

Department of Justice

U.S. Attorney's Office

Western District of Arkansas

FOR IMMEDIATE RELEASE

Friday, July 30, 2021

Louisiana Doctor Pleads Guilty to Workers' Comp Fraud Conspiracy

Took Kickbacks from Arkansas Company

FAYETTEVILLE, Ark.—A Lake Charles, La., physician pleaded guilty today to one count of conspiracy to commit mail fraud, wire fraud, health care fraud, fraud to obtain federal employees' compensation, and illegal remunerations (taking kickbacks), in connection with a scheme to defraud the U.S. government and private insurance companies by over-billing for unnecessary medications provided to workers' compensation patients.

U.S. District Judge Timothy L. Brooks presided over the plea hearing, in which Robert Dale Bernauer, Sr., 74, waived indictment by a grand jury and pleaded guilty to a criminal information charging him with conspiracy to violate five different federal statutes. According to court documents, Bernauer, an orthopedic surgeon and clinician who practiced in Louisiana, made more than \$1,000,000 off of the scheme, which ran from 2011 until 2017 and defrauded both federal and private workers' compensation insurers.

Court documents allege that the basic premise of the scheme was that individuals associated with an Arkansas company recruited Bernauer to dispense pain creams and patches to his workers' compensation patients by offering him a 50 percent split of the profits collected from successfully billing insurers. The company billed insurers at markups of anywhere from 1,500 to 2,000 percent—in other words, 15 to 20 times what the medications actually cost. The unnamed company acted as the billing agent for Bernauer, handling all of the paperwork and submitting the allegedly fraudulent claims to both the U.S. Department of Labor, Office of Workers' Compensation Programs, which covers all federal employees, and to private insurers as well.

Bernauer admitted that both he and his co-conspirators knew he did not have a license to dispense medications from his clinic, which was required under Louisiana law, but proceeded anyway to sign two contracts under which he agreed to buy topical medications from the Arkansas company at set rates, and dispense them exclusively to his workers' compensation patients. In turn, the contracts provided that Bernauer and the company would each get half of all amounts successfully collected from insurers.

Although such profit-splitting arrangements violated both federal and Louisiana laws, in pleading guilty Bernauer admitted he joined the scheme knowing it was, in his words, "too good to be true." Bernauer further admitted he deliberately blinded himself to the illegality of the business arrangement, despite all the "red flags" he knew to be present. Bernauer's plea agreement states that while not offering any excuses for his conduct, he joined in the conspiracy because he needed the money, and continued to participate due to expenses associated with his wife's final illness.

Court documents indicate that Bernauer was not the only physician involved in this scheme, and the total financial harm to federal and private workers' compensation insurers is not listed.

However, Bernauer alone accounted for a loss of approximately \$2,050,546, of which \$664,176.50 was suffered by the federal agencies whose employees were Bernauer's patients.

"The Department of Justice and this U.S. Attorney's Office are committed to combatting health care fraud and holding accountable the perpetrators of schemes like the one alleged here," said David Clay Fowlkes, Acting U.S. Attorney for the Western District of Arkansas.

"Today's guilty plea highlights the commitment of the Department of Defense Inspector General, Defense Criminal Investigative Service, and our law enforcement partners to protect the integrity of the workers' compensation program that serves our federal workforce," said Special Agent in Charge Michael Mentavlos of the Defense Criminal Investigative Service Southwest Field Office. "Physicians, marketers and billing companies who attempt to take advantage of the program by paying and receiving kickbacks for prescribing unnecessary medications expose our workforce to potential physical harm and waste valuable taxpayer dollars."

"An important mission of the Office of Inspector General is to investigate allegations of fraud related to the Department of Labor's Office of Workers' Compensation Programs. We will continue to work with our law enforcement partners and the Office of Workers' Compensation Programs to protect the integrity of the department's benefit programs and hold those who defraud them accountable as demonstrated in today's guilty plea," stated Steven Grell, Special Agent in Charge, Dallas Region, U.S. Department of Labor Office of Inspector General.

"Billing for unnecessary medications undermines the integrity of federal health care programs," stated Jeffrey Breen, Special Agent in Charge at the Department of Veterans Affairs Office of Inspector General. "This guilty plea holds the defendant accountable for his criminal actions placing profits before his patients' health. We thank our law enforcement partners for their collaboration in this important investigation."

"Today's guilty plea is a testament to the dedication and determination of the investigative and legal teams," said Special Agent in Charge Scott Pierce, U.S. Postal Service Office of Inspector General, Southern Area Field Office. "The Postal Service spends hundreds of millions of dollars annually on health care related costs and these monies are critical to those who legitimately need medical services. As in this case, our criminal investigators will diligently pursue any individual or organization intent on defrauding the Postal Service with an eye on both federal prosecution and returning lost monies to the affected program."

In his plea agreement, Bernauer promised to immediately start making amends, by within 30 days paying \$664,176.30 directly to the Department of Labor, as restitution to the federal agencies that were primary targets of the fraudulent scheme, and a further \$361,096.70 to the court clerk's office, to be distributed to other insurers victimized by the conspiracy. Bernauer also acknowledged that he would be subject to an additional restitution order of approximately \$1,025,273, as a shared obligation with any of his co-conspirators who are later convicted.

As a result of his guilty plea to the single conspiracy count, Bernauer may be sentenced to a maximum of five years in prison. The court will determine his sentence at a later date, after reviewing a pre-sentence investigation report prepared by the U.S. Probation Office, and considering the U.S. Sentencing Guidelines and other statutory factors.

The case was investigated by the Department of Defense, Defense Criminal Investigative Service, the Department of Labor Office of Inspector General, the Department of Veterans Affairs Office of Inspector General, the U.S. Postal Service Office of Inspector General, with the assistance of the Internal Revenue Service-Criminal Investigation, the Louisiana Department of Justice, the Louisiana State Board of Medical Examiners, and the Louisiana Board of Pharmacy.

Assistant U.S. Attorneys Steven Mohlhenrich and Hunter Bridges prosecuted the case for the United States.

Topic(s):
Health Care Fraud

Component(s):
USAO - Arkansas, Western

Updated August 1, 2021