

Telemedicine Criminal Enforcement Action

Steps to take to comply with laws and regulations

Richard P. Kusserow | July 2024

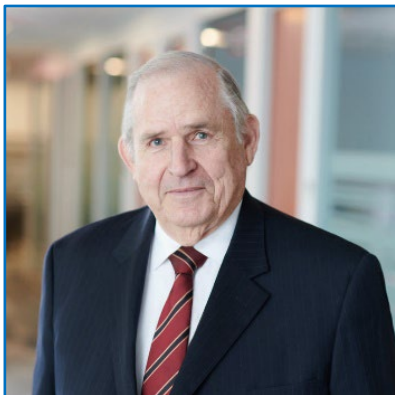
The Department of Justice (DOJ) has moved to file an [indictment](#) against a telemedicine provider, charged with criminal conspiracy to commit healthcare fraud, distribute controlled substances, and obstruction of justice. This is the first DOJ criminal case filing for drug distribution related to telemedicine prescribing. Telemedicine is the delivery of health care from a distance using electronic information and technology, such as computers, cameras, videoconferencing, satellites, wireless communications, and the internet. It allows for long-distance patient and clinician contact, care, advice, reminders, education, intervention, monitoring, and remote admissions.

The indictments included charging the President of Done Global and others from management, a physician, and a nurse practitioner who were involved in providing behavioral health services to patients that increased during the COVID-19 pandemic. These individuals allegedly took advantage of the flexibilities and policy changes provided by the Department of Human and Health Services (HHS) and the Drug Enforcement Agency (DEA), which suspended several requirements for physicians and other practitioners to permit prescribing controlled substances virtually after an initial in-person patient consultation. The defendants allegedly created the false appearance that Done Global was an independent company, but in actuality it was involved with the prescribing practitioner's clinical decision-making, which resulted in millions of prescriptions that were not supported for a legitimate medical purpose, resulting in improper reimbursement exceeding \$14 million.

This case is likely going to open the door to other similar types of investigations, serving as a warning to other telemedicine providers of the importance of avoiding any interference in the clinical decision-making of affiliated practitioners. It is further advisable to take steps necessary to ensure compliance with laws and regulations, including the following:

- Developing and implementing policies and procedures to guide decisions and actions and determining guidelines for day-to-day activities related to providing telehealth services.
- Determining the types of services that can be provided and ensuring they follow the Centers for Medicare & Medicaid Services Conditions of Participation for the type of facility and services.
- Using safe and secure communication methods that comply with the Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic Clinical Health Act (HITECH) requirements in creating, transmitting, viewing, and storing information.
- Ensure patients are fully informed of the risks and benefits of telemedicine services, provide their official consent, and maintain documentation of their understanding prior to providing telehealth services.
- Maintain accurate, thorough, and detailed documentation regarding all actions taken related to a patient encounter.

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About the Author

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.