2020R01096/OJB/JRA

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No. 21-
	:	
v.	:	Hon.
	:	
JENNIFER NASH	:	18 U.S.C. § 1349
	:	

INFORMATION

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

BACKGROUND

1. At all times relevant to this Information:

Individuals and Entities

a. Defendant JENNIFER NASH was a resident of River Vale, New Jersey, who was employed by Company 1 as a sales representative. NASH also was an Advanced Practice Nurse (APN), although her APN license with the New Jersey Board of Nursing was inactive or suspended after on or about December 19, 2014.

b. Co-conspirators 1 and 2 were residents of New Jersey who co-owned and operated Company 1.

c. Company 1 was a New Jersey company involved in the marketing and sale of prescription compounded medications, including various "metabolic supplements," commonly known as "vitamins," scar creams, and pain creams.

Compounding

d. A compounded medication is a drug product mixed to create a medication tailored to the unique needs of a particular patient. Only a licensed professional, like a pharmacist, is authorized to combine, mix, or alter ingredients of a drug to create a medication tailored to the needs of an individual patient ("compounding pharmacy").

e. A compounded medication generally is prescribed only after a licensed medical professional considered the particular patient's diagnoses, medical condition, individual health factors, and reactions to other medications and determined that commercially available medications are not as beneficial or may be inappropriate or harmful to a particular patient. The ingredients of each compounded medication then are combined by the pharmacist in the exact strength and dosage required for the particular patient's unique circumstances. For example, if a patient is allergic to a specific ingredient in an off-the-shelf medication approved by the Food and Drug Administration ("FDA") (an "FDA-Approved Medication")—such as a dye or preservative—a compounded medication could be prepared by a compounding pharmacy excluding the substance that triggered the allergic reaction. A compounded medication also could be 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 needed the drug in a liquid form that was not otherwise available.

f. Given that compounded medications are custom-made for particular patients, typically they are much more expensive than mass-produced prescription medications. Further, because compounded medications are custom made to fit the unique needs of each patient, the FDA does not regulate or approve compounded medications. Therefore, the FDA also does not verify the safety or effectiveness of compounded drugs. Due to the unique and individualized nature of compounded medications, such medications are neither commercially available nor distributed in mass quantities.

Insurance Reimbursements

g. In New Jersey, the State Health Benefits Program ("SHBP") offered medical and prescription drug coverage to qualified state and local government public employees, retirees, and eligible dependents. The School Employees' Health Benefits Program ("SEHBP") offered medical and prescription drug coverage to qualified local education public employees, retirees, and eligible dependents.

h. Health care plans sponsored by private employers are governed by the Employment Retirement Income Security Act of 1974 ("ERISA") (collectively, along with SHBP and SEHBP, the "Insurance Plans"). Insurance Plans offer health insurance benefits to individuals, known as "beneficiaries," pursuant to contracts between such Insurance Plans and health care providers. Insurance Plans delegate the processing of the claims for reimbursement for their beneficiaries' prescriptions to one of several Pharmacy

Benefit Managers ("PBMs") that administered prescription drug benefits and claims on behalf of the Insurance Plans. Pharmacies could submit electronic claims for reimbursement to the PBMs. If the PBM adjudicated (*i.e.*, approved) the claim, it reimbursed the pharmacy on behalf of the Insurance Plans, which then reimbursed PBM.

i. The Insurance Plans and PBMs were "health care benefit programs," as defined in 18 U.S.C. § 24(b), that is, "any public or private plan or contract, affecting commerce, under which any medical benefit, item or service is provided to any individual." Under the terms of the insurance policies and consistent with state and federal law, the Insurance Plans were only responsible to reimburse for claims for services that: (i) were "medically necessary" and actually rendered, (ii) were provided by a properly licensed service provider, and (iii) complied with the terms of the health care plans.

j. "Marketers" or "sales representatives" were participants in the scheme to defraud who recruited individual beneficiaries who were willing to obtain compounded medications. At times, the marketers or sales representatives put the beneficiaries' personal information—including their name, date of birth and insurance information on pre-formulated prescription forms—prior to a patient being evaluated by a doctor. That form was then submitted to a doctor for approval based on the recruited beneficiaries' request for a compounded medication. On other occasions, the marketers or sales representatives directed recruited beneficiaries to contact telemedicine companies, whose doctors were expected to prescribe compounded medications

from the marketing company's pre-formulated prescription pad. The ultimate goal was to generate as many prescriptions for pre-formulated expensive and medically unnecessary compounded medications, rather than FDA-Approved Medications or a tailored-made medication for the unique needs of the patient.

Telemedicine

k. Telemedicine was the remote diagnosis and treatment of patients by means of telecommunications technology, such as the telephone. Telemedicine allowed health care providers, such as physicians, to write a prescription without an in-person visit.

Conspiracy to Commit Health Care Fraud

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

JENNIFER NASH

did knowingly and intentionally conspire and agree with others to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program, as defined by 18 U.S.C. § 24(b), namely, the Insurance Plans, 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, the Insurance Plans, 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 NASH, Co-Conspirators 1 and 2, and others, to unlawfully enrich themselves by causing the Insurance Plans to issue reimbursements for expensive medically unnecessary compounded medications and collecting a percentage of those reimbursements.

Manner and Means of the Conspiracy

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

a. NASH was recruited by Co-conspirators 1 and 2, through Company 1, to market prescription-based compounded medications to beneficiaries. These medications included, but were not limited to, vitamins, scar creams, pain creams, and wound creams. NASH, at the direction of Co-conspirators 1 and 2, marketed these medications irrespective of whether the beneficiary needed a compounded medication or there was an appropriate FDA-Approved Medication (the "medically unnecessary compounded medications").

b. From at least in or about March 2015 through in or about May 2016, NASH recruited beneficiaries of the Insurance Plans to submit prescriptions for compounded medications to certain compounding pharmacies. Co-conspirators 1 and 2, through Company 1, were paid by those pharmacies, directly or indirectly, for each prescription that they, and individuals that they recruited, including NASH, referred to the compounding

pharmacies and that the Insurance Plans approved, regardless of medical necessity.

c. As Company 1's owners, Co-conspirators 1 and 2 kept a percentage of the reimbursement amount and paid NASH a percentage for each prescription that NASH caused to be reimbursed by recruiting the beneficiary.

d. Co-conspirators 1 and 2 also paid NASH to write prescriptions for medically unnecessary compounded medications at events held outside of a medical office or other facility, including at a bar or gym.

e. For example, on or about March 25, 2015, Co-conspirators 1 and 2 held an event at a gym in Fairfield, New Jersey. NASH accepted a cash payment from Co-conspirators 1 and 2 at the event in exchange for NASH writing prescriptions for medically unnecessary compounded medications for beneficiaries NASH met at the event.

f. On other occasions, NASH, on behalf of other Company 1 sales representatives, wrote prescriptions for medically unnecessary compounded medications without meeting or examining patients in exchange for cash payments.

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

FORFEITURE ALLEGATION

1. The allegations contained in 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, NASH shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, obtained by NASH that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of such offense, including but not limited to $291,814.36 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).

Rachael A. Honig

RACHAEL A. HONIG
Acting United States Attorney

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UNITED STATES OF AMERICA

v.

JENNIFER NASH

INFORMATION FOR

18 U.S.C. § 1349

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(Ed. 1/97)