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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

June 2017 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

THOMAS S. POWERS, M.D., and
ANTHONY PADUANO,

Defendants.

No. SA CR 17

CR 17 00077

I N D I C T M E N T

[18 U.S.C. § 1347: Health Care Fraud; 18 U.S.C. § 2: Aiding and Abetting and Causing an Act to be Done; 18 U.S.C. §§ 982(a)(7), 981(a)(1)(C), 28 U.S.C. § 2461(c): Criminal Forfeiture]

The Grand Jury charges:

[18 U.S.C. § 1347; 18 U.S.C. § 2]

I. GENERAL ALLEGATIONS

At times relevant to this Indictment:

A. Defendants and Related Entities

1. Defendant THOMAS S. POWERS, M.D. ("defendant POWERS"), was a medical doctor, licensed to practice medicine in the State of California under Physician's and Surgeon's License Number XX640, with his business address in Santa Ana, California.

1 2. Defendant ANTHONY PADUANO ("defendant PADUANO") was an
2 individual who resided in Newport Beach, California, and owned
3 and controlled a purported business entity called Accolade
4 Equity LLC.

5 3. TC Medical Pharmacy ("TCMP") was a pharmacy located at
6 760 Washburn Ave., Suite 1, Corona, California 92882. Co-
7 Schemer #1 was TCMP's pharmacist-in-charge.

8 B. TRICARE

9 4. TRICARE was a federal health benefit program, as
10 defined by 18 U.S.C. § 24(b), that provided coverage for
11 Department of Defense beneficiaries world-wide, including active
12 duty service members, National Guard and Reserve members,
13 retirees, their families, and survivors.

14 C. Compounded Medications

15 5. In general, "compounding" is a practice by which a
16 licensed pharmacist, a licensed physician, or, in the case of an
17 outsourcing facility, a person under the supervision of a
18 licensed pharmacist, combines, mixes, or alters ingredients of a
19 drug or multiple drugs to create a drug tailored to the needs of
20 an individual patient. Compounded drugs are not FDA-approved,
21 that is, the FDA does not verify the safety, potency,
22 effectiveness, or manufacturing quality of compounded drugs.
23 The California State Board of Pharmacy regulates the practice of
24 compounding in the State of California.

25 6. Compounded drugs may be prescribed by a physician when
26 an FDA-approved drug does not meet the health needs of a
27 particular patient. For example, if a patient is allergic to a
28 specific ingredient in an FDA-approved medication, such as a dye

1 or a preservative, a compounded drug can be prepared excluding
2 the substance that triggers the allergic reaction. Compounded
3 drugs may also be prescribed when a patient cannot consume a
4 medication by traditional means, such as an elderly patient or a
5 child who cannot swallow an FDA-approved pill and needs the drug
6 in a liquid form that is not otherwise available.

7 II. THE FRAUDULENT SCHEME

8 7. Beginning on or about a date unknown, and continuing
9 to in or about June 2015, in Orange and Riverside Counties,
10 within the Central District of California, and elsewhere,
11 defendants POWERS and PADUANO, together with Co-Schemer #1, and
12 others known and unknown to the Grand Jury, knowingly,
13 willfully, and with the intent to defraud, executed and
14 attempted to execute a scheme and artifice: (1) to defraud a
15 federal health care benefit program, namely, TRICARE, as to
16 material matters in connection with the delivery of and payment
17 for health care benefits, items, and services; and (b) to obtain
18 money from a federal health care benefit program, namely,
19 TRICARE, by means of material false and fraudulent pretenses and
20 representations and the concealment of material facts in
21 connection with the delivery of and payment for health care
22 benefits, items, and services.

23 8. The fraudulent scheme operated, in substance, in the
24 following manner:

25 a. Defendant PADUANO would, through his purported
26 business, Accolade Equity LLC, enter into a "Marketing Contract
27 Agreement" with TCMP whereby Co-Schemer #1 would pay defendant
28 PADUANO a fee, approximating 40% of the reimbursement that TCMP

1 would receive from TRICARE for filling compounded medications
2 prescriptions, for referring compounded medications
3 prescriptions to TCMP.

4 b. Defendant PADUANO would solicit TRICARE
5 beneficiaries to seek compounded medications in exchange for
6 payment and to refer other TRICARE beneficiaries to defendant
7 PADUANO in exchange for payment of a referral fee.

8 c. Defendants POWERS and PADUANO would enter into an
9 agreement whereby defendant PADUANO would pay defendant POWERS a
10 fee of \$200 per individual to write a prescription that called
11 for multiple compounded medications. Defendant PADUANO, who had
12 no medical training, would complete the compounded medications
13 prescription forms and select the compounded medications for
14 each individual. Defendant POWERS would authorize the
15 prescriptions without examining the individual or otherwise
16 rendering an independent opinion regarding the medical necessity
17 for such medications for whom the prescriptions were written.

18 d. Co-Schemer #1, and others known and unknown to
19 the Grand Jury, would, on behalf of TCMP, fill the compounded
20 medications prescriptions referred by defendant PADUANO and
21 would submit claims to TRICARE for reimbursement. Co-Schemer #1
22 would, in turn, pay defendant PADUANO, and others known and
23 unknown to the Grand Jury, a referral fee for such
24 prescriptions.

25 III. EXECUTION OF THE FRAUDULENT SCHEME

26 9. On or about the dates set forth below, within the
27 Central District of California, and elsewhere, defendants POWERS
28 and PADUANO, together with others known and unknown to the Grand

1 Jury, knowingly and willfully executed and attempted to execute
2 the fraudulent scheme described above, by authorizing compounded
3 medications prescriptions and, in turn, submitting and willfully
4 causing to be submitted, and aiding and abetting the submission
5 to TRICARE of, the following false and fraudulent claims:

6 a. On or about April 29, 2015, TCMP submitted
7 TRICARE claims for filling compounded medication prescriptions,
8 authorized by defendant POWERS, for A.B., for which TRICARE paid
9 TCMP approximately \$12,605.

10 b. On or about April 29, 2015, TCMP submitted
11 TRICARE claims for filling compounded medications prescriptions,
12 authorized by defendant POWERS, for N.S., for which TRICARE paid
13 TCMP approximately \$12,753.

FORFEITURE ALLEGATION

[18 U.S.C. §§ 982(a)(7), 981(a)(1)(C) and 28 U.S.C. § 2461(c)]

10. Pursuant to Rule 32.2(a), Fed. R. Crim. P., notice is hereby given to defendants THOMAS S. POWERS, M.D., and ANTHONY PADUANO that the United States will seek forfeiture as part of any sentence in accordance with Title 18, United States Code, Sections 982(a)(7) and 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), in the event of any defendant's conviction under this Indictment.

11. Defendants shall forfeit to the United States the following property:

a. all right, title, and interest in any and all property, real or personal, that constitutes or is derived, directly or indirectly, from the gross proceeds traceable to the commission of the offense set forth in this Indictment; and

b. a sum of money equal to the total value of the property described in subparagraph a.

12. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982(b), defendants shall forfeit substitute property, up to the total value of the property described in the preceding paragraph if, as a result of any act or omission of a defendant, the property described in the preceding paragraph, or any portion thereof (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to or deposited with a third party; (c) has been placed beyond the jurisdiction of the Court;

1 (d) has been substantially diminished in value; or (e) has been
2 commingled with other property that cannot be divided without
3 difficulty.

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5 A TRUE BILL

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7 151
8 Foreperson

9 SANDRA R. BROWN
Acting United States Attorney

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11 LAWRENCE S. MIDDLETON
Assistant United States Attorney
12 Chief, Criminal Division

13 GEORGE S. CARDONA
Assistant United States Attorney
14 Chief, Major Frauds Section

15 STEPHEN A. CAZARES
Assistant United States Attorney
16 Deputy Chief, Major Frauds Section

17 MARK AVEIS
PAUL G. STERN
18 CASSIE D. PALMER
Assistant United States Attorneys
19 Major Frauds Section