

2021R00519/RV

RECEIVED

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SEP 13 2021

AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

UNITED STATES OF AMERICA

:

Hon. *Michael A. Shipp*

:

Crim. No. *21-691*

:

v.

:

18 U.S.C. § 371

:

DIEGO PANCH VALENCIA

:

INFORMATION

The defendant having waived in open court prosecution by indictment, the Acting United States Attorney for the District of New Jersey charges:

**(Conspiracy to Defraud the United States and
Pay and Receive Health Care Kickbacks)**

1. Unless otherwise indicated, at all times relevant to this Information:

The Defendant

- a. Defendant DIEGO PANCH VALENCIA was a resident of Lake Grove, New York.

Relevant Entities and Individuals

- b. "Laboratory Company 1" was a diagnostic testing laboratory located in Teterboro, New Jersey.
- c. Express Diagnostics, LLC ("Express Diagnostics") was a New Jersey limited liability company located in East Brunswick, New Jersey, that purported to serve as a diagnostic testing laboratory.

d. Tox Management, LLC (d/b/a “Accurate DX”) was a Texas limited liability company located in San Antonio, Texas, that purported to serve as a diagnostic testing laboratory.

e. Laboratory Company 1, Express Diagnostics, and Accurate DX are collectively referred to herein as the “Laboratories.”

f. Individual 1 was a medical doctor and resident of New York.

g. Individual 2 was a medical doctor and resident of New York.

The Medicare Program

h. 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. Medicare was administered by the Centers for Medicare and Medicaid Services (“CMS”), a federal agency within the U.S. Department of Health and Human Services (“HHS”). Individuals who received Medicare benefits were referred to as Medicare “beneficiaries.”

i. Medicare was divided into multiple parts with separate coverages: Part A covered hospital inpatient care; Part B covered physicians’ services and outpatient care; Part C covered Medicare Advantage Plans; and Part D covered prescription drugs.

j. Medicare was a “Federal health care program,” as defined in Title 42, United States Code, Section 1320a-7b(f).

k. Medicare was also a “health care benefit program,” as defined in Title 18, United States Code, Section 24(b).

l. Medicare paid for claims only if the items or services were medically reasonable, medically necessary for the treatment or diagnosis of the patient's illness or injury, documented, and actually provided as represented.

m. Medicare would not pay for items or services that were procured through kickbacks and bribes.

Genetic Testing

n. Genetic tests were laboratory tests designed to identify specific inherited mutations in a patient's genes.

o. Genetic tests related to a patient's hereditary predisposition to cancer were commonly referred to as "CGx" tests. These tests 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.

p. In order to have a genetic test performed, an individual provided a saliva sample using a buccal (cheek) swab, which collected a specimen containing DNA material. The sample was then transmitted to a laboratory for testing.

q. 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 "[e]xaminations 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.*

r. If diagnostic testing was necessary for the diagnosis or treatment of illness or injury, or to improve the functioning of a malformed body member, Medicare imposed additional regulations before covering the testing. Title 42, Code of Federal Regulations, Section 410.32(a) provided that “all diagnostic x-rays tests, diagnostic laboratory tests, and other diagnostic tests must be ordered by the physician who is treating the beneficiary, that is, a 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.”

The Conspiracy

2. From in or about May 2019 through in or about September 2020, in the District of New Jersey and elsewhere, defendant

DIEGO PANCH VALENCIA

did knowingly and intentionally conspire and agree with Individual 1, Individual 2, and others to commit certain offenses against the United States, that is,

a. to knowingly and intentionally defraud the United States by cheating the United States government or any of its departments or agencies out of money and property, and by impairing, impeding, obstructing, and defeating

through deceitful and dishonest means, the lawful government functions of HHS and CMS in their administration and oversight of Medicare;

b. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A), by knowingly and willfully soliciting and receiving any remuneration, specifically, 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 and service for which payment may be made in whole and in part by a federal health care program; and

c. to violate Title 42, United States Code, Section 1320a-7b(b)(2)(B), by knowingly and willfully offering and paying any remuneration, specifically, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, or ordering any good, facility, service, and item for which payment may be made in whole and in part under a federal health care program.

Goal of the Conspiracy

3. It was the goal of the conspiracy for defendant DIEGO PANCH VALENCIA and his co-conspirators to unlawfully enrich themselves by, among other things: (a) soliciting, receiving, offering, and paying kickbacks and bribes in return for referring Medicare beneficiaries to the Laboratories for medically unnecessary CGx testing; (b) offering and paying kickbacks and bribes to Individual 1 and Individual 2 in exchange for approving fraudulent orders for

genetic testing for Medicare beneficiaries; (c) submitting and causing the submission of false and fraudulent claims to Medicare for services that were ordered or provided through kickbacks and bribes, medically unnecessary, ineligible for reimbursement, and not provided as represented; (d) concealing the submission of claims that were false and fraudulent, and ordered and provided through kickbacks and bribes, and the receipt and transfer of the proceeds; and (e) diverting proceeds for the personal use and benefit of defendant DIEGO PANCHIA VALENCIA and his co-conspirators.

Manner and Means of the Conspiracy

4. The manner and means by which defendant DIEGO PANCHIA VALENCIA and his co-conspirators sought to accomplish the goal of the conspiracy included, among other things, the following:

a. Defendant DIEGO PANCHIA VALENCIA and others agreed to and did solicit and receive kickbacks and bribes in exchange for referring Medicare beneficiaries to the Laboratories for medically unnecessary CGx tests.

b. Defendant DIEGO PANCHIA VALENCIA and others obtained and provided the Laboratories with swabs containing DNA material and signed orders for CGx tests for Medicare beneficiaries.

c. Defendant DIEGO PANCHIA VALENCIA and others agreed to and did offer and pay kickbacks and bribes to Individual 1 and Individual 2 in exchange for approving and signing fraudulent orders for CGx tests that the Laboratories billed to Medicare.

d. Defendant DIEGO PANCHIA VALENCIA and others, through

the Laboratories, submitted and caused the submission of approximately \$12,642,613 in false and fraudulent claims to Medicare for CGx tests that were procured by the payment of kickbacks and bribes, medically unnecessary, ineligible for reimbursement, and not provided as represented. Medicare paid approximately \$3,355,848 based on these false and fraudulent claims.

Overt Acts

5. In furtherance of the conspiracy and to accomplish its goals, defendant DIEGO PANCH VALENCIA and his co-conspirators committed and caused the commission of one or more of the following acts in the District of New Jersey and elsewhere:

a. On or about July 24, 2019, DIEGO PANCH VALENCIA was paid an illegal kickback and bribe of approximately \$75,000 in exchange for genetic test referrals.

b. On or about August 21, 2019, DIEGO PANCH VALENCIA was paid an illegal kickback and bribe of approximately \$75,000 in exchange for genetic test referrals.

c. On or about January 9, 2020, Laboratory Company 1, located in New Jersey, submitted a claim to Medicare for genetic testing that had been referred by DIEGO PANCH VALENCIA in exchange for an illegal kickback and bribe.

d. On or about January 30, 2020, DIEGO PANCH VALENCIA was paid an illegal kickback and bribe of approximately \$46,000 in exchange for genetic test referrals.

e. On or about July 29, 2020, DIEGO PANCH VALENCIA was paid an illegal kickback and bribe of approximately \$25,000 in exchange for genetic test referrals.

In violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATIONS
18 U.S.C. § 982(a)(7)

1. The allegations contained in this Information are re-alleged here for the purpose of alleging forfeiture against defendant DIEGO PANCH VALENCIA.

2. Pursuant to Title 18, United States Code, Section 982(a)(7), upon being convicted of the crime charged in this Information, defendant DIEGO PANCH VALENCIA 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.

Substitute Assets Provision

3. If any of the above-described forfeitable property, as a result of any act or omission of defendant DIEGO PANCH VALENCIA:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- 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 subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code,

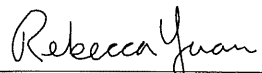
Section 853(p), as incorporated by Title 18, United States Code, Section 982(b), to seek forfeiture of any other property of defendant DIEGO PANCH VALENCIA up to the value of the forfeitable property described above.


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