or around 2013, companies marketing various compounded medications for certain compounding pharmacies (the “Marketing Companies”) began targeting individuals covered under health care benefit programs (“Beneficiaries”) with prescription benefits that paid for

various compounded medications (“the Paying Health Plans”) because the compounded medications could be billed to Paying Health Plans at exorbitant prices, which were substantially more expensive than their FDA-approved therapeutic equivalent.

1. The Marketing Companies would recruit and pay individuals as “sales representatives” to either: (1) obtain compounded medications, regardless of medical necessity, for themselves or family members through Paying Health Plans; or (2) recruit others with Paying Health Plans to obtain compounded medications regardless of medical necessity. For example, TRICARE was one of the Paying Health Plans. Consequently, TRICARE Beneficiaries were targeted by the Marketing Companies to receive compounded medications regardless of medical necessity.

m. The Marketing Companies either maintained direct relationships with compounding pharmacies or affiliated themselves with other Marketing Companies that had relationships with compounding pharmacies. Through these relationships, Marketing Companies agreed to direct prescriptions to certain compounding pharmacies, and, in return, the compounding pharmacies would pay the Marketing Companies a percentage of the reimbursement amount the compounding pharmacies received from Paying Health Plans.

n. To ensure that physicians prescribed compounded medications, the Marketing Companies referred Beneficiaries to telemedicine companies and their doctors with whom the Marketing Companies had financial agreements. The telemedicine doctors then prescribed compounded medications to the Beneficiaries regardless of medical need. Because they were paid by the Marketing Companies to authorize prescriptions, neither the telemedicine companies nor the telemedicine doctors billed the Beneficiaries’ Paying Health Plans for their services.

#### Object of the Conspiracy

2. It was the object of the conspiracy for OGON and others to unlawfully enrich themselves by causing the submission of fraudulent insurance claims for medically unnecessary compounded prescription medications to health care benefit programs.

#### Manner and Means of the Conspiracy

3. It was part of the conspiracy that OGON was paid by various telemedicine companies, including the OGON Telemedicine Companies, to prescribe compounded medications, such as pain creams, scar creams,

migraine creams, and metabolic supplements/“wellness capsules,” regardless of medical necessity.

4. It was further part of the conspiracy that the telemedicine companies, including the OGON Telemedicine Companies, would send OGON prescriptions to sign for compounded medications (the “Prescriptions”). OGON signed the Prescriptions without: (1) having established any prior doctor-patient relationship; (2) speaking with the patient; and/or (3) conducting a sufficient medical evaluation.

5. It was further part of the conspiracy that the Prescriptions were on preprinted forms that required: (1) patient information, such as but not limited to, patient name, address, date of birth, telephone number, and health insurance information; and (2) prescribing doctor information, such as but not limited to, doctor name, address, telephone number, and signature. The preprinted Prescription forms also listed various compounded medications that could be selected by the prescribing doctor.

6. It was further part of the conspiracy that, on more than one occasion, OGON requested that the telemedicine companies completely fill out the Prescriptions, including selecting the compounded medications OGON was to prescribe, before sending them to OGON. The telemedicine companies complied with OGON’s request, and OGON on many occasions received completed Prescriptions that required only his signature.

7. It was further part of the conspiracy that OGON received from the telemedicine companies an incomplete or cursory medical intake form along with the completed Prescriptions. Sometimes OGON received no patient medical intake form. As a result, OGON on multiple occasions signed Prescriptions for either compounded scar cream or pain cream even though OGON had not received any information, either on the patient’s medical intake form or from any other source, indicating a medical need for them. OGON also signed Prescriptions for patients residing in States where he was not licensed to practice medicine.

8. It was further part of the conspiracy that, after OGON signed the medically unnecessary Prescriptions, the Prescriptions were not returned to the patient. Instead, either OGON or the telemedicine companies steered the Prescriptions to compounding pharmacies selected by the Marketing Companies. These compounding pharmacies then filled the Prescriptions and billed the patient’s health care benefit program regardless of medical necessity.

9. It was further part of the conspiracy that telemedicine companies, including the OGON Telemedicine Companies, paid OGON on a per-

prescription basis for many Prescriptions OGON signed, regardless of medical necessity. However, if a Prescription was cancelled or not paid by a health benefit program, OGON would not be paid for that Prescription.

10. It was further part of the conspiracy that, for example, Telemedicine Company-2 paid OGON approximately \$20 to \$30 per Prescription OGON signed. For example, from in or around July 14, 2015 to in or around July 31, 2015, OGON signed approximately 173 Prescriptions and billed Telemedicine Company-2 approximately \$4,325.00. As another example, from in or around October 16, 2015 to in or around October 29, 2015, OGON signed approximately 412 Prescriptions and billed Telemedicine Company-2 approximately \$8,240.00.

11. It was further part of the conspiracy that OGON's participation in the conspiracy caused a loss to health care benefit programs of over \$20 million.

#### Representative Examples of OGON's Role in the Conspiracy

##### ***Example 1***

12. On or about June 12, 2015, a medical intake form for Individual-1 was completed and was sent to OGON soon thereafter. Individual-1 lived in Willingboro, New Jersey. The medical intake form indicated that Individual-1 was a TRICARE Beneficiary. The medical intake form also indicated that Individual-1 was 86 years old and had scars, but the form did not indicate that Individual-1 was experiencing any pain.

13. On or about June 15, 2015, OGON signed two prescriptions for compounded medications for Individual-1: (1) a pain cream with six refills; and (2) a scar cream with six refills. These prescriptions were sent to and filled by Compounding Pharmacy-1 located in or around Deerfield Beach, Florida. TRICARE was billed a total of \$4,524.28 for the two prescriptions.

14. In a subsequent interview with law enforcement, Individual-1 stated that Individual-1 had never been a patient of OGON, never met OGON, and could not recall ever speaking or otherwise communicating with OGON. Moreover, when law enforcement interviewed Individual-1's daughter, Individual-1's daughter stated that due to Individual-1's age, Individual-1 was not concerned about scars and thus did not need scar cream.

### ***Example 2***

15. On or about June 10, 2015, a medical intake form for Individual-2 was completed and was sent to OGON soon thereafter. Individual-2 lived in Chicago, Illinois. The medical intake form indicated that Individual-2 was a TRICARE Beneficiary. The medical intake form also indicated that Individual-2 was 82 years old and had scars, but it did not indicate that Individual-2 was experiencing any pain.

16. On or about the next day, June 11, 2015, OGON signed two prescriptions for compounded medications for Individual-2: (1) a pain cream with six refills; and (2) "wellness" capsules or metabolic supplements with six refills. OGON then faxed these prescriptions to Compounding Pharmacy-2 located in or around Mount Juliet, Tennessee. TRICARE was billed a total of \$7,617.84 for the two prescriptions.

17. In a subsequent interview with law enforcement, Individual-2 stated that Individual-2 had never been a patient of OGON, never met OGON, and could not recall ever speaking or otherwise communicating with OGON. Individual-2 also stated that Individual-2 had never heard of Compounding Pharmacy-2.