
**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA : Hon. Michael A. Hammer
:
v. : Mag. No. 19-4299
:
MARK A. FILIPPONE, M.D., : **CRIMINAL COMPLAINT**
JOSEPH MILLER, :
a/k/a JOSEPH VANGELAS, :
MARLENE VANGELAS, and :
ZACHARY OHEBSHALOM. :

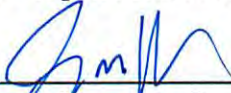
I, Joseph Koczon, being duly sworn, state the following is true and correct to the best of my knowledge and belief:

SEE ATTACHMENT A

I further state that I am a Special Agent with the United States Department of Labor, Office of Inspector General, and that this Complaint is based on the following facts:

SEE ATTACHMENT B

continued on the attached page and made a part hereof.



Joseph Koczon, Special Agent
U.S. Department of Labor
Office of Inspector General

Sworn to before me, and
Subscribed in my presence.

July 15, 2019, at
District of New Jersey

HONORABLE MICHAEL A. HAMMER
UNITED STATES MAGISTRATE JUDGE



Signature of Judicial Officer

ATTACHMENT A

COUNT ONE

(Conspiracy to Commit Health Care Fraud)

From at least as early as in or around November 2015 through in or around the present, in Bergen and Hudson Counties, in the District of New Jersey, and elsewhere, defendants

MARK A. FILIPPONE, M.D.,

**JOSEPH MILLER,
a/k/a JOSEPH VANGELAS,**

MARLENE VANGELAS, and

ZACHARY OHEBSHALOM

knowingly and willfully conspired and agreed with each other and others to execute a scheme and artifice to defraud the federal workers' compensation benefits program administered by the Department of Labor, Office of Workers' Compensation, a "health care benefit program" as that term is defined under Title 18, United States Code, Section 24(b), and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, contrary to Title 18, United States Code, Section 1347.

In violation of Title 18, United States Code, Section 1349.

COUNT TWO

**(Conspiracy to Pay and Receive Illegal Remunerations
contrary to the federal Anti-Kickback Statute)**

From in or around May 2016 through in or around the present, in Hudson County, in the District of New Jersey and elsewhere, defendants

MARK A. FILIPPONE, M.D.,

**JOSEPH MILLER,
a/k/a JOSEPH VANGELAS,**

MARLENE VANGELAS,

ZACHARY OHEBSHALOM

knowingly and willfully conspired and agreed with each other and others to commit certain offenses against the United States, that is, to knowingly and willfully receive and pay remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, in return for the referral of an individual to another person for the furnishing and arranging for the furnishing of any items and services, namely, the referral of medically unnecessary pain cream prescriptions for patients to a pharmacy located in Fairlawn, New Jersey, for which payment was made in whole or in part under a Federal health care program, namely, the federal workers' compensation benefits program administered by the Department of Labor, Office of Workers' Compensation, contrary to Title 42, United States Code, Section 1320a-7b(b)(1)-(2).

In violation of Title 18, United States Code, Section 371.

ATTACHMENT B

I, Joseph Koczon, am a Special Agent with the United States Department of Labor, Office of Inspector General. I have knowledge of the following facts based upon both my investigation and discussions with other law enforcement personnel and others. Because this affidavit is being submitted for the sole purpose of establishing probable cause to support the issuance of a complaint, I have not included each and every fact known to the government concerning this matter. Where statements of others are set forth herein, these statements are related in substance and in part. Where I assert that an event took place on a particular date, I am asserting that it took place on or about the date alleged.

Relevant Individuals and Background Information

1. At all times relevant to this Criminal Complaint:

a. Defendant MARK A. FILIPPONE, M.D. ("FILIPPONE") was a medical doctor who maintained medical practices at a medical office and residence located in Jersey City, New Jersey (the "Jersey City Premises") and Wallington, New Jersey (the "Wallington Premises"). FILIPPONE presently resides in Wallington, New Jersey.

b. JOSEPH MILLER, a/k/a/ JOSEPH VANGELAS ("MILLER"), directed the business operations of and maintained a financial interest in a pharmacy located in Fairlawn, New Jersey (the "Fairlawn Pharmacy"). MILLER presently resides in Fort Lee, New Jersey.

c. MARLENE VANGELAS ("VANGELAS") was the sole nominal owner of the Fairlawn Pharmacy and directed the day-to-day operations of the Fairlawn Pharmacy. VANGELAS presently resides in River Vale, New Jersey.

d. ZACHARY OHEBSHALOM ("OHEBSHALOM") worked on behalf of the Fairlawn Pharmacy and was a close personal confidant of MILLER. OHEBSHALOM presently resides in Edgewater, New Jersey.

e. The Fairlawn Pharmacy was located in Fairlawn, Bergen County, New Jersey. Since its opening in or about July 2015, the Fairlawn Pharmacy was used to dispense, among other things, expensive topical pain creams to FILIPPONE'S patients.

f. The United States provides certain benefits, including health care benefits and wage loss replacement, to federal employees, who sustain a work-related injury. See Federal Employee's Compensation Act, 5 U.S.C. § 8101, *et seq.* The federal workers' compensation program is administered by the United States Department of Labor, Office of Workers' Compensation Program ("DOL-OWCP"). If a federal employee is injured on the job, they are required to submit to DOL-OWCP certain forms and medical reports that contain information about the claimant and the injury. Once approved for benefits, individuals can claim health care benefits, including qualifying doctor's visits and prescription drugs, through the DOL-OWCP. As such, the federal workers' compensation program constitutes a "health care benefit program" as defined in 18 U.S.C. § 24, and a "federal health care program," as defined in 42 U.S.C. § 1320a-7b(f).

g. A "National Drug Code," or as it is more colloquially known, an "NDC," is a unique numerical code that is used to identify specific drug products.

h. A "test claim" refers to the process used by pharmacy professionals to determine, among other things, a patient's insurance carrier, coverages, eligibility, and co-pay. In the ordinary course of a pharmacy's business, a pharmacy employee may submit electronically a "test claim" through pharmacy billing software regarding a specific patient or prescription. The "test claim" elicits a nearly-instantaneous response that shows a patient's insurance information and the reimbursement rate for the particular drug's NDC. The "test claim" is then "reversed," meaning the claim is withdrawn and no money is caused to be paid out by the patient's insurance program.

The Health Care Fraud Conspiracy

2. From at least as early as in or about November 2015 through the present, **FILIPPONE** treated, among others, hundreds of now-former United States Postal Service employees as the result of injuries they purportedly sustained on-the-job. **FILIPPONE** submitted medical reports and other required documentation determining that his patients were permanently disabled. DOL-OWCP records indicated that many of **FILIPPONE's** patients traveled long distances, including from as far as Florida and Georgia, to be treated by **FILIPPONE** in connection with their workers' compensations claims.

3. **FILIPPONE** wrote numerous prescriptions for his patients, including expensive topical pain creams, which **FILIPPONE** steered almost exclusively to **MILLER** and the Fairlawn Pharmacy. The pain creams were not medically necessary and many of **FILIPPONE's** patients did not use or need the pain creams. For example, law enforcement interviewed approximately thirty of **FILIPPONE's** patients who received the pain creams. All thirty patients interviewed stated, in sum and substance, that, at the time they received the pain cream in the mail from the Fairlawn Pharmacy, they were not aware that **FILIPPONE** had prescribed this medication for them, did not know why he had prescribed the pain cream, and believed that the amount of the pain cream was excessive. Of the thirty patients interviewed, approximately eleven confirmed that they tried the cream once or twice only and then discontinued use either because it was ineffective or because it caused a troublesome skin reaction. Law enforcement has obtained unopened and unused tubes of pain cream from **FILIPPONE's** patients.

4. The pain creams were formulated from two or three ingredients, including a drug with analgesic properties and a cream base. **MILLER, VANGELAS, and OHEBSHALOM** at the Fairlawn Pharmacy – rather than **FILIPPONE** – created the formulations of the pain creams based not on medical necessity or medical judgment, but rather based solely on the most lucrative reimbursement that **MILLER, VANGELAS, and OHEBSHALOM** could obtain based on DOL-OWCP health insurance coverages.

5. **MILLER, VANGELAS, and OHEBSHALOM** directed pharmacists at the Fairlawn Pharmacy to submit “test claims” to DOL-OWCP in order to determine which NDCs for the various ingredients used in the pain creams were being reimbursed at the most lucrative rates, and then adjusted the pain cream formulations accordingly. For example, on or about February 9, 2018, a recording made at the Fairlawn Pharmacy captured one of the pharmacists describing an incident in which **MILLER** and **OHEBSHALOM** told the pharmacist, “try this, try this, try this . . . select a patient, select a doctor, put in the NDC number, see what the reimbursement is, and then void it out, and there’s a whole list . . . just to see what the highest reimbursement is.” On that same date, the recording captured the pharmacist referring to a “list” of NDCs and described it as follows:

[W]ait until you see this. They . . . want you to bill this insurance – every single NDC that I’m giving you here and I said okay. I had to add every single of those NDC

number drugs. NDC is the National Drug Code for every drug, okay? I want you to bill all of them and see which one gives you more money, okay? This is the insurance company, the same day, the same day, the same drug, with different NDC numbers, just to see which one gave you more money[.]

6. Once **MILLER, VANGELAS**, and **OHEBSHALOM** were aware of the most lucrative formulation of the pain creams, recordings made at the Fairlawn Pharmacy indicated that they directed, both individually and together, the pharmacists to create and pre-print prescription labels to be given to **FILIPPONE**. **MILLER** and **OHEBSHALOM** delivered the pre-printed labels to **FILIPPONE**, who used them to write medically unnecessary prescriptions for his patients and steered those prescriptions back to the Fairlawn Pharmacy.

7. On or about February 27, 2018, a telephone conversation was recorded with **OHEBSHALOM** in which **OHEBSHALOM** confirmed, in sum and substance, that the "SOP" (or standard operating procedure) for the past two years had been to print out prescription labels and provide them to **FILIPPONE** so he could use the labels and send the prescriptions back to the Fairlawn Pharmacy.

8. DOL-OWCP records confirmed that the formulations of pain creams prescribed by **FILIPPONE** and dispensed at the Fairlawn Pharmacy changed depending upon DOL-OWCP reimbursement rates. Additionally, law enforcement has obtained copies of the pre-printed prescription labels and confirmed that **FILIPPONE** used the pre-printed prescription labels created at the Fairlawn Pharmacy to steer prescriptions back to the Fairlawn Pharmacy. The Fairlawn Pharmacy's business was and is dependent upon **FILIPPONE's** pain cream prescriptions.

9. In total, over the course of the charged conspiracy, **FILIPPONE** prescribed and the Fairlawn Pharmacy, acting through **MILLER, VANGELAS**, and **OHEBSHALOM**, dispensed approximately \$10,552,144.51 in medically unnecessary pain cream prescriptions, which were reimbursed through the DOL-OWCP.

The Illegal Kickback and Referral Conspiracy

10. **FILIPPONE** wrote the medically unnecessary pain cream prescriptions and steered them to the Fairlawn Pharmacy, in large part, because of illegal remuneration he received from **MILLER** and **VANGELAS**.

11. Between in or about 1993 and December 2017, **FILIPPONE** treated patients at the Jersey City Premises. Beginning or about January 2017 to the present, **FILIPPONE** treated patients at the Wallington Premises, however **FILIPPONE** continued to use the Jersey City Premises to store medical records and for other personal uses.

12. Through interviews with multiple witnesses, law enforcement learned that beginning at least as early as in or about 2016, **FILIPPONE** was in a dire financial situation and fell behind on his mortgage payments on the Jersey City Premises, which **FILIPPONE** was using as his medical office and personal residence at the time. **MILLER** became concerned that **FILIPPONE's** medical practice might fail should the mortgagor foreclose on the Jersey City Premises. Because the Fairlawn Pharmacy was dependent upon **FILIPPONE's** pain cream prescriptions, **MILLER** and **VANGELAS** orchestrated the purchase of the Jersey City Premises for more than its fair market value. Bank records analysis revealed that the purchase of the Jersey City Premises was funded from money obtained through DOL-OWCP reimbursements from **FILIPPONE's** own pain cream prescriptions.

13. In order to obscure the relationship between the purchase of the Jersey City Premises and the flow of prescriptions to **MILLER** and **VANGELAS** at the Fairlawn Pharmacy, bank records indicated that **MILLER** and **VANGELAS** used a family member who was not affiliated with the Fairlawn Pharmacy as a straw purchaser and nominee owner for the Jersey City Premises. Payments to purchase the Jersey City Premises were made, in part, from bank accounts controlled by **VANGELAS**.

14. Additionally, in order to avoid the appearance of a possible kickback to **FILIPPONE**, **FILIPPONE** was supposed to pay monthly rent to **VANGELAS** in order to continue to use the Jersey City Premises. However, the investigation revealed that while **MILLER** and **VANGELAS**, and others, occasionally raised the issue of rent payments with each other and **FILIPPONE**, **FILIPPONE** routinely failed to make such rent payments and was almost always tens of thousands of dollars in arrears.

15. The investigation further revealed that **MILLER** and **VANGELAS** did not seek to collect the rent payments from **FILIPPONE** because they wanted the flow of prescriptions from **FILIPPONE** to continue. For example, on March 15, 2018, a telephone call with **MILLER** was recorded in which **MILLER** admitted that whether **MILLER** seeks to collect rent from **FILIPPONE** with respect to the Jersey City Premises was “dependent upon how things go prescription volume wise.” Later in that same conversation, **MILLER** acknowledged that **FILIPPONE** could not stay in the Jersey City Premises if he didn’t pay rent because of the “medical rules – laws,” and stated that he would tell **FILIPPONE** that, “the prescription volume as of right now is not going to . . . cut it . . . so, I’ve always told you, if the prescription volume was better . . . at a good range . . . these conversations are really mute points.” **MILLER** also stated that he intended to tell **FILIPPONE**, “I tied up a lot of money into [the Jersey City Premises] – I did you a big favor and you know . . . you can’t bring me down with you.

16. Similarly, on or about March 28, 2018, a conversation with both **VANGELAS** and **OHEBSHALOM** was recorded in which both **VANGELAS** and **OHEBSHALOM** acknowledged that **FILIPPONE** was not paying his rent. **OHEBSHALOM** stated that a “real landlord” would not allow a tenant to go 5 months without paying rent. And, **VANGELAS** stated that **FILIPPONE’s** non-payment of rent was worth approximately \$30,000 at that time.

17. **OHEBSHALOM** also referred to the Jersey City Premises as a point of leverage to force **FILIPPONE** to continue to send prescriptions to the Fairlawn Premises. For example, on or about November 20, 2017, a telephone conversation with **OHEBSHALOM** was recorded in which **OHEBSHALOM** stated that he was very upset with **FILIPPONE** because **FILIPPONE** was not sending enough prescriptions, and that they might consider exerting more pressure on **FILIPPONE** by threatening to foreclose on the Jersey City Premises.

18. For his part, **FILIPPONE** acknowledged that he was not paying rent on the Jersey City Premises, and continued to send prescriptions to the Fairlawn Pharmacy because of the benefits he drew from continuing to use the Jersey City Premises rent-free. For example, on or about November 20, 2018, a conversation with **FILIPPONE** was recorded in which **FILIPPONE** acknowledged that he was not paying rent on the Jersey City Premises and

that his daughter lived rent-free in the upstairs apartment of the Jersey City Premises. **FILIPPONE** also stated that he could not remain in the Jersey City Premises without paying rent because “that’s being watched. It’s a . . . violation.” **FILIPPONE** indicated that he was providing 4 to 5 pain cream prescriptions per day to the Fairlawn Pharmacy and noted that **MILLER** helped him out by allowing **FILIPPONE** to use the Jersey City Premises.

19. On or about June 7, 2019, a conversation with **FILIPPONE** was recorded in which **FILIPPONE** acknowledged that **MILLER** helped him because he permitted **FILIPPONE** to keep “truckloads” of items at the Jersey City Premises. Specifically, **FILIPPONE** stated that he was not paying rent on the Jersey City Premises, but he was keeping a large number of medical records and personal belongings at the Jersey City Premises. **FILIPPONE** stated that he would not stop writing prescriptions for **MILLER** until **FILIPPONE** finished getting all of his belongings out of the Jersey City Premises.