

PFE/LCP/DBL
GJ # 12 (May 2021)**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION****UNITED STATES OF AMERICA****v.****PHILLIP ANTHONY MINGA**)
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)**CASE NO. _____****18 U.S.C. §§ 2, 1343, 1347,
and 1349****INDICTMENT**

The Grand Jury charges that:

At all times relevant to this Indictment:

INTRODUCTION**I. The Medicare Program and Medicare Part D**

1. The Medicare Program (“Medicare”) is a federal health-insurance program that provides medical benefits, items, and services to beneficiaries: (1) aged 65 and older, (2) under 65 with certain disabilities, and (3) of all ages with end-stage renal disease (permanent kidney failure requiring dialysis or a kidney transplant).

2. The Centers for Medicare and Medicaid Services (“CMS”) is an agency of the U.S. Department of Health and Human Services and is a federal government body responsible for the administration of Medicare.

3. The Medicare programs cover different types of benefits that are separated into different program parts.

4. Medicare Part D, also called the Medicare prescription drug benefit, is a program that covers prescription drugs. Medicare beneficiaries obtain Part D benefits in two ways: (a) by joining a prescription drug plan, which covers only prescription drugs, or (b) by joining a Medicare Advantage Plan, which covered both prescription drugs and medical services (collectively, “the Medicare Plans”). The Medicare Plans are operated by private companies, often referred to as drug plan sponsors, that are approved by Medicare.

5. Medicare and individual Medicare drug plan sponsors are “health care benefit programs,” as defined by Title 18, United States Code, Section 24(b).

6. A pharmacy can participate in the Medicare Part D program by entering into an agreement: (a) directly with a prescription drug plan; (b) with one or more Pharmacy Benefit Managers (“PBMs”); or (c) with a Pharmacy Services Administration Organization (“PSAO”). A PBM acts on behalf of one or more prescription drug plans. Through a prescription drug plan’s PBM, a pharmacy can join a prescription drug plan’s network. A PSAO contracts with PBMs on behalf of the pharmacy.

7. CMS assigns pharmacies a national provider identifier number (“NPI”).

A pharmacy dispensing medications to a beneficiary uses its assigned NPI number when submitting a claim for reimbursement under Medicare Part D.

8. Typically, a beneficiary enrolled in a Medicare prescription drug plan obtains prescription medications from a pharmacy enrolled in the beneficiary's prescription drug plan. After filling a beneficiary's prescription, the pharmacy submits the claim electronically either directly to a prescription drug plan or to a PBM that represents the prescription drug plan. The pharmacy provides, among other things, the beneficiary's identification number and the pharmacy's NPI number with the claim. Then, the prescription drug plan or PBM, either directly or indirectly, reimburses the pharmacy for the claim.

II. Exclusion from Medicare

9. The Department of Health and Human Services, Office of Inspector General (HHS OIG) has the authority to exclude medical providers and related individuals from Medicare if they fail to disclose required material information.

10. Once excluded, an individual may not serve in an executive or leadership role at a provider that furnishes items or services payable by Medicare. Also, an excluded individual may generally not provide other types of administrative and management services, such as information technology services and support, strategic planning, billing and accounting, staff training, and human resources.

11. HHS OIG maintains a List of Excluded Individuals/Entities that identifies all currently excluded individuals and entities. HHS OIG recommends that healthcare entities routinely check the List of Excluded Individuals/Entities to ensure that new hires and current employees are not on it because employers risk liability for employing excluded individuals. Access to this list is free and available online.

III. Defendant MINGA

12. Defendant **PHILLIP ANTHONY MINGA** is a resident of Mississippi and has operated pharmacies in Alabama, Mississippi, and Arkansas.

A. Defendant MINGA's Prior Criminal Conviction

13. On May 27, 2008, defendant **MINGA** was charged in federal district court in the Northern District of Mississippi with wire fraud related to the sale of insurance, in Case Number: 08-cr-00052-MPM-DAS.

14. On April 5, 2010, defendant **MINGA** entered a guilty plea to the charge of wire fraud.

15. On November 18, 2010, defendant **MINGA** was sentenced by the court to three years' probation.

B. Defendant MINGA's Exclusion from Medicare

16. At the time defendant **MINGA** was charged, he had managing control

of a durable medical equipment supplier called Medpoint. Medpoint, at that time, was operating in Amory, Mississippi and was enrolled in Medicare.

17. After defendant **MINGA** pled guilty and was sentenced, neither he nor anyone else with Medpoint updated Medpoint's Medicare enrollment information to notify CMS of defendant **MINGA's** conviction, which they were required to do.

18. Following an investigation by HHS OIG, on October 17, 2016, defendant **MINGA** entered into an Exclusion Agreement with HHS OIG in which defendant **MINGA** agreed to an exclusion from Medicare for ten years.

19. The exclusion agreement provided that Medicare would not pay claims submitted by anyone who employed defendant **MINGA** in a management or administrative role.

20. The exclusion agreement further provided that defendant **MINGA** would hold Medicare harmless for any financial responsibility for claims submitted by any entity that employed him in a management or administrative role.

21. The exclusion agreement further stated defendant **MINGA** "understands that violations of the conditions of exclusion may subject him to criminal prosecution."

22. In executing the exclusion agreement, defendant **MINGA** acknowledged having knowledge of its contents and that he entered into it

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