

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA	:	Criminal No. 20-
	:	
v.	:	Hon. Madeline Cox Arleo
	:	
DAVID M. FULKERSON	:	18 U.S.C. § 1349
	:	18 U.S.C. § 371

I N F O R M A T I O N

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

**COUNT 1
(Conspiracy to Commit Health Care Fraud)**

1. At all times relevant to Count 1 of this Information:

Background

a. Defendant DAVID M. FULKERSON (“FULKERSON”) was a resident of Indiana who owned and operated L.O.A.D.E.D. Pharmaceuticals, LLC (“LOADED”), an Indiana company.

b. Kent Courtheyn, a/k/a “Troy Taylor,” (“Courtheyn”), a separately charged co-conspirator, was a resident of Ohio who owned and operated IntegriMed Solutions, LLC (“IntegriMed”) and KA Compounding, LLC (“KA Compounding”), both Ohio companies.

c. “Compounding Pharmacy-A” was a compounding pharmacy located in Mississippi.

d. “Telemedicine Company-A” and “Telemedicine Company-B” were telemedicine companies located in Florida.

e. “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.”

f. 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.

g. Generally, compounded drugs are prescribed by a physician when an 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 could be prepared by a compounding pharmacy excluding the substance that triggers the allergic reaction. Compounded drugs also are prescribed when a patient cannot consume a medication by traditional means, such as an elderly patient or child who cannot swallow an FDA-approved pill and needs the drug in a liquid form that is not otherwise available.

h. TRICARE was a health care entitlement program of the United States Department of Defense (“DoD”) Military Health System that provided coverage for DoD beneficiaries worldwide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors.

Individuals who received health care benefits through TRICARE were referred to as TRICARE beneficiaries. TRICARE was a “health care benefit program,” as defined by 18 U.S.C. § 24(b), and a “Federal health care program,” as defined by 42 U.S.C. § 1320a-7b(f), that affected commerce.

i. TRICARE contracted with a pharmacy benefit manager company (“PBM-1”), a third party that administered TRICARE’s prescription drug benefits and claims. Pharmacies could submit electronic claims for reimbursement to PBM-1, which servers were located in New Jersey. If PBM-1 adjudicated (*i.e.*, approved) the claim, it reimbursed the pharmacy on behalf of TRICARE, and TRICARE then reimbursed PBM-1. PBM-1 was a “health care benefit program,” as defined by 18 U.S.C. § 24(b), and a “Federal health care program,” as defined by 42 U.S.C. § 1320a-7b(f), that affected commerce.

j. FULKERSON and certain of his family members received health care benefits through TRICARE.

2. From at least in or about February 2015 through in or about February 2016, in the District of New Jersey and elsewhere, defendant

DAVID M. FULKERSON

did knowingly and intentionally conspire and agree with others to knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program, as defined by 18 U.S.C. § 24(b), namely, TRICARE, and to obtain, by means of false and fraudulent pretenses, representations, and promises, money owned by, and under the custody and control of, a health care benefit

program, namely, TRICARE, in connection with the delivery of and payment for health care benefits, items, and services, contrary to Title 18, United States Code, Section 1347.

Goal of the Conspiracy

3. It was a goal of the conspiracy for FULKERSON, co-conspirator Courtheyn, and others to unlawfully enrich themselves by causing TRICARE to issue reimbursements for medically unnecessary compounded medications and receiving a percentage of those reimbursements.

Manner and Means of the Conspiracy

4. The manner and means by which FULKERSON and others sought to accomplish the object of the conspiracy included, among other things, the following:

a. Co-conspirator Courtheyn recruited FULKERSON to market compounded medications that were billed to TRICARE, including, but not limited to, scar creams, pain creams, wound creams, and metabolic supplements or vitamins.

b. From at least in or about February 2015 through in or about February 2016, FULKERSON, through LOADED, recruited TRICARE beneficiaries to submit prescriptions for compounded medications to certain pharmacies, including Compounding Pharmacy-A. FULKERSON and his co-conspirators, including Courtheyn, were paid by those pharmacies, directly or indirectly, for each prescription that they, and individuals that they recruited, referred to the pharmacies and that TRICARE approved, regardless of medical necessity.

c. Co-conspirator Courtheyn kept a percentage of the reimbursement amount and paid FULKERSON a percentage for: (1) each prescription that FULKERSON directly caused to be reimbursed, and (2) each prescription reimbursement attributable to any other “sales representative” that FULKERSON recruited.

d. FULKERSON also received from co-conspirator Courtheyn a percentage of the reimbursement amount for each compounded prescription that FULKERSON submitted for himself as a TRICARE beneficiary (“self-prescription”) or his family members (“family-prescription”), regardless of medical necessity.

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

COUNT 2
(Conspiracy to Violate the Anti-Kickback Statute)

1. Paragraphs 1, 3, and 4 of Count 1 are re-alleged here.

2. From at least in or about February 2015 through in or about February 2016, in the District of New Jersey, and elsewhere, defendant

DAVID M. FULKERSON

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

a. to knowingly and willfully solicit and receive any remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, in return for referring individuals for the furnishing and arranging for the furnishing of any item and service, that is, the referral of patients to compounding pharmacies for the furnishing and arranging of compounded medications, for which payment was made in whole and in part under a Federal health care program, namely, TRICARE, contrary to Title 42, United States Code, Section 1320a-7b(b)(1)(A); and

b. to knowingly and willfully offer and pay any remuneration, directly and indirectly, overtly and covertly, in cash or in kind, that is, kickbacks and bribes, to any person in order to induce such person to refer an individual for the furnishing and arranging for the furnishing of any item and service, that is, obtaining compounded medications at certain compounding pharmacies, for which payment may be made in whole and in part under a Federal health care program,

namely TRICARE, contrary to Title 42, United States Code, Section 1320a-7b(b)(2)(A).

Goal of the Conspiracy

3. It was a goal of the conspiracy for FULKERSON, co-conspirator Courtheyn, and others to unlawfully enrich themselves by: (1) receiving kickbacks from compounding pharmacies for the referral of TRICARE beneficiaries' prescriptions, and (2) paying money to a telemedicine company to cause the billing of compounded medications to TRICARE.

Manner and Means of the Conspiracy

4. The manner and means by which FULKERSON and others sought to accomplish the object of the conspiracy included, among other things, the following:

a. FULKERSON and co-conspirator Courtheyn were paid by certain compounding pharmacies, either directly or indirectly, for each prescription that they referred to the pharmacies and that TRICARE adjudicated.

b. FULKERSON and co-conspirator Courtheyn steered TRICARE beneficiaries to Telemedicine Company-A. They paid Telemedicine Company-A, directly or indirectly, for each patient consultation that Telemedicine Company-A completed.

c. Telemedicine Company-A prescribed compounded medications that caused TRICARE to issue reimbursements to the pharmacies that, in turn, made payments to FULKERSON and co-conspirator Courtheyn.

Overt Acts

5. In furtherance of the conspiracy, and to effect its object, FULKERSON and his co-conspirators committed or caused the commission of the following overt acts in the District of New Jersey and elsewhere:

Kickbacks from Pharmacies

a. On or about November 2, 2015, FULKERSON caused Individual-1 and Individual-2, two of his family members who were TRICARE beneficiaries, to obtain prescriptions from Telemedicine Company-A for compounded medications and to submit those prescriptions to Compounding Pharmacy-A to be filled.

b. On or about November 2, 2015, Compounding Pharmacy-A sought reimbursement for the costs associated with Individual-1's and Individual-2's prescriptions by electronically submitting or causing the electronic submission of the reimbursement claims to PBM-1. PBM-1 then processed the claims through its servers in New Jersey, resulting in TRICARE paying approximately \$4,671 for Individual-1's claims and \$3,396 for Individual-2's claims.

c. On or about November 25, 2015, Compounding Pharmacy-A paid co-conspirator Courtheyn approximately \$23,985 via a wire transfer to KA Compounding, which included the kickback payment associated with Individual-1's and Individual-2's prescriptions, as well as additional transactions.

d. On or about December 1, 2015, co-conspirator Courtheyn paid FULKERSON approximately \$12,974 via a wire transfer.

e. On or about December 10, 2015, FULKERSON caused Individual-3, one of his family members who was a TRICARE beneficiary, to obtain prescriptions for compounded medications and to submit those prescriptions to Compounding Pharmacy-A to be filled.

f. On or about December 10, 2015, Compounding Pharmacy-A sought reimbursement for the costs associated with Individual-3's prescriptions by electronically submitting or causing the electronic submission of the reimbursement claims to PBM-1. PBM-1 then processed the claims through its servers in New Jersey, resulting in TRICARE paying approximately \$4,079 for Individual-3's claims.

g. On or about December 21, 2015, Compounding Pharmacy-A paid co-conspirator Courtheyn approximately \$52,712 via a wire transfer to KA Compounding, which included the kickback payment associated with Individual-3's prescriptions, as well as additional transactions.

h. On or about December 31, 2015, co-conspirator Courtheyn paid FULKERSON approximately \$12,574 via a wire transfer.

Payments to Telemedicine Companies

i. On or about November 3, 2015, co-conspirator Courtheyn sent FULKERSON an email which, among other things, informed him that, "Just like [with Telemedicine Company-A], you will have to wire money for payment [to Telemedicine Company-B], and will have to talk them down from initially asking for 100 prepaid consults."

j. On or about January 19, 2016, FULKERSON received an email from Telemedicine Company-A showing that he had wired \$7,500 to Telemedicine Company-A as advance payment for “\$100 per consult and \$10 per lead.”

k. On or about February 24, 2016, co-conspirator Courtheyn, through IntegriMed, transferred \$7,125 via wire to Telemedicine Company-A, which acknowledged via email that the amount would be used for “75 consults.”

In violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATION

1. The allegations contained in Counts 1 and 2 of this Information are realleged here for the purpose of alleging forfeiture, pursuant to 18 U.S.C. § 982(a)(7).

2. Upon conviction of conspiracy to commit health care fraud, contrary to 18 U.S.C. § 1347, in violation of 18 U.S.C. § 1349 (Count 1), and conspiracy to violate the Anti-kickback Statute, contrary to 42 U.S.C. § 1320a-7b(b)(1)(A) and (b)(2)(A), in violation of 18 U.S.C. § 371 (Count 2), as alleged in this Information, FULKERSON shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, obtained by the defendant that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of such offense, including but not limited to \$759,710.17 in United States currency.

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).


CRAIG CARPENITO
United States Attorney

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INFORMATION FOR

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