

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 20-cr-764-2 (RBK)
 :
 v. : 18 U.S.C. § 371
 :
 FRANK ALARIO : SUPERSEDING INFORMATION
 :

The defendant having waived in open court prosecution by Indictment, the Attorney for the United States, acting pursuant to authority conferred by 28 U.S.C. § 515, charges:

COUNT 1
(Conspiracy to Wrongfully Disclose and Obtain Individually Identifiable Health Information)

1. At all times relevant to this Superseding Information:
 - a. Defendant FRANK ALARIO was a medical doctor who practiced medicine at medical offices in Marlboro, Bayville, and Whiting, New Jersey; Stuart and Hollywood, Florida; and New York, New York.
 - b. Keith Ritson, who is listed as a co-conspirator but not as a defendant herein, was a pharmaceutical sales representative in New Jersey who promoted compound prescription medications and received commissions for compound prescription medications he arranged.
2. At all times relevant to this Superseding Information:
 - a. 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.

b. 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 triggers the allergic reaction.

c. The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) protects individually identifiable health information from wrongful disclosure and seeks to set national standards to maintain patient confidentiality.

d. In connection with HIPAA, the United States Department of Health and Human Services enacted regulations to safeguard the privacy of patients’ medical records and limit circumstances in which individually identifiable health information or protected health information could be used or disclosed. The HIPAA law and privacy regulations apply to, among others, health care providers, such as medical doctors, who transmit health information in connection with a transaction covered by the law and privacy regulations.

e. Defendant FRANK ALARIO was a health care provider and a covered entity under the HIPAA law and privacy regulations.

3. From in or about August 2014 through in or about February 2016, in the District of New Jersey, and elsewhere, defendant

FRANK ALARIO

did knowingly and intentionally conspire and agree with Keith Ritson and others to commit offenses against the United States, that is, to knowingly and without authorization disclose individually identifiable health information and protected health information to another person, and to knowingly and without authorization obtain individually identifiable health information and protected health information maintained by a covered entity relating to individuals, contrary to Title 42, United States Code, Section 1320d-6.

Object of the Conspiracy

4. The object of the conspiracy was for defendant FRANK ALARIO to give Keith Ritson access to patients' individually identifiable health information and protected health information, which Keith Ritson used to cause the submission of false and fraudulent insurance claims for compound prescription medications that he promoted and for which he received commissions.

Manner and Means of the Conspiracy

5. It was part of the conspiracy that, as an outside pharmaceutical sales representative who was not affiliated with, employed by, and who did not have a business associate agreement with defendant FRANK ALARIO or his medical practices, Keith Ritson was not permitted by HIPAA and its regulations to obtain the

individually identifiable health information and protected health information of defendant FRANK ALARIO's patients.

6. It was further part of the conspiracy that Keith Ritson obtained and defendant FRANK ALARIO caused and facilitated the disclosure of patients' individually identifiable health information and protected health information at defendant FRANK ALARIO's medical practices.

7. It was further part of the conspiracy that defendant FRANK ALARIO permitted Keith Ritson to enter the medical practices through the employee entrances and to be present in the office both during and outside of normal hours of operation.

8. It was further part of the conspiracy that defendant FRANK ALARIO allowed Keith Ritson to access and use areas of the medical offices that contained patients' individually identifiable health information and protected health information, and from which such information could be heard or observed, including areas restricted to staff, hallways outside patient exam rooms, and areas with patient files, office computers, fax machines, and office telephones.

9. It was further part of the conspiracy that Keith Ritson was frequently present in patient exam rooms during patient consultations and appointments with defendant FRANK ALARIO, which allowed him to obtain patients' individually identifiable health information and protected health information.

10. It was further part of the conspiracy that, by allowing Keith Ritson to be present during patient visits and giving the impression to patients that Keith

Ritson was affiliated with the medical practice, defendant FRANK ALARIO caused the disclosure of patients' individually identifiable health information and protected health information to Keith Ritson.

11. It was further part of the conspiracy that, on other occasions, defendant FRANK ALARIO would instruct his patients to see Keith Ritson in another part of the office for the purpose of providing Keith Ritson with their patient information so that Keith Ritson could fill out compound medication prescriptions that ultimately were authorized by defendant FRANK ALARIO.

12. It was further part of the conspiracy that defendant FRANK ALARIO allowed Keith Ritson to access patient files and other identifying information in paper files or on the office computer and to speak directly with patients for the purpose of determining insurance coverage because only certain insurance plans covered the compound medications promoted by Keith Ritson.

13. It was further part of the conspiracy that Keith Ritson would access and review defendant FRANK ALARIO's patient schedule, review patient charts and information, and designate in advance for defendant FRANK ALARIO which patients had insurance plans that covered the compound medications so that defendant FRANK ALARIO could prescribe those medications.

14. It was further part of the conspiracy that defendant FRANK ALARIO and Keith Ritson did not disclose to patients for whom defendant FRANK ALARIO prescribed the compound medications their relationship or that Keith Ritson would receive a commission on the prescriptions.

15. It was further part of the conspiracy that the disclosure of individually identifiable health information and protected health information was done without patients' informed consent or valid authorization.

Overt Acts:

16. In furtherance of the conspiracy and in order to effectuate the object of the conspiracy, defendant FRANK ALARIO and Keith Ritson committed or caused the commission of the following overt acts in the District of New Jersey and elsewhere:

a. Defendant FRANK ALARIO permitted Keith Ritson to access electronic patient records on office computers for the purpose of determining whether patients' insurance would cover the compound prescription medications, which caused the disclosure of individually identifiable health information and protected health information.

b. Defendant FRANK ALARIO brought Keith Ritson into patient exam rooms during patient consultations for the purpose of Keith Ritson promoting and/or defendant FRANK ALARIO prescribing compound prescription medications promoted by Keith Ritson, which caused Keith Ritson to obtain and defendant FRANK ALARIO to disclose individually identifiable health information and protected health information.

c. Defendant FRANK ALARIO introduced Keith Ritson to patients as his nephew or otherwise gave patients the impression that Keith Ritson was

affiliated with his medical practice, which caused or facilitated the disclosure of individually identifiable health information and protected health information.

d. Defendant FRANK ALARIO directed patients to provide Keith

Ritson with their confidential health information and personal identifiers so that Keith Ritson could fill out compound medication prescription forms for them, which caused and facilitated the disclosure of individually identifiable health information

and protected health information.

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



VIKAS KHANNA

Attorney for the United States

Acting Under Authority Conferred by 28 U.S.C. § 515

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