

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 15-
 :
 v. : Hon.
 :
 HOWARD WERTHEIM : 42 U.S.C. § 1320a-7b(b)(2)(A)

INFORMATION

(Violation of the Anti-Kickback Statute)

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

1. At all times relevant to this Information:

a. Prescriptions R Us (“PRU”) was a compounding pharmacy located at 301 Madison Avenue, Lakewood, New Jersey. Pharmacy compounding involved the preparation of medication, using different types and dosages of drugs, in order to provide more personalized medications for patients. PRU, among other things, prepared and supplied a certain compound medication, namely, a topical cream that was prescribed to treat a variety of pain-related conditions (hereinafter “the Pain Cream”). The Pain Cream contained several ingredients, including gabapentin, ketamine (a Schedule III non-narcotic), lidocaine, diclofenac, and cyclobenzaprine.

b. The Medicare Program (“Medicare”) was a federal program established by the Social Security Act of 1965 to assist qualified aged and disabled individuals in paying for the cost of health care. Medicare worked by reimbursing health care providers and suppliers for the costs of health care services and items at fixed rates. The Medicare program provided reimbursement only for those health care services

and items that were: (i) medically necessary, (ii) ordered by a physician, and (iii) actually provided as billed. Medicare had an optional Part D program, which, for a monthly premium, provided coverage for the cost of prescription drugs for people on Medicare. This coverage was provided by insurance companies and other private companies approved by Medicare. Medicare was a “Federal health care program” as defined in Title 42, United States Code, Section 1320a-7b(f) and a “health care benefit program” as defined in Title 18, United States Code, Section 24(b).

c. The Medicaid program (“Medicaid”) was a program jointly funded by the federal government and individual states to assist low-income persons and other qualified persons in paying for the costs of health care. The Medicaid program worked by reimbursing hospitals, physicians and other health care suppliers, such as pharmacies, for providing health care services and items to qualified individuals at fixed rates in a manner similar to the Medicare program.

d. PRU was an approved Medicare and Medicaid provider. Medicare and Medicaid paid PRU for products dispensed to patients enrolled in the Medicare and Medicaid programs.

e. PRU also billed, and was paid by, various health care insurance companies (“private payors”) in the business of providing health care insurance to individuals and entities under various insurance policies. Pursuant to these policies, private payors paid PRU for, among other things, filling prescriptions for medicine for patients who had been referred to PRU by physicians.

f. Defendant HOWARD WERTHEIM was paid by PRU to, among other things, recruit physicians to refer their prescriptions to PRU.

g. Vladimir Kleyman was the owner of PRU, and routinely exerted direct control over various aspects of the operations of PRU that are relevant to this Information.

h. James Morales was a physician with a medical practice in New Jersey who accepted cash bribes from Vladimir Kleyman in exchange for referring Pain Cream prescriptions for his patients to PRU.

The Kickback Scheme

2. Beginning in and around early 2013, Vladimir Kleyman, defendant HOWARD WERTHEIM, and others obtained additional revenue for PRU, and in turn, for themselves and each other individually, by soliciting James Morales and paying James Morales cash bribes for referrals of Pain Cream prescriptions to PRU, which PRU then would bill for and use to obtain payment from various payors, including Medicare and Medicaid.

3. PRU dispensed Pain Cream to patients for whom it had been prescribed and fraudulently obtained hundreds of thousands of dollars in reimbursement for this item from Medicare, Medicaid, and other various private payors, by knowingly and willfully misrepresenting the nature and amount of the item that had been dispensed as well as the frequency with which the item had been dispensed.

4. Defendant HOWARD WERTHEIM, on behalf of PRU, solicited and paid tens of thousands of dollars in cash bribes to James Morales for referrals of James Morales's patients' prescriptions to be filled by PRU. For example:

a. For example, on or about November 21, 2013, defendant HOWARD WERTHEIM received a PRU check from a co-conspirator not named

herein in the amount of approximately \$13,225. Defendant HOWARD WERTHEIM subsequently cashed that check and used a portion of it to pay James Morales in exchange for having referred Pain Cream prescriptions to PRU.

b. On or about December 19, 2013, defendant HOWARD WERTHEIM received a PRU check from a co-conspirator not named herein in the amount of approximately \$15,302. Defendant HOWARD WERTHEIM subsequently cashed that check and used a portion of it to pay James Morales in exchange for having referred Pain Cream prescriptions to PRU.

c. On or about December 20, 2013, Vladimir Kleyman gave defendant HOWARD WERTHEIM \$11,000 in cash to use to pay James Morales in exchange for having referred Pain Cream prescriptions to PRU.

5. From in and about February 2013 through in and about October 2013, in Ocean County, in the District of New Jersey and elsewhere, defendant

HOWARD WERTHEIM

did knowingly and willfully offer and pay remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, to physicians in order to induce referrals of prescriptions for patients to PRU for the furnishing and arranging for the furnishing of items and services, that is, the referral by physicians of prescriptions for Pain Cream, for which payment was made in whole or in part under a Federal health care program, namely, Medicare and Medicaid.

In violation of Title 42, United States Code, Section 1320a-7b(b)(2)(A).

FORFEITURE ALLEGATION

1. As the result of committing the Federal health care offense as defined in 18 U.S.C. § 24 alleged in this Information, defendant HOWARD WERTHEIM shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the offense, including but not limited to a forfeiture money judgment in the amount of \$25,000, representing all property constituting or derived from gross proceeds traceable to the commission of the Federal health care offense (as defined in 18 U.S.C. § 24) to which he is pleading guilty.

Substitute Assets Provision

2. If any of the above-described forfeitable property, 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 person;
- (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 subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.



PAUL J. FISHMAN
United States Attorney

CASE NUMBER: 15-

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

HOWARD WERTHEIM

INFORMATION FOR

Title 42, United States Code, Section 1320a-7b(b)(2)(A)

PAUL J. FISHMAN

UNITED STATES ATTORNEY, NEWARK, NEW JERSEY

JANE H. YOON
ASSISTANT U.S. ATTORNEY
NEWARK, NEW JERSEY
(973) 645-2719
