

FILED

2016 JUN 16 PM 4:44

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY _____ *acc* DEPUTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

January 2016 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

HOOTAN MELAMED (1),
JEAN FRANCOIS PICARD (2),
JOHN PANGELINAN (3),
PHONG HUNG TRAN (4),
JONATHAN PENA (5),

Defendants.

Case No. 16 CR 1409H

I N D I C T M E N T

Title 18, U.S.C., Sec. 371 -
Conspiracy; Title 18, U.S.C.,
Secs. 1341 and 1346 - Honest
Services Mail Fraud; Title 18,
U.S.C., Sec. 1952(a)(1) and
(a)(2) - Travel Act; Title 18,
U.S.C., Sec. 2 - Aiding and
Abetting; Title 18, U.S.C.,
Sec. 981(a)(1)(C) and
Title 28, U.S.C., Sec. 2461(c) -
Criminal Forfeiture

The Grand Jury charges, at all times relevant:

INTRODUCTORY ALLEGATIONS

1. Defendant HOOTAN MELAMED was a pharmacist licensed with the state of California. He operated and was the de facto owner of New Age Pharmaceuticals, Inc., ("New Age") a compounding pharmacy located in Beverly Hills, California. He also had business interests in other pharmacies, including RoxSan Pharmacy, Inc. ("RoxSan"), Concierge Compounding Pharmaceuticals, Inc. ("Concierge"), Alexso, Inc., and Portland Professional Pharmacy ("Portland Pharmacy") (together, "Melamed's Pharmacies"). These compound pharmacies supplied compound creams and other custom pharmaceuticals to patients.

VHC:nlv(1):San Diego
6/16/16

1 medical and legal fees, were billed directly to, and were paid by, the
2 insurer. The CWCS was regulated by the California Labor Code, the
3 California Insurance Code, and the California Code of Regulations, and
4 was administered by the California Department of Industrial Relations.

5 8. CWCS benefits were administered by the employer, an
6 insurer, or a third party administrator. The CWCS required claims
7 administrators to authorize and pay for medical care that was
8 "reasonably required to cure or relieve the injured worker from the
9 effects of his or her injury."

10 9. California law, including but not limited to the California
11 Business and Professions Code, the California Insurance Code, and the
12 California Labor Code, prohibited the offering, delivering,
13 soliciting, or receiving of anything of value in return for referring
14 a patient for goods or services paid for under the CWCS.

15 10. The United States offered a workers' compensation program to
16 provide medical care to federal workers who suffer work-related
17 injuries or occupational diseases. The program was administered by
18 the Office of Workers' Compensation Programs. Claims are submitted to
19 the Department of Labor for adjudication and payment.

20 11. Both California and the federal workers' compensation
21 benefits included prescription medications prescribed by a doctor.
22 Compound creams were specialty medications prescribed for patients who
23 are unable to take medications in their standard formulations (for
24 example, tablets, pills, or injections), for medications that must be
25 absorbed through the skin, or where the specific combination of
26 medicines is not available. Compound pharmacies could custom-mix the
27 prescribed medicines into a cream to be dispensed to the patient.

28

1 doctor's honest services, and to cause mailings in furtherance
2 thereof, in violation of Title 18, United States Code, Sections 1341
3 and 1346; and

4 c. violate the Travel Act, that is, to use and cause to be used
5 facilities in interstate commerce with intent to promote, manage,
6 establish, carry on, distribute the proceeds of, and facilitate the
7 promotion, management, establishment, carrying on, and distribution of
8 the proceeds of an unlawful activity, that is, commercial bribery in
9 violation of California law, and, thereafter, to promote and attempt
10 to perform acts to promote, manage, establish, carry on, distribute
11 the proceeds of, and facilitate the promotion, management,
12 establishment, carrying on, and distribution of the proceeds of such
13 unlawful activity, in violation of Title 18, United States Code,
14 Sections 1952(a)(1) and (a)(3).

15 **FRAUDULENT PURPOSE**

16 15. It was the goal of the conspiracy to fraudulently obtain
17 money from health care benefit programs by submitting claims for
18 prescription pharmaceuticals and DME that were generated through a
19 secret pattern of bribes to doctors (and those acting with them and on
20 their behalf), to induce the doctors to refer patients to particular
21 pharmacies and DME providers, in violation of the doctors' fiduciary
22 duty to their patients.

23 **MANNER AND MEANS**

24 16. The conspirators used the following manner and means in
25 pursuit of their fraudulent purpose:

26 a. It was a part of the conspiracy that defendants MELAMED,
27 PICARD, PANGELINAN and PENA, and other co-conspirators, knowing that
28 the payment of per-patient referral fees was unlawful, paid doctors to

1 recommend certain goods and services and refer workers' compensation
2 patients to specific providers for those goods and services, including
3 to pharmacies in which MELAMED had an interest for prescription
4 pharmaceuticals, to Company No. 1 for DME, and to other providers in
5 which the co-conspirators had financial interests for other goods and
6 services.

7 b. It was a further part of the conspiracy that defendant TRAN,
8 knowing that receiving a per-patient referral fee was unlawful, agreed
9 to accept per-patient bribes from the co-conspirators to refer
10 workers' compensation patients to companies owned by his co-
11 conspirators or in which they had an interest.

12 c. It was a further part of the conspiracy that the co-
13 conspirators paid or accepted specific bribe and kickback amounts for
14 specific kinds of prescriptions, including: between \$200-250 per IF
15 Unit referral, \$150-200 for each Flurbiprofen cream prescription, \$150
16 for each Gabapentin cream, and \$50 per Terocin patch.

17 d. It was a further part of the conspiracy that the co-
18 conspirators bribed and solicited marketers and doctors to prescribe
19 compound creams and patches over other types of medications, because
20 these custom pharmaceuticals can be billed at high rates to insurance
21 companies.

22 e. It was a further part of the conspiracy that the co-
23 conspirators crafted compound creams and other pharmaceuticals to
24 contain the most expensive components, in order to bill at high rates
25 to insurance companies, instead of customizing the medications to the
26 needs of particular patients.

27 f. It was a further part of the conspiracy that the co-
28 conspirators concealed from patients, and intended to cause the

1 doctors, including Dr. TRAN, to conceal from patients, the kickback
2 and bribe payments made to doctors for referring patients to companies
3 owned by the co-conspirators or in which they had an interest, in
4 violation of the doctors' fiduciary duty to their patients.

5 g. It was a further part of the conspiracy that the co-
6 conspirators obscured the true nature of their financial relationships
7 in order to conceal their corrupt payments for patient referrals,
8 including by entering sham agreements to purportedly lease office
9 space or provide marketing services, when in reality the corrupt
10 payments were made in exchange for, or to induce, the referral of
11 patients.

12 h. It was a further part of the conspiracy that the co-
13 conspirators, knowing that the payment of per-patient referral fees
14 was unlawful, inserted intermediaries (referring to them as
15 "marketers" or "marketing companies") to hide and obscure the flow of
16 payments from providers to doctors, when in reality the payments were
17 unlawful volume-based, per-patient referral fees.

18 i. It was a further part of the conspiracy that the co-
19 conspirators obscured the true nature of their financial relationships
20 in order to conceal their corrupt payments for patient referrals,
21 including by creating separate companies in the names of nominees and
22 straw owners, to pay and receive kickback and bribe money.

23 j. It was a further part of the conspiracy that, knowing that
24 per-patient referral fees were unlawful, the co-conspirators disguised
25 their bribes and kickbacks to doctors by providing gift cards,
26 vacations, sports tickets, cash, or patient referrals.

27 k. It was a further part of the conspiracy that MELAMED, after
28 paying doctors and marketers kickbacks and bribes to prescribe

1 compound creams, then filled the prescriptions himself through New
2 Age, or sent those prescriptions to other pharmacies to be filled,
3 including RoxSan, Concierge, or Portland, in exchange for a further
4 kickback from those pharmacies.

5 l. It was a further part of the conspiracy that the co-
6 conspirators discussed via telephone calls, emails, and in-person
7 meetings the workers' compensation patients who had been corruptly
8 referred for goods and services in exchange for kickbacks.

9 m. It was a further part of the conspiracy that the co-
10 conspirators utilized interstate facilities, including cellular
11 telephones and email, in order to coordinate the referral of patients
12 for goods and services, knowing that such referrals were predicated on
13 unlawful per-patient kickback payments.

14 n. It was a further part of the conspiracy that the co-
15 conspirators utilized the mails as an essential part of their
16 fraudulent scheme, including by mailing bills to insurance carriers,
17 and mailing prescription pharmaceuticals and DME to patients.

18 o. It was a further part of the conspiracy that co-conspirators
19 billed, and caused insurers to bill, for services provided to patients
20 that the co-conspirators had procured by paying bribes and kickbacks.

21 p. It was a further part of the conspiracy that defendants
22 concealed from insurers and patients the material fact of the kickback
23 arrangements, which were in violation of California state law, that
24 led to the referrals.

25 q. Using the manners and means described above, defendants
26 submitted and caused to be submitted claims of over \$27 million for
27 pharmaceutical prescriptions and over \$7.6 million in DME
28 prescriptions procured through the payment of bribes and kickbacks.

OVERT ACTS

1
2 17. In furtherance of the conspiracy and in order to effect the
3 objects thereof, the defendants and others committed or caused the
4 commission of the following overt acts in the Southern District of
5 California and elsewhere:

6 a. On or about August 9, 2012, in a telephone call, PICARD
7 offered to pay a marketer \$125 per compound cream prescription the
8 marketer could get a doctor to prescribe, which would be filled by
9 MELAMED and fraudulently billed to an insurance carrier.

10 b. On or about August 20, 2012, PICARD offered to pay a
11 marketer a "guaranteed [\$]200 per script" if the marketer could find
12 doctors who would prescribe compound creams to workers' compensation
13 patients, which would be filled by MELAMED and fraudulently billed to
14 an insurance carrier.

15 c. On or about December 12, 2012, PICARD offered a marketer a
16 25 percent kickback of the proceeds on any creams that the marketer
17 could get doctors to prescribe, which would be filled by MELAMED and
18 fraudulently billed to an insurance carrier.

19 d. In or about March 2013, PICARD explained to a marketer that
20 the compound creams cost around \$20 to produce, but that they could
21 bill the insurance company \$3,000 for a "five-pack" of pharmaceuticals
22 that were formulated to contain the highest-priced medications.

23 e. In or about March 2013, PICARD suggested that a marketer
24 offer to pay the prescribing doctor between \$100 and \$150 to prescribe
25 a "five-pack" of prescriptions offered by MELAMED's pharmacy.

26 f. In or about March 2013, PICARD directed a marketer to fax
27 compound cream prescriptions to a fax number for New Age.

28

1 g. On or about March 26, 2013, in a telephone call, PICARD
2 requested information about patients that had been procured as a
3 result of a bribe, so that New Age could bill the Department of Labor
4 for prescription pharmaceuticals for those patients.

5 h. On or about March 27, 2013, MELAMED caused \$4,497.77 to be
6 billed to the U.S. Department of Labor's workers' compensation program
7 for pharmaceuticals that MELAMED had bribed a doctor to prescribe.

8 i. On or about March 28, 2013, MELAMED caused \$2,613.60 to be
9 billed to the U.S. Department of Labor's workers' compensation program
10 for pharmaceuticals that he had bribed a doctor to prescribe.

11 j. On or about March 30, 2013, MELAMED and PICARD and others
12 caused prescription pharmaceuticals that were prescribed due to
13 payment of kickbacks and bribes to be mailed to a location in San
14 Diego.

15 k. On or about April 4, 2013, MELAMED and PICARD and others
16 caused prescription pharmaceuticals that were prescribed due to
17 payment of kickbacks and bribes to be mailed to a location in San
18 Diego.

19 l. On or about April 11, 2013, MELAMED and PICARD and others
20 caused prescription pharmaceuticals that were prescribed due to
21 payment of kickbacks and bribes to be mailed to a location in San
22 Diego.

23 m. On or about May 2, 2013, MELAMED and PICARD and others
24 caused prescription pharmaceuticals that were prescribed due to
25 payment of kickbacks and bribes to be mailed to a location in San
26 Diego.

27

28

1 n. On or about May 9, 2013, MELAMED caused \$10,740.28 to be
2 billed to the U.S. Department of Labor's workers' compensation program
3 for pharmaceuticals that he had bribed a doctor to prescribe.

4 o. On or about July 23, 2013, MELAMED and PICARD and others
5 caused prescription pharmaceuticals that were prescribed due to
6 payment of kickbacks and bribes to be mailed to a location in San
7 Diego.

8 p. On or about October 17, 2013, MELAMED caused \$1,476.00 to be
9 billed to the U.S. Department of Labor's workers' compensation program
10 for pharmaceuticals that he had bribed a doctor to prescribe.

11 q. On or about November 26, 2013, MELAMED caused \$1,476.00 to
12 be billed to the U.S. Department of Labor's workers' compensation
13 program for pharmaceuticals that he had bribed a doctor to prescribe.

14 r. On or about June 24, 2014, PENA gave a doctor gift cards
15 totaling \$1,050 in value, in payment for 42 MRI scans that the doctor
16 had referred to Company A.

17 s. On or about August 1, 2014, PENA gave a doctor a gift card
18 for \$725, in payment for 29 MRI scans that the doctor had referred to
19 Company A.

20 t. On or about April 15, 2014, TRAN and PANGELINAN caused
21 Company No. 1 to send a claim for \$1,375.31 for DME for patient
22 Michael W., that was referred to Company No. 1 due to payment of
23 kickbacks and bribes, to be sent to an insurance company in San Diego.

24 u. On or about August 21, 2014, TRAN and PANGELINAN caused
25 Company No. 1 to send a claim for \$1,375.31 for DME for patient Maria
26 H., that was referred to Company No. 1 due to payment of kickbacks and
27 bribes, to be sent to an insurance company in San Diego.

28

1 v. On or about August 14, 2014, TRAN and PANGELINAN caused
2 Company No. 1 to send a claim for \$1,375.31 for DME for patient
3 Francisco C., that was referred to Company No. 1 due to payment of
4 kickbacks and bribes, to be sent to an insurance company in San Diego.

5 w. On or about November 29, 2014, MELAMED caused New Age to
6 send to an insurer in San Diego a claim for reimbursement for
7 prescription pharmaceuticals (for patient Edgar M.).

8 x. On or about December 13, 2014, MELAMED caused New Age to
9 send to an insurer in San Diego a claim for reimbursement for
10 prescription pharmaceuticals (for patient Clara S.).

11 y. On or about December 13, 2014, MELAMED caused New Age to
12 send to an insurer in San Diego a claim for reimbursement for
13 prescription pharmaceuticals (for patient Fidel V).

14 z. On or about October 28, 2015, MELAMED paid a marketer a
15 total of \$75,810 for 390 compound creams and 331 Terocin patches
16 prescribed in September 2015 by doctors recruited by the marketer or
17 those working with him.

18 aa. On or about October 29, 2015, PANGELINAN accepted \$20,130.50
19 as his share of the kickback paid by MELAMED, for 237 creams and 237
20 Terocin patches that PANGELINAN's doctors prescribed.

21 bb. On or about November 4, 2015, TRAN asked PENA to send
22 kickback money to a separate marketing company, because TRAN did not
23 want the money going directly to him.

24 cc. On or about November 4, 2015, TRAN asked PENA to send him a
25 text message that used the code "Let's meet at one [o'clock]" if PENA
26 would pay \$100 per compound cream prescription, or "two [o'clock]" if
27 PENA would pay \$200.

28

1 dd. In November 2015, TRAN and PANGELINAN discussed a bribe
2 payment of over \$100 per cream prescribed.

3 ee. On or about November 16, 2015, PANGELINAN delivered to TRAN
4 or TRAN's representative a check for \$10,000 made out to "Team
5 Enterprise," in payment for 50 IF Units referred by TRAN to Company
6 No. 1.

7 ff. On or about November 19, 2015, PANGELINAN accepted a check
8 for \$11,565.06 in payment for the DME referrals he had caused doctors
9 to make to Company No. 1 in October 2015.

10 gg. On or about November 20, 2015, MELAMED paid a marketer a
11 total of \$75,900 for 387 compound creams and 339 Terocin patches
12 prescribed by doctors recruited by that marketer and those working
13 with him in October 2015.

14 hh. On or about November 24, 2015, PANGELINAN suggested a new
15 kickback deal with TRAN, to pay TRAN over \$100 for each compound cream
16 prescription that TRAN prescribed to MELAMED'S Pharmacies.

17 ii. On or about November 24, 2015, PANGELINAN offered to tell
18 doctors that he worked with, including Dr. F and Dr. Y, and their
19 staff, that they should conceal the fact that the doctors were
20 supposed to prescribe a certain amount of DME for the monthly payments
21 received from Company No. 1.

22 jj. On or about November 24, 2015, PANGELINAN accepted
23 \$17,037.50 as his share of the kickback paid by MELAMED, for 254
24 creams and 252 Terocin patches that PANGELINAN's doctors prescribed.

25 kk. Sometime before December 2015, TRAN and PANGELINAN agreed
26 that TRAN would receive \$10,000 per month (disguised as payment for
27 "marketing" services) in exchange for referring 50 IF Units per month
28 to Company No. 1.

1 ll. On or about December 8, 2015, TRAN said that he would be
2 sending many more DME referrals to Company No. 1, and in order for
3 Company No. 1 to "catch up" on payments due him, TRAN suggested that
4 he only have to refer 40 IF Units per month in exchange for the
5 \$10,000 monthly payment from Company No. 1.

6 mm. On or about December 8, 2015, TRAN and PANGELINAN agreed
7 that TRAN would be paid \$125 per compound cream that he prescribed and
8 sent to PANGELINAN, to be filled by a pharmacy designated by MELAMED.

9 nn. On or about December 15, 2015, PANGELINAN delivered to TRAN
10 or TRAN's representative a check for \$10,000 made out to "Team
11 Enterprise," in payment for 50 IF Units referred by TRAN to Company
12 No. 1.

13 oo. On or about December 17, 2015, PANGELINAN accepted a check
14 for \$7,506.34 in payment for the DME referrals he had caused doctors
15 to make to Company No. 1 in November 2015.

16 pp. In or around December 2015, TRAN started a new marketing
17 company so that he could receive kickback payments.

18 qq. In or about December 2015, MELAMED agreed to pay \$175 per
19 compound cream prescription to a marketer so that TRAN, in turn, could
20 be paid \$125 per prescription for prescribing compound creams to be
21 filled by a pharmacy designated by MELAMED.

22 rr. On or about December 14, 2015, MELAMED paid a marketer a
23 total of \$77,900 for 412 compound creams and 314 Terocin patches
24 prescribed in November 2015 by doctors recruited by the marker or
25 those working with him.

26 ss. On or about December 16, 2015, PANGELINAN accepted
27 \$18,462.50 as his share of the kickback paid by MELAMED, for 256
28 creams and 256 Terocin patches that PANGELINAN's doctors prescribed.

1 tt. On or about January 29, 2016, MELAMED paid a marketer a
2 total of \$64,150 for 335 compound creams and 278 Terocin patches
3 prescribed in December 2015 by doctors recruited by the marketer or
4 those working with him.

5 uu. On or about January 14, 2016, PANGELINAN accepted a check
6 for \$8,610.86 in payment for the DME referrals he had caused doctors
7 to make to Company No. 1 in December 2015.

8 vv. On or about January 14, 2016, PANGELINAN delivered to TRAN
9 or TRAN's representative a check for \$10,000 made out to "Team
10 Enterprise," in payment for 40 or 50 IF Units referred by TRAN to
11 Company No. 1.

12 ww. On or about February 18, 2016, PANGELINAN accepted a check
13 for \$12,981.27 in payment for the DME referrals he had caused doctors
14 to make to Company No. 1 in January 2016.

15 xx. On or about February 29, 2016, MELAMED caused New Age to
16 send to an insurer in San Diego a claim for reimbursement for
17 prescription pharmaceuticals (for patient Edgar M.).

18 yy. On or about March 1, 2016, MELAMED paid a marketer a total
19 of \$54,900 for 273 compound creams and 278 Terocin patches prescribed
20 in January 2016 by doctors recruited by the marketer or those working
21 with him..

22 zz. On or about March 3, 2016, PANGELINAN accepted \$12,768.75
23 as his share of the kickback paid by MELAMED, for 234 creams and 234
24 Terocin patches that PANGELINAN's doctors prescribed.

25 aaa. On or about March 16, 2016, PANGELINAN accepted a check for
26 \$9,469.34 in payment for the DME referrals he had caused doctors to
27 make to Company No. 1 in February 2016.

28

