

Department of Justice

U.S. Attorney's Office

Eastern District of Pennsylvania

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Federal Civil and Criminal Investigations Result in Six Convictions and Recovery of Over \$8.7 Million in Connection with Compounded Medications Formulated by DelCo Pharmacy

PHILADELPHIA – United States Attorney Jennifer Arbittier Williams announced the criminal and civil resolutions of multi-year investigations of various health care fraud schemes involving prescriptions for compounded medications formulated by Heritage Therapeutics, LLC, a Delaware County pharmacy. The investigations yielded six criminal convictions and recovered over \$8.7 million in criminal forfeitures, criminal restitution, and civil settlement payments.

From 2013 into 2015, Heritage formulated expensive compounded medications such as pain creams, scar creams, and vitamins. These compounded medications were prescribed to, among others, beneficiaries of TRICARE, a federally funded health care program for military members, retirees, and their families. The investigations revealed that Heritage paid commissions to some of its sales representatives for referring Heritage's compounded medications to medical providers who prescribed them to TRICARE beneficiaries. Some of these sales representatives, in turn, paid kickbacks to the medical providers to induce them to issue those prescriptions.

A lead sales representative for Heritage was Michael Bemis. Bemis paid kickbacks to a Philadelphia-area physician, Dr. Scott Kurzrok, in exchange for issuing prescriptions to TRICARE beneficiaries that Kurzrok allegedly never examined or treated. In addition, Bemis recruited other sales representatives and encouraged them to also pay kickbacks to medical providers to induce them to prescribe compounded medications to TRICARE beneficiaries through Heritage. Bemis also paid and encouraged other sales representatives to pay TRICARE beneficiaries to allow medically unnecessary prescriptions to be filled in their names. In addition, Bemis encouraged sales representatives to push TRICARE beneficiaries to accept refills of the medically unnecessary medications. Heritage submitted claims for those medications to TRICARE and paid commissions on those prescriptions to Bemis and other sales representatives. For his involvement in the scheme, Bemis pleaded guilty to conspiracy to commit health care fraud, was sentenced to over two and a half years in prison, and was ordered to pay criminal restitution of more than \$3.3 million and to forfeit over \$930,000. Bemis and Dr. Kurzrok each entered into settlement agreements to resolve civil claims under the False Claims Act.

Charles Hollister, a Heritage sales representative in North Carolina, was one of Bemis's recruits. Hollister paid kickbacks to Tanya Dyer, a licensed nurse practitioner in Hickory, North Carolina, in exchange for Dyer prescribing Heritage compounded medications to TRICARE beneficiaries. These TRICARE beneficiaries included individuals whom Dyer allegedly never saw or examined. Hollister pleaded guilty to conspiracy to commit health care fraud, was sentenced to over a year in prison, and was ordered to pay over \$1 million of criminal restitution jointly and severally with Bemis. Dyer entered into a settlement agreement to resolve civil claims under the False Claims Act.

Andrew Balick, a Heritage sales representative in Georgia, was another of Bemis' recruits. Balick convinced a purported physician assistant to write medically unnecessary prescriptions for compounded medications that were filled by Heritage. Balick provided TRICARE beneficiary information to the physician assistant for use in writing the prescriptions and then shared part of his Heritage sales commissions with the beneficiaries, including a man named Andrew Dykstra. In addition to providing his own beneficiary information to Balick, Dykstra became a Heritage sales representative and allegedly recruited other purported sales representatives to provide their TRICARE beneficiary information for use in the scheme. Balick pleaded guilty to conspiracy to commit health care fraud, was sentenced to over a year in prison, and was ordered to pay criminal restitution of over \$1.8 million jointly and severally with Bemis. Dykstra entered into a settlement agreement to resolve civil claims under the False Claims Act.

Separately, Benjamin Tewes, the brother of Heritage sales representative Kristine Sewell, paid kickbacks to Thomas Hersch, a physician assistant in Georgia, to induce him to write prescriptions for Heritage compounded medications to TRICARE beneficiaries. Sewell allegedly received sales commissions from Heritage on these prescriptions and shared part of her commissions with Tewes. Tewes pleaded guilty to one count of paying kickbacks in connection with a federal health care program, was sentenced to 3 years of probation, and was ordered to forfeit

over \$276,000 and to pay a \$15,000 fine. Hersch pleaded guilty to one count of receiving kickbacks in connection with a federal health care program. Sewell entered into a monetary settlement agreement to resolve civil claims under the False Claims Act.

In addition, Joseph Fidelie, who was both a Heritage sales representative and a medical assistant at an orthopedic practice in Oklahoma, paid kickbacks to a physician assistant in the same practice to induce the physician assistant to prescribe Heritage's compounded medications to TRICARE beneficiaries. Fidelie received commissions from Heritage for the claims paid by TRICARE. Fidelie pleaded guilty to one count of paying kickbacks in connection with a federal health care program.

In addition to the resolutions noted above, Heritage, along with its president, David Raffaele; principals Kevin O'Brien and Stephen Seiner; former pharmacist-in-charge Gary Umland; and sales assistant Michael D'Antonio; entered into a settlement agreement to resolve civil claims against the entity and associated individuals under the False Claims Act. The civil claims resolved through this settlement relate to Heritage's sales representatives' alleged payments of kickbacks to medical providers, as described above, as well as to Heritage's compensation of its sales representatives on a commission basis in the absence of *bona fide* employee relationships, all in violation of the Anti-Kickback Statute. In addition, this settlement resolved claims that, to avoid TRICARE's recoupment of amounts previously paid to Heritage for compounded medications prescribed to TRICARE beneficiaries in the absence of any legitimate provider-patient relationship, as described above, Heritage itself made false statements in its responses to a TRICARE audit.

"With the conclusion of these investigations, we serve notice that medical providers and pharmaceutical manufacturers who prey on the men and women who bravely serve in our armed forces, and their families, in order to line their own pockets, will be relentlessly pursued with all of the resources of the United States Attorney's Office," said U.S. Attorney Williams. "Through the combined efforts of our criminal division, civil division, and our partner agencies, the fraudulent acts of both the company and the individuals who acted through it were held to account."

"Investigating corrupt schemes that undermine the integrity of TRICARE, the healthcare system for military members and their families, is a top priority for the Department of Defense Office of Inspector General's Defense Criminal Investigative Service (DCIS)," stated Special Agent in Charge Patrick J. Hegarty, DCIS Northeast Field Office. "Today's announcement demonstrates our commitment to work with the Department of Justice to tirelessly pursue those individuals and corporations that target our service members and put TRICARE beneficiaries at risk."

The investigations were conducted by agents from, in addition to DCIS, the Office of Personnel Management, Office of Inspector General; Department of Labor, Office of Inspector General; United States Postal Service, Office of Inspector General; and U.S. Army Criminal Investigation Division.

Assistant United States Attorney Mary Kay Costello and former Assistant United States Attorney John Crutchlow prosecuted the criminal cases. Assistant United States Attorneys Bryan C. Hughes and Rebecca S. Melley handled the civil investigation and settlements, assisted by Auditor George Niedzwicki.

Except for those facts admitted to in the guilty pleas, the claims resolved by the civil settlements are allegations only, and there has been no determination of liability.

Topic(s):

False Claims Act
Health Care Fraud

Component(s):

USAO - Pennsylvania, Eastern

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