

JET/CDM/NSG/DBL: July 2017  
(by information)

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ALABAMA  
JASPER DIVISION**

**UNITED STATES OF AMERICA** )  
 )  
 v. )  
 )  
**JEFFREY SOUTH** )

**Case No. \_\_\_\_\_  
18 U.S.C. §§ 371, 1347**

**INFORMATION**

The United States Attorney charges that:

At all times relevant to this Information:

**INTRODUCTION**

**I. PHARMACEUTICAL SERVICES**

1. Pharmacies may dispense pre-manufactured and traditionally compounded (hereafter “compounded”) medications.
2. Pre-manufactured medications are mass-produced for use by a large population of patients. They are purchased by a pharmacy in the same form in which the pharmacy dispenses them to patients.
3. Compounded medications are a customized combination of medicines initiated and prescribed by a licensed prescriber for specific patients, based upon the prescriber-patient relationship and taking into consideration the particular patient’s

diagnoses, medical condition, individual health factors, and reaction to other medications. The U.S. Food and Drug Administration (“FDA”) offers the following examples of when drugs would be compounded: (a) if a patient has an allergy and needs a medication to be made without a certain dye preservative; and (b) if an elderly patient or child cannot swallow a pill and needs a medicine in a liquid form that is not otherwise available.

## **II. INSURANCE PLANS**

4. Various entities, government and private, offer prescription drug benefits as part of health insurance plans. A beneficiary in such an insurance plan can fill a prescription at a pharmacy and use her or his plan to pay for some or all of the prescription.

5. Blue Cross Blue Shield of Alabama (“BCBSAL”) was a private insurance company providing medical and drug insurance coverage in Alabama and elsewhere.

6. The Medicare Program (“Medicare”) is a federally funded program that provides free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare programs covering different types of benefits are separated into different program “parts.” Part D subsidizes the costs of certain prescription drugs.

7. TRICARE is a health care program of the United States Department of Defense (“DOD”) Military Health System that provides coverage for DOD beneficiaries worldwide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors. TRICARE provides coverage for certain prescription drugs.

8. BCBSAL, Medicare, and TRICARE are “health care benefit programs” as that term is defined by Title 18, United States Code, Section 24(b), and used in Title 18, United States Code, Section 1347.

### **III. THIRD PARTY ADMINISTRATORS**

9. A Pharmacy Benefit Manager (“PBM”) is a third party administrator of prescription drug programs, including privately or government insured drug plans, and acts on behalf of one or more prescription drug plans.

10. A Pharmacy Services Administrative Organization (“PSAO”) is also a third party entity, which provides various services such as contract negotiation and communication to pharmacies. Pharmacies may contract with PSAOs, which in turn contract with PBMs, such that PSAO member pharmacies may participate in a PBM network.

11. A pharmacy could participate in a privately or government insured plan directly by entering an agreement with the insured plan, or indirectly by joining a

PBM's pharmacy network through an agreement with a PBM or a PSAO.

12. Prime Therapeutics ("Prime") is a PBM for BCBSAL and other insurance plans.

13. CVS/Caremark is a PBM for various insurance plans.

14. Express Scripts Inc. ("ESI") is a PBM for various insurance plans.

15. Prime, CVS/Caremark, and ESI are "health care benefit programs," as defined by Title 18, United States Code, Section 24(b), and as that term is used in Title 18, United States Code, Section 1347.

16. AmerisourceBergen Elevate Provider Network (formerly Good Neighbor Pharmacy Provider Network) ("Good Neighbor") and others are PSAOs through which pharmacies could enter PBMs' pharmacy networks.

17. To become a PBM network pharmacy, a pharmacy agrees to be bound by, and comply with, all applicable State and Federal laws, specifically including those addressing fraud, waste, and abuse. A pharmacy also agrees to be bound by the PBM's rules and regulations. These rules include prohibitions against fraudulent conduct, including submitting claims for invalid prescriptions, submitting claims in a way that bypasses PBM billing safeguards, paying kickbacks, and waiving patient co-pays. PBMs require pharmacies to collect co-pays, typically a fixed amount, from patients, in part so that the patient has "skin in the game" and is motivated to

decline medically unnecessary or otherwise fraudulent prescriptions.

18. When a pharmacy receives a prescription from a privately or government insured beneficiary, the pharmacy is to collect any applicable co-pay from the beneficiary, dispense the drug to the beneficiary, and submit a claim for reimbursement to the PBM that represents the beneficiary's insured drug plan. The pharmacy periodically receives payment for submitted claims from the Plan, PBM, or a PSAO. If payment is made by a PBM or PSAO, those entities are ultimately reimbursed, directly or indirectly, by the insured plan.

#### **IV. THE DEFENDANT, CO-CONSPIRATORS, & PHARMACIES**

19. Northside Pharmacy d/b/a Global Compounding Pharmacy ("Global") was an Alabama company that provided pharmaceutical services. It operated from two locations. It compounded and shipped its pre-manufactured and compounded products from its pharmacy location, 922 20th Street, Haleyville, Alabama. It processed prescriptions, including initial receipt, billing, and patient contact, from its billing center located at 4700 140th Avenue North, Suites 111 and 112, Clearwater, Florida. The billing center was referred to as the "Clearwater Call Center."

20. Global employed pharmacists, pharmacy technicians, and other employees who worked from Global in Haleyville, Alabama. Additionally, Global

hired outside sales representatives, who worked from various locations throughout the United States, were primarily responsible for generating prescriptions from licensed prescribers, and reported to regional district managers. Global also hired inside sales representatives, sometimes also referred to as “pharmacy technicians,” who worked at the Clearwater Call Center, and who were generally responsible for billing and patient contact.

21. The following were among the individuals who worked at Global:

22. **MANAGEMENT PERSON #1** was an owner, President, and Chief Executive Officer of Global.

23. **MANAGEMENT PERSON #2** was an owner, Vice President, and Chief Operating Officer of Global. **MANAGEMENT PERSON #2** resigned from Global on or about July 21, 2015.

24. **MANAGEMENT PERSON #3** served as Global’s Vice President of Sales for the majority of his tenure with Global. He was hired as a district manager in or about November 2014; became Regional Sales Director on or about January 16, 2015; and became Vice President of Sales at least as of February 16, 2015. District managers, who supervised outside sales representatives, reported to him.

25. **MANAGEMENT PERSON #4** was Global’s Inside Sales Manager, and supervised the inside sales representatives at the Clearwater Call Center.

26. **DISTRICT MANAGER #3** was a district manager for the area covering Alabama.

27. **PHARMACIST #1** was a pharmacist located in Global's Haleyville, Alabama location from at least November 2014 to June 2015.

28. **PHARMACIST #3** was a pharmacist located in Global's Haleyville, Alabama location from at least November 2014 to at least November 12, 2015. During that time and continuing through at least June 2016, he held other roles at Global, including in sales and business development.

29. Defendant **JEFFREY SOUTH** worked for Global from at least in or about November 2014 to at least in or about June 2016. For the majority of his tenure with Global, he was Operations Manager for Global, located at the Haleyville, Alabama location.

30. **MANAGEMENT PERSON #1** and other co-conspirators caused Global to engage with multiple affiliate pharmacies, which Global managers used to fill and bill for prescriptions when Global could not bill for them directly. One such affiliate was Carrollton Pharmacy d/b/a The Prescription Shop ("TPS"), located at 41254 Highway 195, Haleyville, Alabama. In or about August 2015, **MANAGEMENT PERSON #1** and other co-conspirators caused TPS to obtain Prime coverage and caused Global to begin transferring prescriptions for Prime

beneficiaries to TPS. The decision to transfer these prescriptions occurred after **MANAGEMENT PERSON #1** and other co-conspirators were informed on or about May 29, 2015 by Prime that Global would be terminated from the Prime network effective September 4, 2015 for failing to comply with Prime's terms and conditions. At **MANAGEMENT PERSON #1's** direction, two Global employees became the listed owners of TPS, thus concealing Global and **MANAGEMENT PERSON #1's** involvement in TPS's operations from Prime. TPS operated using many of Global's processes and employees.

31. **MANAGEMENT PERSON #1** and other co-conspirators caused Global and TPS to contract with BCBSAL to provide health insurance to employees and their dependents, who were located in Alabama and elsewhere in the United States.

32. **MANAGEMENT PERSON #1** and other co-conspirators caused Global and TPS to contract, and attempt to contract, including through PSAOs, to participate in the pharmacy networks of various PBMs, including Prime, ESI, and CVS/Caremark. Global billed for prescription drugs through its contracts with these PBMs and PSAOs.



**Count One**  
**Conspiracy**  
**18 U.S.C. § 371**

33. Paragraphs 1 to 32 of the Introduction of this Information are fully incorporated as though set forth herein.

**THE CONSPIRACY**

34. From in or about November 2014, and continuing until in or about at least June 2016, the exact dates being unknown, within Winston County in the Northern District of Alabama, and elsewhere, defendant

**JEFFREY SOUTH,**

knowingly and willfully conspired, combined, and agreed with others known and unknown to the United States:

- a. to execute a scheme and artifice to defraud health care benefit programs affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, BCBSAL, Prime, CVS/Caremark, and others, 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 and payment for health care benefits, items and services, in violation Title 18, United States Code, Section 1347;
- b. to devise and intend to devise a scheme and artifice to defraud BCBSAL, Prime, CVS/Caremark, and others, and to obtain money and property belonging to others by means of materially false and fraudulent pretenses, representations, and promises by use of interstate wire transmissions, in violation of Title 18, United States Code, Section 1343; and

- c. to devise and intend to devise a scheme and artifice to defraud BCBSAL, Prime, CVS/Caremark, and others, and to obtain money and property belonging to others by means of materially false and fraudulent pretenses, representations, and promises, by use of United States mail and private and commercial interstate carrier, in violation of Title 18 United States Code, Section 1341.

### **MANNER AND MEANS OF THE CONSPIRACY**

35. It was a part of the conspiracy that to generate sales, **MANAGEMENT PERSON #1**, and other co-conspirators sought out and hired as outside sales representatives, individuals who were: **(a)** married or otherwise closely related to individuals with prescribing authority, including physicians, physician assistants and nurse practitioners, (hereafter “Prescribers”); and **(b)** Prescribers or worked in Prescribers’ offices.

36. It was a further part of the conspiracy that to generate sales, **MANAGEMENT PERSON #1** and others directed and encouraged Global outside sales representatives to work, typically without pay, in Prescribers’ offices, including by reviewing patient files and pushing and promoting Global’s products to the Prescribers’ patients.

37. It was a further part of the conspiracy that **MANAGEMENT PERSON #1** and other co-conspirators regularly instructed Global employees to obtain prescriptions for Global’s highest reimbursing products for themselves and their family members regardless of medical necessity.

38. It was a further part of the conspiracy that some of these high reimbursing prescription drugs included:

- a. Various compounded products, advertised as for use in scar removal, wound care, and pain relief.
- b. Various pain and/or anti-inflammatory drugs such as Active Prep Kit II, Lidocin, Camphomex, and Medi-Derm.
- c. Silapak, also referred to as PharmaPak, a product Global's marketing flyer described as a "topical Skin Repair Complex . . . designed to provide relief for irritating skin conditions caused by numerous etiologies such as eczema, allergic reactions, irritating keloid and hypertrophic scars, psoriasis, and allergic reactions." The flyer further stated that "Silapak is not indicated for pregnant women or children."

39. It was a further part of the conspiracy that to incentivize its employees to obtain prescriptions for these high-reimbursing drugs, **MANAGEMENT PERSON #1** and other co-conspirators paid outside sales representatives a commission of varying percentages for prescriptions they obtained for themselves and their family members.

40. It was a further part of the conspiracy that with defendant **SOUTH's** knowledge, inside sales representatives and other co-conspirators would and did automatically refill patient prescriptions, including those of Global employees and their family members, regardless of whether patients needed or requested refills.

41. It was a further part of the conspiracy that to incentivize patients,

including employees and their family members to obtain or retain Global's prescription drugs, **MANAGEMENT PERSON #1**, defendant **SOUTH**, and other co-conspirators would routinely waive patients' co-pays.

42. It was a further part of the conspiracy that in responding to PBM audits, defendant **SOUTH** and other co-conspirators provided false and misleading information to PBMs to conceal Global's fraudulent billing practices, including relating to co-pay waivers and changes made to prescriptions.

43. It was a further part of the conspiracy that **MANAGEMENT PERSON #1**, defendant **SOUTH** and other co-conspirators used multiple pharmacies to bill for and dispense prescription drugs in order to conceal **MANAGEMENT PERSON #1's** and Global's involvement in these pharmacies from PBM's. These affiliate pharmacies included TPS.

44. It was a further part of the conspiracy that Global and TPS employees shipped many of Global and TPS pre-manufactured and compounded drugs from its Haleyville, Alabama location to customers within and outside Alabama via United States Postal Service ("USPS") and private and commercial interstate carriers such as United Parcel Service ("UPS").

45. It was a further part of the conspiracy that Global, TPS and other affiliate pharmacies received payments from Prime and other PBMs for

prescriptions. These payments were sometimes made through PSAOs.

46. It was a further part of the conspiracy that between in or about November 2014, and in or about June 2016, Global and its affiliate pharmacies would and did pay defendant **SOUTH** over \$124,330.

### **OVERT ACTS**

In furtherance of the conspiracy and to achieve the objects thereof, defendant **SOUTH** and others known and unknown to the United States committed and caused to be committed the following overt acts, among others, in the Northern District of Alabama and elsewhere:

47. In or about December 2014, **MANAGEMENT PERSON #1** hired defendant **SOUTH** as Global's Operations Manager.

48. On or about March 13, 2015, defendant **SOUTH** falsely informed a federal law enforcement agent that Global was making diligent efforts to collect co-pays.

49. On or about May 1, 2015, defendant **SOUTH** sent an email to **MANAGEMENT PERSON #3**, **MANAGEMENT PERSON #4**, copying **PHARMACIST #3**. The email stated "[W]e are working on the CVS audit response. I'm going to list some names below and if you see any of these individuals who are sales reps, please touch base with them and let them know that we need to

receive a copay payment from then next week. . . . They do not have to pay it all but we do need to show collection.”

50. On or about September 4, 2015, defendant **SOUTH** falsely omitted **MANAGEMENT PERSON #1**'s name from an ESI change of ownership form when asked to list individuals with “**ownership interest of 5% or greater or control** interest,” whether director or indirect, in TPS.

51. On or about January 21, 2016, defendant **SOUTH**, after being informed that Global's management needed a plan to lower TPS's profits so as to avoid PBM attention, proposed “For the remainder of the month, we go back to calling patients for refills before sending. This will slow us down a bit.”

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

**Counts 2 through 5**  
**Health Care Fraud**  
**18 U.S.C. § 1347**

52. Paragraphs 1 to 32 of the Introduction of this Information are fully incorporated as though set forth herein.

53. Beginning in or about November 2014, and continuing until at least in or about June 2016, within Winston County in the Northern District of Alabama, and elsewhere, the defendant,

**JEFFREY SOUTH,**

did knowingly and willfully execute and attempt to 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, BCBSAL, Medicare, TRICARE, Prime, CVS/Caremark, and others, 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 BCBSAL, Medicare, TRICARE, Prime, CVS/Caremark, and others, in connection with the delivery of and payment for health care benefits, items, and services.

#### **PURPOSE OF THE SCHEME AND ARTIFICE**

54. It was the purpose of the scheme and artifice for defendant **SOUTH** and others known and unknown to the United States to unlawfully enrich themselves through the submission of false and fraudulent claims to BCBSAL, Medicare, TRICARE, Prime, CVS/Caremark and others.

#### **THE SCHEME AND ARTIFICE**

55. Paragraph 35 of this Information is hereby incorporated by reference as though fully set forth herein, with the words “It was a part of the scheme and artifice” replacing “It was a part of the conspiracy” at the beginning of the paragraph. Paragraphs 36 to 46 are hereby incorporated by reference as though fully set forth herein, with the words, “It was a further part of the scheme and artifice” replacing

“It was a further part of the conspiracy” at the start of each paragraph.

**ACTS IN EXECUTION OF THE SCHEME AND ARTIFICE**

56. On or about May 8, 2015, in Winston County within the Northern District of Alabama, and elsewhere, the defendant,

**JEFFREY SOUTH,**

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute and attempt to execute, the above-described scheme and artifice to defraud health care benefit programs affecting commerce, that is, BCBSAL, Medicare, TRICARE, Prime, CVS/Caremark, and others, 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.

57. The allegations of paragraphs 52 to 56 above are realleged for each of Counts 2 through 5 below, as though fully set forth therein, when on or about the dates listed below, defendant **SOUTH** caused TPS to submit the following medically unnecessary and otherwise fraudulent prescriptions to Prime:

<b>Count</b>	<b>Drug</b>	<b>Beneficiary</b>	<b>Approx. Date Billed</b>	<b>Approx. Amt. Billed</b>	<b>Approx. Amt. Paid</b>
2	Lidocin	DISTRICT MGR. #3	Sept. 28, 2015	\$2,433	\$2,066
3	Silapak/ Derma Silk	DISTRICT MGR. #3	Sept. 28, 2015	\$5,136	\$4,307



4	Medi-Derm	DISTRICT MGR. #3	Sept. 29, 2015	\$804	\$603
5	Medi-Derm	DISTRICT MGR. #3	Oct. 25, 2015	\$804	\$603

All in violation of Title 18, United States Code, Section 1347.

**NOTICE OF FORFEITURE**

1. The allegations in COUNT 1 through COUNT 5 of this Information are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982(a)(7) and Title 28, United States Code, Section 2461(c),

2. Upon conviction of the offenses set forth in COUNT 1 through COUNT 5 of this Information, in violation of Title 18, United States Code, Sections 371, 1341, 1343, and 1347, the defendant

**JEFFREY SOUTH,**

shall forfeit to the United States of America:

- a. 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 of wire fraud in, violation of Title 18 United States Code, Section 1343, and mail fraud, in violation of Title 18, United States Code Section 1341; and
- b. 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 health care fraud offense, in violation of Title 18, United States Code, Section 1347.

3. The property to be forfeited includes, but is not limited to **\$124,330**, which represents the amount defendant personally obtained, controlled, and benefitted from as a result of his criminal offenses.

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

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third 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), 982(a)(7) and 28 U.S.C. § 2461(c).

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