

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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PETER OPPENEER
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WD OF WI

UNITED STATES OF AMERICA

INDICTMENT

v.

Case No. **20 CR 153 WMC**

KENNETH ZIPPERER,

18 U.S.C. § 1341
18 U.S.C. § 1343
21 U.S.C. § 331(k)
21 U.S.C. § 333(a)(2)
21 U.S.C. § 353(b)(1)
18 U.S.C. § 1956(a)(1)(B)(i)
18 U.S.C. § 1956(a)(1)(A)(i)
21 U.S.C. § 334(d)(3)
18 U.S.C. § 981
18 U.S.C. § 982
21 U.S.C. § 853 (p)
28 U.S.C. § 2461(c)

Defendant.

THE GRAND JURY CHARGES:

COUNTS 1-5

Factual Background

1. At times material to this indictment:

a. Defendant KENNETH ZIPPERER worked as an insurance broker.

He sold Medicare supplement health insurance policies to seniors age 65 or older.

ZIPPERER was licensed by the State of Wisconsin to sell life, accident, and health insurance. ZIPPERER did not possess a valid wholesale drug distribution license, a valid pharmacy license, or a license to prescribe prescription drugs in Wisconsin.

b. ZIPPERER owned and operated Zipperer Financial LLC which was a limited liability company based in Wausau, Wisconsin. ZIPPERER registered

Zipperer Financial LLC with the Wisconsin Department of Financial Institutions on July 1, 2009. The webpage for Zipperer Financial LLC indicated that it was an insurance agency that for the past 25 years focused on serving clients who were on Medicare. The company sold Medicare Supplement Plans, Medicare Advantage Plans and Part D prescription drug plans. The company sold insurance policies from Security Health, Aetna, Blue Cross Blue Shield, Humana, and Medco. The company serviced over 4000 insurance clients and generated annual gross receipts in excess of \$550,000. Zipperer Financial LLC had four employees, including ZIPPERER.

c. ZIPPERER rented Post Office Box 2076, Wausau, Wisconsin 54402, under the business name Zipperer Financial LLC.

d. ZIPPERER imported, via the U.S. Mails and Express Mail Service (EMS), an interstate commercial carrier, foreign-sourced prescription drugs from an internet pharmacy company in India using the website: www.alldaychemist.com. The packages mailed from this pharmacy contained the return address of Derric Wood in Delhi, India. The webpage for Derric Wood indicated that it was a pharmaceutical company established in 2007 in Delhi, India, and was engaged primarily in the manufacturing, exporting and supplying of pharmaceutical products including medicines for multiple therapeutic fields including anti-microbial, gastro-intestinal, anti-histaminic and anti-oxidants.

e. ZIPPERER imported many of the foreign-sourced prescription drugs in wholesale quantities into the United States from India or Canada. ZIPPERER broke down these bulk shipments and repackaged them into retail quantities for

individual clients. ZIPPERER distributed many of the foreign-sourced prescription medications to his insurance clients in person, primarily at the business office for Zipperer Financial LLC in Wausau, Wisconsin. ZIPPERER intended that these foreign-sourced versions of prescription medications be used by his clients to affect the structure and function of the human body.

f. ZIPPERER used computers at the business office for Zipperer Financial LLC to transact business with alldaychemist.com and to communicate with his clients, as well as check on the shipping status of the drug purchases through the U.S. Postal Service's online tracking system, using multiple email addresses including: kjzipperer@gmail.com, zippererfin@yahoo.com, kenbobzip@gmail.com, and Kenneth.Zipperer@frontier.com.

g. ZIPPERER maintained numerous business checking, savings, and personal checking accounts at CoVantage Credit Union and Associated Bank. ZIPPERER deposited numerous checks from his prescription drug customers into his business bank account and personal bank account. Some of these checks included notations such as "Meds," "Prescription Pills," "Celebrex," "drugs," "Crestor," and "inhalers."

h. ZIPPERER used the online money transfer system "PayPal," and the merchant payment processor company "TheEcheck.com" to make payments for his purchases of the foreign-sourced prescription drugs from Derric Wood. These payments to Derric Wood would appear on ZIPPERER's bank statements with a fake payee name such as: JBI, Paymonex, or Iweb Dynamics.

Legal Background

U.S. Food and Drug Administration – Drug Definitions

i. The United States Food and Drug Administration (FDA) was the federal agency within the executive branch of the government responsible for protecting the health and safety of the American public by enforcing the Federal Food, Drug, and Cosmetic Act (FDCA). Among the purposes of the FDCA was to assure that drugs sold for human use are safe and effective for their intended uses, and bear accurate labeling containing all required information. The FDA's responsibilities under the FDCA include regulating the manufacture, labeling, and distribution of all drugs shipped or received in interstate commerce.

j. Under the FDCA, a “drug” was defined as, among other things, articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans (21 U.S.C. § 321(g)(1)(B)); articles intended to affect the structure or function of the body of humans (21 U.S.C. § 321(g)(1)(C)); and articles intended for use as components of other drugs (21 U.S.C. § 321(g)(1)(D)).

k. A “prescription drug” was defined under the FDCA as a drug: (a) which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, was not safe for use except under the supervision of a practitioner licensed by law to administer such drug; and (b) limited by an FDA-approved application to use under the professional supervision of a licensed medical practitioner. (21 U.S.C. §§ 353(b)(1)(A) and (B)).

l. Under the FDCA, the term “label” was defined as a display of written, printed, or graphic matter upon the immediate container of any article. (21 U.S.C. § 321(k)). The term “labeling” was broader and was defined as all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article. (21 U.S.C. § 321(m)).

m. Under the FDCA, a drug was “misbranded” if, among other things: (1) its labeling was false or misleading in any particular manner (21 U.S.C. § 352(a)); or (2) its labeling failed to bear adequate directions for use (21 U.S.C. § 352 (f)(1)); or (3) it was an imitation of another drug (21 U.S.C. § 352(i)(2)), or (4) it was offered for sale under the name of another drug (21 U.S.C. § 352(i)(3)); or (5) the drug was a prescription drug dispensed without the valid prescription of a practitioner licensed by law to administer such drug (21 U.S.C. § 353(b)(1)).

n. “Adequate directions for use” meant that the directions were sufficient for a layman to safely use the drug and for the purposes for which it was intended. Directions under which a layperson can use a drug safely cannot be written for a prescription drug because such drugs can, by definition, only be used safely at the direction, and under the supervision, of a licensed practitioner. FDA-approved prescription drugs with their approved labeling were exempt from having adequate directions for use by a layperson under specific circumstances, but unapproved prescription drugs that did not meet all the conditions for an exemption from the requirement of having adequate directions for use were necessarily misbranded.

o. A prescription drug was dispensed only upon the written prescription of a practitioner licensed by law to administer such a drug, or upon an oral prescription of such practitioner, which was reduced promptly to writing and filed by the Pharmacist. The act of dispensing a drug contrary to these requirements results in that drug being misbranded while held for sale. (21 U.S.C. § 353(b)(1) & 331(k)).

p. The FDCA prohibited among other things, the doing or causing the following:

- The introduction or delivery for introduction into interstate commerce of a misbranded drug. (21 U.S.C. § 331(a));
- The receipt in interstate commerce of any drug that is misbranded and the delivery or proffered delivery thereof for pay or otherwise. (21 U.S.C. § 331(c)); and
- The doing of any act with respect to a drug while such article is held for sale after shipment in interstate commerce which results in the drug being misbranded. (21 U.S.C. § 331(k)).

U.S. Department of Homeland Security – Import and Export Regulations

q. The Department of Homeland Security, Customs and Border Protection (CBP), and Immigration & Customs Enforcement (ICE), and Homeland Security Investigations (HSI) were the agencies responsible for administering the laws governing the importation into the United States of merchandise, including drugs. The agencies were also responsible for the enforcement of applicable statutes associated with the export of goods from the United States.

r. Federal law required that, among other things, all merchandise brought into the United States by any individual: (1) be declared to a Customs Officer at the port of first arrival in the United States; (2) be declared on a conveyance en route to the United States on which a Customs Officer was assigned for that purpose; or (3) be declared to a pre-clearance office in a foreign country where a United States Customs Office was stationed for that purpose.

s. An importer of merchandise into the United States was liable for duties, taxes, and fees on the imported merchandise. The importer of record was responsible for filing entry documents with the CBP, which classified the imported merchandise, identified its value, and provided any other information necessary to enable CBP to assess duties properly, collect accurate statistics, and determine whether other applicable legal requirements, if any, had been met.

t. Whenever drugs falling under the jurisdiction of the FDA were declared or offered from import into the United States, the CBP notified the FDA to determine whether the drug should be sampled and whether importation of the drug was lawful under the FDCA.

Scheme To Defraud

2. From in or about 2012 and continuing to in or about January 2019, in the Western District of Wisconsin and elsewhere, the defendant,

KENNETH ZIPPERER,

knowingly, and with the intent to defraud, devised and participated in a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, promises, and by concealment of material facts.

3. It was part of the scheme to defraud that ZIPPERER operated an underground pharmacy and distributed misbranded prescription drugs to his Medicare health insurance clients in Wisconsin and other states. These prescription drugs were foreign-sourced versions of various prescription drugs that were not approved by the FDA for use in the United States, thereby making them illegal to possess or sell.

4. It was further part of the scheme to defraud that ZIPPERER illegally smuggled into the United States misbranded prescription drugs from India. The labels on the drug packaging indicated some of the drugs were manufactured by Cipla Ltd. in India, or Natco Pharma Ltd. in India. These imported misbranded prescription drugs were shipped in brown cardboard boxes containing a U.S. Customs Declaration Form CN 22, affixed to the outside of the box, falsely stating: (1) the contents were "personal supply medications;" and (2) the contents did not "contain any dangerous articles or articles prohibited by legislation or by postal or customs regulations."

5. It was further part of the scheme to defraud that ZIPPERER did not use these misbranded prescription drugs as "personal supply medications." Rather, he sold them to his Medicare health insurance clients, despite the fact that he could not legally dispense any prescription drugs in Wisconsin because he was not licensed to do so. ZIPPERER did not possess a valid wholesale drug distribution license, a valid pharmacy license, or a license to prescribe prescription drugs in Wisconsin. ZIPPERER

also was not duly registered to manufacture, prepare, propagate, compound, or process drugs under Section 510 of the FDCA.

6. It was further part of the scheme to defraud that ZIPPERER attempted to hide his underground pharmacy operation from U.S. regulators and law enforcement authorities (including the FDA, CBP, ICE, HSI, U.S. Postal Inspection Service and the Internal Revenue Service), by:

a. Using Zipperer Financial LLC as a nominee to help disguise the underground pharmacy services that ZIPPERER was providing his Medicare health insurance clients. For example, ZIPPERER used his company name Zipperer Financial LLC on the PO Box that received the misbranded prescription drugs from India. ZIPPERER also used his company staff, computers, and office space to: (1) order the misbranded prescription drugs from alldaychemist.com; (2) break down the bulk shipments of medications into retails quantities for individual clients; (3) store the excess drug inventory held for sale; (4) issue invoices for payment; (5) distribute the misbranded prescription drugs to customers on-site in the office; (6) deposit the drug customer checks into the company's business bank account; (7) use the company's business bank account to make payments to PayPal and E-check to pay Derric Wood in India; and (8) allow his prescription drug customers to use his company email to place their orders with alldaychemist.com, thereby protecting their identity.

b. Not reporting to the Internal Revenue Service on his individual federal income tax returns (Form 1040), or on Zipperer Financial LLC's corporate tax returns (Form 1102S), the income, expenses and profit generated from his underground

pharmacy operation. ZIPPERER withheld from his tax return preparer the fact that ZIPPERER was operating an underground pharmacy and selling misbranded prescription drugs in Wisconsin and elsewhere. As a result, the tax return preparer prepared false income tax returns for ZIPPERER that failed to report all of ZIPPERER's income to the United States Treasury Department, Internal Revenue Service.

c. Requesting that his prescription drug customers pay him in cash to avoid creating a paper trail of the financial transactions associated with his underground pharmacy's operations.

7. It was further part of the scheme to defraud that ZIPPERER made various false representations to his prescription drug clients, including:

a. The prescription medications he was ordering for them and dispensing to them came from Canada; and

b. Some of the prescription medications he distributed to clients were drug samples.

8. It was further part of the scheme to defraud that ZIPPERER failed to inform his prescription drug clients that:

a. The misbranded prescription drugs he was selling to them came from India, and were manufactured in India;

b. The misbranded prescription drugs he was selling to them had not been approved by the FDA for use and distribution in the United States;

c. He did not have a license in Wisconsin to act as a pharmacist and was not allowed to dispense any prescription medications in Wisconsin;

d. His conduct in selling the misbranded prescription medications to his clients was illegal; and

e. He negotiated with alldaychemist.com to pay him a 10% kickback on the value of all successful medication orders he placed on behalf of his clients.

9. It was further part of the scheme to defraud that ZIPPERER provided his current Medicare health insurance clients this service of ordering and distributing to them cheap prescription medications, because he wanted them to spread by word-of-mouth, his pharmacy services to other seniors in hopes that he could sign up more Medicare health insurance clients using this simple form of advertising. ZIPPERER attempted to take advantage of this vulnerable population -- based upon their age and limited resources to pay for expensive prescription medications -- as a way to boost his own Medicare health insurance sales.

Mailings

10. On or about the dates listed below, in the Western District of Wisconsin and elsewhere, the defendant,

KENNETH ZIPPERER,

for the purpose of executing this scheme, knowingly used, and caused to be used, the U.S. mails and an interstate commercial carrier, as follows:

COUNT	DATE	NATURE OF MAILING
1	1-23-18	The defendant caused to be delivered by mail and an interstate commercial carrier (EMS) according to the directions thereon, 4 packages of misbranded prescription drugs from Derric Wood in Delhi, India to Kenneth Zipperer, PO Box 2076, Wausau, Wisconsin 54402 (USPS Tracking Number ED695703326IN) (USPS Tracking Number ED695700404IN) (USPS Tracking Number ED695705503IN) (USPS Tracking Number ED695703215IN).
2	7-11-18	The defendant caused to be delivered by mail and an interstate commercial carrier (EMS) according to the directions thereon, 3 packages of misbranded prescription drugs from Derric Wood in Delhi, India to Kenneth Zipperer, PO Box 2076, Wausau, Wisconsin 54402 (USPS Tracking Number ED878007476IN) (USPS Tracking Number ED878004815IN) (USPS Tracking Number ED878001116IN).
3	10-26-18	The defendant caused to be delivered by mail according to the directions thereon, a \$25 payment of invoice #102118DK, mailed from D.K. in Wausau, WI to Zipperer Financial, PO Box 2076, Wausau, WI 54402.
4	11-5-18	The defendant caused to be delivered by mail according to the directions thereon, a \$300 payment of invoice #102418AS, mailed from A.S. in New London, WI to Zipperer Financial, PO Box 2076, Wausau, WI 54402.
5	1-10-19	The defendant caused to be delivered by mail according to the directions thereon, a \$80 payment of invoice #111118KB#2, mailed from K.B. in Ocala, FL to Zipperer Financial, PO Box 2076, Wausau, WI 54402.

(All in violation of Title 18, United States Code, Section 1341).

COUNTS 6-15

1. Paragraph 1 of Count 1 is incorporated here.

Wires

2. On or about the dates listed below, in the Western District of Wisconsin and elsewhere, the defendant,

KENNETH ZIPPERER,

for the purpose of executing this scheme, knowingly caused to be transmitted, by means of wire communication in interstate commerce, the signals and sounds described below for each count:

COUNT	DATE	NATURE OF WIRE COMUNICATION
6	11-21-16	Email at 10:24 p.m. from the defendant using email address kjzipperer@gmail.com to D.B. re: helping D.B. fix the problem with D.B.'s order #BMD1010-16023820373635 for medications with alldaychemist.com.
7	2-26-18	Email at 11:45 p.m. from alldaychemist.com to the defendant at kenneth.zipperer@frontier.com re: confirming the placement of order #BMD2602-18063523606839 and notice that the charge will appear on his bank statement as "JBI or Iweb Dynamics or Paymonex."
8	2-26-18	Email at 11:54 p.m. from alldaychemist.com to the defendant at kenneth.zipperer@frontier.com re: notice that order #BMD2602-18063523606839 has been moved for dispensing.
9	5-16-18	Email at 11:37 p.m. from alldaychemist.com to the defendant at kenneth.zipperer@frontier.com re: confirming the placement of order #BMD1605-1805351264216 and notice that the charge will appear on his bank statement as "JBI or Iweb Dynamics or Paymonex."
10	7-20-18	Email at 2:19 a.m. from alldaychemist.com to the defendant at kenneth.zipperer@frontier.com re: notice that order #BMD1707-18112732666892 has been shipped to PO Box 2076, 3406 N. 73 rd Street, Wausau, Wisconsin 54402.

COUNT	DATE	NATURE OF WIRE COMUNICATION
11	8-24-18	Email at 7:02 p.m. from alldaychemist.com to the defendant at kenneth.zipperer@frontier.com re: notice that order #BMD1508-18032413678375 is in transit and may be tracked using USPS Tracking #ED884869798IN.
12	8-25-18	Email at 1:35 p.m. from alldaychemist.com to the defendant at kenneth.zipperer@frontier.com re: notice that order #BMD1508-18032413678375 was successfully delivered on 8-25-18 at 12:17 p.m.
13	10-12-18	Email at 2:01 a.m. from alldaychemist.com to V.S. at kenneth.zipperer@frontier.com re: confirming the placement of order #BMD0310-18032208697643 and notice that the order will be shipped to V.S. in Port Edwards, Wisconsin.
14	10-30-18	Email at 4:47 a.m. from the defendant using email address kjzipperer@gmail.com to J.F. re: confirming that he will send 6 packages of Seroflo 125 inhalers to J.F. in Tamarac, Florida by mail.
15	11-16-18	Email at 12:46 p.m. from alldaychemist.com to the defendant at kenneth.zipperer@frontier.com re: confirming the placement of order #BMD1611-18013139714603 for 15 Foracort inhalers for \$205.75, and notice that the order will be shipped to D.M. in Wausau, Wisconsin.

(All in violation of Title 18, United States Code, Section 1343).

COUNT 16

1. Paragraph 1 of Count 1 is incorporated here.
2. On or about January 23, 2018 in the Western District of Wisconsin, and elsewhere, the defendant,

KENNETH ZIPPERER,

having received prescription drugs in interstate commerce from Delhi India to Wausau Wisconsin, with the intent to defraud and mislead customers and the FDA, held the

prescription drugs for sale and subsequently dispensed the prescription drugs without a written or oral prescription and a license by law to administer such drugs.

(All in violation of Title 21, United States Code, Sections 331(k), 333(a)(2) and 353(b)(1)).

COUNT 17

1. Paragraph 1 of Count 1 is incorporated here.

2. On or about July 11, 2018 in the Western District of Wisconsin, and elsewhere, the defendant,

KENNETH ZIPPERER,

having received prescription drugs in interstate commerce from Delhi India to Wausau Wisconsin, with the intent to defraud and mislead customers and the FDA, held the prescription drugs for sale and subsequently dispensed the prescription drugs without a written or oral prescription and a license by law to administer such drugs.

(All in violation of Title 21, United States Code, Sections 331(k), 333(a)(2) and 353(b)(1)).

COUNTS 18-22

1. Paragraph 1 of Count 1 is incorporated here.

2. On or about the dates listed below, in the Western District of Wisconsin, and elsewhere, the defendant,

KENNETH ZIPPERER,

knowingly conducted and attempted to conduct the following financial transactions, which affected interstate commerce, which financial transactions involved the proceeds of a specified unlawful activity, specifically, mail and wire fraud, with the intent to conceal and disguise the source, nature, ownership and control of the proceeds of said

specified unlawful activity, and that while conducting and attempting to conduct the financial transactions listed below, the defendant knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity:

COUNT	DATE	NATURE OF TRANSACTION
18	10-4-17	Deposit of check #1767 in the amount of \$200 from J.A into defendant's personal checking account at Associated Bank, account #xxx-8669.
19	5-18-18	Deposit of check #9805 in the amount of \$27.80 from V.F. into defendant's personal checking account at Associated Bank, account #xxx-8669.
20	7-5-18	Deposit of check #2669 in the amount of \$46 from J.N. into defendant's personal checking account at Associated Bank, account #xxx-8669.
21	7-19-18	Deposit of check #5449 in the amount of \$8.11 from D.K. into defendant's personal checking account at Associated Bank, account #xxx-8669.
22	7-19-18	Deposit of check #4244 in the amount of \$75.76 from N.S. into defendant's personal checking account at Associated Bank, account #xxx-8669.

(All in violation of Title 18 United States Code Section 1956(a)(1)(B)(i)).

COUNTS 23-26

1. Paragraph 1 of Count 1 is incorporated here.
2. On or about the dates listed below, in the Western District of Wisconsin, and elsewhere, the defendant,

KENNETH ZIPPERER,

knowingly conducted and attempted to conduct the following financial transactions, which affected interstate commerce, which financial transactions involved the proceeds of a specified unlawful activity, specifically, mail and wire fraud, with the intent to promote the carrying on of said specified unlawful activity, and that while conducting and attempting to conduct the financial transactions listed below, the defendant knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity:

COUNT	DATE	NATURE OF TRANSACTION
23	2-1-18	Payment to Derric Wood via ACH transfer of \$1,683.47 from defendant's personal bank account at Associated Bank, account #xxx-8669.
24	2-7-18	Payment to Derric Wood via ACH transfer of \$822.65 from defendant's personal bank account at Associated Bank, account #xxx-8669.
25	2-23-18	Payment to Derric Wood via ACH transfer of \$1,035.54 from defendant's personal bank account at Associated Bank, account #xxx-8669.
26	3-12-18	Payment to Derric Wood via ACH transfer of \$957.61 from defendant's personal bank account at Associated Bank, account #xxx-8669.

(All in violation of Title 18 United States Code Section 1956(a)(1)(A)(i)).

FOREFEITURE ALLEGATION

1. Upon conviction of one or more of the offenses alleged in Counts 1-17 of this indictment, the defendant KENNETH ZIPPERER shall forfeit to the United States,

pursuant to 21 U.S.C. § 334(d)(3) and 28 U.S.C. § 2461(c), all quantities of the misbranded drugs offered for sale and distributed by ZIPPERER.

2. Upon conviction of one or more of the offenses alleged in Counts 1-15 of this indictment, the defendant, KENNETH ZIPPERER, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C), 982, and 28 U.S.C. § 2461(c), any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including a sum of money equal to \$231,315 in United States currency, representing the amount of proceeds obtained as a result of mail and wire fraud.

3. Upon conviction of one or more of the offenses alleged in Counts 18-26 of this indictment, the defendant, KENNETH ZIPPERER, shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1) and property, real or personal, involved in such offense, and any property traceable to such property, including a sum of money equal to \$227,116 in United States currency, representing the amount of money involved in the money laundering offense.

4. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or 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 of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1) and Title 28, United States Code, Section 2461(c).

A TRUE BILL



PRESIDING JUROR

Indictment returned: 21



SCOTT C. BLADER
United States Attorney