

**Sep 7, 2021**

ANGELA E. NOBLE  
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S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
**21-80137-CR-RUIZ/REINHART**

Case No. \_\_\_\_\_

18 U.S.C. § 371

18 U.S.C. § 982(a)(7)

UNITED STATES OF AMERICA

vs.

MICHAEL W. DINNEN,

Defendant.

\_\_\_\_\_ /

**INFORMATION**

The Acting United States Attorney charges that:

**GENERAL ALLEGATIONS**

At all times material to this Information:

**Medicare Program**

1. The Medicare Program (“Medicare”) was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services (“HHS”), through its agency, the Centers for Medicare and Medicaid Services (“CMS”), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare “beneficiaries.”

2. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), and a “Federal health care program,” as defined by Title 42, United States

Code, Section 1320a-7b(f).

3. Medicare covered different types of benefits, which were separated into different program “parts.” Medicare “Part A” covered health services provided by hospitals, skilled nursing facilities, hospices, and home health agencies. Medicare “Part B” was a medical insurance program that covered, among other things, medical services provided by physicians, medical clinics, laboratories, and other qualified health care providers, such as office visits, minor surgical procedures, and laboratory testing, that were medically necessary and ordered by licensed medical doctors or other qualified health care providers.

4. Physicians, clinics, and other health care providers, including laboratories, that provided services to Medicare beneficiaries were able to apply for and obtain a “provider number.” A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries.

5. A Medicare claim was required to contain certain important information, including: (a) the Medicare beneficiary’s name and Health Insurance Claim Number (“HICN”); (b) a description of the health care benefit, item, or service that was provided or supplied to the beneficiary; (c) the billing codes for the benefit, item, or service; (d) the date upon which the benefit, item, or service was provided or supplied to the beneficiary; and (e) the name of the referring physician or other health care provider, as well as a unique identifying number, known either as the Unique Physician Identification Number (“UPIN”) or National Provider Identifier (“NPI”). The claim form could be submitted in hard copy or electronically.

#### **Part B Coverage and Regulations**

6. CMS acted through fiscal agents called Medicare administrative contractors (“MACs”), which were statutory agents for CMS for Medicare Part B. The MACs were private

entities that reviewed claims and made payments to providers for services rendered to Medicare beneficiaries. The MACs were responsible for processing Medicare claims arising within their assigned geographical area, including determining whether the claim was for a covered service.

7. Novitas Solutions Inc. (“Novitas”) was the MAC for the consolidated Medicare jurisdictions that covered Louisiana, Mississippi, Oklahoma, Texas, and Pennsylvania. Palmetto GBA (“Palmetto”) was the MAC for the consolidated Medicare jurisdictions that included Georgia, Alabama, Tennessee, South Carolina, North Carolina, Virginia, and West Virginia.

8. To receive Medicare reimbursement, providers had to make appropriate application to the MAC and executed a written provider agreement. The Medicare provider enrollment application, CMS Form 855B, was required to be signed by an authorized representative of the provider. CMS Form 855B contained a certification that stated:

I agree to abide by the Medicare laws, regulations, and program instructions that apply to this [provider]. The Medicare laws, regulations, and program instructions are available through the Medicare contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions (including, but not limited to, the federal anti-kickback statute and the Stark law), and on the [provider]’s compliance with all applicable conditions of participation in Medicare.

9. CMS Form 855B contained additional certifications that the provider “will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare and will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.”

10. Payments under Medicare Part B were often made directly to the health care provider rather than to the patient or beneficiary. For this to occur, the beneficiary would assign the right of payment to the health care provider. Once such an assignment took place, the health

care provider would assume the responsibility for submitting claims to, and receiving payments from, Medicare.

### **Cancer Genomic Tests**

11. Cancer genomic (“CGx”) testing used DNA sequencing to detect mutations in genes that could indicate a higher risk of developing certain types of cancers in the future. CGx testing was not a method of diagnosing whether an individual presently had cancer.

12. Medicare did not cover diagnostic testing that was “not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.” Title 42, United States Code, Section 1395y(a)(1)(A). Except for certain statutory exceptions, Medicare did not cover “examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptoms, complaint or injury.” Title 42, Code of Federal Regulations, Section 411.15(a)(1). Among the statutory exceptions Medicare covered were cancer screening tests such as “screening mammography, colorectal cancer screening tests, screening pelvic exams, [and] prostate cancer screening tests.” *Id.*

13. If diagnostic testing were necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, Medicare imposed additional requirements before covering the testing. Title 42, Code of Federal Regulations, Section 410.32(a) provided, “All diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who is treating the beneficiary, that is, the physician who furnishes a consultation or treats a beneficiary for a specific medical problem and who uses the results in the management of the beneficiary’s specific medical problem.” “Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary.” *Id.*

14. Because CGx testing did not diagnose cancer, Medicare only covered such tests in limited circumstances, such as when a beneficiary had cancer and the beneficiary's treating physician deemed such testing necessary for the beneficiary's treatment of that cancer. Medicare did not cover CGx testing for beneficiaries who did not have cancer or lacked symptoms of cancer.

### **Telemedicine**

15. Telemedicine provided a means of connecting patients to doctors by using telecommunications technology, such as the internet or telephone, to interact with a patient.

16. Telemedicine companies provided telemedicine services to individuals by hiring doctors and other health care providers. Telemedicine companies typically paid doctors a fee to conduct consultations with patients. In order to generate revenue, telemedicine companies typically either billed insurance or received payment from patients who utilized the services of the telemedicine company.

17. Medicare Part B covered expenses for specified telemedicine services if certain requirements were met. These requirements included that (a) the beneficiary was located in a rural or health professional shortage area; (b) services were delivered via an interactive audio and video telecommunications system; and (c) the beneficiary was a practitioner's office or a specified medical facility—not at a beneficiary's home—during the telemedicine consultation with a remote practitioner.

### **The Defendant and Related Individuals and Entities**

18. LabSolutions, LLC ("LabSolutions"), a limited liability company formed under the laws of Georgia and authorized to provide services in Florida, was a laboratory that purportedly provided CGx testing to Medicare beneficiaries.

19. Minal Patel, a resident of Georgia, was the owner of LabSolutions.

20. XGEN Marketing, LLC ("XGEN") was a limited liability company formed under the laws of Florida, with its principal place of business in Palm Beach County, Florida.

21. Christian McKeon, a resident of Palm Beach County, Florida, was a manager and member of XGEN.

22. Defendant **MICHAEL W. DINNEN**, a resident of Colorado, owned and operated ePayFunding, Inc. ("EPAY"), a factoring company incorporated under the laws of Colorado. A factoring company purchased future receivables from another company at a discount.

**Conspiracy to Solicit and Receive Health Care Kickbacks  
(18 U.S.C. § 371)**

From in or around August 2018, and continuing through in or around December 2018, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendant,

**MICHAEL DINNEN,**

did knowingly and willfully, that is, with the intent to further the object of the conspiracy, combine, conspire, confederate and agree with Minal Patel, Christian McKeon, and others known and unknown to the Acting United States Attorney, to commit an offense against the United States, that is, to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A), by knowingly and willfully soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item or service for which payment may be made in whole or in part by a Federal health care program, that is, Medicare.

**Purpose of the Conspiracy**

23. It was a purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by: (a) soliciting and receiving kickbacks and bribes in return for recruiting and referring Medicare beneficiaries to LabSolutions; (b) submitting and causing the

submission of claims to Medicare for CGx tests that LabSolutions purported to provide to those Medicare beneficiaries; (c) concealing the payment and receipt of kickbacks and bribes; and (d) diverting proceeds for their personal use and benefit, the use and benefit of others and to further the conspiracy.

**Manner and Means of the Conspiracy**

The manner and means by which the defendant and his co-conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

24. **MICHAEL DINNEN**, Christian McKeon, and other co-conspirators solicited kickbacks and bribes from Minal Patel, through LabSolutions, in exchange for referring Medicare beneficiaries, CGx tests, and doctors' orders to LabSolutions for CGx testing.

25. Christian McKeon and other co-conspirators obtained access to thousands of Medicare beneficiaries by targeting them with telemarketing campaigns, and inducing them to accept CGx testing.

26. Christian McKeon and other co-conspirators obtained doctor's orders for the CGx tests by paying telemedicine companies kickbacks and bribes for orders written by doctors who contracted with the telemedicine companies, even though those doctors were not treating the beneficiaries for cancer or symptoms of cancer, did not use the test results in the treatment of the beneficiaries, and did not conduct a proper telemedicine visit.

27. Christian McKeon and other co-conspirators referred the beneficiaries, CGx tests, and doctor's orders to LabSolutions in exchange for kickbacks and bribes so that LabSolutions could submit claims to Medicare for the CGx tests.

28. Christian McKeon, Minal Patel, and other co-conspirators submitted and caused LabSolutions to submit claims for CGx testing to Medicare, and Medicare made payments on those

claims to LabSolutions in the approximate amount of at least \$3,461,662.

29. **MICHAEL DINNEN**, through EPAY, purchased, or factored, the kickbacks and bribes LabSolutions owed to XGEN at a discounted rate, enabling Christian McKeon to obtain at least a partial payment of the kickbacks and bribes more quickly than if McKeon were to wait for Medicare to pay the claims LabSolutions submitted for the CGx tests.

30. **MICHAEL DINNEN**, through EPAY, received the kickbacks and bribes that Minal Patel owed to Christian McKeon.

31. **MICHAEL DINNEN** and other co-conspirators used the kickbacks received from LabSolutions to benefit themselves and others, and to further the scheme.

#### Overt Acts

In furtherance of the conspiracy, and to accomplish its object and purpose, at least one co-conspirator committed and caused to be committed, in the Southern District of Florida, at least one of the following overt acts, among others:

1. On or about August 7, 2018, **MICHAEL DINNEN** signed an “Independent Distributor Compliance Agreement,” in which he acknowledged “that I understand the contents” of the Federal Anti-Kickback Statute and “that I, or any of my affiliates, have not taken part in any of these, or other prohibited acts . . . .”

2. On or about September 26, 2018, **MICHAEL DINNEN**, through EPAY, made a payment to McKeon, through XGEN, in the approximate amount of \$96,000 to purchase the future receivables that Minal Patel, through LabSolutions, owed to XGEN and that was tied to XGEN’s referral of beneficiaries, CGx tests, and doctors’ orders to LabSolutions.

3. On or about December 3, 2018, **MICHAEL DINNEN**, through EPAY, and other co-conspirators caused Minal Patel, through LabSolutions, to make a payment to EPAY in the

approximate amount of \$353,881, which represented a kickback payment in exchange for XGEN's referrals of beneficiaries, CGx tests, and doctors' orders to LabSolutions.

All in violation of Title 18, United States Code, Section 371.

**FORFEITURE**

1. The allegations of this Information are re-alleged and by this reference fully incorporated herein for purposes of alleging criminal forfeiture to the United States of certain property in which the defendant, **MICHAEL DINNEN**, has an interest.

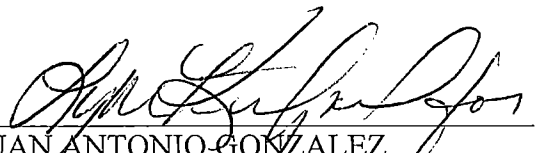
2. Upon conviction of a conspiracy to commit a violation of Title 42, United States Code, Section 1320a-7b, as alleged in this Information, the defendant shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense, pursuant to Title 18, United States Code, Section 982(a)(7).

3. If any of the property subject to forfeiture, 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 co-mingled with other property which cannot be divided without difficulty,


the United States shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p).

All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth in Title 21, United States Code, Section 853, as incorporated by Title 18, United States Code, Section 982(b)(1).

  
\_\_\_\_\_  
JUAN ANTONIO GONZALEZ  
ACTING UNITED STATES ATTORNEY

JOSEPH S. BEEMSTERBOER  
ACTING CHIEF  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

ALLAN MEDINA  
DEPUTY CHIEF  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

  
\_\_\_\_\_  
PATRICK J. QUEENAN  
TRIAL ATTORNEY  
CRIMINAL DIVISION, FRAUD SECTION  
U.S. DEPARTMENT OF JUSTICE

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. \_\_\_\_\_

v.

MICHAEL W. DINNEN,

**CERTIFICATE OF TRIAL ATTORNEY\*****Superseding Case Information:**

Defendant. \_\_\_\_\_/

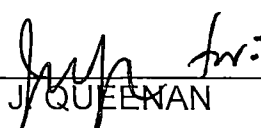
**Court Division:** (Select One)
☐ Miami   ☐ Key West   ☐ FTL  
☒ WPB   ☐ FTP
New defendant(s) ☐ Yes ☐ No

Number of new defendants \_\_\_\_\_

Total number of counts \_\_\_\_\_

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) **No**  
List language and/or dialect \_\_\_\_\_
4. This case will take 0 days for the parties to try.
5. Please check appropriate category and type of offense listed below:  

(Check only one) I   0 to 5 days <input checked="" type="checkbox"/> II   6 to 10 days <input type="checkbox"/> III   11 to 20 days <input type="checkbox"/> IV   21 to 60 days <input type="checkbox"/> V   61 days and over <input type="checkbox"/>	(Check only one) Petty <input type="checkbox"/> Minor <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Felony <input checked="" type="checkbox"/>
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6. Has this case previously been filed in this District Court? (Yes or No) **No**  
 If yes: Judge \_\_\_\_\_ Case No. \_\_\_\_\_  
 (Attach copy of dispositive order)  
 Has a complaint been filed in this matter? (Yes or No) **No**  
 If yes: Magistrate Case No. \_\_\_\_\_  
 Related miscellaneous numbers: \_\_\_\_\_  
 Defendant(s) in federal custody as of \_\_\_\_\_  
 Defendant(s) in state custody as of \_\_\_\_\_  
 Rule 20 from the District of \_\_\_\_\_  
 Is this a potential death penalty case? (Yes or No) **No**
7. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to August 9, 2013 (Mag. Judge Alicia O. Valle)? (Yes or No) **No**
8. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard)? (Yes or No) **No**
9. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss)? (Yes or No) **No**

  
 PATRICK J. QUEENAN

DOJ Trial Attorney

Court ID No.      A5502715

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: MICHAEL W. DINNEN

Case No: \_\_\_\_\_

Count #: 1

Title 18, United States Code, Section 371

Conspiracy to Solicit and Receive Health Care Kickbacks

\*Max Penalty: Five (5) years' imprisonment

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

AO 455 (Rev. 01/09) Waiver of an Indictment

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UNITED STATES DISTRICT COURT

for the  
Southern District of Florida

United States of America

v.

Michael W. Dinnen,

*Defendant*

)  
)  
)  
)  
)

Case No.

**WAIVER OF AN INDICTMENT**

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Defendant's signature*

\_\_\_\_\_  
*Signature of defendant's attorney*

BENJAMIN G. GREENBERG, ESQ.

\_\_\_\_\_  
*Printed name of defendant's attorney*

\_\_\_\_\_  
*Judge's signature*

\_\_\_\_\_  
*Judge's printed name and title*