

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
STATESBORO DIVISION

CR 622 - 0006

UNITED STATES OF AMERICA

v.

LUCKY S. OTT, JR.

) INDICTMENT NO.

)

) 18 U.S.C. § 371

) Conspiracy

)

FILED  
U.S. DISTRICT COURT  
2022 AUG -3 P 3:17  
CLERK  
SO. DIST. OF GA.

THE GRAND JURY CHARGES THAT:

At all times relevant to this Indictment, unless otherwise indicated:

INTRODUCTION

1. Lucky S. Ott, Jr. (“OTT”) and his co-conspirators unlawfully submitted and caused to be submitted false and fraudulent claims to Federal health care programs for expensive creams, ointments, and other prescription drugs. In just two years, a pharmacy owned by OTT received over \$10 million for these expensive creams, ointments, and other prescription drugs. These prescriptions, as OTT and his co-conspirators knew and intended, were, among other things, medically unnecessary, not provided as represented, not eligible for reimbursement, and induced through the payment and receipt of unlawful kickbacks and bribes, in violation of the Federal Anti-Kickback Statute. OTT and his co-conspirators distributed payments from Federal health care programs among themselves to unlawfully enrich and benefit themselves and others.

Federal Health Care Programs

2. The Medicare Program (“Medicare”) was a Federal health care program providing benefits to individuals who were the age of 65 or older, or disabled. The

benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services (“HHS”), through its agency, the Centers for Medicare Services (“CMS”), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare “beneficiaries.” Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), and a “Federal health care program,” as defined by Title 42, United States Code, Section 1320a-7b(f).

3. TRICARE was a Federal health care program for the United States Department of Defense (“DoD”) Military Health System that provided coverage for DoD beneficiaries worldwide, including active duty service members, National Guard and Reserve members, retirees, their families, and survivors. TRICARE was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), and a “Federal health care program,” as defined by Title 42, United States Code, Section 1320a-7b(f).

#### Pharmacy Benefit Managers

4. Medicare and other health care benefit programs contracted with pharmacy benefit managers (“PBMs”) to process and adjudicate claims for payments submitted by pharmacies.

5. CVS Caremark, Express Scripts, and Optum were three of the largest nationwide PBMs that adjudicated prescription claims on behalf of Medicare and other health care benefit programs.

The Defendant and Related Individuals and Entities

6. DicotRx 1 LLC did business as Boerne Drug Company (“Boerne Drug”). Boerne Drug was a Texas limited liability company that paid kickbacks to physicians, including a physician in the Statesboro Division of the Southern District of Georgia, in exchange for prescribing expensive creams, ointments, and other prescription drugs for patients residing across the United States, including many who resided within the Southern District of Georgia. After agreeing to pay a kickback and receiving a prescription, Boerne Drug shipped prescription drugs to beneficiaries across the country, including into the Southern District of Georgia.

7. **LUCKY S. OTT, JR.** resided in Boerne, Texas and owned Boerne Drug. **OTT** conspired with others to pay kickbacks from Boerne Drug to physicians, including a physician in the Statesboro Division of the Southern District of Georgia.

8. Company 1 was a Texas limited liability company.

9. Company 2 was a Texas limited liability company.

10. Co-Conspirator 1 resided in Texas and operated Company 1 and Company 2.

11. Physician 1 resided in the Statesboro Division of the Southern District of Georgia, and was licensed to practice medicine in Georgia and elsewhere.

12. Medicare beneficiary C.A. resided in the Southern District of Georgia.

**COUNT ONE**

*Conspiracy to Defraud the United States and to Offer or Pay Illegal Remuneration*  
18 U.S.C. §§ 371, 2326(1), and 2326(2)

13. All previous paragraphs of this Indictment are realleged and incorporated herein by reference.

14. From in or around June 2017, and continuing through in or around April 2019, the exact dates being unknown to the Grand Jury, in Emanuel County in the Southern District of Georgia and elsewhere, the defendant,

**LUCKY S. OTT, JR.,**

Co-Conspirator 1, and others, known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, confederate, and agree with each other to commit the following offenses against the United States, that is:

a. to defraud the United States by impairing, impeding, obstructing and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of Medicare; and

b. to violate Title 42, United States Code, Section 1320a-7b(b)(2), by offering and paying remuneration, specifically, kickbacks and bribes, directly and indirectly, overtly and covertly, in return for referring individuals for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part by a Federal health care program, that is, Medicare and TRICARE; and for the purchasing, leasing, ordering, and arranging for and recommending the purchasing, leasing, and ordering of any good, item, and service

for which payment may be made in whole and in part by a Federal health care program, that is, Medicare and TRICARE.

Object/Purpose of the Conspiracy

15. It was an object/purpose of the conspiracy for OTT and others to unlawfully rich themselves by, among other things, (a) offering and paying kickbacks and bribes in exchange for prescriptions for expensive prescription drugs that Boerne Drug used to submit false and fraudulent claims to PBMs that paid claims on behalf of Medicare, TRICARE, and other health care benefit programs; (b) concealing the payment of kickbacks and bribes and the transfer of proceeds from the fraud; and (c) diverting proceeds of the fraud for their personal use and benefit, for the use and benefit of others, and to further the fraud.

Manner and Means of the Conspiracy

16. The manner and means by which OTT and his co-conspirators sought to accomplish the object and purpose of the conspiracy, which was in connection with the conduct of telemarketing and in connection with the conduct of telemarketing targeting and victimizing persons over the age of 55, included, among other things, the following:

a. OTT operated Boerne Drug to achieve the objective of the conspiracy: to unlawfully enrich himself and his co-conspirators by buying prescriptions for expensive prescription drugs in exchange for kickbacks and bribes, and that were submitted for payment to PBMs that paid claims on behalf of Medicare, TRICARE, and other health care benefit programs.

b. OTT, through Boerne Drug, paid Co-Conspirator 1, through Company 1, for completed prescriptions for expensive prescription drugs.

c. Co-Conspirator 1, through Company 1 and Company 2, paid physicians kickbacks to prescribe expensive prescription drugs, and paid another coconspirator who operated a call center that obtained patient information of individuals to whom OTT could supply prescription drugs.

d. OTT knew that Co-Conspirator 1 was being paid for both physician kickbacks and to obtain patient identities from a call center.

e. Among the physicians paid kickbacks by Co-Conspirator 1 to prescribe drugs was Physician 1.

f. Physician 1 prescribed hundreds of topical creams and gels for patients in exchange for money.

g. Physician 1's prescriptions were then provided to Boerne Drug, which then shipped medical products to patients and billed PBMs for the drugs.

h. OTT, through Boerne Drug, caused kickbacks to be paid to Physician 1 within the Southern District of Georgia and caused kickback-procured prescription drugs to be shipped to patients within the Southern District of Georgia.

i. From in or around June 2017, and continuing through in or around April 2019, OTT and co-conspirators, through Boerne Drug, transferred over \$1 million in kickbacks to Company 1 in exchange for prescriptions used to submit false and fraudulent claims to Medicare.

j. From in or around June 2017, and continuing through in or around April 2019, Boerne Drug was paid over \$10 million from PBMs, much of which were the product of kickbacks and bribes paid by OTT and others.

Overt Acts

17. In furtherance of the conspiracy, and to accomplish its object and purpose, the conspirators committed and caused to be committed, in the Statesboro Division of the Southern District of Georgia, and elsewhere, the following overt acts:

a. On or about August 2, 2017, OTT signed two checks from Boerne Drug's bank account made out to Company 1, each for \$40,000.

b. Also on or about August 2, 2017, CVS Caremark sent Boerne Drug a payment of \$128,498.33 to pay claims submitted to CVS Caremark by Boerne Drug.

c. On or about September 27, 2017, CVS Caremark sent Boerne Drug a payment of \$218,149.13 to pay claims submitted to CVS Caremark by Boerne Drug.

d. On or about October 20, 2017, Boerne Drug submitted a claim to CVS Caremark for Doxepin HCL Cream 5% for a Georgia patient whose initials are M.C., and on that claim indicated the prescriber to be Physician 1.

e. On or about November 10, 2017, TRICARE sent Boerne Drug payments of \$62,595.67 and \$157,708.01 to pay claims submitted to TRICARE by Boerne Drug.

f. On or about June 29, 2018, Boerne Drug submitted a claim to health care benefit program for Doxepin HCL Cream 5% for a Southern District of Georgia Medicare beneficiary whose initials are C.A., and on that claim indicated the prescriber to be Physician 1. Around that time, Boerne Drug shipped Doxepin to C.A. in the Southern District of Georgia.

g. OTT discussed buying set amounts of prescriptions in exchange for money. For example, on March 24, 2019, Co-Conspirator 1 sent a text message to OTT that said, "I would do the 250 with [another co-conspirator] for 25k and forget the others but its your money. That 250 is all you need to get on track." OTT replied to Co-Conspirator 1 "Absolutely the 25k with [co-conspirator]...for sure."

h. In text messages, OTT and his co-conspirators discussed the use of sham marketing agreements to cover up kickbacks. On or about March 25, 2019, OTT texted with Co-Conspirator 1 and another co-conspirator about structuring compensation from the kickback conspiracy. OTT sent a text message that indicated that he wanted to reduce compensation to conspirators "that aren't participating," to which a co-conspirator replied that instead of getting a percentage of the venture that OTT and Co-Conspirator 1 could alternatively "just give me a 'marketing' agreement for business I send."

All done in violation of Title 18, United States Code, Sections 371, 2326(1), and 2326(2).



**FORFEITURE ALLEGATIONS**  
(18 U.S.C. § 982(a)(7))

Pursuant to 18 U.S.C. § 982(a)(7), upon conviction of Count One **OTT** shall forfeit to the United States, any property, real or personal, which constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

Pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), if any of the property described above, as a result of any act or omission of a defendant:

- 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;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States intends to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

A True Bill.



Handwritten signature of David H. Estes in blue ink.

David H. Estes  
United States Attorney

Handwritten signature of Jonathan A. Porter in blue ink.

Jonathan A. Porter  
Assistant United States Attorney  
\*Lead Counsel

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