

Department of Justice

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

Thursday, April 2, 2020

**Manhattan U.S. Attorney Announces Settlement Of
Fraudulent Billing And Kickback Lawsuit Against
Compounding Pharmacies And Owners**

Geoffrey S. Berman, the United States Attorney for the Southern District of New York, Lt. Gen. Ronald J. Place, Director of the Defense Health Agency of the U.S. Department of Defense (“DoD”), Scott J. Lampert, Special Agent in Charge of the New York Regional Office of the U.S. Department of Health and Human Services, Office of Inspector General (“HHS-OIG”), Michael Mikulka, Special Agent-in-Charge of the Office of Investigations, Labor Racketeering and Fraud, of the U.S. Department of Labor, Office of Inspector General (“DOL-OIG”), and Thomas W. South, Deputy Assistant Inspector General for Investigations of the U.S. Office of Personnel Management, Office of Inspector General (“OPM-OIG”), announced today that the United States has filed a lawsuit and simultaneously settled civil healthcare fraud claims against FPR SPECIALTY PHARMACY LLC and MEAD SQUARE PHARMACY, INC. (“MEAD SQUARE” and together, the “Pharmacies”), and their owners, CHRISTOPHER K. CASEY and WILLIAM RUE (collectively, “Defendants”), for their submission of fraudulent claims for reimbursement to federal healthcare programs for compounded prescription drugs in violation of the False Claims Act and the Anti-Kickback Statute. Specifically, as alleged in the Government’s complaint, the Pharmacies sold prescription drugs to federal healthcare program beneficiaries in states in which the Pharmacies were not licensed, improperly induced patients to purchase expensive custom compounded medications by waiving all or part of the substantial co-payments required under the federal healthcare programs, and paid sales representatives per-prescription commissions to illegally induce more prescriptions to be written. In connection with the settlement agreements, which were approved today by U.S. District Judge Paul A. Engelmayer, Defendants agreed to pay a total of \$426,000, and admitted to and accepted responsibility for the conduct alleged in the complaint. The amounts paid by Defendants under the settlements are based on the Office’s assessment of their ability to pay based on the financial information they provided.

Manhattan U.S. Attorney Geoffrey S. Berman said: “Pharmacies, like other participants in the healthcare industry, must follow the rules. The defendants here brazenly flouted basic rules on licensing and kickbacks to line their pockets with dollars from federal healthcare programs. That is a prescription for intervention by my Office and our partners.”

According to the complaint filed in Manhattan federal court:

During the relevant period, from 2011 through 2015, the Pharmacies dispensed a compounded prescription analgesic cream known as Focused Pain Relief from their facility in Victor, New York, to patients around the country. Many of the Pharmacies’ patients were beneficiaries of federal healthcare programs such as TRICARE, Medicare, federal employee workers’ compensation programs overseen by DOL, and the Federal Employee Health Benefit Program. CASEY and RUE co-owned and managed FPR SPECIALTY PHARMACY, while CASEY owned and managed MEAD SQUARE, for which RUE also worked for a time.

The rules governing federal healthcare programs require pharmacies dispensing prescriptions to their members to be licensed with the appropriate state authorities in order to request reimbursement for the cost of the medications. The Pharmacies violated the False Claims Act by dispensing and requesting reimbursement for hundreds of prescriptions of Focused Pain Relief dispensed to federal healthcare program beneficiaries located in states where the Pharmacies were not licensed to operate by the appropriate state authorities, and by failing to disclose that they were not licensed. The Pharmacies also violated the False Claims Act by billing federal healthcare programs for prescriptions dispensed in states in which they had obtained their state licenses under false pretenses, including by failing to inform state authorities that they had previously dispensed drugs in the states without a license and by failing to disclose CASEY's criminal history on pharmacy license applications.

In addition, the Pharmacies violated the Anti-Kickback Statute by engaging in two separate illegal practices. First, the Pharmacies regularly charged federal healthcare program beneficiaries co-payments substantially below program requirements (which often exceeded \$100) in order to induce them to purchase expensive prescriptions of Focused Pain Relief, for which the federal healthcare programs paid hundreds and sometimes thousands of dollars each. And second, the Pharmacies often paid illegal kickbacks to their sales representatives in the form of sales commissions tied to the number of Focused Pain Relief prescriptions written by the physicians to whom each representative marketed.

As part of the settlement agreements, Defendants agreed and accepted responsibility for the following:

- The Pharmacies sold prescriptions to customers covered by federal healthcare programs who were located in several states in which they were not licensed or no longer licensed by the relevant state pharmacy boards to operate as out-of-state mail-order pharmacies or otherwise sell prescription drugs to residents of those states.
- The Pharmacies did not disclose, in connection with their applications to state pharmacy boards, which were usually signed by CASEY, when they had previously sold mail-order prescription drugs to residents of those states where the Pharmacies either were not licensed or had license applications pending but were not yet licensed.
- The Pharmacies often did not charge customers who were covered by federal healthcare programs the required co-pays or coinsurance payments mandated by those programs for prescription drugs, in connection with their sales of Focused Pain Relief to those customers.
- The Pharmacies entered into agreements with independent sales agents and distributors to solicit physicians to prescribe Focused Pain Relief. These agreements, which were often signed by RUE, generally provided that the Pharmacies would pay the sales agents and distributors specific sums as sales commissions for each prescription of Focused Pain Relief prescribed by a physician assigned to

the particular agent or distributor. The Pharmacies actually paid their sales agents and distributors sales commissions on a per-prescription basis, in accordance with these agreements.

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As part of today's settlement, MEAD SQUARE also entered into a corporate integrity agreement with HHS-OIG, through which it agreed to implement compliance measures and submit to monitoring. FPR SPECIALTY PHARMACY dissolved in 2016.

In connection with the filing of the lawsuit and settlement, the Government intervened in a private whistleblower lawsuit that had been filed under seal pursuant to the False Claims Act.

Mr. Berman thanked DoD, HHS-OIG, DOL-OIG, and OPM-OIG for their assistance with the case.

The case is being handled by the Office's Civil Frauds Unit. Assistant United States Attorney Jean-David Barnea is in charge of the case.