

TYPES NOT MAPPED YET August 08, 2018 | TTR not mapped yet | Claire M. Schenk

# DOJ continues to investigate, seek recoveries over compounding pharmacy fraud

As those in the health care industry are well aware, the Department of Justice and the Department of Health and Human Services, along with their state and federal law enforcement partners, have continued their rigorous enforcement efforts to prevent fraud and abuse involving government reimbursement programs like Medicare, Medicaid and TRICARE, the federal government payor for military health insurance.

As one example, the recently announced [2018 National Health Care Fraud Takedown](#) described fraud schemes involving more than 600 defendants and over \$2 billion in losses.

One significant area of focus for federal investigators of health care fraud involves compounding pharmacies – pharmacies and pharmacists that combine, mix or alter ingredients “to create a medication tailored to the needs of an individual patient,” [according to the FDA](#), which does not approve compounded drugs.

A recent search of civil and criminal enforcement actions involving compound pharmacies since 2015 shows that health care providers have paid more than \$200 million in fines and penalties for alleged fraud and abuse related to compounding.

We’ve included a summary below of these matters, which involved individual physicians, pharmacists and pharmacies. Each of the cases underscores how important it is for health care providers to monitor closely their practices and policies for compounding pharmacies, to implement rigorous internal compliance protocols, and to respond promptly and effectively to inquiries from federal agencies or the DOJ.

### Summary of government recoveries in civil and criminal matters involving compounding

**Party:** Michael Frey M.D.

**Date:** 5/11/2018

**Court:** U.S. District Court for the Middle District of Florida

**Description:** From April 1, 2013, until April 30, 2015, Dr. Frey knowingly caused the submission of false claims to TRICARE for pharmaceutical pain cream prescriptions by receiving cash payments from Ryan Williamson in exchange for referrals of pharmaceutical pain cream prescriptions in violation of the Anti-Kickback Act, 42 U.S.C. § 1320a-7b. Ryan Williamson was a sales representative for RX To You Pharmacy, Inc., located in Stuart, Florida.

**Amount:** \$3 million

**Party:** MedMax LLC

**Date:** 2/14/2018

**Court:** U.S. District Court of New Jersey

**Description:** Steven M. Butcher, a former pharmaceutical sales representative turned owner and operator of MedMax LLC, admitted that from July 2014 through April 2016, he organized a large-scale scheme to defraud health insurance plans by submitting phony claims for medically unnecessary prescription compounded medications, including scar creams, pain creams and metabolic supplements marketed by MedMax for certain compounding pharmacies.

**Amount:** \$45 million

**Party:** Express Plus Pharmacy

**Date:** 11/30/2017

**Court:** U.S. District Court for the Southern District of Florida

**Description:** The United States contends that it has certain civil claims against Defendants arising from Defendants’ knowingly billing TRICARE for prescriptions for pharmaceutical products written by Dr. Vijil K. Rahulan that were invalid and not reimbursable because: there was no valid prescriber-patient relationship; the prescriptions were

based on telephone consultations with patients that violated applicable law and regulations on telemedicine; the prescriptions were medically unnecessary; and/or the prescriptions were tainted by kickbacks, all during the period from January 1, 2015 through May 31, 2015.

**Amount:** \$170,000

**Party:** A to Z Pharmacy

**Date:** 11/06/2017

**Court:** U.S. District Court for the Middle District of Florida

**Description:** According to admissions made as part of his plea agreement, Nicholas A. Borgesano Jr, president and owner of A to Z Pharmacy, owned and operated numerous pharmacies and shell companies that he and his co-conspirators used to execute a fraud scheme involving prescription compounded medications. The scheme generated over \$100 million in fraud proceeds, he admitted. Borgesano acquired and controlled A to Z Pharmacy in New Port Richey, New Jersey, Havana Pharmacy, Medplus/New Life Pharmacy and Metropolitan Pharmacy in Miami, Florida and Jaimy Pharmacy and Prestige Pharmacy in Hialeah, Florida. He admitted using these pharmacies to cause the submission of false and fraudulent reimbursement claims for prescription compounded medications, chiefly pain creams and scar creams, to private insurance companies, Medicare and TRICARE.

**Amount:** \$7.6 million forfeited

**Party:** Bridget McCune

**Date:** 08/17/2017

**Court:** U.S. District Court for the Northern District of Alabama

**Description:** Bridget McCune of Destin, Florida, pleaded guilty to conspiracy to commit health care fraud, wire fraud and mail fraud and to conspiring to solicit and receive kickbacks in return for referring prescriptions under Medicare and TRICARE. McCune also pleaded guilty to four counts of health care fraud and to two counts of money laundering for spending proceeds of the crimes.

**Amount:** \$401,628

**Party:** Clifford Carroll, Todd Stephens, Tim Clinton\*, Michael Kenna, Joel McDermott, Todd Hanson, Lisa Goldberg\*, Christopher Mucha, Ian Flaster, Kyle O'Brien, Rhett Gordon\*, William Earl, Frederick Thomas Giampa\*, Peter Williams, John Johnson\*, Brett Nadel\*

**Date:** 05/16/2017

**Court:** U.S. District Court for the Southern District of Florida

**Description:** The settlement amount of \$130 million is the amount of restitution ordered from the six starred defendants (\*) as of May 16, 2017. All defendants were charged with and pled guilty to a \$172 million health insurance fraud scheme involving the manufacturing and distribution of compounded medications. Clifford Carroll was the scheme's ringleader, and participants in the scheme illegally gave doctors pre-printed description pads, solicited potential patients through misrepresentations, and paid illegal kickbacks to doctors.

**Amount:** \$130 million

**Party:** Robin Gary Lowry

**Date:** 05/09/2017

**Court:** U.S. District Court for the Northern District of Alabama

**Description:** The U.S. Attorney's Office charged Robin Gary Lowry of Columbus, Mississippi, with conspiring between October 2014 and November 2015 to defraud Blue Cross and Blue Shield of Alabama and Prime Therapeutics, the entity that processed prescription drug reimbursement claims for BCBSAL. The information also charges Lowry with three counts of health care fraud for submitting fraudulent claims for payment to BCBSAL.

**Amount:** \$272,405

**Party:** Topical Specialists LLC

**Date:** 02/11/2016

**Court:** U.S. District Court for the Middle District of Florida

**Description:** The United States contends that it has certain civil claims against Topical Specialists for knowingly causing the submission of claims for reimbursement of prescription medications to the federal health care programs that were not reimbursable. Specifically, the United States contends that from February 26, 2013, to May 31, 2015, Topical Specialists caused claims for reimbursement of prescription medications to be submitted through WellHealth Pharmacy that were ordered by referral sources that had a financial interest in the filling of the prescriptions. The United States contends that Topical Specialists caused WellHealth Pharmacy to fill these prescriptions and submit claims for reimbursement of prescription medications to the federal health care programs in exchange for remuneration paid from WellHealth Pharmacy to Topical Specialists for such submitted claims for reimbursement. The United States also contends that Topical Specialists paid, through a third-party company, remuneration in the form of research fees that exceeded fair market value, to several physician referral sources who prescribed prescription medications through Topical Specialists.

**Amount:** \$2.2 million

**Party:** Mehul Parkeh

**Date:** 02/11/2016

**Court:** U.S. District Court for the Middle District of Florida

**Description:** The United States contends that it has certain civil claims against Dr. Parekh for knowingly causing WellHealth to submit claims for reimbursement of prescription medications to federal health care programs that were not reimbursable. Specifically, the United States contends that from February 26, 2013, to May 31, 2015, Dr. Parekh, by his writing of prescriptions for prescription medications filled by WellHealth, caused WellHealth to submit claims to Federal health care programs that were improper as a result of remuneration paid from WellHealth to Topical Specialists, and subsequently distributed to its member for such submitted claims. The United States further contends that Dr. Parekh, as a referral source to WellHealth who prescribed prescription medication for

which WellHealth submitted claims to Federal health care programs, was involved in recruiting physicians for a research study evaluating the efficacy of pain creams that compensated physicians' research fees that exceeded fair market value.

**Amount:** \$10,000

**Party:** WellHealth Inc

**Date:** 02/11/2016

**Court:** U.S. District Court for the Middle District of Florida

**Description:** The United States contends that it has certain civil claims against WellHealth arising from WellHealth knowingly billing the federal healthcare programs for services that were not reimbursable. Specifically, the United States contends that from February 26, 2013 to March 20, 2015, WellHealth sought reimbursement for pharmaceutical prescriptions that were written by referral sources that had a financial interest in the prescriptions. The government contends that WellHealth filled prescriptions from an affiliated pharmacy that indirectly paid, through a third-party company, remuneration in the form of research fees that exceeded fair market value, to several referring physicians. The referring physicians, in exchange for the research fee, gathered information and generated documentation regarding the efficacy of topical medications. During the same time frame, the physicians also wrote prescriptions for various medications that were ultimately filled by WellHealth, and billed to federal government programs.

**Amount:** \$1.9 million

**Party:** Manish Bansal

**Date:** 02/11/2016

**Court:** U.S. District Court for the Middle District of Florida

**Description:** The United States contends that it has certain civil claims against Dr. Bansal knowingly causing WellHealth to submit claims for reimbursement of prescription medications to Federal health care programs that were not reimbursable. Specifically, the United States contends that from February 26, 2013, to May 31, 2015, Dr. Bansal, by his writing of prescriptions for prescription medications filled by WellHealth, caused WellHealth to submit claims to Federal health care programs that were improper as a result of remuneration paid from WellHealth to Topical Specialists, and subsequently distributed to its members, for such submitted claims. The United States further contends that Dr. Bansal, as a referral source to WellHealth who prescribed prescription medication for which WellHealth submitted claims to federal health care programs, was involved in recruiting physicians for a research study evaluating the efficacy of pain creams that compensated physicians' research fees that exceeded fair market value.

**Amount:** \$1.2 million

**Party:** Syed Asad

**Date:** 02/11/2016

**Court:** U.S. District Court for the Middle District of Florida

**Description:** The United States contends that it has certain civil claims against Dr. Asad for knowingly causing WellHealth to submit claims for reimbursement of prescription medications to federal health care programs that were not reimbursable. Specifically, the United States contends that from February 26, 2013, to May 31, 2015, Dr. Asad, by his writing of prescriptions for prescription medications filled by WellHealth, caused WellHealth to submit claims to Federal health care programs that were improper as a result of remuneration paid from WellHealth to Topical Specialists, and subsequently distributed to its members, for such submitted claims. The United States further contends that Dr. Asad, as a referral source to WellHealth who prescribed prescription medication for which WellHealth submitted claims to Federal health care programs, was involved in recruiting physicians for a research study evaluating the efficacy of pain creams that compensated physicians' research fees that exceeded fair market value.

**Amount:** \$10,000

**Party:** Marisol Arcila

**Date:** 02/11/2016

**Court:** U.S. District Court for the Middle District of Florida

**Description:** The United States contends that it has certain civil claims against Dr. Arcila for knowingly causing WellHealth to submit claims for reimbursement of prescription medications to Federal health care programs that were not reimbursable. Specifically, the United States contends that from February 26, 2013, to May 31, 2015, Dr. Arcila, by her writing of prescriptions for prescription medications filled by WellHealth, caused WellHealth to submit claims to Federal health care programs that were improper as a result of remuneration paid from WellHealth to TS, and subsequently distributed to its members, for such submitted claims. The United States further contends that Dr. Arcila, as a referral source to WellHealth who prescribed prescription medication for which WellHealth submitted claims to Federal health care programs, was involved in recruiting physicians for a research study evaluating the efficacy of pain creams that compensated physicians' research fees that exceeded fair market value. Recital A and Recital B constitutes the "Covered Conduct" referred to in this Agreement.

**Amount:** \$400,000

**Party:** Blanding Health Mart Pharmacy

**Date:** 07/15/2015

**Court:** U.S. District Court for the Southern District of Florida

**Description:** The United States contends that it has certain civil claims against Blanding arising from Blanding knowingly billing TRICARE for services that were not reimbursable. Specifically, the United States contends that from February 9, 2015, to April 13, 2015, Blanding sought reimbursement for pharmaceutical prescriptions that were not medically necessary and were written by physicians that had never actually seen the patients. The United States contends these prescriptions were not appropriately reimbursable. Recital B constitutes the "Covered Conduct" referred to in this Agreement.

**Amount:** \$8.4 million



*Claire Schenk is a business litigation partner who has assisted health care clients with compounding issues. She concentrates her practice in the areas of health care fraud and abuse, False Claims Act litigation and other complex white-collar civil litigation.*

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