

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

v.

HUNTER MATTHEW BURROUGHS (01)
STEPHEN KEITH ANDREWS (02)

No. 5:22 CR 5001-001-002

18 U.S.C. § 1349
18 U.S.C. § 1343
18 U.S.C. § 2

US DISTRICT COURT
WESTERN DIST. OF ARKANSAS
FILED

FEB 28 2022

INDICTMENT

By

JAMIE GIANI, Clerk
Deputy Clerk

THE GRAND JURY CHARGES THAT:

At all times material to this Indictment, unless otherwise set forth, with all dates and times alleged to be “on or about” or “in or about,” and all amounts alleged to be “approximately:”

GENERAL ALLEGATIONS

Persons and Entities

1. Defendant **HUNTER MATTHEW BURROUGHS** (“BURROUGHS”) was a resident of Benton County, within the Fayetteville Division of the Western District of Arkansas.

2. Common Compounds, Inc., (“CCI”), also known as “CCI Billing,” was an Arkansas corporation located in Rogers, Arkansas, within the Fayetteville Division of the Western District of Arkansas. CCI, established in July 2011, sold health care providers and their medical clinics topical medications, which those health care providers dispensed by prescription. CCI then billed that medication to various workers’ compensation insurers on behalf of the health care provider or medical clinic.

3. BURROUGHS was a founder and owner of CCI. From mid-2013 through September 28, 2017, BURROUGHS was the sole owner of CCI.

4. EZPharmaRX, LLC (“EZPharma”), established in July 2015, was an Arkansas corporation owned by BURROUGHS and utilized in conjunction with CCI. The management team, location, and employees of EZPharma were identical to CCI.

5. Defendant **STEPHEN KEITH ANDREWS** (“ANDREWS”) was a resident of Benton County, Arkansas. ANDREWS was a sales manager for CCI from mid-2013 until 2015, and the CCI Chief Executive Officer (“CEO”) from 2015 until January 2018. ANDREWS was responsible for recruiting and managing sales representatives, as well as the day-to-day sales operations of CCI. ANDREWS assisted BURROUGHS in managing CCI.

6. Amanda Dawn Rains (“Rains”), charged elsewhere, was a resident of Benton County, Arkansas. From the first quarter of 2013 until the second quarter of 2016, Rains managed the billing department of CCI. Her duties with CCI included being responsible for CCI’s processing of prescriptions sent by health care providers, submission of claims to insurers, and supervision of CCI employees in the billing department. After leaving CCI, Rains was employed by BURROUGHS as CEO of Preferred Billing Partners, which BURROUGHS also owned. However, until May 5, 2017, Rains continued to perform work related to CCI, including advising “Employee-2” and “Employee-3,” who succeeded her as CCI Billing Directors from the second quarter of 2016 through September 28, 2017.

7. “Attorney-1,” who resided and worked in the Western District of Arkansas, was corporate counsel for CCI from the time the company was established by BURROUGHS and others until 2013.

8. “Attorney-2,” who resided and worked in the Western District of Arkansas, was corporate counsel for CCI from at least January 2014 until at least July 2016.

9. On September 29, 2017, “Company-9,” based in Aventura, Florida, purchased CCI and EZPharma from BURROUGHS.

Prescribing, Dispensing, and Billing for Medications

10. Under federal regulations, a “health care provider” was defined as: a doctor of medicine or osteopathy, podiatrist, dentist, chiropractor, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, or a clinical social worker who was authorized to practice by the state and performing within the scope of their practice as defined by state law.

11. “Workers’ compensation insurers” were a type of insurance company that provided workers’ compensation insurance to public and private entities. Workers’ compensation insurance was a type of insurance that provided benefits to employees who suffered work-related injuries and illnesses. This insurance could help pay for medical care, wages from lost work time, and other costs.

12. Topical medications were medications applied to body surfaces such as the skin and mucus membranes. Topical medications included, but were not limited to, creams and patches.

13. Terocin, a form of topical medication, later rebranded New Terocin (“Terocin”) was a lotion formulated for pain relief and pain management. Terocin also came in the form of a patch.

14. Medrox, a form of topical medication, was a pain relief patch. Medrox also came in the form of a lotion.

15. Medical clinics often had what was known as an “in-house pharmacy,” sometimes referred to as “point-of-care dispensing” or “in-house dispensing.” A typical in-house pharmacy was one in which the medical clinic purchased and maintained an inventory of frequently used prescription and over-the-counter medications that could be dispensed to patients in accordance with prescriptions written by health care providers within that office.

16. Health care providers often used management companies for assistance in managing and administering in-house pharmacy programs. The management companies provided management and administrative services, such as assisting in the acquisition, shipment and storage of pharmaceuticals and related supplies, educating staff members, and billing and collection services. Management companies normally operated with health care providers pursuant to a management agreement between the relevant parties. These arrangements typically did not involve percentage-based profit splitting.

17. Average Wholesale Price (“AWP”) was a dollar figure reported by commercial publishers of drug pricing data based on drug manufacturers’ self-reported information. The AWP was a benchmark used to determine pricing and reimbursement of medications to third parties such as the government and private payers.

18. The Healthcare Common Procedure Coding System (“HCPCS”) was a coding system that described physician and non-physician services and supplies. These codes included supplies, such as drugs. The codes consisted of five characters, the first being a letter, which was followed by four numbers. Billing codes beginning with the letter “J” (referred to as “J codes”) denoted drugs that typically were not self-administered. For instance, J3490 was the code denoting an “Unclassified Injection.”

19. While CCI was involved in the distribution of other medical products, the majority of CCI’s billing, including most, if not all DOL-OWCP billing, was for topical medications.

The Federal Employee Compensation Act

20. The Federal Employee Compensation Act (“FECA”) was a health care benefit program as defined in Title 18, United States Code, Section 24(b), and a federally funded health care program as defined in Title 42, United States Code, Section 1320a-7b.

21. FECA provided for the payment of workers' compensation benefits to federal employees who suffered an injury, disease, or death in the performance of duty. A federal employee must have a medical condition that was causally related to a claimed work-related injury, disease, or death to establish a claim for benefits. Benefits were only available to the employee while a work-related condition continued to exist. The benefits under FECA included compensation for lost wages, all necessary medical care, medical supplies and prescription drugs, and disability payments. FECA provided coverage for pharmaceuticals necessary to treat symptoms resulting from work-related injuries, if prescribed by a doctor and medically necessary.

22. The U.S. Department of Labor, Office of Workers' Compensation Programs ("DOL-OWCP"), administered the benefits under FECA. In order to submit claims for benefits, health care providers and their billing agents (such as management companies) were required to enroll with DOL-OWCP to receive a provider identification number and proceeds from adjudicated claims under FECA. Form OWCP-1168, Provider Enrollment Form, was used for enrollment and updating provider information. By completing and submitting Form OWCP-1168, a provider or billing agent certified that all applicable Federal and State licensure and regulatory requirements were satisfied.

23. In order to submit claims for benefits, health care providers and billing agents such as management companies were required to enroll with DOL-OWCP through its designated billing administrator, Affiliated Computer Services ("ACS"). After the assignment of a provider number, the provider or billing agent was given access to the ACS online system, by which one could submit claims, check the status of pending claims, and perform other billing related functions.

24. Claims for reimbursement under FECA normally included a Health Insurance Claim Form, OMB Form HCFA-1500 (also designated OWCP-1500 and sometimes referred to as a "Form 1500") ("HCFA form"). The HCFA forms, which were submitted electronically, itemized

the procedures and services, identified using the appropriate codes, and contained the signature or signature stamp of the provider. Providers were required to identify on each claim the services provided. All claims submitted were required to be supported by medical evidence. Each HCFA form contained the following attestation: “I certify that the services shown on this form were medically indicated and necessary for the health of the patient.” Additionally, each HCFA form contained the following warning: “Anyone who misrepresents or falsifies essential information to receive payment from Federal funds requested by this form may upon conviction be subject to fine and imprisonment.”

25. DOL-OWCP caused payments to be sent to providers and billing agents via electronic funds transfer (“EFT”) from the U.S. Treasury, and DOL-OWCP sent remittance notices to the provider or billing agent that submitted the claim, listing all the claims paid on each EFT.

26. FECA patients did not pay for the treatment of their work-related injuries, and did not receive any explanation of the benefits DOL-OWCP paid on their behalf. Consequently, FECA patients typically were aware of neither what services their providers billed for, nor the cost of those services to DOL-OWCP.

27. FECA was financed by the Employees’ Compensation Fund, which consisted of funds appropriated by Congress directly and indirectly, and by administrative fees paid to various federal agencies. Multiple federal agencies reimbursed DOL-OWCP for services billed by CCI. Those federal agencies included the following: (a) the U.S. Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Homeland Security, Justice, State, Interior, the Transportation, Treasury, and Veterans Affairs; (b) the Environmental Protection Agency, General Services Administration, Government Publishing Office, National Aeronautics and Space Administration, Smithsonian Institution, Social Security Administration, Tennessee

Valley Authority, U.S. Postal Service; (c) the Army, Navy, and Air Force; and (d) various independent U.S. Government agencies.

Registration with DOL-OWCP

28. CCI submitted a Form OWCP-1168 to DOL-OWCP on November 29, 2011, and after submitting supplemental documentation to DOL-OWCP obtained a provider number in January 2012. CCI utilized a billing address in Rogers, Arkansas. From December 2013 through February 2016, Rains, BURROUGHS, and others caused CCI to update its addresses and billing information with DOL-OWCP on four occasions.

Federal Anti-Kickback Law and the “Substantial Financial Risk” Exception

29. Title 42, United States Code, Section 1320a-7b, outlined criminal penalties for certain acts involving federal health care programs. Section (b), “Illegal Remunerations,” provided that: “Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind...shall be guilty of a felony...”

30. One exception to the anti-kickback statute, known as the “substantial financial risk” exception, in relevant part exempted remuneration pursuant to a written agreement, if the written agreement, through a risk-sharing arrangement, placed the individual or entity providing the items or services “at substantial financial risk for the cost or utilization of the items or services, or a combination thereof, which the individual or entity is obligated to provide.”

COUNT 1
18 U.S.C. § 1349
(Conspiracy to Commit Health Care Fraud)

31. The factual allegations of Paragraphs 1 through 30 are re-alleged and incorporated as though fully set forth.

Object of the Conspiracy

32. Beginning in or about 2011, and continuing until September 28, 2017, in the Fayetteville Division of the Western District of Arkansas, and elsewhere, defendants **HUNTER MATTHEW BURROUGHS** and **STEPHEN KEITH ANDREWS** knowingly combined, conspired, and agreed together, and with Amanda Dawn Rains and others known and unknown to the Grand Jury, to knowingly and willfully execute and attempt to execute a scheme and artifice to defraud health care benefit programs and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody or control of, health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

Fraudulent Purpose

33. It was the goal of BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury to fraudulently obtain money from health care benefit programs, including FECA, administered by DOL-OWCP, and private workers' compensation insurers, by submitting claims for topical medications supplied by CCI and prescribed and dispensed by health care providers who were remunerated (paid) based on a percentage of the amounts collected. It was further the goal of the conspirators to continue in their fraudulent scheme by concealing and attempting to conceal CCI's remuneration arrangements with providers.

The Scheme

34. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury devised a scheme and artifice to defraud, and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody or control of, the U.S. Department of Labor and private workers' compensation insurers. The basic premise of this scheme was that:

a. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury would and did cause CCI to solicit health care providers by offering a split of future profits (i.e., remuneration) for claims paid by FECA and other insurers for certain topical medications (i.e., goods or items), in exchange for, among other things, the health care providers exclusively purchasing the topical medications from CCI.

b. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury would and did cause CCI to purchase topical medications and furnish them to health care providers.

c. The health care providers would and did prescribe and dispense the topical medications to workers' compensation patients.

d. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury would and did cause CCI, acting as the billing agent for the health care providers, to bill the workers' compensation programs, including DOL-OWCP, for the topical medications at significantly higher rates, typically a 1,500 to 2,000 percent markup over the price at which they sold those items to the providers.

e. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury would and did cause CCI to pay the health care providers a percentage of the proceeds of the

funds reimbursed by the workers' compensation programs for the topical medications they dispensed, typically 50 percent.

f. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury would and did cause CCI to employ sales and marketing representatives to recruit health care providers and manage their accounts, and paid those sales and marketing representatives a percentage of the proceeds from health care providers they recruited and managed.

g. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury would and did cause CCI to recruit and employ staff members at some medical clinics whose health care providers prescribed and dispensed its topical medications to workers' compensation patients. CCI recruited and employed the medical clinic staff members to process topical medicine prescriptions for transmittal to CCI, to dispense topical medications to workers compensation patients, to manage the inventory of CCI topical medications held within the medical clinic, and to act as a liaison between CCI and the health care provider.

h. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury structured the scheme so as to conceal and cover up their fraud, by attempting to avoid the appearance of illegal fee-splitting arrangements with health care providers, even though such fee-splitting was integral to the scheme. They did so by concocting and disseminating a false depiction of the scheme, in which health care providers assumed financial risk by way of the business arrangement, when in truth and in fact they did not. By claiming that health care providers paid for CCI's topical medications "up front," the conspirators attempted to and did create the false appearance that the health care providers assumed the financial risk that the patients' insurance would not cover the medication. However, in truth and in fact, health care providers party to the scheme would not and did not pay for the medication for extended periods of time. Moreover, the

minimal cost of the medications, compared to the inflated amounts billed and collected by CCI, ensured there was no substantial risk to the providers and their clinics.

i. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury would and did make, and cause CCI to make, false statements and reports to execute all aspects of the scheme.

Manner and Means

35. The manner and means by which BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury achieved and attempted to achieve the objects of the conspiracy included, but were not limited to, those set forth in the paragraphs immediately above, and the following:

BURROUGHS, ANDREWS, and Others Caused CCI to Recruit Health Care Providers to Participate in the Scheme.

36. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to employ sales representatives to recruit health care providers to contract with CCI to prescribe and dispense topical medications provided to them by CCI. CCI paid commissions to the sales representatives based upon the gross revenue collected from insurers for prescriptions written by the recruited providers—typically, ten percent. Some contracts between CCI and sales representatives included additional commissions based on the number of prescriptions collected in a month.

37. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to prepare presentations to be used by CCI sales representatives to recruit health care providers. Portions of the sales pitch involved slide-shows prepared using the Microsoft PowerPoint software. (“PowerPoint presentations.”) The presentations contained assurances that the proposed business arrangement did not violate federal and state anti-kickback laws because

health care providers were required to pay for all medications at the time of receipt (“up-front”) in order to place their businesses at risk of financial loss.

38. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to enter into the above-described contracts with health care providers, knowing the business arrangements did not place providers and their medical clinics at substantial financial risk, and thus caused CCI’s payments to providers and clinics to be illegal remunerations, sometimes described as “kickbacks.”

39. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused to be made false statements to health care providers and on CCI’s public website to conceal and cover up the true nature of CCI’s business arrangements with contracted health care providers.

40. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused these false statements to be disseminated in CCI’s prepared presentation materials, in-person statements by CCI’s sales and marketing representatives to health care providers, and in language posted on CCI’s public Internet website.

41. Finally, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury further caused CCI’s prepared presentations to assure health care providers that they would be placed at minimal financial risk, and promised returns on investment as high as 241 percent, even if the provider only dispensed half of the medications purchased from CCI.

42. During the course and in furtherance of the conspiracy, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury recruited to join in the scheme both individual health care providers and multi-provider clinics. Based on total remunerations, the top three participants recruited to dispense medications provided by CCI were those set forth below.

a. "Clinic-1" was a group practice medical clinic located in Redwood City, California, which specialized in pain management, internal medicine, physical medicine and rehabilitation, sports medicine, and pain medicine. Clinic-1 employed multiple health care providers, including "Physician-1," an anesthesiologist and pain medicine provider.

b. Robert Dale Bernauer, Sr. ("Bernauer"), charged elsewhere, was an orthopedic surgeon and orthopedic medicine practitioner who practiced in Lake Charles, Louisiana. Bernauer's clinic, R. Dale Bernauer APMC, also known as The Bernauer Clinic, was located at 4150 Nelson Road, Lake Charles, Louisiana. Bernauer practiced medicine at this location from 1986 until he voluntarily surrendered his medical license in December 2016.

c. "Physician-2," was a general practice and general surgery provider who practiced in Alexandria, Louisiana. Physician-2 owned "Clinic-2," a group practice medical clinic located in Alexandria, Louisiana, which specialized in general practice, general surgery, internal medicine, and occupational medicine. Clinic-2 employed "Physician-7," an internal medicine and bariatric medicine provider.

43. On October 31, 2013, ANDREWS sent a health care provider an email having the subject line, "Medrox Patches." In the body of the email, ANDREWS identified the profit the provider would realize per patient, stating:

What we have found is with product grouping we can maximize your profit for prescribing these two products. You can prescribe the Terocin pain cream for daytime use and the Medrox patches for night time use. With you prescribing these two products in this manner **Your Net Profit is \$653 per patient.**

(Emphasis in original.) ANDREWS also stated, "[a]s always these products are for workers comp patients."

44. On November 6, 2013, ANDREWS sent an email to a potential sales representative having the subject line, "CCI Information." In the body of the email, ANDREWS stated: "The first attachment is how the process works, the second attachment is our product line and some

other information, and the third attachment is some checks we currently sent to some clinics that are on our program.” The email had three attachments.

a. The first was the following document, entitled, “How the process works-
CCI.doc”:

How the process works:

Common Compounds (CCI) and the physician enter into a contract naming Common Compounds the billing agent for the physician, Worker's Comp only, (CCI Contract).

The physician orders manufactured compounds from CCI for dispensing in his/her office, (CCI Order Form).

CCI bills the physician for the purchased product at the end of the month in which the product was ordered and gives the physician 60 day terms, starting the following month the order was placed. It is recommended to order product at the beginning of each month. (Example: Product ordered January 4th, clinic receives bill every month but payment is not due or expected on January shipments until April 1st)

The physician writes a prescription and gives the patient Menthaderm/Terocin/Medrox in the office or a combination of the drugs. (CCI Prescription Form).

The physician's office faxes the prescription form to Common Compounds.

Common Compounds bills and collects from Workers Comp and sends the physician 50% of what is collected.

Steps:

1. Sign contract, to include (Dispensing License/MD License/NPI Number and DEA Number)
2. Place Product order
3. Prescribe and dispense to patient
4. Scripts are faxed daily to Common Compounds office 877-427-2307
5. Re-order Product

Financial Benefit:

Topical cream is supplied in a box with (2-120mg) bottles of Menthaderm/Terocin/Medrox (1 month supply). The average reimbursement for a box of topical cream is \$852. The physician receives 50% after CCI billing or \$426 avg. reimbursement. Physician pays for the topical creams (\$70 per box) and nets approx. \$356 per box dispensed.

CCI also offers transdermal patches. A box of patches contains (5) patches. A month's prescription is (6) boxes per patient or 30 patches. Physicians cost for a box of patches is \$23 per box, (6 boxes = 30 patches = \$138. Average reimbursement is \$870/box. The physician receives 50% after CCI billing or an average of \$435/box and pays for the Medrox patches (\$138) and nets approx. \$297 per patches dispensed. When a product grouping of transdermal patches and creams are prescribed for the patients plan of care together, then the clinic will \$653 Net Profit per patient.

Florida Representative:



CCI contact: CONTRACTS

Amanda Rains

arains.cci@gmail.com

 COMMON
COMPOUNDS, INC.

b. The second attachment was a PDF entitled “CC_Slicks.pdf,” which contained the following image:

PROFIT FORECAST SUMMARY			
Scripts Per Week	Scripts Per Month	Your Organization's Monthly Profit	Annual Income w/Ancillary Products
20	80	\$24,400.00	\$292,800.00
30	120	\$36,600.00	\$439,200.00
40	160	\$48,800.00	\$585,600.00
50	200	\$61,000.00	\$732,000.00

Reimbursement and Collections will vary by state.

c. The third attachment was an image entitled, “CCI Checks and Details.pdf,” which included a product listing and images of CCI checks written in 2013 to CCI clients and signed by BURROUGHS, including Check #1370, payable to Clinic-1 in the amount of \$89,376.51.

45. On December 28, 2015, BURROUGHS modified a Word document similar to the first attachment to ANDREWS’s November 6, 2013, email depicted above, to list ANDREWS and Rains as points of contact on the first of two pages, as depicted below. This version, depicted below, listed ANDREWS as the Regional Manager and Rains as the CCI contact for contracts on the first of two pages.

How the process works:

CCI and the physician enter into a contract naming CCI the billing agent for the physician, Worker's Comp only, (CCI Contract).

The physician orders manufactured compounds from CCI for dispensing in his/her office, (CCI Order Form).

CCI bills the physician for the purchased product at the end of the month in which the product was ordered and gives the physician 60 day terms, starting the following month the order was placed. It is recommended to order product at the beginning of each month. (Example: Product ordered January 4th, clinic receives bill every month but payment is not due or expected on January shipments until April 1st)

The physician writes a prescription and gives the patient LidoPro/Terocin in the office or a combination of the drugs, (CCI Prescription Form).

The physician's office faxes the prescription form to CCI.

CCI bills and collects from Workers Comp and sends the physician 50% of what is collected.

Steps:

1. Sign contract, to include (Dispensing License/MD License/NPI Number and DEA Number)
2. Place Product order
3. Prescribe and dispense to patient
4. Scripts are faxed daily to CCI office 877-427-2307
5. Re-order Product

Financial Benefit:

Topical cream is supplied in a box with (2-121mg) bottles of topical pain cream (1 month supply). The average reimbursement for a box of topical cream is \$875. The physician receives 50% after CCI billing or \$437 avg. reimbursement. Physician pays for the topical creams (\$76 per box) and nets approx. **\$361 per box dispensed**.

CCI also offers transdermal patches. A box of patches contains (10) patches. A month's prescription is (3) boxes per patient or 30 patches. Physicians cost for a box of patches is \$49.33 per box, (3 boxes = 30 patches = \$148. Average reimbursement is \$970/month worth. The physician receives 50% after CCI billing or an average of \$485/box and pays for the Terocin patches (\$148) and nets approx. **\$337 per patches dispensed**. When a product grouping of transdermal patches and creams are prescribed for the patient's plan of care together, then the clinic will on average get **\$698 Net Profit per patient**.

Regional Manager
Stephen Andrews
[REDACTED]
stephena@cc-medical.com

CCI contact: CONTRACTS
Amanda Rains
[REDACTED]
amandar@cc-medical.com

46. Between August 11, 2016, and August 15, 2016, the conspirators caused CCI to create an 11-slide PowerPoint marketing presentation entitled, "CCI Topical Pain Program Training [REDACTED].pptx." The presentation contained the following slide (slide #3) outlining the process a health care provider would use to submit a topical medication claim, and to set forth an example of a commission paid on "50% Contract."

Ancillary Program

Example of 50% Contract:

Medication Cost (1 month supply):	
LidoPro	\$76
Terocin Patch	\$148
Total (1) month cost	\$224
AWP Billed:	
LidoPro	\$1,050
Terocin Patch	\$1,100
Total Billed	\$2,150
Approx. 50% Collections	\$1,075
Less Medication cost:	-\$224
Clinic Est. Net: \$851 Patient (10) Patients a month - \$8,510/Month.	

How the process works:

CCI and the Physician/Clinic enter into a contract naming CCI the billing agent for the physician. Worker's Comp only. (CCI Contract).

The physician orders product from CCI for dispensing in his/her office. (CCI Order Form).

CCI bills the physician for the purchased product at the end of the month in which the product was ordered and gives the physician 60 day terms, ~~starting the following month the order was placed~~. It is recommended to order product at the beginning of each month. (Example: Product ordered January 4th, clinic receives bill every month but payment is not due or expected on January shipments until April 1st).

The physician writes a prescription and gives the patient LidoPro/Terocin in the office or a combination of the drugs, (CCI Prescription Form). 1 month is normally (1) Box LidoPro and (3) Boxes Terocin Patches.

The physician's office faxes the prescription form to CCI.

CCI bills and collects from Workers Comp and sends the physician 50% of what is collected.

Steps:

- Sign contract, to include (Dispensing License/MD License/NPI Number and DEA Number)
- Place Product order
- Prescribe and dispense to patient
- Scripts are faxed daily to CCI office 877-427-2307
- Re-order Product

47. Additionally, the 11-slide PowerPoint marketing presentation referenced immediately above contained the following slide (slide #10):

Minimal Clinic RISK

- If a clinic orders 10 Patients worth of LidoPro and Terocin Patch and pays for it up front. $10 \times \$224 = \$2,224$.
- CCI Collects $10 \text{ Patients} \times \$2,150 = \$21,500$. $\$21,500/50\% \text{ contract} = \$10,750$ to clinic. $\$10,750 - \$2,224/\text{cost} = \$8,526$ Net. That's huge! Where else can they get that?
- **RISK:** If CCI only collected 5 out of 10 patients for a clinic and the clinic pays for all 10 patients worth of product. $5 \times \$2,150 = \$10,750$. $\$10,750/50\% = \$5,375$. $\$5,375 - (\text{all 10 patients cost } \$2,224) = \$3,510$ net profit to the clinic.
- Only collecting on 5 out of ten patients is a Return On Investment of 241%. Profit $\$5,375/\$2,224$ Total Cost = **241% ROI**.

ANDREWS and BURROUGHS Caused CCI to Furnish Attorney Letters for Use by CCI Employees.

48. To recruit health care providers to enter into contracts with CCI, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury also caused CCI to show providers letters written by Attorney-1 and Attorney-2 (the “Attorney Letters”). The Attorney Letters asserted CCI’s proposed business arrangement did not violate federal anti-kickback law, because the provider or clinic purchased medications “up front” and was thus “at risk.” However, as BURROUGHS and ANDREWS then knew, the assurances contained in the Attorney Letters were false and misleading because CCI would not and did not implement the business arrangement as described in the prepared presentations and written contracts subsequently entered into, and further knew the business arrangement placed the health care providers at little or no financial risk.

Business Arrangements with Health Care Providers

49. Upon being successfully recruited, health care providers signed contracts with a representative of CCI, normally BURROUGHS. These contracts established CCI as the exclusive billing agent for topical medications it furnished to the providers. Further, the contracts provided for remuneration to the providers using a percentage-based profit splitting system. Typically, the provider would be and was paid fifty percent (50%) of the amounts CCI successfully collected in billing for medications prescribed by the provider and dispensed by the provider’s in-house pharmacy. Further, the contracts typically required the provider to only prescribe and dispense CCI’s topical medications to workers’ compensation patients, unless otherwise permitted by CCI.

50. BURROUGHS caused CCI to agree to sell the topical medications to the providers at prices substantially below AWP, and allowed the providers and clinics extended periods in which to pay for the medications—typically up to 90 days.

51. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to ship to health care providers and their medical clinics topical medications, normally via FedEx ground, overnight, and priority overnight packages.

52. Finally, the health care providers prescribed the topical medications and dispensed them to workers' compensation patients through their in-house pharmacies.

53. During the course and in furtherance of the conspiracy, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to continue to provide topical medications to health care providers, even when they had actual knowledge that the providers would not and did not pay for the medications up-front, as required in the contracts.

The Conspirators Instructed Providers to Not Dispense Topical Medications to Patients Having Certain Insurers, and Maintained a "Do Not Dispense" List.

54. From 2013 through 2017, ANDREWS, Rains, and other CCI employees repeatedly referenced a "do not dispense list" or list of a similar nature in which the conspirators caused CCI to recommend that topical medications not be dispensed to certain types of patients and to patients with certain workers' compensation insurers, for which CCI could not profitably bill.

55. On December 31, 2013, Rains sent an email to a health care provider's employee having the subject line, "RE: [REDACTED] prescription faxed 12/31/13." Rains explained to the health care provider that she had submitted some "test" claims for patients with private insurance to see if the topical medications were found on private pay fee schedules in addition to workers' compensation fee schedules. Rains stated in the email, "[t]he best method to increase the chances of payment on these claims is to prescribe these products to workers comp patients only."

56. Between September 15, 2014, and September 17, 2014, Rains created a nine-slide PowerPoint presentation entitled, "Terocin Medrox Slide Show Power Point 2014.pptx." The presentation contained the following slide (with the identities of four workers' compensation insurers redacted):

Workers Comp Patients ONLY!

► **DO NOT GIVE TO:**

- [Insurer-3]
- [Insurer-4]
- [Insurer-5]

- [Insurer-6] ?

57. On July 24, 2017, Employee-3 sent an email to Physician-1, ANDREWS, a CCI employee, and other individuals associated with Clinic-1 having the subject line “[Insurer-8].” In the body of the email, Employee-3 stated that Insurer-8 was requiring additional documentation and the collection rate was low. Employee-3 advised that CCI was attempting to bill the insurer in a different manner, but it may not be successful. Employee-3 stated, “I would advise that all California clinics not to *[sic]* dispense any patient *[sic]* that *[sic]* has [Insurer-8] for the time being.” Physician-1 responded via email to ANDREWS, Employee-3, and other individuals, “Ok, I will notify the office. Please let us know when we can dispense again, thank you-[Physician-1 initials].”

58. Also on July 24, 2017, Employee-3 sent an almost identical email to multiple CCI employees, including another CCI sales representative and ANDREWS. In the email, Employee-3 directed that clinics in California be told to not dispense to Insurer-8 beneficiaries.

59. Also on July 24, 2017, ANDREWS sent Employee-3 an email stating that a health care provider had requested a quarterly report so he “knows who not to dispense to any longer.”

The Conspirators Caused CCI to Bill and Collect from Workers' Compensation Insurers, Including DOL-OWCP, for Topical Medications Dispensed.

60. Health care providers billed for all medical services provided to their patients, except for CCI topical medications they prescribed and dispensed, in accordance with their standard practice, and under their own provider numbers.

61. Health care providers provided to CCI, usually via interstate wires, copies of the prescriptions and other documentation of the dispensed topical medications, for CCI to bill.

62. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to bill workers' compensation insurers, including DOL-OWCP, for the topical medications, using CCI's provider number. To do so, CCI employees prepared claims, which normally included a HCFA form. In the billing code section, Box 24-Section D, CCI employees were instructed to use the code J3490, meaning an "unclassified injection."

63. During the course and in furtherance of the conspiracy, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to send a DOL-OWCP office located in London, Kentucky more than 5,000 claims seeking payment for topical medications health care providers had prescribed and dispensed.

64. Based upon the claims the conspirators caused CCI to submit, workers' compensation insurers, including DOL-OWCP, dispensed payments to CCI via wire transfer to its bank accounts ending in 3533 and 4368, held at Simmons Bank and Regions Bank, respectively.

65. From the claims the conspirators caused CCI to submit to DOL-OWCP, CCI received net amounts typically ranging from \$125 to \$1,000 per topical medication prescription, with the average payment being \$765 per claim.

66. On August 5, 2014, Rains sent an email to multiple CCI employees, having the subject line, "Medrox Patches: AWP price increase." In the email Rains informed the CCI employees that the "AWP price for Medrox Patches has increased from \$870.00 to \$1,170.00 for

a 30 day supply.” Rains further stated, “I am in talks with Hunter as to the price we will be billing it as, I am almost positive we will be billing the full price.”

67. On August 6, 2014, Rains sent an email to multiple CCI employees, having the subject line, “Medrox Patches: Formulary changes.” In the body of the email Rains confirmed that Medrox patches would be billed at \$1,170.00.

68. On May 22, 2015, Rains sent an email to two CCI employees having the subject line, “RE: [REDACTED] (really all DOSs).” In the body of the email, Rains instructed the employees to bill an insurer in Ohio using a health care provider clinic’s tax identification number as opposed to CCI tax identification number because CCI was not on the insurer’s approved providers for workers’ compensation claims. Rains advised that CCI would track the payment to the health care provider and take the money owed CCI out of the health care provider’s money owed. Rains stated in the email, “Ohio does not allow physician dispensing so if we can get around that for this claim as they think we can, it is worth a try.”

69. On or about September 2, 2015, Rains created a PowerPoint presentation titled, “CCI Billing Department Team Meeting 9.” The PowerPoint presentation contained the slide set forth below outlining the steps CCI billing employees used to process a workers’ compensation topical medication claim:

CCI TOPICAL PROGRAM

BILLING:

- HCFA 1500 PAPER BILLING TO MEDICAL INSURANCE

MEDICATIONS:

ONLY TOPICAL MEDICATIONS (LOTIONS/PATCHES) ARE INCLUDED IN THIS PROGRAM

TEROCIN CREAM	TEROCIN PATCH	MEDROX CREAM	MEDROX PATCH
MENTHODERM	LIDOPRO OINTMENT	LIDOPRO PATCHES	FIRST RELIEF TOPICAL SPRAY
REFIYT PATCH (FLORIDA)			

PRESCRIPtIONS:

- EITHER FAXED OR EMAILED ON CCI PRESCRIPTION FORM.
- CCI PROCESSES ALL PATIENT DEMOGRAPHICS, SUBMITS RX, AND SAVES PRESCRIPTION IN ONLINE STORAGE.
- **1 EXCEPTION:** *OFFICE IN LOUISIANA ENTERS THEIR OWN PRESCRIPTIONS FOR THIS PROGRAM.*

NOTE: THIS PROGRAM MAKES UP THE HIGHEST PERCENTAGE OF OUR CURRENT CL ENT BASE

70. On December 14, 2016, ANDREWS sent an email to BURROUGHS, Rains, and other CCI employees having the subject line “2017 Collection and Billed Goals.” In the body of the email, ANDREWS provided CCI’s monthly collection goals for the year 2017.

71. On October 19, 2016, Rains sent ANDREWS an email having the subject line, “RE: Peer to Peer,” regarding edits Rains had made to a CCI letter intended for health care providers who were employed by insurers to confirm that treatments provided were medically necessary. The signature block of the email listed Rains’s titles as: Preferred Billing Partners CEO, and Billing Consultant for CCI and EZPharma. In the email, Rains stated:

[“Individual-6”]’s letter looked good, it covered all the points that I tell the doctors to say. Over 70% of it was composed of a letter I personally made for [Individual-6] over a year ago to help with Bernauer’s claims, so naturally I like it. :) The stuff I took out was just a few things I’ve learned don’t work or cause flags in the few times I’ve gotten to speak with an insurance staff doctor. I don’t get feedback from the providers on what questions they are asked or if anything in these calls stump them so I’ve stayed true to the information that [Individual-6] listed in the letter. I’ve been out of the close internal daily loop of CCI for many months, if you and [REDACTED] know of any questions or topics that are stumping the doctors let me know and I’ll come up with a solution for us and I promise it will be epic and fantastic as always. ;)

The Conspirators Caused CCI to Remunerate Health Care Providers, and Concealed the Scheme to Defraud.

72. Following receipt of funds from billing for the topical medications, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to remunerate the dispensing health care provider the agreed percentage (normally 50%) by way of checks drawn on its business accounts ending in 3533 and 4368, using the U.S. Postal Service and commercial interstate carriers.

73. To reassure health care providers that they would not be subjected to additional scrutiny by insurers, including DOL-OWCP, as late as May 26, 2015, the conspirators caused the CCI website's Frequently Asked Questions section to state: "We do not bill on J Code's *[sic]* or L Code's *[sic]*, which are used for billing medical services or supplies."

74. However, in truth and in fact, during the course and in furtherance of the conspiracy, and continuing until September 28, 2017, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI submit approximately 4,849 claims, to DOL-OWCP using HCPCS "J" Code J3490, including approximately 900 claims paid in 2015. These claims resulted in approximately \$3.9 million paid by DOL-OWCP.

75. The conspirators caused the Frequently Asked Questions section of the CCI website, as of May 26, 2015, to state:

Q: Why is our program not in violation of the Stark Law or Anti-Kickback laws?

A: All of our services work on behalf of the physician. Therefore the physician is actually agreeing to pay us for the service we provide, not the reverse. We do not pay the physician for dispensing medications. Rather, we charge the physician a percentage of the collected funds as compensation for the Management Services that we provide on the physician's behalf. When physicians order medications from us, they are buying the medications. We are not providing them on consignment; rather we are selling them directly to the physicians. This is a legal requirement and not an option. Offering physician's medications on consignment and then paying them based on their dispensing would be in violation of the Stark Laws.

76. However, in truth and in fact, BURROUGHS and ANDREWS did not require CCI health care providers, including Clinic-1, Bernauer, and Clinic-2, to pay for the medication in advance, and when providers failed to do so they simply deducted the cost of the medication from their monthly remuneration.

77. During the course and in furtherance of the conspiracy, ANDREWS caused CCI to provide him with regular monthly reports showing medical clinics' commissions (remunerations) and outstanding product (topical medication) invoices. ANDREWS then decided, in consultation with other CCI employees, whether to deduct outstanding product invoices from health care providers' commissions.

78. On August 4, 2016, ANDREWS sent Employee-4 and another CCI employee an email that discussed a health care provider's payments, and the fact that the provider owed invoices due for CCI products. Employee-4 suggested that CCI could simply apply the amount due to the provider's invoices if ANDREWS approved. ANDREWS replied by stating, "I do approve this..."

79. On January 4, 2017, ANDREWS sent a CCI sales representative an email regarding a health care provider who had a past due invoice of \$3,900 due on December 9, 2016. ANDREWS noted the health care provider was due a check in the amount of \$6,031.59, and asked the sales representative, "[h]ow do they want to handle it? We can take it from their check or they can send in a check."

80. On January 4, 2017, ANDREWS sent a CCI sales representative an email having the subject line, "Past due Invoices." The email concerned two different health care providers who had past due invoices. ANDREWS asked the sales representative to find out how the health care providers wanted to handle their past due amounts, stating, "I need to know how they would like to handle it by sending us a check or us taking those two invoices out of their check?"

81. On January 16, 2017, ANDREWS sent multiple CCI sales representatives an email regarding a health care provider who had product invoices past due, stating:

The email stated they want us to deduct from their check what has been reimbursed by the insurance and hold the other product until they show a profit. So in other words pay for what gets reimbursed and not pay for the ones that don't and cci holds the product cost until the *[sic]* see a profit. One the doctor/clinic has to show a risk and this is not a risk. Second this would be considered a consignment which is illegal. If you would like to deduct the full product cost from their reimbursements we can do that like we do with other accounts. It has to all *[sic]* the product cost not just the ones that got reimbursed. Let me know if you have any questions...

82. On January 24, 2017, ANDREWS sent Employee-4 and another CCI employee an email endorsing a health care provider's request for treatment contrary to CCI's represented practices, stating, “[t]he doctor wants all checks and invoices sent to his house instead of the clinic. He also wants invoices taken out of his check when they are due.”

83. On March 6, 2017, a CCI employee sent an email to a CCI sales representative having the subject line “Clinic Checks for March.” In the body of the email was a table detailing the “Open Balance” for many health care providers who were CCI clients. Clinic-1 and Physician-1 were listed on the same line of the table with what appeared to be an open balance in excess of \$68,000, with due dates from September 8, 2016, to March 10, 2017. In the right column of the row for Clinic-1/Physician-1, there was a note in red that stated: “That one is always Stephens *[sic]* call.” Additionally, many of the other health care providers listed in the table had a note in the right column of the table instructing CCI employees to pay different percentages of their remuneration checks to cover their money owed to CCI. The same day, the CCI sales representative forwarded the email with the table to ANDREWS. ANDREWS then replied to the CCI sales representative and asked, in the body of the email, if the health care providers had been notified money would be deducted from their reimbursement checks.

84. On August 16, 2017, BURROUGHS sent an email to Employee-4 having the subject line, “Re: CCI Sales Rep Contract.” In the body of the email, BURROUGHS asked

Employee-4, “can you send me the commission amounts submitted.” Employee-4 emailed BURROUGHS, stating, “[l]ess the \$60,593.29 that we offset invoice.” BURROUGHS then sent an email to Employee-4, ANDREWS, and two other CCI employees, with two Excel spreadsheets depicting the “commissions” for the month of July 2017. In the body of the email, BURROUGHS stated, “the ones highlighted in red are concerning and I am needing some explanation on.”

85. On September 5, 2017, a CCI employee emailed ANDREWS a spreadsheet that listed CCI health care providers and identified numerous health care providers who had past due balances that exceeded one hundred days.

86. On September 19, 2017, a CCI District Manager emailed ANDREWS and a CCI employee, stating that a health care provider with past-due invoices had the amount deducted from his August collections.

87. From 2011 through September 28, 2017, providers and clinics prescribed and dispensed CCI-supplied topical medications to FECA patients, for which the conspirators caused CCI to submit total numbers of claims to DOL-OWCP, as set forth below:

Table 1: CCI Claims to DOL-OWCP for Topical Medications (By Year Paid)							
2011	2012	2013	2014	2015	2016	2017	Total
0	585	281	938	894	1512	1218	5,428

88. From March 8, 2012, through September 28, 2017, the conspirators caused DOL-OWCP to pay CCI approximately \$3,984,438, primarily via EFT, to CCI’s bank accounts ending in 3533 and 4368, as set forth below:

Table 2: Amounts CCI Collected from DOL-OWCP						
2012	2013	2014	2015	2016	2017	Total
\$219,264	\$219,902	\$735,999	\$701,898	\$1,172,948	\$934,428	\$3,984,438

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

COUNTS 2-11

Introductory Allegations

Relevant Individuals

89. “Individual-6,” who at various times resided in Louisiana and the Western District of Arkansas, was an employee and later office manager for Bernauer, having worked for him from 2000 until he closed his clinic in 2016. Additionally, in 2013, Individual-6 became a CCI sales representative, and continued as such after Bernauer’s clinic was closed, until at least September 28, 2017.

90. “Individual-7,” was a sales representative for CCI in Louisiana from August 2013 through September 28, 2017. Individual-7 recruited Physician-2 as a CCI provider.

91. “Individual-9” and “Individual-10” were sales representative for CCI in Louisiana from 2011 through 2012.

**Interstate Wire Transmissions Caused by the Deposit of Checks,
and Relevant Financial Institutions**

92. The following financial institutions are relevant to this investigation, and the reconciliation of deposited checks and electronic transfers to each caused wire transmissions to be made in interstate commerce as described below.

a. CCI had a bank account with Regions Bank, which was headquartered in Birmingham, Alabama. Regions Bank had branches throughout the United States, including in Rogers, Arkansas. CCI, located within the Western District of Arkansas, issued checks to various entities and individuals, including healthcare providers, such as Bernauer and Physician-2, which caused to be transmitted interstate wire transmissions between Regions Bank, Birmingham, Alabama, and other financial institutions such as Capital One Bank and First Federal Bank of Louisiana. Regions Bank settled transmissions from other financial institutions by communicating directly with that financial institution or via a Federal Reserve Bank location

outside the state of Arkansas and Alabama. Additionally, CCI's Regions Bank account received electronic funds transfers from other entities, including DOL-OWCP, for workers' compensation claims billed by CCI. All electronic funds transfers Regions Bank received from DOL-OWCP utilized a Federal Reserve Bank location outside the states of Arkansas and Alabama.

b. CCI had a bank account with Simmons Bank, which is headquartered in Pine Bluff, Arkansas. Simmons Bank had branches through the United States, including in Bentonville, Arkansas. CCI, located within the Western District of Arkansas, issued checks to various entities and individuals, including healthcare providers, such as Bernauer, which caused to be transmitted interstate wire transmissions between Simmons Bank, and other financial institutions such as Capital One Bank. Simmons Bank settled transmissions from other financial institutions via a Federal Reserve Bank location outside the state of Arkansas. Additionally, CCI's Simmons Bank account received electronic funds transfers from other entities, including DOL-OWCP, for workers' compensation claims billed by CCI. All electronic funds transfers Simmons Bank received from DOL-OWCP utilized a Federal Reserve Bank location outside the state of Arkansas.

c. Bernauer utilized Capital One Bank, which was headquartered in Richmond, Virginia. Capital One Bank had locations throughout the United States, including in Lake Charles, Louisiana. Capital One Bank settled transmissions from other financial institutions via Richmond, Virginia.

d. Physician-2 utilized First Federal Bank of Louisiana, which was headquartered in Lake Charles, Louisiana. First Federal Bank of Louisiana had branches throughout the state of Louisiana. First Federal Bank of Louisiana settled transmissions from other financial institutions via a third-party company and the Federal Reserve Bank. The third-party company and the Federal Reserve Bank location were outside the state of Louisiana.

Relevant Louisiana Laws and Regulations

93. Louisiana Revised Statute 37:1261 set forth the following as the purpose of the Louisiana State Board of Medical Examiners:

Recognizing that the practice of medicine, surgery, and midwifery is a privilege granted by legislative authority and is not a natural right of individuals, the state of Louisiana deems it necessary as a matter of policy in the interests of public health, safety, and welfare to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and from unprofessional conduct of persons licensed to practice medicine, surgery, and midwifery.

94. Louisiana Revised Statute 37:1270 granted the Louisiana State Board of Medical Examiners the power to promulgate laws and regulations, such as Louisiana Administrative Code 46, in order to regulate the practice of medicine in the state of Louisiana. Section 1270 stated, among other things, the Louisiana State Board of Medical Examiners, shall:

- (1) Examine all applicants for the practice of medicine; issue licenses or permits to those possessing the necessary qualifications therefor; and take appropriate administrative actions to regulate the practice of medicine in the state of Louisiana;
- (2) Have its seal; and
- (3) Report to the prosecuting officer of the state all persons violating the provisions of this Part...

95. Louisiana Administrative Code 46:XLV.4201 stated, "Physicians owe a fiduciary duty to patients to exercise their professional judgement in the best interests of their patients in providing, furnishing, prescribing, recommending, or referring patients for health care items and services, without regard to personal financial recompense. The purpose of these rules and the laws they implemented was to prevent payments by or to a physician as a financial incentive for the referral of patients to a physician or other health care provider for diagnostic or therapeutic services or items."

96. Louisiana Administrative Code 46:XLV.6505 prohibited physicians and medical clinics from dispensing any medication other than “bona fide medication samples” unless the dispensing physician maintained a current license to dispense in Louisiana.

97. Louisiana Administrative Code 46:XLV.6507 stated that a violation of the prohibitions set forth in Section 6505, “...shall be deemed to constitute just cause for the suspension, revocation, refusal to issue, or the imposition of probationary or other restrictions on any license or permit to practice medicine in the state of Louisiana held or applied for by a physician culpable of such violation ...” Additionally, Louisiana Administrative Code 46:XLV.6509 stated that noncompliance with any of the provisions of the chapter will allow the Louisiana State Board of Medical Examiners to “...suspend, revoke, or cancel a physician’s registration as a dispensing physician or impose such restrictions or conditions on the physician’s authority to dispense medications as the board may deem necessary or appropriate.”

98. Louisiana Administrative Code 46:XLV.6513 stated that any physician who had his or her professional license “suspended, revoked or placed on probation or restriction in any manner by the board,” would not be granted a dispensing license in the state of Louisiana.

99. Louisiana Administrative Code 46:XLV.7603 described unprofessional conduct to include: “A physician shall not: place his or her own financial gain over the interest and welfare of a patient in providing, furnishing, prescribing, recommending or referring a patient for therapy, treatment, diagnostic testing or other health care items or services.” Additionally, “A physician shall not: exercise influence over a patient in such a manner as to exploit the patient or his or her third party payor for financial gain of the physician or of a third party through the promotion or sale of services, goods, appliances or drugs.”

COUNT 2
18 U.S.C. § 1349
(Conspiracy to Commit Wire Fraud)

100. The factual allegations of Paragraphs 1 through 99 are re-alleged and incorporated as though fully set forth.

Object of the Conspiracy

101. Beginning at least as early as 2013, and continuing until September 28, 2017, in the Fayetteville Division of the Western District of Arkansas, and elsewhere, defendants **HUNTER MATTHEW BURROUGHS** and **STEPHEN KEITH ANDREWS** knowingly combined, conspired, and agreed together, and with Amanda Dawn Rains, Robert Dale Bernauer, Sr., and others known and unknown to the Grand Jury, to devise and intend to devise a scheme and artifice to defraud, and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody or control of, the U.S. Department of Labor and workers' compensation insurers, and for the purpose of executing said scheme caused to be transmitted by means of wire communication in interstate commerce various writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

Fraudulent Purpose

102. It was the goal of the BURROUGHS, ANDREWS, Rains, and Bernauer to fraudulently obtain money from DOL-OWCP and private workers' compensation programs, by submitting claims for topical medications supplied by CCI and prescribed and dispensed by Bernauer in the state of Louisiana, knowing that Bernauer's dispensing of the medications violated Louisiana laws and regulations prohibiting health care providers from dispensing medications without a license to do so.

The Scheme

103. BURROUGHS, ANDREWS, Rains, and others known and unknown to the Grand Jury caused CCI to furnish medications to Bernauer and bill for medications Bernauer prescribed even when they had actual knowledge Bernauer was dispensing the medications in violation of Louisiana laws and regulations prohibiting health care providers from dispensing medications without a license to do so.

104. During the course and in furtherance of the conspiracy, until Bernauer surrendered his medical license in December 2016, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to provide topical medications to Bernauer for him to prescribe and dispense, all the while knowing Bernauer did not have a license to dispense medication in Louisiana.

105. From 2011 until 2016, despite knowing Bernauer did not have a license to dispense medication, the conspirators caused CCI to continue to supply Bernauer with topical medications, typically via FedEx, and then billed workers' compensation insurers for those topical medications after Bernauer prescribed and dispensed them.

106. From 2011 until 2017, despite knowing Bernauer did not have a license to dispense medication, BURROUGHS and others instructed various CCI employees to continue to bill workers' compensation insurers, including DOL-OWCP, for topical medications prescribed and dispensed by Bernauer.

107. For the execution of said scheme to defraud, BURROUGHS, ANDREWS, Rains, Bernauer, and others known and unknown to the Grand Jury, caused to be transmitted by means of wire communication in interstate commerce various writings, signs, signals, pictures, and sounds, including:

- a. Bernauer sent prescription information to CCI via fax, email, and a secure on-line portal;
- b. CCI personnel communicated with Bernauer and insurance adjusters using email and telecommunications;
- c. CCI electronically submitted completed HCFA forms to insurance providers;
- d. CCI's submission of claims caused insurance providers, including DOL-OWCP, caused to be made payments to CCI's bank accounts via electronic transfer, and by checks which would be and were deposited and electronically reconciled between the sending and receiving bank accounts; and
- e. CCI remunerated health care providers and clinics, normally by way of checks, which would be and were deposited and electronically reconciled between the sending and receiving bank accounts.

Manner and Means

108. The manner and means by which BURROUGHS, ANDREWS, Rains, Bernauer, and others known and unknown to the Grand Jury achieved and attempted to achieve the objects of the conspiracy included, but were not limited to, those set forth in the paragraph immediately above, and the following:

BURROUGHS and Others Caused CCI to Recruit Bernauer.

109. In October 2011, Individual-9 and Individual-10, acting according to instructions provided by BURROUGHS and others, recruited Bernauer to enter into a contract with CCI. Also, on one occasion, BURROUGHS traveled to Louisiana to meet with Bernauer to recruit him to enter into a contract with CCI.

110. Bernauer agreed to distribute pain cream and patches to workers' compensation patients, after which CCI would bill DOL-OWCP and other workers' compensation insurers for the prescriptions. Bernauer would receive 50 percent of the adjudicated amount of all CCI collected from its billing for topical medications Bernauer prescribed and dispensed.

111. Bernauer agreed with BURROUGHS that: CCI would supply Bernauer with Terocin, Medrox, and other topical medications at prices significantly below what insurers would ultimately be billed for the products. Bernauer would only dispense the CCI topical medications to his workers' compensation patients. Once Bernauer wrote a prescription and dispensed the medication, CCI would seek proceeds from the adjudicated claims for the dispensed topical medications.

112. **First Contract.** On October 25, 2011, Bernauer ("Customer") and BURROUGHS, representing CCI ("Distributor"), signed a distribution agreement. At the time Bernauer signed this agreement, Bernauer knew he did not have a license to dispense medication in the state of Louisiana, and had informed BURROUGHS of this fact. BURROUGHS's response was that CCI's lawyers had informed him Bernauer's lack of a dispensing license was not a problem. Amongst other provisions, the contract stated:

a. "Unless otherwise agreed to in writing by the parties, Customer agrees that Customer will only dispense drugs ordered from the Drug Order to its Worker Compensation patients."

b. If Bernauer failed to pay CCI within a specific time period, "Distributor shall deduct funds from the Physician's Account sufficient to compensate Distributor those compounds provided to the Customer."

c. "Customer agrees that Distributor shall be reimbursed fifty percent (50%) (the 'Compensation Amount') of the net receivables collected on Physician's behalf as its

reasonable compensation... Net receivables means the total amounts collected on Physician's behalf minus the cost of the drugs (including packaging, shipping and handling) ordered on behalf of Physician."

113. **Second Contract.** On March 13, 2013, Bernauer and BURROUGHS, signed an updated distribution agreement. At the time they signed the contract, Bernauer, BURROUGHS, and multiple CCI employees knew Bernauer did not have a license to dispense medication in the state of Louisiana. Amongst other provisions, the contract stated:

a. "Unless otherwise agreed to in writing by the parties, Customer agrees that Customer will only dispense drugs ordered from the Drug Order to its Worker Compensation patients."

b. "Physician shall be responsible for paying the cost of the Product (\$35.00/bottle) ('Drug Orders') purchased from Distributor, at sole risk to physician."

c. If Bernauer failed to pay CCI within a specific time period, the contract stated, "Distributor shall deduct funds from the Physician's account sufficient to compensate Distributor for those compounds provided to the Customer by Distributor."

d. "Customer agrees that Distributor shall be compensated with fifty percent (50%) (the 'Compensation Amount') of the net receivables (i.e., gross collected amount received from the third party carrier) collected on Physician's behalf as its reasonable compensation..."

114. In 2013, the conspirators caused CCI to hire Individual-6, Bernauer's Office Manager, as a sales representative. Individual-6 received a percentage of the adjudicated amount of all prescriptions that Bernauer prescribed.

115. From 2013 until 2017, CCI paid Individual-6 and another Bernauer employee to process topical medicine prescriptions for transmittal to CCI, to dispense topical medications to

workers' compensation patients, to manage the inventory of CCI topical medications held within the medical clinic, and to act as a liaison between CCI and Bernauer.

Bernauer Saw Patients and Prescribed and Dispensed CCI Topical Medications, for Which the Conspirators Caused CCI to Bill and Obtained Payment.

116. Bernauer saw patients and prescribed and dispensed CCI topical medications, for which CCI billed and obtained payment, including the patients identified below by their initials.

Patient "D.H."

117. From February 2012 to August 2016, Bernauer saw as a patient federal employee "D.H." During that time, typically, D.H.'s appointments with Bernauer lasted approximately ten minutes from the time he arrived at the clinic until he left the clinic.

118. During every visit, Bernauer or his nurse gave D.H. a bag full of pain cream and patches without any explanation. D.H. did not receive any instructions with the medication nor was he asked about any known allergies related to using the medications, which D.H. did not use.

119. From February 2012 to August 2016, the conspirators caused CCI to submit 67 individual claims to DOL-OWCP for medications Bernauer prescribed and dispensed to D.H. In so billing, the conspirators caused CCI to claim a total of \$56,000.24 for topical medications Bernauer prescribed and dispensed to D.H., of which amount CCI collected \$48,965.35.

120. From 2012 to 2017, based on the amount collected, the conspirators caused CCI to pay remuneration to Bernauer in the approximate amount of \$24,482 in exchange for his prescribing and dispensing topical medications to D.H.

Patient "G.B."

121. From July 2013 to August 2016, Bernauer saw as a patient federal employee "G.B." During that time, Bernauer's medical care of G.B. was limited to prescribing and dispensing medications.

122. From July 2013 to August 2016, the conspirators caused CCI to submit 73 individual claims to DOL-OWCP for topical medications Bernauer prescribed and dispensed to G.B. In so billing, the conspirators caused CCI to claim a total of \$65,033.50 for topical medications Bernauer purportedly prescribed and dispensed to G.B., of which amount CCI collected \$58,098.49.

123. From 2013 to 2017, based on the amount collected, the conspirators caused CCI to pay remuneration to Bernauer in the approximate amount of \$29,049 in exchange for his prescribing and dispensing topical medications to G.B.

Patient “D.G.”

124. From May 2016 to August 2016, Bernauer saw as a patient federal employee “D.G.” During that time, typically, D.G.’s visits with Bernauer lasted between five and ten minutes, and Bernauer’s clinic dispensed Terocin cream and patches to D.G., despite D.G. not having requested the topical medications.

125. From July 2016 to August 2016, the conspirators caused CCI to submit five individual claims to DOL-OWCP for topical medications Bernauer prescribed and dispensed to D.G. In so billing, the conspirators caused CCI to claim a total of \$4,533.50 for topical medications Bernauer prescribed and dispensed to D.G., of which amount CCI collected \$4,398.50.

126. From 2016 to 2017, based on the amount collected, the conspirators caused CCI to pay remuneration to Bernauer in the approximate amount of \$2,199 in exchange for his prescribing and dispensing topical medications to D.G.

Patient “K.M.”

127. From August 2011 to August 2016, Bernauer saw as a patient federal employee “K.M.” During K.M.’s visits to Bernauer’s clinic, typically the lobby was full of patients, and K.M.’s visits with Bernauer lasted no longer than five minutes.

128. On one occasion, Bernauer joked with K.M., stating, “I’m on the post office most wanted list,” in reference to having all of his postal worker patients on workers’ compensation.

129. From March 2012 to November 2016, the conspirators caused CCI to submit 77 individual claims to DOL-OWCP for topical medications Bernauer dispensed to K.M. In so billing, the conspirators caused CCI to claim a total of \$59,138.91 for topical medications Bernauer prescribed and dispensed to K.M., of which amount CCI collected \$54,120.32.

130. From 2012 to 2017, based on the amount collected, the conspirators caused CCI to pay remuneration to Bernauer in the approximate amount of \$27,060 in exchange for his prescribing and dispensing topical medications to K.M.

BURROUGHS, ANDREWS, and Others Caused CCI to Furnish Medications to Bernauer, Knowing Bernauer Did Not Have a License to Dispense.

131. During the course and in furtherance of the conspiracy, until Bernauer surrendered his medical license in December 2016, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to provide topical medications to Bernauer for him to prescribe and dispense, knowing Bernauer did not have a license to dispense medication in Louisiana.

132. On February 26, 2014, Rains sent ANDREWS an email having the subject line “DISPENSING REGULATIONS BY STATE” and containing a link to an Internet web page maintained by The American Academy of Urgent Care Medicine (AAUCM), which was a society for physicians, physician assistants, and nurse practitioners practicing urgent care medicine.

133. On March 13, 2014, Rains sent ANDREWS and a CCI sales representative an email having the subject line, “Louisiana Board of Medical Examiners; Verification.” The email contained a link to the Louisiana State Board of Medical Examiners and stated, “[h]ere is the website that I use to check physicians license status and if they have dispensing licenses for Louisiana:”

134. On March 14, 2014, ANDREWS sent an email to a CCI sales representative having the subject line, “Actions for a Dispensing License.” In the body of the email, ANDREWS provided a seven-step process for completion of the dispensing license application. ANDREWS also included a dispensing permit application instructions document from the Louisiana State Board of Medical Examiners.

135. On March 14, 2014, Individual-6 informed ANDREWS that Bernauer did not have a Louisiana dispensing license. ANDREWS stated to Individual-6 in an email: “You called the board of pharmacy this is medical board. Medical board does the dispensing license.” ANDREWS later emailed Individual-6, asking, “[h]ow did it go?” Individual-6 responded via email: “Hey...She said he never had one and told me to go the the *[sic]* website and apply. This is so strange because we definitely went through the application process when we first started. I just can *[sic]* remember all the details.”

136. On April 30, 2014, ANDREWS sent an email having the subject line “CCI clinics.” The body of the email listed different health care providers and medical clinics in Louisiana and other states, and detailed the number of patients per month the health care provider or medical clinics were treating. The listing for one such clinic contained the following notation: “40-50 pts/mth. – need dispensing license – Louisiana....” ANDREWS further identified Bernauer in the email with the following note: “Bernauer- 60 scripts.”

137. On October 25, 2016, ANDREWS sent an email to a CCI sales representative, having the subject line, “Louisiana-Initial-Application-Dispensing-License-1.doc – Hword 2014.” Attached to the email was a dispensing permit application instructions document from the Louisiana State Board of Medical Examiners. In the section titled, “Causes for Being Deemed Ineligible for Registration as a Dispensing Physician,” the instructions listed the following:

Has currently or at any time in the past, had his medical license placed on probation or restriction in any manner, suspended or revoked, or who has agreed to not seek

re-licensure, voluntarily surrendered, or entered into an agreement with the Board or with any licensing authority in lieu of the institution of disciplinary charges or actions against such license.

138. On February 7, 2017, ANDREWS sent an email to the same CCI sales representative, having the subject line “Louisiana.” In the body of the email, ANDREWS stated: “I was thinking of things that are in place for the state of Louisiana. Physician Assistants and Nurse Practitioners are not allowed to dispense in the state. It must be a MD or DO that is dispensing.” ANDREWS further stated, “[p]hysicians must dispense from their clinics address that aligns with their dispensing license.”

BURROUGHS, ANDREWS, and Others Caused CCI to Bill and Obtain Payment from DOL-OWCP for Prescriptions Bernauer Submitted, Knowing Bernauer had Prescribed and Dispensed the Medications in Violation of Louisiana Laws.

139. During the course and in furtherance of the conspiracy, until Bernauer surrendered his medical license in December 2016, Bernauer’s clinic often sent CCI signed prescription forms that did not indicate the types or amounts of topical medications he prescribed. CCI employees then filled in the missing data, using Bernauer’s prescription form from the month prior.

140. During the course and in furtherance of the conspiracy, despite knowing Bernauer did not have a license to dispense medication, BURROUGHS, ANDREWS, and others instructed various CCI employees to continue to bill workers’ compensation insurers, including DOL-OWCP, for topical medications prescribed and dispensed by Bernauer.

141. From 2011 through September 28, 2017, the conspirators caused CCI to submit 997 claims to a DOL-OWCP office in London, Kentucky, seeking payment for topical medications Bernauer had prescribed and dispensed, as set forth below:

Table 3: CCI Claims to DOL-OWCP for Bernauer Prescriptions (By Year of Service)						
2011	2012	2013	2014	2015	2016	Total
40	220	149	189	219	180	997

142. From 2012 to 2017, the conspirators caused CCI to bill DOL-OWCP a total of \$742,683 for topical medications Bernauer prescribed and dispensed to FECA patients, as set forth below:

Table 4: CCI Billing to DOL-OWCP for Bernauer Prescriptions						
2012	2013	2014	2015	2016	2017	Total
\$120,600	\$97,831	\$171,926	\$171,282	\$181,044	\$0	\$742,683

143. From March 8, 2012, until May 18, 2017, the conspirators caused DOL-OWCP to send payments to CCI for topical medications Bernauer had prescribed and dispensed.

144. From 2012 until 2017, the conspirators caused CCI to collect from DOL-OWCP \$664,176 for topical medications Bernauer prescribed and dispensed to FECA patients (taking into account payments from DOL-OWCP to CCI and refunds from CCI to DOL-OWCP), as set forth below:

Table 5: CCI Collections from DOL-OWCP for Bernauer Prescriptions						
2012	2013	2014	2015	2016	2017	Total
\$76,471	\$82,664	\$189,536	\$154,388	\$165,265	-\$4,148	\$664,176

145. Between January 1, 2015, and December 31, 2016, the conspirators caused CCI to collect from workers' compensation insurers, including DOL-OWCP, approximately \$826,475.83 for topical medications prescribed and dispensed by Bernauer, constituting the second highest payment amount of all clinics with which CCI contracted, and approximately eight percent of CCI's collections during that time period.

146. From 2011 to 2017, the conspirators caused CCI to collect from workers' compensation insurers, including DOL-OWCP, approximately \$2,595,070 for topical medications Bernauer prescribed and dispensed.

147. Between December 2011 and November 2016, the conspirators caused CCI to issue approximately 56 checks, from two different bank accounts controlled by CCI to Bernauer. The

checks included the following, the reconciliation of which resulted in interstate wire transmissions on the dates noted below:

a. CCI's check #4465, dated October 10, 2016, drawn on its account ending in 4368, held at Regions Bank, payable to Bernauer in the amount of \$10,584.15. Bernauer caused the check to be deposited check to his account ending in 6201, and the check cleared on October 17, 2016.

b. CCI's check #4595, dated November 10, 2016, drawn on its account ending in 4368, held at Regions Bank, payable to Bernauer in the amount of \$7,740.74. Bernauer caused the check to be deposited to his account ending in 6201, held at Capital One Bank, and the check cleared on November 15, 2016.

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

COUNT 3
18 U.S.C. § 1349
(Conspiracy to Commit Wire Fraud)

148. The factual allegations of Paragraphs 1 through 147 are re-alleged and incorporated as though fully set forth.

Object of the Conspiracy

149. Beginning in August 2013, and continuing until September 28, 2017, in the Fayetteville Division of the Western District of Arkansas, and elsewhere, defendants **HUNTER MATTHEW BURROUGHS** and **STEPHEN KEITH ANDREWS** knowingly combined, conspired, and agreed together, and with Amanda Dawn Rains, Physician-2, and others known and unknown to the Grand Jury, to devise and intend to devise a scheme and artifice to defraud, and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody or control of, the U.S. Department of Labor and workers' compensation insurers, and for the purpose of executing said scheme caused to be transmitted by means of wire communication in interstate commerce various writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

Fraudulent Purpose

150. It was the goal of BURROUGHS, ANDREWS, Rains, and Physician-2 to fraudulently obtain money from DOL-OWCP and private workers' compensation programs, by submitting claims for topical medications supplied by CCI and prescribed and dispensed by Physician-2 in the state of Louisiana, knowing that Physician-2's dispensing of the medications violated Louisiana laws and regulations prohibiting health care providers from dispensing medications without a license to do so.

The Scheme

151. BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to furnish medications to Physician-2 and bill for medications Physician-2 prescribed even when they had actual knowledge Physician-2 was dispensing the medications in violation of Louisiana laws and regulations prohibiting health care providers from dispensing medications without a license to do so.

152. During the course and in furtherance of the conspiracy, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to provide topical medications to Physician-2 for him to prescribe and dispense, all the while knowing Physician-2 did not have a license to dispense medication in Louisiana.

153. From August 2013 until September 28, 2017, despite knowing Physician-2 did not have a license to dispense medication, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to continue to supply Physician-2 with topical medications, typically via FedEx, and then billed workers' compensation insurers for those topical medications after Physician-2 prescribed and dispensed them.

154. From August 2013 until September 28, 2017, despite knowing Physician-2 did not have a license to dispense medication, BURROUGHS, ANDREWS, Rains, and others known and

unknown to the Grand Jury instructed various CCI employees to continue to bill workers' compensation insurers, including DOL-OWCP, for topical medications prescribed and dispensed by Physician-2.

155. For the execution of said scheme to defraud, BURROUGHS, ANDREWS, Rains, Physician-2, and others known and unknown to the Grand Jury, caused to be transmitted by means of wire communication in interstate commerce various writings, signs, signals, pictures, and sounds, including:

- a. Physician-2 sent prescription information to CCI via fax, email, and a secure on-line portal;
- b. CCI personnel communicated with Bernauer and insurance adjusters using email and telecommunications;
- c. CCI electronically submitted completed HCFA forms to insurance providers;
- d. CCI's submission of claims caused insurance providers, including DOL-OWCP, caused to be made payments to CCI's bank accounts via electronic transfer, and by checks which would be and were deposited and electronically reconciled between the sending and receiving bank accounts; and
- e. CCI remunerated health care providers and clinics, normally by way of checks, which would be and were deposited and electronically reconciled between the sending and receiving bank accounts.

Manner and Means

156. The manner and means by which BURROUGHS, ANDREWS, Rains, Physician-2, and others known and unknown to the Grand Jury achieved and attempted to achieve the objects

of the conspiracy included, but were not limited to, those set forth in the paragraph immediately above, and the following:

BURROUGHS and Others Caused CCI to Recruit Physician-2.

157. In 2013, Individual-7, acting according to instructions provided by BURROUGHS and others, made an in-person sales call to Physician-2 in hopes of recruiting him as a health care provider for CCI.

158. Physician-2 agreed to distribute pain cream and patches to workers' compensation patients, after which CCI would bill DOL-OWCP and other workers' compensation insurers for the prescriptions. Physician-2 would receive 50 or 55 percent of the adjudicated amount of all CCI collected from its billing for topical medications Physician-2 prescribed and dispensed.

159. Physician-2 agreed with Burroughs that: CCI would supply Physician-2 with Terocin, Medrox, and other topical medications at prices significantly below what insurers would ultimately be billed for the products. Physician-2 would only dispense the CCI topical medications to his workers' compensation patients. Once Physician-2 wrote a prescription and dispensed the medication, CCI would seek proceeds from the adjudicated claims for the dispensed topical medications.

160. CCI furnished Physician-2 with an Attorney Letter authored by Attorney-1 and dated April 24, 2013. In the body of the letter, Attorney-1 stated, CCI does not bill Medicare or Medicaid, and thus does not fall under the STARK ACT..." The letter further stated, "[a]lthough the Federal Anti-kickback language is broader and could be potentially extended to all federal programs, neither I nor any of the other legal experts with which I have consulted have ever heard of it being extended to a federal worker's compensation plan." The letter also stated, "[p]hysicians are not without risk in these situations, as they are required to pay for all of the product ordered,

whether or not they ultimately, in their own independent medical judgement, decide that it is appropriate for any particular patient.”

161. **First Contract.** On August 26, 2013, Physician-2 (“Customer”) and Burroughs, representing CCI (“Distributor”), signed a distribution agreement. At the time Physician-2 signed this agreement, Physician-2 knew he did not have a license to dispense medication in the state of Louisiana. Amongst other provisions, the contract stated:

- a. “Unless otherwise agreed to in writing by the parties, Customer agrees that Customer will only dispense drugs ordered from the Drug Order to its Worker Compensation patients.”
- b. If Physicians-2 failed to pay CCI within a specific period, “Distributor shall deduct funds from the Physician’s Account sufficient to compensate Distributor those compounds provided to the Customer.”
- c. “Customer agrees that Distributor shall be reimbursed fifty percent (50%) (the ‘Compensation Amount’) of the net receivables collected on Physician’s behalf as its reasonable compensation...”

162. **Second Contract.** On May 5, 2015, Physician-2 and BURROUGHS, signed an updated consulting agreement. At the time they signed the contract, Physician-2, BURROUGHS, and multiple CCI employees knew Physician-2 did not have a license to dispense medication in the state of Louisiana. Amongst other provisions, the contract stated:

- a. “CCI will mail a check by first-class U.S. mail to Provider on the tenth day of each month . . . for FIFTY FIVE PERCENT (55%) of all amounts collected on Provider’s behalf in the preceding calendar month. . . As consideration for CCI’s services under the Agreement, which will include properly billing workers’ compensation payors, responding to requests for information, conducting negotiations with workers” compensation insurance entities, maintaining

proper records of Provider's account, and providing other services, CCI will retain 45% of all amounts collected on Provider's behalf." (The "45" in the preceding quote was hand-written, below the printed number "50," which had been stricken through, followed by the hand-written initials, "H.B.")

b. "During the Term, Provider will order [Terocin, Lidapro, and Medrox] exclusively from CCI," and **"Provider understands and acknowledges that Provider is purchasing the Products from CCI,** and Provider agrees to pay invoices for Products within sixty (60) days of the last date upon which Provider dispenses the Products in any month. CCI will have the right to deduct the amounts of any unpaid, overdue Product invoices from Provider's compensation." (Emphasis in original.)

Physician-2 Saw Patients and Prescribed and Dispensed CCI Topical Medications, for Which the Conspirators Caused CCI to Bill and Obtained Payment.

163. Physician-2 saw patients and prescribed and dispensed CCI topical medications, for which CCI billed and obtained payment, including the patients identified below by their initials.

Patient "D.F."

164. From October 2013 to September 2017, Physician-2 saw as a patient federal employee, "D.F." During that time, Physician-2 provided D.F. with topical medications, and prescription pain-killers.

165. From October 2013 to September 2017, the conspirators caused CCI to submit 68 individual claims to DOL-OWCP for topical medications Physician-2 dispensed to D.F. In so billing, the conspirators caused CCI to claim a total of \$60,596.71 for topical medications Physician-2 prescribed and dispensed to D.F., of which amount CCI collected \$49,525.39, including DOL-OWCP payments to CCI on April 20, 2017, July 20, 2017, and September 14, 2017.

166. From October 2013 to September 2017, based on the amount collected, the conspirators caused CCI to pay remuneration to Physician-2 in the approximate amount of \$26,247.64 in exchange for his prescribing and dispensing topical medications to D.F.

Patient “J.T.”

167. From September 2013 to August 2017, Physician-2 saw as a patient federal employee, “J.T.”

168. From September 2013 to August 2017, the conspirators caused CCI to submit 25 individual claims to DOL-OWCP for topical medications Physician-2 dispensed to J.T. In so billing, the conspirators caused CCI to claim a total of \$23,358.48 for topical medications Physician-2 prescribed and dispensed to J.T., of which amount CCI collected \$19,446.82, including payments made from DOL-OWCP to CCI on May 11, 2017, and August 17, 2017.

169. From October 2013 to September 2017, based on the amount collected, the conspirators caused CCI to pay remuneration to Physician-2 in the approximate amount of \$10,141.33 in exchange for his prescribing and dispensing topical medications to J.T.

BURROUGHS, ANDREWS, and Others Caused CCI to Furnish Medications to Physician-2, Knowing Physician-2 Did Not Have a License to Dispense.

170. During the course and in furtherance of the conspiracy, until Physician-2 stopped prescribing CCI medications in or about the fall of 2017, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to provide topical medications to Physician-2 for him to prescribe and dispense, while knowing Physician-2 did not have a license to dispense medication in Louisiana.

171. On February 26, 2014, Rains sent ANDREWS an email having the subject line “DISPENSING REGULATIONS BY STATE” and containing a link to an Internet web page maintained by The American Academy of Urgent Care Medicine (AAUCM), which was a society for physicians, physician assistants, and nurse practitioners practicing urgent care medicine.

172. On March 13, 2014, Rains sent ANDREWS and a CCI sales representative an email having the subject line, “Louisiana Board of Medical Examiners; Verification.” The email contained a link to the Louisiana State Board of Medical Examiners and stated, “[h]ere is the website that I use to check physicians license status and if they have dispensing licenses for Louisiana:”

173. On March 14, 2014, ANDREWS sent an email to a CCI sales representative having the subject line, “Actions for a Dispensing License.” In the body of the email, ANDREWS provided a seven-step process for completion of the dispensing license application. ANDREWS also included a dispensing permit application instructions document from the Louisiana State Board of Medical Examiners.

174. On April 30, 2014, ANDREWS sent an email having the subject line “CCI clinics.” The body of the email listed different health care providers and medical clinics in Louisiana and other states, and detailed the number of patients per month the health care provider or medical clinics were treating. The listing for one such clinic contained the following notation: “40-50 pts/mth. – need dispensing license – Louisiana....” ANDREWS further identified Physician-2 in the email with the following note: “[Clinic-2]- 80 scripts.”

175. On October 25, 2016, ANDREWS sent an email to a CCI sales representative, having the subject line, “Louisiana-Initial-Application-Dispensing-License-1.doc – Hword 2014.” Attached to the email was a dispensing permit application instructions document from the Louisiana State Board of Medical Examiners. In the section titled, “Causes for Being Deemed Ineligible for Registration as a Dispensing Physician,” the instructions listed the following:

Has currently or at any time in the past, had his medical license placed on probation or restriction in any manner, suspended or revoked, or who has agreed to not seek re-licensure, voluntarily surrendered, or entered into an agreement with the Board or with any licensing authority in lieu of the institution of disciplinary charges or actions against such license.

176. On February 7, 2017, ANDREWS sent an email to the same CCI sales representative, having the subject line “Louisiana.” In the body of the email, ANDREWS stated: “I was thinking of things that are in place for the state of Louisiana. Physician Assistants and Nurse Practitioners are not allowed to dispense in the state. It must be a MD or DO that is dispensing.” ANDREWS further stated, “[p]hysicians must dispense from their clinics address that aligns with their dispensing license.”

BURROUGHS, ANDREWS, and Others Caused CCI to Bill and Obtain Payment from DOL-OWCP for Prescriptions Physician-2 Submitted, Knowing Physician-2 had Prescribed and Dispensed the Medications in Violation of Louisiana Laws.

177. From September 2013 through September 2017, Physician-2 prescribed and dispensed CCI supplied topical medications to his FECA patients.

178. From September 2013 through September 2017, Physician-2 caused signed prescription forms for topical medications dispensed to FECA patients to be sent to CCI from Clinic-2, in Louisiana, to CCI, in Arkansas, by means of interstate wire transmissions, usually via fax, including the following interstate wire transmissions sent from the business’s fax number:

a. The April 24, 2017, fax transmission of a prescription form for topical medications dispensed to patient J.T., dated April 24, 2017.

b. The August 23, 2017, transmission of a prescription form for topical medications dispensed to patient D.F., dated August 23, 2017.

179. During the course and in furtherance of the conspiracy, despite knowing Physician-2 did not have a license to dispense medications in the state of Louisiana, BURROUGHS and ANDREWS instructed and caused to be instructed various CCI employees to continue to bill workers’ compensation insurers, including DOL-OWCP, for topical medications prescribed and dispensed by Physician-2, including topical medications Physician-2 prescribed and dispensed to FECA patients D.F. and J.T.

180. From September 2013 through September 28, 2017, the conspirators caused CCI to submit 1,079 claims to a DOL-OWCP office in London, Kentucky, seeking payment for topical medications Physician-2 had prescribed and dispensed, as set forth below:

Table 6: CCI Claims to DOL-OWCP for Physician-2 Prescriptions (By Year of Service)					
2013	2014	2015	2016	2017	Total
50	275	229	279	246	1,079

181. From October 3, 2013, until September 28, 2017, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused DOL-OWCP to send payments to CCI via interstate wire transmissions—specifically, electronic payments to CCI’s accounts—for topical medications Physician-2 had prescribed and dispensed. The payments included the following:

- a. May 11, 2017, \$3,515.50 electronic payment from the Department of Labor (United States Treasury), originating outside the state of Arkansas, including \$587.18 for topical medication Physician-2 prescribed to patient J.T. on April 24, 2017, into CCI’s Simmons Bank account ending in 3533.
- b. September 14, 2017, \$2,051.34 electronic payment from the Department of Labor (United States Treasury), originating outside the state of Arkansas, including \$1,464.16 for topical medications Physician-2 prescribed to patient D.F. on August 23, 2017, into CCI’s Simmons Bank account ending in 3533.

182. Between August 2013 and September 2017, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to issue approximately 48 checks, via the U.S. Postal Service and commercial interstate carriers, from two different bank accounts controlled by CCI to Physician-2. The checks included the following:

- a. CCI’s check #5250, dated June 15, 2017, drawn on its account ending in 4368, held at Regions Bank, payable to Physician-2/Clinic-2 in the amount of \$23,692.03. Physician-2 caused the check to be deposited to his account ending in 1357, held at First Federal Bank of Louisiana, and the check cleared on June 22, 2017.
- b. CCI’s check #6370, dated September 15, 2017, drawn on its account ending in 4368, held at Regions Bank, payable to Physician-2/Clinic-2 in the amount of \$25,691.95. Physician-2 caused the check to be deposited to his account ending in 1357, held at First Federal Bank of Louisiana, and the check cleared on September 21, 2017.

183. Between January 1, 2015, and December 31, 2016, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to collect from workers' compensation insurers, including DOL-OWCP, approximately \$505,491.05 for topical medications prescribed and dispensed by Physician-2, constituting the third highest payment amount of all clinics with which CCI contracted, and approximately five percent of CCI's collections during that time period.

184. From 2013 to 2017, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to bill DOL-OWCP a total of \$1,013,794 for topical medications Physician-2 prescribed and dispensed to FECA patients, as set forth below:

Table 7: CCI Billing to DOL-OWCP for Physician-2 Prescriptions					
2013	2014	2015	2016	2017	Total
\$31,848	\$230,474	\$172,513	\$320,795	\$258,164	\$1,013,794

185. From 2013 until 2017, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to collect from DOL-OWCP \$810,017 for topical medications Physician-2 prescribed and dispensed to FECA patients (taking into account payments from DOL-OWCP to CCI and refunds from CCI to DOL-OWCP), as set forth below:

Table 8: CCI Collections from DOL-OWCP for Physician-2 Prescriptions					
2013	2014	2015	2016	2017	Total
\$30,404	\$205,350	\$139,768	\$249,227	\$185,268	\$810,017

186. From 2013 to 2017, BURROUGHS, ANDREWS, and others known and unknown to the Grand Jury caused CCI to collect approximately \$1,476,383.47 for topical medication billed to workers' compensation insurers, including DOL-OWCP that were prescribed and dispensed by Physician-2.

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

COUNTS 4 and 5
18 U.S.C. §§ 1343 and 2
(Wire Fraud and Aiding and Abetting)

187. The factual allegations of Paragraphs 1 through 186 are re-alleged and incorporated as though fully set forth.

The Scheme

188. Beginning at least as early as 2013, and continuing until September 28, 2017, in the Western District of Arkansas and elsewhere, defendants **HUNTER MATTHEW BURROUGHS** and **STEPHEN KEITH ANDREWS**, aiding and abetting, and aided and abetted by: one another, Amanda Dawn Rains, Robert Dale Bernauer Sr., and others known and unknown to the Grand Jury, knowingly devised and intended to devise a scheme and artifice to defraud, and obtain money by means of materially false and fraudulent pretenses, representations, and promises.

Manner and Means

189. The manner and means by which the defendants accomplished and attempted to accomplish the aims and objects of their scheme are as set forth in Paragraphs 103 through 147 of this Indictment.

Execution of the Scheme

190. On or about each of the dates set forth below, in the Fayetteville Division of the Western District of Arkansas, and elsewhere, defendants **HUNTER MATTHEW BURROUGHS** and **STEPHEN KEITH ANDREWS**, aiding and abetting, and aided and abetted by: one another, Amanda Dawn Rains, Robert Dale Bernauer Sr., and others known and unknown to the Grand Jury, for the purpose of executing the scheme described above, and attempting to do so, caused to be transmitted by means of wire communication in interstate commerce the writings, signs, signals, pictures, and sounds described below for each count, each transmission constituting a separate count:

Count	Date	Description
4	October 17, 2016	Reconciliation of funds resulting from the deposit of CCI's check #4465, dated October 10, 2016, drawn on its Regions Bank account ending in 4368 in the amount of \$10,584.15, to Bernauer's Capital One Bank account ending in 6201.
5	November 15, 2016	Reconciliation of funds resulting from the deposit of CCI's check #4595, dated November 10, 2016, drawn on its Regions Bank account ending in 4368 in the amount of \$7,740.74, to Bernauer's Capital One Bank account ending in 6201.

All in violation of Title 18, United States Code, Section 1343 and Title 18, United States Code, Section 2.

COUNTS 6-11
18 U.S.C. §§ 1343 and 2
(Wire Fraud and Aiding and Abetting)

191. The factual allegations of Paragraphs 1 through 190 are re-alleged and incorporated as though fully set forth.

The Scheme

192. Beginning in August 2013, and continuing until September 28, 2017, in the Fayetteville Division of the Western District of Arkansas, and elsewhere, defendants **HUNTER MATTHEW BURROUGHS** and **STEPHEN KEITH ANDREWS**, aiding and abetting, and aided and abetted by: one another, Amanda Dawn Rains, Physician-2, and others known and unknown to the Grand Jury, knowingly devised and intended to devise a scheme and artifice to defraud, and obtain money by means of materially false and fraudulent pretenses, representations, and promises.

Manner and Means

193. The manner and means by which the defendants accomplished and attempted to accomplish the aims and objects of their scheme are as set forth in Paragraphs 151 through 186 of this Indictment.

Execution of the Scheme

194. On or about each of the dates set forth below, in the Fayetteville Division of the Western District of Arkansas, and elsewhere, defendants **HUNTER MATTHEW BURROUGHS** and **STEPHEN KEITH ANDREWS**, aiding and abetting, and aided and abetted by: one another, Amanda Dawn Rains, Physician-2, and others known and unknown to the Grand Jury, for the purpose of executing the scheme described above, and attempting to do so, transmitted and caused to be transmitted by means of wire communication in interstate commerce the writings, signs, signals, pictures, and sounds described below for each count, each transmission constituting a separate count:

Count	Date	Description
6	April 24, 2017	Fax transmission of a prescription form for topical medications Physician-2 prescribed to patient J.T. on April 24, 2017, from Clinic-2, in Louisiana, to CCI, in Rogers, Arkansas.
7	May 11, 2017	Reconciliation of funds resulting from a \$3,515.50 electronic payment from the Department of Labor (United States Treasury), originating outside the state of Arkansas, including \$587.18 for topical medication Physician-2 prescribed to patient J.T. on April 24, 2017, into CCI's Simmons Bank account ending in 3533.
8	June 22, 2017	Reconciliation of funds resulting from the deposit of CCI's check #5250, dated June 15, 2017, drawn on its Regions Bank account ending in 4368, in the amount of \$23,692.03 to Physician-2's First Federal Bank of Louisiana account ending in 1357.
9	August 23, 2017	Fax transmission of a prescription form for topical medications Physician-2 prescribed to patient D.F. on August 23, 2017, from Clinic-2, in Louisiana, to CCI, in Rogers, Arkansas.
10	September 14, 2017	Reconciliation of funds resulting from a \$2,051.34 electronic payment from the Department of Labor (United States Treasury), originating outside the state of Arkansas, including \$1,464.16 for topical medications Physician-2 prescribed to patient D.F. on August 23, 2017, into CCI's Simmons Bank account ending in 3533.

Count	Date	Description
11	September 21, 2017	Reconciliation of funds resulting from the deposit of CCI's check #6370, dated September 15, 2017, drawn on its Regions Bank account ending in 4368, in the amount of \$25,691.95, to Physician-2's First Federal Bank of Louisiana account ending in 1357.

All in violation of Title 18, United States Code, Section 1343 and Title 18, United States Code, Section 2.

COUNT 12
18 U.S.C. §§ 1343 and 2
(Wire Fraud, and Aiding and Abetting)

Introductory Allegations

195. The factual allegations of Paragraphs 1 through 194 are re-alleged and incorporated as though fully set forth.

196. “Company-10” was a Texas corporation located in Rogers, Arkansas. Company-10, established in 2017, marketed medical products to health care providers.

197. “Company-11” was a medical billing company located in Bristol, Pennsylvania.

198. On September 29, 2017, as a part of BURROUGHS’ sale of CCI and EZPharma (identified, collectively, as “The Company” in the contract) to Company-9, BURROUGHS (identified as “Seller” in the contract) entered into a confidentiality and non-competition agreement with Company-9 (identified as “Buyer” in the contract), which included the following:

a. Section 2, which prohibited BURROUGHS from competing with Company-9, CCI, or EZPharma:

Non-Competition and Non-Solicitation. Seller hereby covenants and agrees with buyer that, during the “Non-Compete Period” and within the “Non-Compete Area,” Seller shall not directly or indirectly: (a) acquire, lease, manage, consult for, serve as agent or subcontractor for, finance, invest in, own any part of or exercise management control over any business which directly competes with the Business as of Closing Date; or (b) directly solicit employment or employ any person who is an employee of the Company on the Closing Date. The term “Non-Compete Period” shall mean a period commencing on the Closing Date and

terminating on the fifth (5th) anniversary thereof. The term “**Non-Compete Area**” shall mean the United States of America, its territories and possessions. Notwithstanding anything in this Agreement to the contrary, the foregoing restriction shall not prevent Seller from (i) owning and operating businesses within the health-care industry which may utilize similar sales representatives via an independent contractor relationship provided the ownership and operation of such companies is consistent with the terms and conditions of this Agreement (*i.e.*, they do not directly compete with the Business of the Company); (ii) using Confidential Information known or otherwise in the possession of Seller to own and operate such businesses within the health-care industry as contemplated by the foregoing sentence; or (iii) owning less than five percent (5%) of the stock of any publicly-held company or the owning stock in Buyer (as contemplated by the Purchase Agreement).

b. The following provision—Section 3 (“Enforcement”), Subsection (a)—in which BURROUGHS acknowledged that violation of the non-competition agreement would cause “irreparable harm to Buyer”:

Seller acknowledges that his breach of Sections 1 or 2 would cause irreparable harm to Buyer and the Company not compensable in monetary damages and that Buyer and the Company shall be entitled, in addition to all other applicable remedies at law and in equity, to a temporary and permanent injunction and a decree for specific performance of the terms of **Section 1**[] or **Section 2**. Nothing herein contained shall be construed as prohibiting Buyer or the Company from pursuing any other remedy available to it for such breach or threatened breach.

c. The following provision—Section 3, (“Enforcement”), Subsection (b)—in which BURROUGHS accepted the non-competition agreement and acknowledged it was reasonable and required:

Seller agrees that the limitations set forth in this Agreement (including, without limitation, time and temporal limitations) are reasonable and properly required for the adequate protection of the current and future interests of Buyer and the Company. The Parties acknowledge the necessity of protection against the competition of Seller against the Company and that the nature and scope of such protection has been carefully considered by the Parties. The Non-Compete Period and Non-Compete Area are expressly acknowledged and agreed to be fair, reasonable and necessary. In the event any covenant contained in **Section 2** is found by a court of competent jurisdiction to be invalid, illegal or unenforceable because of the duration of such covenant or otherwise, the Parties agree that the court making such determination shall have the power to reduce the duration and/or other provision(s) of any such covenant to the maximum extent permissible and to include as much of its nature and scope as will render it enforceable and, in its reduced form said covenant shall be valid, legal and enforceable.

199. On August 6, 2018, in the Circuit Court of the 11th Judicial Circuit, in and for Miami-Dade County, Florida, Complex Business Litigation Section, BURROUGHS caused to be filed a civil lawsuit, brought in his individual capacity, in which he named Company-9 as the defendant. In his complaint, BURROUGHS alleged that Company-9 and its owner wrongfully retained the benefits of the transaction in which BURROUGHS sold CCI and EZPharma to Company-9. BURROUGHS also alleged that Company-9 and its owner refused to pay the full purchase price upon which they had agreed. BURROUGHS sought an award of not less than \$3,112,152.37 in compensatory damages, plus interest, attorney's fees, and costs.

200. In the above-referenced lawsuit, BURROUGHS was primarily represented by an attorney whose law firm's office was in Rogers, Arkansas ("BURROUGHS' civil attorney"), with assistance from a Florida attorney as well (collectively, "BURROUGHS' civil attorneys").

201. On February 27, 2019, Company-9 filed its answer and counterclaim against BURROUGHS. In this matter, Company-9 was represented by an attorney and his firm, having their office in Coral Gables, Florida ("Company-9's civil attorney").

202. On August 13, 2019, Company-9 sought leave of the court to amend its claim to include, *inter alia*, the allegation that BURROUGHS had violated the non-competition agreement, alleging that:

...text messages recently produced by the former CEO of CCI and Burroughs' closest personal, Stephen Andrews, prove that shortly after executing his non-compete and non-solicitation agreements, Burroughs set out to knowingly and intentionally, compete with [Company-9] in direct violation of his non-compete agreement. The text messages reveal that Burroughs used one of his companies, [Company-10], to steal [Company-9's] clients and solicit [Company-9's] sales representatives by, among other things, offering them lucrative commissions.

203. On April 9, 2020, the court granted Company-9's request to amend its claim to include, *inter alia*, the allegation that BURROUGHS had violated the non-competition agreement.

204. During the course of the civil lawsuit between BURROUGHS and Company-9 and its owners, Company-9's civil attorney served court-ordered requests for production of documents ("discovery") to BURROUGHS' civil attorney.

205. On September 24, 2020, BURROUGHS sat for a deposition in Rogers, Arkansas, and provided sworn, recorded, and transcribed testimony regarding the subjects of the parties' lawsuit.

The Scheme

206. From at least as early as April 9, 2020, through September 24, 2020, in the Fayetteville Division of the Western District of Arkansas, and elsewhere, defendant **HUNTER MATTHEW BURROUGHS** knowingly devised and intended to devise a scheme and artifice to defraud Company-9 and the Circuit Court of the 11th Judicial Circuit, in and for Miami-Dade County, Florida, and obtain money by means of materially false and fraudulent pretenses, representations, and promises.

Manner and Means

207. It was part of the scheme that BURROUGHS would and did materially alter and cause to be altered five emails, which he then provided to his civil attorney in that matter, to be produced electronically from his office in the Fayetteville Division of the Western District of Arkansas to Company-9's civil attorney, in Coral Gables, Florida, as discovery in the case. BURROUGHS caused alterations to be made to the emails that hid his financial interest in Company-10, as Company-10 sought to enter into a contractual agreement with Company-11, and further actions from which a reasonable judge and jury could have concluded that BURROUGHS had violated the non-competition agreement.

208. It was a part of the scheme that the first email BURROUGHS caused to be materially altered was a December 4, 2017, email having the subject line, “Re: new consulting agreement,” which BURROUGHS had sent to multiple sales representatives.

a. In the body of the original email, Burroughs had written the following:

Good Morning.
Ok I have attached the contract for doing the RM-3A program. Its under a company called Ancillary direct is who the commission will come from. Please reach out to me with any question.
Hunter Burroughs

b. However, the altered version of the email that BURROUGHS provided to his civil attorney, to produce to Company-9’s civil attorney, instead stated:

Good Morning.
Ok I have attached the contract for doing the RM-3A program. Its under a company called Ancillary which is company owned by my brother in law whom most of you met on the river last year. I am just trying to give him a hand in getting this set up. I wont have anything to do with this company but if I can help on something then please let me know Please reach out to me with any question.

c. The effect of the alteration was to distance BURROUGHS from his affiliation with Company-10.

209. It was a part of the scheme that the second email BURROUGHS caused to be materially altered was a December 14, 2017, email, having the subject line, “Offer for sales force and doing business,” which BURROUGHS had sent to multiple individuals from Company-11.

a. In the body of the original email, BURROUGHS had written the following:

Guys,

I have attached the CCI contracts and our oral dispensing program. We don't charge and upcharge for the orals as they are sent directly from Bryant Ranch. We do for the patches and Creams program under CCI for just workers comp(50%) contracts. My reps would need to have similar contracts such as these made so that you can keep the same profit margins and they can see the same level of commissions coming off. Again we cherry pick for the drugs that they use for the oral dispensing to mainly one that show enough profit to make it worth their while and ours. Mobic is the most common.

We have 3 layers of reps: Regional VP (Las Vegas, MD, FL, Louisiana. All of these guys are studs), State Managers (CO, CA, FL, NC, MS, GA, AZ, NV, MO) independent reps (mainly 1099 but in most of the other states)

Here is what I am asking for:

I will direct the reps to contract directly with you and to be paid directly from your company. You will contract with one of my entities for a manager override. Total percentage I need for this 55% of net, that is to include total payout to rep, manager and me. On the drug profit side I would get 20% of net.

example: Under most our contracts with the doctor 50/50 we collect \$1000 for a month supply of Terocin Patches. Doctor gets \$500, you would get \$500. 40% goes to the regional VP \$200 total rep commission (they can disperse the money from there) and 15% goes to me \$75. For the cost of the drug. No rep commission but we charge \$148 for Terocin patches and our cost is around \$100 with shipping. So on the \$48, I would make \$9.60. **Your gross profit on this one transaction would be \$263.40.**

Of course the profit margin would be less if the percentage is different but its still higher than your currently doing. We would most likely need do something a little different on the situation where the drug cost is much higher so the doctor still wins on the deal.

Course of action would be to start immediately setting clinics up to do all other payors (other than workers comp) and then slowly start moving over the existing patches and creams and higher grossing oral business. Also we have about 2-4 clinics that we need to set up for patches and creams (new business).

Please send me your contracts that your currently use or any marketing material that you are using in the field. Let me know when you want to get back together on this.

Hunter Burroughs

Preferred Billing Partners, Elite Allergy, Blue Print Health, Owner
Office number- 479-845-7000

b. However, the altered version of the email that BURROUGHS provided to his civil attorney, to produce to Company-9's civil attorney, instead stated:

Guys,

The company I just sold in CCI specialized in dispensing to workers comp and doing patches and creams, that business now belongs to a group called Health Right, who seems to be determined to run it into the ground. we cherry pick for the drugs that they use for the oral dispensing to mainly one that show enough profit to make it worth their while and ours. Mobic is the most common. From our experience in the past you have a lot of different ways to generate revenues for reps besides dispensing to workers compensation people, I would like to you expand on that since these reps look like they might be needing new jobs in the near future and they have all become good friends of mine over the years.

We have 3 layers of reps: Regional VP (Las Vegas, MD, FL, Louisiana. All of these guys are studs), State Managers (CO, CA, FL, NC, MS, GA, AZ, NV, MO) independent reps (mainly 1099 but in most of the other states)

Course of action would be to start immediately setting clinics up to do all other payors (other than workers comp, third party groups) and add tox and your other programs. I would like to stay away from dispensing to workers comp as that would violate the reps and my non-compete.

Please send me your contracts that you currently use or any marketing material that you are using in the field. Let me know when you want to get back together on this.

**Hunter Burroughs
Preferred Billing Partners, Elite Allergy, Blue Print Health, Owner
Office number- 479-845-7000**

c. The effect of the alterations was to conceal BURROUGHS' financial gain from the agreement with Company-11, and to conceal BURROUGHS' plan to compete with Company-9, from which a reasonable judge and jury could have concluded BURROUGHS violated the non-competition agreement. In the altered version of the email, BURROUGHS had caused to be made the following changes: (1) removal of references to contracts involving workers' compensation that had been contained in the first paragraph of the original email—a subject covered by the non-competition agreement; (2) removal of two entire paragraphs of the original email, in which BURROUGHS outlined the details of his plan to use and profit from a business model similar to that employed by CCI to distribute topical medications; and (3) addition

of the following sentence, which was not in the original: "I would like to stay away from dispensing to workers comp as that would violate the reps and my non-compete."

210. It was a part of the scheme that the third email BURROUGHS caused to be materially altered was a December 27, 2017, email he had sent to the Company-11 owner.

a. In the body of the email, BURROUGHS had written the following:

[REDACTED]

There are a couple of things that I noticed that could be some hangups

1. The \$500 sign on fee for the doctor/cinic to be a part of them
2. The \$250 monthly fee to do business each month
3. The charge for each transaction of \$10 to do business. (I get this for non workers comp but not the \$10 we get)
4. The bank account for the funds, not sure how many will want to do a bank account together

Just some of my first thoughts

Hunter

b. However, the altered version of the email that BURROUGHS provided to his civil attorney, to produce to Company-9's civil attorney, instead stated:

[REDACTED]

There are a couple of things that I noticed that could be some hangups.

First off, I can not do any form of dispensing to workers comp. I don't have a problem with your other services but we will have to cross out anything with dispensing. Labs, other drugs and a few of your other programs are what I am mostly likely interested in. I think my reps can really do well with those. We most likely need to meet in persona and we can discuss those. If reps are let go or want to look at your dispensing program it has to be up to them and they have to reach out to you.

Just some of my first thoughts.

Hunter

c. The effect of the significant alterations was the complete removal of four specific instructions to the recipient, from which a reasonable judge and jury could have found that BURROUGHS violated the non-competition agreement, and the addition of text to create the appearance he had abided by the non-competition agreement, including: "I don't have a problem with your other services but we will have to cross out anything with dispensing."

211. It was a part of the scheme that the fourth email BURROUGHS caused to be materially altered was a January 17, 2018, email to the Company-11 owner having the subject line, "Re: Follow Up."

a. In the body of the email, BURROUGHS had written the following:

That would probably be best. CCi fired the CEO Stephen Andrews (he will be in Breck as well). If you want to come in on Monday stay else where thats fine and then you can join us for Breakfast Tuesday and go skiing with us (if your wanting too). Our plan is to ski both mornings and work/discuss in the afternoon. The firing of CEO is crazy because now everyone is wanting to jump ship and move over their book of business. We are having our attorney look into their non-competes and the clinics non-compete.

I am telling all of the managers that I am not recommending that you move existing business but to start doing full dispensing to third parties and that the clinic might want to switch after that and that all contracting outside of our two direct reps (Jon Montgomery and zach Henson, both will be there) will be contracted directly with you and all commission will come to you. So I will be completely out of it but will help in any way possible.

Hunter

b. However, the altered version of the email that BURROUGHS provided to his civil attorney, to produce to Company-9's civil attorney, instead stated:

That would probably be best. CCi fired the CEO Stephen Andrews (he will be in Breck as well). If you want to come in on Monday stay else where thats fine and then you can join us for Breakfast Tuesday and go skiing with us (if your wanting too). Our plan is to ski both mornings and work/discuss in the afternoon. The firing of CEO is crazy because now everyone is wanting to jump ship and move over their book of business. (which to be honest, I think the new owner will still come through and I am not encouraging that to happen and I would appreciate you not talking with them about workers comp business. Only tox and third parties) We are having our attorney look into their non-competes and the clinics non-compete because they are all worried.

I am telling all of the managers that I am not recommending that you move existing business but to start doing full dispensing to third parties as CCi does not dispense to those patients currently and shouldn't violate any of my non competes. So I will be completely out of it but will help in any way possible so that my guys don't get left in the gutter at the end of the day. My focus for this meeting is for them to push Allergy, tox and a few new programs we have and for everyone to just have a good time.

Hunter

c. From the original version of the email, a reasonable judge and jury could have concluded he had continued to negotiate a deal to directly compete with Company-9 and attempt to steal Company-9's customers. However, the effect of the alteration was to create the appearance BURROUGHS had abided by the terms of the non-compete agreement, including addition of the following: "I am telling all of the managers that I am not recommending that you move existing business but to start doing full dispensing to third parties as CCI does not dispense to those patients currently and shouldn't violate any of my non competes."

212. It was a part of the scheme that the fifth email BURROUGHS caused to be materially altered was a February 5, 2018, email containing an exchange between himself and the Company-11 owner.

a. On February 5, 2018, BURROUGHS sent an email to the Company-11 owner. In the body of the email, BURROUGHS had written the following:

I have talked with the guys. They won't sign any more non competes as the business is going to stay with these guy where ever they go. If you take care of them, they wont leave. All of them are extremely loyal.

Hunter

b. However, the altered version of the email that BURROUGHS provided to his civil attorney, to produce to Company-9's civil attorney, instead stated:

[REDACTED]

I have talked with the guys. They won't sign any more non competes as the business is going to stay with these guys where ever they go. If you take care of them, they won't leave. All of them are extremely loyal. I am handing all of this over to Stephen Vozeh. Going forward I was asked that you reach out to him regarding dealing with reps with any of your programs. I just have to much on my plate. I am in the process of buying a group of 16 sleep labs in southern Arkansas, a place that bought in January and my Allergy company that is taking off. I wish you well.

Hunter

c. Continuing on February 5, 2018, the Company-11 owner had responded to BURROUGHS, writing the following in the original:

No I understand that. There is no non compete in the Agreement. The non compete is for our employees and vendors not customers. Call me if that doesn't make sense.

Best,

d. However, the altered version of the email that BURROUGHS provided to his civil attorney, to produce to Company-9's civil attorney, instead stated:

No I understand that. Thank you and call me if I can help you in any way.

Best,

e. The effect of the text added to the original version of BURROUGHS' email was to make it seem as though BURROUGHS was transferring Company-10 to a family member, and the further deletion of any mention of the non-competition agreement from the subsequent reply was to remove language from which a reasonable judge and jury could have found that BURROUGHS had violated his agreement with Company-9.

213. On August 17, 2020, BURROUGHS' civil attorney, located in Rogers, Arkansas, sent an email having the subject line, "RE: BURROUGHS v. [Company-9] [FEC-

FEC.FID1189378],” to Company-9’s civil attorney, who was located in Coral Gables, Florida. In the body of the email, BURROUGHS’ civil attorney stated,

Attached please find additional documents in supplementation of Plaintiff’s prior responses to the requests that are the subjects of our below emails. Mr. Burroughs has indicated to me that he does not have a “loanhunter@gmail.com account.” The supplemental production attached here does include emails from his loanhunter@hotmail.com account. We assume that is the account you were attempting to refer to but please let us know if that is not the case.

The email from BURROUGHS’ civil attorney included an attachment, dated August 17, 2020.

The attachment was a separate email from BURROUGHS’ civil attorney to Company-9’s civil attorney, that notified Company-9’s civil attorney he had been sent large files utilizing a file sharing service. Amongst the files uploaded to the file sharing service was “Emails-Burroughs 001786-001998.PDF.” This Portable Document Format (“PDF”) file contained electronic images of the five altered emails BURROUGHS had provided to his civil attorney.

214. It was further a part of the scheme that during the sworn deposition taken on September 24, 2020, within the Fayetteville Division of the Western District of Arkansas, BURROUGHS would and did testify under oath, falsely and perjuriously, that four of the five altered emails identified above, which he had provided to his civil attorneys, were true and correct copies of the originals, when he then and there knew they were not.

215. It was further a part of the scheme that during the September 24, 2020, deposition, BURROUGHS would and did testify under oath, falsely and perjuriously, using the five altered emails as support, that he did not operate Company-10. However, in truth and in fact, as demonstrated by the original versions of the altered emails, the judge and jury in the civil case could reasonably have found that BURROUGHS did operate Company-10. BURROUGHS testified falsely and perjuriously until, hours into the September 24, 2020, deposition, Company-9’s civil attorney confronted BURROUGHS with true and correct copies of the five emails identified above, which had been obtained from another source.

Execution of the Scheme

216. On or about August 17, 2020, in the Fayetteville Division of the Western District of Arkansas, and elsewhere, defendant **HUNTER MATTHEW BURROUGHS**, for the purpose of executing the scheme described above, and attempting to do so, caused to be transmitted by means of wire communication in interstate commerce the following writings, signs, signals, pictures, and sounds: an email from BURROUGHS' civil attorney in Arkansas, to Company-9's civil attorney in Florida having the subject line, "RE: BURROUGHS v. [Company-9] [FEC-FEC.FID1189378]", containing BURROUGHS' production of civil discovery and including five emails that had been materially altered from their original versions.

All in violation of Title 18, United States Code, Section 1343 and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATION

Conspiracy to Commit Health Care Fraud

217. The allegations contained in Count One of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 982(a)(7).

218. Upon conviction of the offense in violation of Title 18, United States Code, Sections 1347 and 1349 set forth in Count One of this Indictment, the defendants, **HUNTER MATTHEW BURROUGHS** and **STEPHEN KEITH ANDREWS**, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense. The property to be forfeited includes, but is not limited to, the following: a forfeiture money judgment equal to the gross proceeds traceable to the commission of the offense.

219. If any of the property described above, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- 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 divided without difficulty;

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

All pursuant to 18 U.S.C. § 982(a)(7) and 28 U.S.C. § 2461(c).

Conspiracy to Commit Wire Fraud and Wire Fraud

220. The allegations contained in Counts Two through Eleven of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

221. Upon conviction of the offenses in violation of Title 18, United States Code, Sections 1343 and 1349 set forth in Counts Two through Fourteen of this Indictment, the defendants, **HUNTER MATTHEW BURROUGHS** and **STEPHEN KEITH ANDREWS**, shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any property, real or personal, which constitutes or is derived from proceeds traceable to the offenses. The property to be

forfeited includes, but is not limited to, the following: a forfeiture money judgment equal to the proceeds traceable to the offenses.

If any of the property described above, as a result of any act or omission of the defendants:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- 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 divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

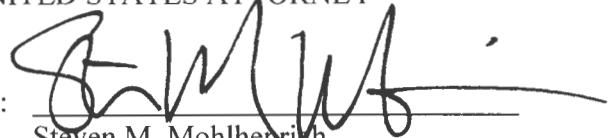
A TRUE BILL.

/s/Grand Jury Foreperson

FOREPERSON

DAVID CLAY FOWLKES
UNITED STATES ATTORNEY

By:



Steven M. Mohlhenrich
Assistant United States Attorney
Maryland Bar No. 9212160240
414 Parker Avenue
Fort Smith, Arkansas 72901
(479) 783-5125
Steven.Mohlhenrich@usdoj.gov