

U.S. DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

**FILED**

OCT - 3 2018

IN OPEN COURT  
JAMES W. McCORMACK, CLERK  
BY: *[Signature]*  
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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

UNITED STATES OF AMERICA )  
 )  
 v. ) No. 4:18-CR-437 BSM  
 )  
 BRAD DUKE ) 18 U.S.C. § 371

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

At times relevant to the Information

TRICARE

1. TRICARE was a program run by the Department of Defense that provided health care benefits for military personnel, retirees, and their families. It therefore qualified as a health care benefit program under Title 18, United States Code, Section 24(b) and a federal health care program affecting commerce under Title 42, United States Code, Section 1320a-7b.

2. TRICARE provided coverage for prescription drugs (including certain compounded drugs) provided they were medically necessary and validly prescribed by a licensed medical professional.

3. Persons covered by TRICARE were commonly referred to as "TRICARE beneficiaries."

Compounding Generally

4. Compounding was a practice in which a licensed pharmacist combined, mixed, or altered ingredients of a drug in response to a prescription to create medication tailored to the needs of an individual patient. For example, when a patient is allergic to an ingredient in an FDA-approved medication, such as a dye or preservative, a compounded drug can be prepared excluding the substance that triggers the allergic reaction. Compounded drugs may also be prescribed where a patient cannot consume a medication by traditional means, such as an elderly patient who cannot swallow an FDA-approved pill and therefore needs the drug in liquid form.

5. Pharmacies engaged in this practice were referred to as “compounding pharmacies.”

Defendant and Related Parties

6. BRAD DUKE was a medical sales representative in Little Rock, Arkansas, who did business as Medsurg, Inc.

7. Pharmacy 1 was a compounding pharmacy in Mississippi. Upon receipt of prescriptions, Pharmacy 1 shipped its compounded medications direct to patients around the United States.

8. Salesman 1 was a medical sales representative in Tennessee, who did business as Medical Sales Company 1, of which he was President and CEO.

9. Doctor 1 was a physician licensed to practice in Arkansas, who operated Medical Clinic 1 in Little Rock, Arkansas. Doctor 1 was not licensed to practice medicine outside of Arkansas.

10. Medical Assistant 1 was a medical assistant at Doctor 1’s clinic.

11. Patient Recruiter 1 was a medical sales representative in Maumelle, Arkansas.

12. Patient Recruiter 2 was a medical sales representative in Little Rock, Arkansas.

13. Patient Recruiter 3 was a medical sales representative in Nashville, Tennessee.

14. Patient Recruiter 4 was a medical sales representative in Fort Smith, Arkansas.

15. Patient Recruiter 5 was a medical sales representative in McKinney, Texas.

COUNT ONE

Conspiracy to Violate the Anti-Kickback Statute

16. Paragraphs 1 through 15 of this Information are realleged and incorporated by reference as though fully set forth herein.

17. From in or around December 2014 to in or around July 2015, in the Eastern District of Arkansas and elsewhere, Defendant

BRAD DUKE

did knowingly conspire and agree with Medical Assistant 1, Patient Recruiter 1, Patient Recruiter 2, Patient Recruiter 3, Patient Recruiter 4, Patient Recruiter 5, and others known and unknown to the United States Attorney, to commit certain offenses against the United States, that is, to knowingly and willfully offer, pay, solicit, and receive remuneration, specifically kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by check and bank transfer, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item and service for which payment may be made in whole and in part under a federal health care program, that is, TRICARE, and in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part under a federal health care program, that is, TRICARE, in violation of Title 42, United States Code, Section 1320a-7b(b).

#### Purpose of Conspiracy

18. It was a purpose of the conspiracy for DUKE and his co-conspirators to unlawfully enrich themselves by offering, paying, soliciting, and receiving kickbacks and bribes in exchange for referring TRICARE beneficiaries to receive prescriptions issued under the name of Doctor 1 for compounded prescription medication produced by Pharmacy 1.

#### Manner and Means

##### *Promotion of Pharmacy 1*

19. Pharmacy 1 manufactured numerous compounds. Among its highest-grossing items were topical pain, scar, and antifungal creams, which came in pump bottles, as well as supplements, which came as pills. Preprinted prescription pads listed all of Pharmacy 1's available compounds such that prescribers need only check a box beside the desired medication(s).

20. Prior to November 2014, Salesman 1 (dba Medical Sales Company 1) struck an agreement with Pharmacy 1 to market its compounded medications. Salesman 1 operated in this regard as a 1099 (or independent contractor) for Pharmacy 1. His compensation equaled a fixed percentage of the sales he generated for Pharmacy 1 (e.g., insurer reimbursements on prescription drug claims).

21. In or around November 2014, Salesman 1 engaged BRAD DUKE (dba Medsurge) to market compounded medications produced by Pharmacy 1. DUKE operated in this capacity as a 1099 for Medical Sales Company 1. His compensation equaled 35 percent of whatever sales he generated for Pharmacy 1.

22. Salesman 1 told DUKE marketing for Pharmacy 1 was lucrative because TRICARE paid vast sums (tens of thousands per month, per patient) for its products, Pharmacy 1 issued monthly refills automatically, and Pharmacy 1 did not enforce copayment collection such that TRICARE beneficiaries could continue to receive monthly shipments of Pharmacy 1 prescriptions (for which TRICARE would continue to pay) at no cost to themselves. Accordingly, Salesman 1 suggested DUKE focus on TRICARE.

*Prescriptions for TRICARE Beneficiaries*

23. In or around December 2014, DUKE visited Medical Clinic 1 to promote Pharmacy 1 products to Doctor 1 and his staff, including Medical Assistant 1.

24. A short time later, DUKE approached Medical Assistant 1 with a proposition: DUKE would supply Medical Assistant 1 with TRICARE beneficiary information, Medical Assistant 1 would use it to issue prescriptions for Pharmacy 1 medications under Doctor 1's name, and DUKE would pay Medical Assistant 1 \$1,000 each time the prescription went through, including \$1,000 for every refill.

25. DUKE added if Medical Assistant 1 supplied the TRICARE beneficiary for a Pharmacy 1 prescription herself, DUKE would pay Medical Assistant 1 10 percent of whatever TRICARE reimbursed.

26. Medical Assistant 1 agreed to these terms. Doctor 1 was unaware of the arrangement.

*Recruitment and Referral of TRICARE Beneficiaries*

27. From in or around December 2014 and continuing into 2015, DUKE engaged subordinates to recruit TRICARE beneficiaries to receive Pharmacy 1 medications and refer them to DUKE, who would facilitate the prescriptions.

28. This group included Patient Recruiter 1, Patient Recruiter 2, Patient Recruiter 3, Patient Recruiter 4, and Patient Recruiter 5 (collectively, "Patient Recruiters").

29. Just as Salesman 1 had earlier told him, DUKE told Patient Recruiters TRICARE covered Pharmacy 1 products, TRICARE paid vast sums of money for them, Pharmacy 1 issued refills automatically, and Pharmacy 1 did not enforce the collection of copayments.

30. DUKE gave Patient Recruiters Pharmacy 1's preprinted prescription pad and explained TRICARE covered up to three compounds per month per patient, and the most lucrative three-prescription combination included pain cream, scar cream, and supplements.

31. DUKE told Patient Recruiters Doctor 1 would sign Pharmacy 1 prescriptions (with auto refills) for TRICARE beneficiaries without consulting them, even if they lived outside Arkansas.

32. In exchange for recruiting and referring TRICARE beneficiaries for Pharmacy 1 products, DUKE promised to pay Patient Recruiters 20 percent of whatever TRICARE paid Pharmacy 1.

33. Recruiters agreed to these terms.

*Operation in Practice*

34. Patient Recruiters each recruited TRICARE beneficiaries in their own right and, at various points, engaged others (in particular those with military ties) to recruit still more TRICARE beneficiaries on their behalf.

35. Patient Recruiters thereafter supplied DUKE with TRICARE beneficiary information so he could file prescriptions under Doctor 1. Patient Recruiters provided (and DUKE required) information needed to fill out Pharmacy 1's preprinted prescription pad (*e.g.*, name, address, date of birth, social security or insurance number). Patient Recruiters did *not* provide (nor did DUKE require) information a prescriber would consider in determining if the prescription was medically necessary (*e.g.*, patient medical history, physical condition, chief complaint, allergies, current medications).

36. Patient Recruiters often referred TRICARE beneficiaries to DUKE by forwarding him pre-filled Pharmacy 1 prescriptions featuring everything except Doctor 1's signature and the amount of refills. That is, Patient Recruiters not only entered TRICARE beneficiary insurance information in the "Patient" section of prescriptions, they also pre-selected what was to be prescribed (usually the most profitable three-drug combo possible) by checking boxes beside the desired compound(s).

37. In other cases, Patient Recruiters simply forwarded DUKE the TRICARE beneficiary insurance information, and he pre-filled the prescriptions.

38. Regardless of who pre-filled a prescription, the process ended with DUKE forwarding the pre-filled prescription to Medical Assistant 1. She then entered the amount of refills (typically 11, the maximum), added Doctor 1's signature, and then faxed the prescription to Pharmacy 1—all unbeknownst to Doctor 1.

39. Consistent with what Duke had initially promised Patient Recruiters, *every* TRICARE beneficiary Patient Recruiters referred to DUKE received a prescription under Doctor 1.

*Compensation*

40. Upon receipt of prescriptions from Doctor 1, Pharmacy 1 dispensed the compounds to the beneficiaries and thereafter submitted prescription drug claims to TRICARE for reimbursement.

41. Upon receipt of payment from TRICARE, Pharmacy 1 paid Medical Sales Company 1, which, in turn, paid DUKE his 35-percent share of whatever TRICARE had reimbursed.

42. Payments from Medical Sales Company 1 to DUKE occurred on a monthly basis and were accompanied by reports that detailed each of the prescriptions for which DUKE was being paid. Among other things, reports listed patient names, prescriber names, compounds dispensed, and insurer reimbursements down to the penny.

43. DUKE used the reports from Medical Sales Company 1 to generate reports of his own, which he used to determine how much he owed Medical Assistant 1 and his Patient Recruiters, whom he also paid on a monthly basis.

44. DUKE circulated copies of his reports via email along with each monthly payment so Medical Assistant 1 and Patient Recruiters could track the prescriptions for which they were responsible, how much TRICARE had paid, and their respective share.

45. Monthly payments from Medical Sales Company 1 to DUKE, and from DUKE to Medical Assistant 1 and Patient Recruiters, generally lagged one to two months behind the prescriptions at issue because of the time involved in Pharmacy 1 submitting prescription claims for payment, TRICARE processing the claims, and, finally, TRICARE issuing reimbursements to Pharmacy 1. So, for example, DUKE and his subordinates did not receive payment for April 2015 prescriptions until June 2015.

*Summary*

46. DUKE paid Medical Assistant 1 over \$250,000 for issuing Pharmacy 1 prescriptions under the name of Doctor 1.

47. DUKE paid over \$2 million to Patient Recruiters 1, 2, 3, 4, and 5 for referring over 100 TRICARE beneficiaries, for whom TRICARE paid over \$10 million in prescription compounds.

48. Over 70 percent of the prescriptions issued under Doctor 1's name were for TRICARE beneficiaries outside of Arkansas. They lived in 24 different states—as far west as Chula Vista, California and as far east as Foxborough, Massachusetts.

*Overt Acts*

49. In furtherance of the conspiracy and to effect its object, DUKE and his co-conspirators committed and caused to be committed the following overt acts, among others, in the Eastern District of Arkansas and elsewhere:

- a. On or about January 30, 2015, Patient Recruiter 4 texted DUKE “Emailed you another script...tricare!”
- b. On or about February 23, 2015, Patient Recruiter 2 texted DUKE in pertinent part, “I have RX #17 for you but I have a question. She is a dependent under Tricare of her husband. Run like normal?” to which DUKE replied via text, “Si si. Just put her husband's name on the bottom of the script.”
- c. On or about March 19, 2015, at or around 10:51 a.m., Patient Recruiter 3 emailed DUKE a pre-filled Pharmacy 1 prescription for a TRICARE beneficiary in Nevada for whom three compounds had been pre-selected; at or around 10:53 a.m., DUKE forwarded it to Medical Assistant 1, writing “Here's another Tricare patient”; at or around 11:00 a.m., Medical Assistant 1 replied to DUKE “Got it done and sent in!”



- d. On or about March 20, 2015, Patient Recruiter 1 emailed DUKE a pre-filled Pharmacy 1 prescription for a TRICARE beneficiary in Mississippi for whom pain cream, scar cream, and a supplement had been pre-selected.
- e. On or about April 3, 2015, DUKE issued check 1304 on his Medsurg account at US Bank payable to Patient Recruiter 2 in the amount of \$156,378.46, the memo line read “Feb [Pharmacy 1] Commission[.]”
- f. On or about April 23, 2015, upon receipt of a March 2015 commission report, Medical Assistant 1 emailed DUKE in pertinent part: “[I]n looking at the report you sent me by accident yesterday, there are 10 patients listed on there that are under [Doctor 1]’s name. I called [Pharmacy 1] and they confirmed that they were billed under his name. If I’m the one taking the risk, I would like to be reimbursed for it. Just for those 10 alone would be another \$10,000. I’m not trying to be bitchy but I’m really risking my job.”
- g. On or about April 26, 2015, Patient Recruiter 5 emailed DUKE a pre-filled Pharmacy 1 prescription for a TRICARE beneficiary in Texas for whom pain cream, scar cream, and a supplement had been pre-selected.
- h. On or about April 29, 2015, DUKE issued check 1361 on his Medsurg account at US Bank payable to Patient Recruiter 1 in the amount of \$53,001.66, the memo line read “March [Pharmacy 1] Comm[.]”
- i. On or about May 28, 2015, Medical Assistant 1 texted DUKE “You can send some more Tricare scripts my way if you want!!”
- j. On or about May 29, 2015, DUKE issued check 1454 on his Medsurg account at US Bank payable to Medical Assistant 1 in the amount of \$154,181.88.

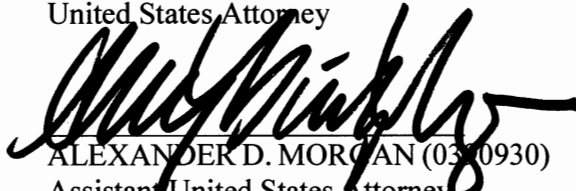
- k. On or about June 1, 2015, DUKE moved \$366,513.30 from his Medsurg account at US Bank to Patient Recruiter 3's account at US Bank.
- l. On or about June 4, 2015, DUKE issued check 1483 on his Medsurg account at US Bank payable to Patient Recruiter 4 in the amount of \$71,176.45, the memo line read "April [Pharmacy 1][.]"
- m. On or about June 4, 2015, DUKE issued check 1476 on his Medsurg account at US Bank payable to Patient Recruiter 5 in the amount of \$121,165.70, the memo line read "April [Pharmacy 1] Commissions[.]"

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

FORFEITURE ALLEGATION

50. Upon conviction of Count One of this Information, Defendant BRAD DUKE shall forfeit to the United States, under Title 18, United States Code, Section 982(a)(7), a money judgment equal to \$1,112,020.09, which represents the remaining proceeds that were derived from or traceable to the offense.

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