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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

17-20484-CR-ALTONAGA/GOODMAN
Case No.

18 U.S.C. § 1349
18 U.S.C. § 982(a)(7)

UNITED STATES OF AMERICA

vs.

ASCIANO SERNA,

Defendant.

_____ /

INFORMATION

The Acting United States Attorney charges that:

GENERAL ALLEGATIONS

At all times material to this Information:

The Medicare Program

1. The Medicare Program (“Medicare”) was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. 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.”

2. Medicare programs covering different types of benefits were separated into different program “parts.” Part D of Medicare (the “Medicare Part D Program” or “Part D”) subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. The Medicare Part D

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2. Medicare programs covering different types of benefits were separated into different program “parts.” Part D of Medicare (the “Medicare Part D Program” or “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.

3. In order to receive Part D benefits, a beneficiary is enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies approved by Medicare. Those companies were 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.

4. A pharmacy could participate in Part D by entering a retail network agreement directly with a plan or with one or more 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. 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.

5. A pharmacy could also submit claims to a Medicare drug plan to whose network the pharmacy did not belong. Submission of such out of network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

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

7. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), that affected commerce, and as that term is used in Title 18, United States Code, Section 1347.

8. Express Scripts Incorporated (“Express Scripts”) and Caremark LLC d/b/a CVS/Caremark (“CVS/Caremark”) were Medicare drug plan sponsors

Privately Insured Drug Plans

9. Commercial insurance companies, employers, and private entities offered drug plans which were also administered and operated by PBMs. A beneficiary in 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.

10. A pharmacy could participate in a privately insured drug plan by entering an agreement with one or more PBMs acting on behalf of a privately insured plan. When a privately insured beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim to a PBM that represented the beneficiary’s privately insured 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.

11. Express Scripts, OptumRX, Inc. (“OptumRX”), CVS/Caremark, MedImpact Healthcare Systems, Inc. (“MedImpact”), and Catamaran Corporation (“Catamaran”) were each a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), that affected commerce, and as that term is used in Title 18, United States Code, Section 1347.

The TRICARE Program

12. 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 the DOD, was the military entity responsible for overseeing and administering the TRICARE program.

13. TRICARE was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), that affected commerce, and as that term is used in Title 18, United States Code, Section 1347.

14. TRICARE was a “health care benefit program,” as defined by Title 42, United States Code, Section 1320a-7b(t), that affected commerce, and as that term is used in Title 42, United States Code, Section 1320a-7b(b).

15. TRICARE provided coverage for certain prescription drugs, including certain compounded drugs, that were medically necessary and prescribed by a licensed medical professional. Express Scripts administered TRICARE’s prescription drug benefits.

16. TRICARE beneficiaries could fill their prescriptions through military pharmacies, TRICARE’s home delivery program, network pharmacies, and non-network pharmacies. If a beneficiary chose a network pharmacy, the pharmacy would collect any applicable co-pay from the beneficiary, dispense the drug to the beneficiary, and submit a claim for reimbursement to Express Scripts, 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.

Compounded Drugs Generally

17. In general, “compounding” is a practice in which a licensed pharmacist, a licensed physician, or, in the case of an outsourcing facility, a person under the supervision of a licensed pharmacist, combines, mixes, or alters ingredients of a drug or multiple drugs to create a drug tailored to the needs of an individual patient. Compounded drugs are not approved by the U.S. Food and Drug Administration (“FDA”); that is, the FDA does not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs. The Florida State Board of Pharmacy regulates the practice of compounding in the State of Florida. However, the ingredients in compounded drugs may be FDA approved individually.

18. Compounded drugs may be prescribed by a physician when an FDA-approved drug does not meet the health needs of a particular patient. For example, if a patient is allergic to a specific ingredient in an FDA-approved medication, such as a dye or a preservative, a compounded drug can be prepared excluding the substance that triggers the allergic reaction. Compounded drugs may also be prescribed when a patient cannot consume a medication by traditional means, such as an elderly patient or child who cannot swallow an FDA-approved pill and needs the drug in a liquid form that is not otherwise available.

Co-payments

19. Health care benefit payors – including private insurance companies, Medicare, and TRICARE – set co-payments for many of the products and services they cover. Co-payments are a portion of the cost of the product or service that must be paid by the patient or beneficiary.

20. Co-payments are set based upon the payor's evaluation of the efficacy of the product or service, the cost of the product or service, and the availability of alternatives. Co-payments are used to prevent or mitigate fraud in the case of expensive medications with limited evidence of effectiveness. That is, if a patient does not need or want a medication, they will be unlikely to pay a high co-payment, the medication should not be dispensed, and the pharmacy should not make a claim to the payor.

21. Therefore, co-payment collection requirements are prominently set forth in PBM contracts with pharmacies, such requirements are material to PBMs, and PBMs audit pharmacies' co-payment collection practices. A pharmacy's failure to collect co-payments in good faith can result in the PBM's refusal to pay the claims and even termination of the contract with the PBM.

The Defendant and Related Company

22. A.S.C. Pharmacy, Inc. ("ASC Pharmacy"), located at 3416 W. 84th Street, Suite 108, Hialeah, FL, was incorporated on or about October 5, 2006, in Miami-Dade County, in the Southern District of Florida.

23. Defendant **ASCIANO SERNA** was an owner and operator of ASC Pharmacy, and was a resident of Miami-Dade County, Florida.

CONSPIRACY TO COMMIT HEALTH CARE FRAUD (18 U.S.C. § 1349)

From in or around June 2013, through in or around March 2016, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

ASCIANO SERNA,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate, and agree with persons known and unknown to the Acting United States

Attorney, to violate Title 18, United States Code, Section 1347, that is, 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, Medicare, TRICARE, and private health care benefit programs, 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.

PURPOSE OF THE CONSPIRACY

It was a purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by, among other things, (a) submitting and causing the submission of false and fraudulent claims to Medicare, TRICARE, and private healthcare benefit programs; (b) submitting and causing the submission of claims to Medicare, TRICARE, and private healthcare benefit programs based upon materially false and fraudulent pretenses, representations and promises; and (c) concealing the submission of false and fraudulent claims to Medicare, TRICARE and private healthcare benefit programs.

MANNER AND MEANS

The manner and means by which the defendant and his co-conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

24. **ASCIANO SERNA** and his co-conspirators caused the submission of false and fraudulent claims to Medicare, TRICARE, and other health care benefit programs for prescription medications, including compound creams, which were not medically necessary, not provided and based upon the payment of illegal bribes and kickbacks.

25. **ASCIANO SERNA** and his co-conspirators falsely and fraudulently materially misrepresented to Medicare, TRICARE, and other health care benefit programs that ASC Pharmacy was making good faith attempts to collect patient co-payments, which it was not.

26. As a result of the false and fraudulent claims, **ASCIANO SERNA** and ASC Pharmacy received overpayments from payment from Medicare, TRICARE, and other health care benefit programs of at least \$3.4 million.

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

FORFEITURE
(18 U.S.C. § 982(a)(7))

1. The allegations contained in this Information are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of certain property in which **ASCIANO SERNA** has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1349, as alleged in this Information, the defendant shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property subject to forfeiture includes a money judgment in the amount of approximately \$3,400,000 in United States currency, which sum represents the value of the gross proceeds traceable to the commission of the violation alleged in this Information.

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


it is the intent of the United States to seek forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), including the following:

- 1) real property located at 6714 SW 114 Avenue, Miami, Florida; and
- 2) real property located at 10234 SW 131 Court, Miami, Florida.

All pursuant to Title 18, United States Code, Section 982(a)(7), Title 28, United States Code, Section 2461(c), and the procedures set forth in Title 21, United States Code, Section 853.


BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY


JOSEPH BEEMSTERBOER
DEPUTY CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE


DAVID A. SNIDER
TRIAL ATTORNEY
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

PENALTY SHEET

Defendant's Name: ASCIANO SERNA

Case No: _____

Count #: 1

Conspiracy to Commit Health Care Fraud

Title 18, United States Code, Section 1349

***Max Penalty:** Ten (10) years' imprisonment

Counts #:

***Max Penalty:** _____

Count #:

***Max Penalty:** _____

Count #:

***Max Penalty:** _____

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES OF AMERICA

CASE NO. _____

v.

CERTIFICATE OF TRIAL ATTORNEY*

ASCIANO SERNA,
Defendant.
_____ /

Superseding Case Information:

Court Division: (Select One)

X Miami _____ Key West
_____ FTL _____ WPB _____ FTP

New Defendant(s) Yes _____ No _____
Number of New Defendants _____
Total number of counts _____

I do hereby certify that:

- I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
- I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
- Interpreter: (Yes or No) No
List language and/or dialect _____
- This case will take 0 days for the parties to try.
- Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<u> X </u>	Petty	_____
II	6 to 10 days	_____	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u> X </u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:
Judge: _____ Case No. _____
(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) No


If yes:
Magistrate Case No. _____
Related Miscellaneous numbers: Sealed 16-mj-2467-JG; Sealed 16-mj-2468-JG; Sealed 16-mj-2477-JG

Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes _____ No X

8. Does this case originate from a matter pending in the Central Region of the U. S. Attorney's Office prior to September 1, 2007? Yes _____ No X



DAVID A. SNIDER
DOJ TRIAL ATTORNEY
court ID No. A5502260

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

United States of America

v.

Asciano Serna,

Defendant

)
)
)
)
)

Case No.

WAIVER OF AN 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