

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

UNITED STATES OF AMERICA	:	Criminal No. 19-25 (JMV)
	:	
v.	:	Hon. John Michael Vazquez
	:	
JOSHUA DARSTEK	:	18 U.S.C. § 1349

SUPERSEDING INFORMATION

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

(Conspiracy to Commit Health Care Fraud)

1. At all times relevant to this Information:

Background

- a. Defendant JOSHUA DARSTEK (“DARSTEK”) was a resident of New Jersey who worked as a sale representative for certain compounding pharmacies and marketing companies.
- b. “Individual-1,” “Individual-2,” and “Individual-3” were each residents of New Jersey.
- c. “Compounding Pharmacy-1” was a compounding pharmacy located in New Jersey. DARSTEK worked as a sales representative for Compounding Pharmacy-1.

d. “Compounding Pharmacy-2” was a compounding pharmacy located in Louisiana. DARSTEK worked as a sales representative for Compounding Pharmacy-2.

e. “Marketing Company-1” was a company based in New York that marketed various compounded drugs. DARSTEK worked as a sales representative for Marketing Company-1.

f. “Compounding” is a practice in which a pharmacist or physician combines, mixes, or alters ingredients of a drug to create a medication tailored to the needs of an individual patient. Pharmacies engaging in this practice are referred to as “compounding pharmacies.”

g. The Food and Drug Administration (the “FDA”) does not approve compounded drugs and thus does not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs.

h. Generally, a physician may prescribe compounded drugs 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 preservative, a compounding pharmacy may prepare a compounded drug by excluding the substance that triggers the allergic reaction. Compounded drugs also are 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.

i. The New Jersey School Employee's Health Benefits Program ("SEHBP") was a health insurance plan that offered health care coverage to state and local government employees, retirees, and eligible dependents. SEHBP was a "health care benefit program" that affected commerce, as defined by 18 U.S.C. § 24(b).

j. SEHBP contracted with a pharmacy benefit manager company ("PBM-1"), a third party that administered SEHBP's prescription drug benefits and claims. Pharmacies could submit electronic claims for reimbursement to PBM-1. If PBM-1 adjudicated (i.e., approved) the claim, it reimbursed the pharmacy on behalf of SEHBP, and SEHBP then reimbursed PBM-1.

k. DARSTEK, Individual-1, Individual-2, and Individual-3 received health care benefits through SEHBP.

2. From in or about May 2014 through in or about January 2016, in the District of New Jersey and elsewhere, defendant

JOSHUA DARSTEK

did knowingly and intentionally conspire and agree with others to knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud any health care benefit program, as defined by 18 U.S.C. § 24(b), and to obtain, by means of false and fraudulent pretenses, representations, and promises, any of the money owned by, and under the custody and control of, any 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.

Goal of the Conspiracy

3. The goal of the conspiracy was for DARSTEK and others to unlawfully enrich themselves by causing health benefit programs, including SEHBP, to issue reimbursements for medically unnecessary compounded drugs and receiving a percentage of those reimbursements.

Manner and Means of the Conspiracy

4. The manner and means by which DARSTEK and others sought to accomplish the goal of the conspiracy, included, among other things, the following:

a. DARSTEK marketed and sold compounded drugs to physicians, including pain, scar, and wound creams and certain supplements and vitamins on behalf of Compounding Pharmacy-1, Compounding Pharmacy-2, and Marketing Company-1 (together the “Darstek Compounding Companies”).

b. The Darstek Compounding Companies paid DARSTEK for each prescription that he referred to Compounding Pharmacy-1 and Compounding Pharmacy-2 and that a health insurance plan approved, regardless of medical necessity. Specifically, the Darstek Compounding Companies paid DARSTEK a percentage of the payments that the Darstek Compounding Companies received from PBM-1 in connection with reimbursement payments made for claims from SEHBP beneficiaries.

c. DARSTEK recruited patients, including SEHBP beneficiaries Individual-1, Individual-2, and Individual-3, to submit medically unnecessary

prescriptions for compounded drugs to Compounding Pharmacy-1 and Compounding Pharmacy-2.

d. Specifically, DARSTEK caused prescribing physicians to write prescriptions for individuals with whom they did not have any interaction for purposes of determining that a prescription for a compounded drug was medically necessary.

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

FORFEITURE ALLEGATIONS

1. Upon conviction of conspiracy to commit health care fraud, contrary to 18 U.S.C. § 1347, in violation of 18 U.S.C. § 1349, as alleged in this Superseding Information, DARSTEK shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, obtained by the defendant that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of such offense, including but not limited to \$148,500 in United States currency.

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;

the United States shall be entitled to forfeiture of substitute property, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b).



CRAIG CARPENITO
United States Attorney

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