

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
NOV 20 2019
David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA

v.

LEONARD CARR,

Defendant.

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Criminal No. 19-CR-693

SUPERSEDING INFORMATION

The United States Attorney for the Southern District of Texas charges:

General Allegations

At all times material to this Superseding Information, unless otherwise specified:

Compounded Drugs

1. Compounded pharmaceuticals were drugs that were combined, mixed, or altered from other drugs by licensed pharmacists or other licensed practitioners, pursuant to valid prescriptions issued by licensed medical professionals, including physicians, physicians' assistants, and nurse practitioners ("prescribers"), to meet the specific needs of individual patients.

2. Although ingredients in compounded medications were generally approved by the United States Food and Drug Administration ("FDA"), the compounded form of those medications were not. That is, the FDA did not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs.

Health Care Benefit Programs

Commercial Insurance

3. Commercial insurance companies provided health care benefits for individuals enrolled with their plans, often referred to as "members." These private insurance companies were

“health care benefit programs” within the meaning of Title 18, United States Code, Section 24(b), that affected commerce.

4. Commercial insurance companies, employers, and private entities offered drug plans, which were administered and operated by Pharmacy Benefit Managers (“PBMs”). A PBM acted on behalf of one or more drug plans. Through a plan’s PBM, a pharmacy could join the plan’s network.

5. A member of a privately insured drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

6. Express Scripts, Inc. (“Express Scripts” or “ESI”); Argus (currently known as DST Solutions); Caremark LLC, doing business as (“d/b/a”) CVS/Caremark (“CVS/Caremark”); OptumRX, Inc.; Catamaran; and Prime Therapeutics, LLC, among others, were PBMs, and were health care benefit programs, as defined by Title 18, United States Code, Section 24(b), that affected commerce.

The TRICARE Program

7. TRICARE was a health care program of the United States Department of Defense (“DOD”) Military Health System that provided coverage for DOD beneficiaries worldwide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors. Individuals who received health care benefits through TRICARE were referred to as TRICARE “beneficiaries.” The Defense Health Agency (“DHA”), an agency of DOD, was the military entity responsible for overseeing and administering TRICARE.

8. TRICARE provided coverage for certain prescription drugs, including certain compounded drugs that were medically necessary and prescribed by a licensed medical professional.

9. In or around May 2015, the DHA implemented a new screening procedure to ensure that TRICARE-covered compounded drugs were safe, clinically necessary, and cost effective, which resulted in a steep decline in TRICARE's reimbursements for compounded drugs.

10. TRICARE beneficiaries could fill their prescriptions through military pharmacies, TRICARE's home delivery program, network pharmacies, and non-network pharmacies. Once a beneficiary filed a prescription, the pharmacy would collect any applicable copay from the beneficiary, dispense the drug to the beneficiary, and submit a claim for reimbursement to Express Scripts, the PBM that administered TRICARE's prescription drug benefits, which would, in turn, adjudicate the claim and reimburse the pharmacy directly or through a Pharmacy Services Administrative Organization ("PSAO"). To become a network pharmacy, a pharmacy agreed to be bound by, and comply with, all applicable State and Federal laws, specifically including those addressing fraud, waste, and abuse.

11. TRICARE was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b) that affected commerce.

The Medicare Program

12. The Medicare Program ("Medicare") was a federal health care program providing benefits to individuals who were 65 years or older or disabled. The United States Department of Health and Human Services, through its agency, the Centers for Medicare and Medicaid Services ("CMS"), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."

13. Medicare programs covering different types of benefits were separated into different program "parts." Medicare Part D ("Part D") subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. The Medicare Part D Program was enacted as part

of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and went into effect on January 1, 2006.

14. To receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies that Medicare approved, often referred to as drug plan “sponsors.” A beneficiary in a Medicare drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

15. A pharmacy could participate in Part D by entering into a retail network agreement directly with a plan or with one or more PBMs. A PBM acted on behalf of one or more drug plans. Through a plan’s PBM, a pharmacy could join the plan’s network. Express Scripts and CVS/Caremark, among others, were Medicare drug plan sponsors.

16. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim either directly to the plan or to a PBM that represented the beneficiary’s Medicare drug plan. The plan or PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

17. Medicare, through CMS, compensated the Medicare drug plan sponsors. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors’ plans, which was adjusted periodically based on various factors, including the beneficiary’s medical conditions. In addition, in some cases in which a sponsor’s expenses for a beneficiary’s prescription drugs exceeded that beneficiary’s monthly fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

18. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b) that affected commerce.

The Federal Employees' Compensation Act

19. The Federal Employees' Compensation Act ("FECA") pays workers' compensation benefits ("Workers' Compensation") to federal employees who suffer an injury, disease, or death in the performance of duty. An injured federal worker insured under FECA was generally referred to as a "claimant."

20. FECA paid for, among other things, necessary prescription drugs on behalf of claimants for injuries sustained during the claimants' work for the Federal government.

21. The Department of Labor Office of Workers' Compensation Program ("DOL-OWCP") administered the benefits under FECA. DOL-OWCP contracted with Affiliated Computer Services ("ACS") to provide medical claims processing and payments. ACS served as the billing administrator for FECA. In this capacity, ACS received provider enrollment forms from prospective FECA providers, assigned provider numbers, and processed and paid claims for benefits under FECA.

22. Once enrolled, a provider was given access to the ACS online system. Through this ACS system, a provider could submit claims, among other functions. Providers were required to identify on each claim the services provided. All claims submitted were required to be supported by medical evidence. The submission of a claim and acceptance of payment by a provider signified that the service for which reimbursement was sought was: performed as described, medically necessary and appropriate, and properly billed in accordance with accepted industry standards. DOL-OWCP paid claims for prescriptions on behalf of beneficiaries to the pharmacy's financial institution via wire, check, and electronic transfer.

23. FECA was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b) that affected commerce.

Claims Adjudication

24. Providers, including pharmacies, entered into contractual relationships with PBMs either directly or indirectly. If indirectly, providers first contracted with pharmacy network groups, or PSAOs, which then contracted with PBMs on behalf of providers. Providers, whether directly or indirectly, by contracting with PBMs, agreed to comply with all applicable laws, rules, and regulations, including all applicable federal and state anti-kickback laws.

25. For prescription drugs, including compounded medications, to be reimbursed, health care benefit programs required that they be dispensed pursuant to a valid prescription and be medically necessary for the treatment of covered illnesses or conditions.

26. Copayments set by the health care benefit programs were the monetary amounts or percentages paid by beneficiaries and members for health care services and items received.

27. Most, if not all, PBMs required participating pharmacies to collect and make good faith efforts to collect copayments from beneficiaries and members at the time of billing, and specified that copayments could not be systematically waived or reduced, in part because consistent copayment collection was a fraud prevention measure—copayments gave beneficiaries and members financial incentives to reject medications that were not medically necessary or had little to no value to their treatments.

28. Upon receiving prescriptions and dispensing prescription drugs, pharmacies submitted claims to health care benefit programs or PBMs. Health care benefit programs or PBMs reimbursed pharmacies at specified rates, minus any copayments to be paid by beneficiaries.

29. PBMs adjudicated claims submitted electronically in states other than Texas.

Relevant Entities

30. Pharms, LLC (“Pharms”), a Texas Limited Liability Company, was a management

company formed in or around June 2013.

31. OmniPlus Healthcare, L.P.; Alternative Medicine and Pharmacy, Inc., d/b/a OmniPlus Pharmacy (“OmniPlus”); Omni-One-Med Pharmacy Services, LLC (“Omni-One-Med”); Safety and Health Technology, LLC, d/b/a Accu-Care Pharmacy; Healthy Pharmacy Solutions, Inc.; Kremco Pharmacy, LLC, d/b/a Kremco Pharmacy; and JSW Prosperity, LLC, d/b/a 1 Stop Pharmacy (collectively “the Pharmacies”) were licensed pharmacies formed, acquired, or purchased between in or around March 2013 and in or around 2016. Many of the Pharmacies were held by holding companies, which were Texas Limited Liability Companies.

32. Rx Logistics LLC, d/b/a Rx Logistics, a Texas Limited Liability Company, was a wholesale pharmaceutical distributor formed in or around 2015.

The Defendant and Coconspirators

33. Defendant **LEONARD CARR**, a resident of Houston, Texas, was the Vice President of Operations at Pharms, and was a part-owner of Pharms, some of the Pharmacies, and Rx Logistics.

34. Brian Swiencinski (“Swiencinski”), a resident of Dallas, Texas, owned Worth Medical (“Worth”). Swiencinski and others owned or controlled Pharms, the Pharmacies, Rx Logistics, and other related business entities located in or around Houston, Texas.

35. Scott Breimeister (“Breimeister”), a resident of Houston, Texas, owned or controlled Pharms, the Pharmacies, Rx Logistics, and other related business entities located in or around Houston, Texas with Swiencinski and others.

36. Vladimir Redko, M.D. (“Redko”) a resident of Houston, Texas, was a physician licensed to practice medicine in the State of Texas. Redko, Swiencinski, and others, owned or controlled several of the Pharmacies and related business entities located in or around Houston,

Texas.

37. Christopher Ince (“Ince”), a resident of Dallas, Texas was a physician licensed to practice medicine in the State of Texas. Ince owned or controlled Applied Pain Associates, PLLC, which he formed in or around 2011.

38. Defendant Ronnie Mcada, Jr. (“Mcada”), a resident of Sunnyvale, Texas, was a sales representative. Mcada owned Elite Health Providers, LLC and Medallion Health Group, L.L.C.

COUNT ONE
Conspiracy to Commit Mail Fraud, Wire Fraud, and Health Care Fraud
(18 U.S.C. § 371)

39. Paragraphs 1 through 38 of this Superseding Information are realleged and incorporated by reference as though fully set forth herein.

40. Beginning no later than 2013 and continuing through in or around 2018, the exact dates being unknown, in the Houston Division of the Southern District of Texas and elsewhere, the Defendant,

LEONARD CARR

did knowingly and willfully combine, conspire, confederate, and agree with others known and unknown, including Brian Swiencinski, Scott Breimeister, Vladimir Redko M.D., Christopher Ince M.D., Ronnie McAda, Jr., and others, to commit certain offenses against the United States, that is:

- a. to knowingly and with the intent to defraud, devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and for the purpose

of executing the scheme and artifice, did knowingly deliver and cause to be delivered, certain mail matter by the U.S. Postal Service and any private and commercial interstate carrier according to the directions thereon, in violation of Title 18, United States Code, Section 1341;

b. to knowingly and with the intent to defraud, devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and did knowingly transmit and cause to be transmitted, by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds for the purposes of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343; and

c. to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, TRICARE, Workers' Compensation, and other government and private health care benefit programs, generally administered by PBMs, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said 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.

Purpose of the Conspiracy

41. It was an object and purpose of the scheme for the Defendant **LEONARD CARR**, his coconspirators Swiencinski, Breimeister, Redko, Ince, McAda, and others, known and unknown, to unlawfully enrich themselves by, among other things, submitting or causing the

submission of false and fraudulent claims to health care benefit programs, that is, Medicare, TRICARE, Workers' Compensation, and other government and private health care benefit programs, generally administered by PBMs, for compounded and other drugs that were often medically unnecessary, not provided or not provided as billed, based on an invalid prescriber-patient relationship, induced by kickbacks or bribes, dispensed in violation of state licensing requirements, or for which copayments were not properly collected.

Manner and Means of the Conspiracy

42. The manner and means by which the defendant **LEONARD CARR** and his coconspirators sought to accomplish the object and purpose of the conspiracy included, among other things:

43. Beginning no later than 2013 and continuing through in or around 2018, Swiencinski partnered with Redko, Breimeister, **LEONARD CARR**, and others to found, own, and operate the Pharmacies. The Pharmacies contracted with several PBMs to file claims for reimbursement for compounded and other pharmaceutical drugs.

44. The Pharmacies formulated, mixed, and dispensed compounded drugs, "kits," "patches," and other drugs (collectively "compounded and other drugs") not based on individualized patient need, but instead based on formulas designed to maximize reimbursements from government and private health care benefit programs.

45. **LEONARD CARR** was hired in or around May 2014, and became Pharms' Vice President of Operations in or around October 2014. In or around late January 2015, **LEONARD CARR** became a part-owner of Pharms and some of the Pharmacies.

46. In or around late 2015, Swiencinski, Breimeister, and **LEONARD CARR** formed Rx Logistics, a wholesale purchaser and seller of pharmaceutical products that were sold to the

Pharmacies. By purchasing wholesale drugs from Rx Logistics, Swiencinski, Breimeister, **LEONARD CARR**, and other owners increased their own profits.

47. To increase reimbursements, Swiencinski, who was himself a sales representative, oversaw a national network of hundreds of other sales representatives, including McAda. Sales representatives were financially incentivized through kickbacks and bribes, often disguised as commission payments, which were usually based on the reimbursements from government and private health care benefit programs, administered by the PBMs, to the Pharmacies for compounded and other drugs. Beginning in 2014, **LEONARD CARR** began overseeing these payments.

48. To further increase reimbursements, Swiencinski, Breimeister, and their coconspirators, including McAda and other sales representatives, often directed prescribers, including Redko, Ince, and others to prescribe and sign off on prescriptions for compounded and other drugs that were often medically unnecessary, not eligible for reimbursement, or not provided.

49. Also to maximize reimbursements, Swiencinski, McAda, and other employees and sales representatives signed up themselves, their families, and others to receive compounded and other drugs that were often medically unnecessary, not eligible for reimbursement, sometimes not provided, or for which copayments were rarely paid. Redko, Ince, and others signed or purportedly signed these prescriptions, many times without seeing or treating the recipient. **LEONARD CARR** knew that many sales representatives were paid on prescriptions dispensed to themselves and their families.

50. Swiencinski, Breimeister, and their coconspirators often paid prescribers including Redko, Ince, and others, kickbacks and bribes, in exchange for medically unnecessary prescriptions for compounded and other drugs.

51. Some prescribers were also financially incentivized to invest in one of the Pharmacies in exchange for returns on those investments. Those payments were often inducements to write prescriptions concealed as returns on investment.

52. Many times, the Pharmacies waived copayments, even though Medicare, TRICARE, and other government and commercial health care benefit programs required the Pharmacies to collect copayments.

53. Once filled, the Pharmacies sometimes mailed the compounded and other drugs to recipients who resided in states in which the Pharmacies or the prescribers were not properly licensed. The Pharmacies evaded detection by employing fraudulent shipping practices, including by using Swiencinski's home address or Redko's office address as a false recipient address.

54. The PBMs occasionally audited or investigated the Pharmacies, the prescribers, and the recipients who had purportedly been prescribed these expensive compounded and other drugs. At various times, **LEONARD CARR**, Swiencinski, Breimeister, Redko, McAda, and others conspired to and did provide false information in response to these audits and investigations.

55. When a PBM terminated one of the Pharmacies in or around 2014, **LEONARD CARR**, Swiencinski, Breimeister, and others conspired to sell other Pharmacies using Pharms employees as straw owners, with the intent to deceive the PBMs to ensure that the Pharmacies could continue billing for compounded and other drugs.

56. To execute their scheme to defraud, **LEONARD CARR**, Swiencinski, Breimeister, Redko, Ince, McAda, and others transmitted and caused to be transmitted by means of wire communication in interstate commerce, writings, signs, signals, pictures, and sounds, including e-mails, text messages and other communications, wire transfers and electronic payments, and claims for reimbursement.

57. The Pharmacies submitted claims electronically to government and private health care benefit programs, generally through PBMs, seeking reimbursement for the compounded and other drugs they purportedly dispensed. Those health care benefit programs, including the PBMs, in turn, reimbursed the Pharmacies' claims in reliance on representations that the drugs dispensed were medically necessary, provided as billed, based on valid prescriptions and prescriber-patient relationships, not induced by kickbacks or bribes, dispensed in accordance with state licensing requirements, and that copayments were properly collected.

58. Between in or around 2013 and in or around 2017, government and private health care benefit programs paid the Pharmacies, generally through the PBMs, over approximately \$140 million, mostly for compounded and other drugs that were medically unnecessary, not provided or not provided as billed, based on an invalid prescriber-patient relationship, induced by kickbacks or bribes, dispensed in violation of state licensing requirements, or for which copayments were not properly collected.

59. The proceeds were disbursed to the Defendant, his coconspirators, and others. Between in or around 2014 and in or around 2017, **LEONARD CARR** was paid at least \$2.8 million from his ownership in Pharms and the Pharmacies, salary, and bonuses.

Overt Acts

60. In furtherance of the conspiracy, and to accomplish its object and purpose, **LEONARD CARR** and his coconspirators committed and caused to be committed, in the Houston Division of the Southern District of Texas and elsewhere, the following overt acts:

a. Swiencinski, McAda, and other sales representatives referred themselves and their families, friends, and others to receive compounded drugs that were often medically unnecessary, based on invalid prescriptions, dispensed in violation of state

licensing requirements, and for which copayments were not collected.

b. Some of the individuals referred lived in Ohio and states other than Texas in which the Pharmacies were, for a time, unlicensed to dispense compounded medications.

c. Although Redko and Ince purportedly prescribed expensive compounded drugs to many of these sales representatives, their families, friends, and others, Redko and Ince never saw or treated as patients these individuals, many of whom resided in different states in which Redko and Ince were not licensed to practice medicine.

d. Swiencinski, McAda, and other sales representatives were paid sales commissions on a monthly basis on these prescriptions for which the PBMs reimbursed the Pharmacies, even though Swiencinski, McAda, and other sales representatives knew that these prescriptions were fraudulent.

e. In or around December 2014, Pharms, LLC paid Swiencinski's company approximately \$506,510.31 for "Sales Commissions for November 2014" by check from JPMorgan Chase Account ending *1228. **LEONARD CARR**, a signatory on the account, signed that check. That payment included commissions based on prescriptions for known sales representatives, and other out-of-state individuals who resided in states in which the Pharmacies were unlicensed.

f. **LEONARD CARR**, Breimeister, and others signed off on other sales commission checks paid to Swiencinski, McAda, and other sales representatives and their associated entities to induce the referral of prescriptions for compounded and other drugs that would be paid for by government and private health care benefit programs.

All in violation of Title 18, United States Code, Section 371.

NOTICE OF CRIMINAL FORFEITURE
(18 U.S.C. § 982(a)(7))


61. Pursuant to Title 18, United States Code, Section 982(a)(7), the United States of America gives notice to the defendant **LEONARD CARR** that, upon conviction of Count One, all property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of such offense is subject to forfeiture.

Money Judgment and Substitute Assets

62. Defendant **LEONARD CARR** is notified that upon conviction, a money judgment may be imposed against the defendant. In the event that one or more conditions listed in Title 21, United States Code, Section 853(p) exists, the United States will seek to forfeit any other property of the defendant up to the amount of the money judgment.

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Case No: 19-CR-693

WAIVER OF INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: _____

Defendant's signature

Signature of defendant's attorney

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title