

Sep 1, 2021

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
21-80133-CR-MIDDLEBROOKS/MATTHEWMAN

Case No. _____
18 U.S.C. § 1349
18 U.S.C. § 982

UNITED STATES OF AMERICA

vs.

FRANK BIANCO,

Defendant.

_____ /

INFORMATION

The Acting United States Attorney charges:

GENERAL ALLEGATIONS

At all times material to this Information:

The Medicare Program

1. The Medicare Program ("Medicare") was a federal health care program that provided free or below-cost health care benefits to individuals who were sixty-five years of age or older or 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).

3. Medicare was subdivided into multiple program "parts." Medicare Part A covered

health care services provided by hospitals, skilled nursing facilities, hospices, and home health agencies. Medicare Part B covered physician services and outpatient care, including an individual's access to durable medical equipment ("DME"), such as orthotic devices and wheelchairs.

Durable Medical Equipment

4. Orthotic devices were a type of DME that included rigid and semi-rigid devices, such as knee braces, back braces, shoulder braces, and wrist braces.

5. DME suppliers, physicians, and other health care providers that provided services to Medicare beneficiaries were referred to as Medicare "providers." To participate in Medicare, providers were required to submit an application, CMS Form 855S, which contained a certification that stated:

I agree to abide by the Medicare laws, regulations and program instructions that apply to me or to the organization listed in Section 1B of this application. The Medicare laws, regulations, and program instructions are available through the fee-for-service 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, 42 U.S.C. section 1320a-7b(b)[.]

I 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.

6. CMS Form 855S also required applicants to disclose to Medicare any individual or organization with an ownership interest, partnership interest, or managing control of a DME supplier. This included: (i) all individuals and organizations with five percent or more of an ownership stake, either direct or indirect, in the DME supplier; (ii) all individuals or organizations with a partnership interest in the DME supplier, regardless of the partner's percentage of

ownership; (iii) all organizations with “managing control” of the DME supplier; and (iv) all “managing employees.”

7. Form CMS-855S defined an organization with “managing control” of a DME supplier as “[a]ny organization that exercises operational or managerial control” over the DME supplier, or “conducts the day-to-day operations” of the DME supplier. Form CMS-855S defined “managing employee” as “a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operations” of the DME supplier, “either under contract or through some other arrangement, whether or not the individual is a W-2 employee” of the DME supplier.

8. Form CMS-855S also required the disclosure of “Adverse Legal Actions” against individuals or organizations with an ownership interest, partnership interest, or managing control of a DME supplier. Form CMS-855S defined “Adverse Legal Actions” as, among other things, any federal or state felony conviction within the previous ten years, and any felony or misdemeanor conviction, under federal or state law, relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

9. If Medicare approved a provider’s application, Medicare assigned the provider a Medicare “provider number.” A health care provider with a Medicare provider number could file claims with Medicare to obtain reimbursement for services rendered to beneficiaries.

10. Enrolled Medicare providers agreed to abide by the policies, procedures, rules, and regulations governing reimbursement. To receive Medicare funds, enrolled providers were required to abide by the Anti-Kickback Statute and other laws and regulations. Providers were given access to Medicare manuals and service bulletins describing billing procedures, rules, and regulations.

11. Medicare reimbursed DME companies and other providers for services and items rendered to beneficiaries. To receive payment from Medicare, providers submitted or caused the submission of claims to Medicare, either directly or through a billing company.

12. A Medicare claim for DME reimbursement was required to set forth, among other things, the beneficiary's name and unique Medicare identification number, the equipment provided to the beneficiary, the date the equipment was provided, the cost of the equipment, and the name and unique physician identification number of the physician who prescribed or ordered the equipment.

13. A claim for DME submitted to Medicare qualified for reimbursement only if it was medically necessary for the treatment of the beneficiary's illness or injury and prescribed by a licensed physician, and accompanied by a completed prescription for braces and other Medicare-required documents (collectively referred to as "doctors' orders").

The Defendant, Related Entities, and Individuals

14. Anointed Medical Supplies, LLC ("Anointed") was a Florida company with its principal place of business in Martin County, in the Southern District of Florida.

15. Defendant **FRANK BIANCO**, a resident of Martin County, was an owner and operator of Anointed.

16. Christine Pawlak, a resident of Palm Beach County, was a consultant for Anointed.

17. Co-Conspirator 1, a resident of St. Lucie County, was the co-owner of Anointed.

18. Individual 1, a resident of Martin County, was the listed owner of Anointed.

**CONSPIRACY TO COMMIT HEALTH CARE FRAUD
(18 U.S.C. § 1349)**

From in or around September 2019, and continuing through in or around October 2020, in

Martin and Palm Beach Counties, in the Southern District of Florida, and elsewhere, the defendant,

FRANK BIANCO,

did knowingly and willfully, that is, with the intent to further the object of the conspiracy, combine, conspire, confederate, and agree with Christine Pawlak, Co-Conspirator 1, and with others known and unknown to the Acting United States Attorney, to execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

Purpose of the Conspiracy

19. It was a purpose of the conspiracy for the defendant, Christine Pawlak, Co-Conspirator 1, and their co-conspirators to unlawfully enrich themselves by, among other things: (a) concealing their ownership of Anointed from Medicare; (b) paying kickbacks and bribes in exchange for signed doctors' orders for DME prescribed to Medicare beneficiaries that were medically unnecessary, not eligible for reimbursement, and/or not provided as represented; (b) submitting and causing the submission of false and fraudulent claims to Medicare; (c) concealing and causing the concealment of false and fraudulent claims to Medicare; and (d) diverting fraud proceeds for their personal use and benefit, the use and benefit of others, and to further the fraud.

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:

20. **FRANK BIANCO**, Christine Pawlak, and Co-Conspirator 1 caused the submission of Medicare enrollment documents that falsely identified Individual 1 as the owner of Anointed, and falsely certified to Medicare that Anointed would comply with all federal laws and regulations, including that it would not knowingly present and cause to be presented a false and fraudulent claim for payment by a federal health care program and that it would comply with the federal Anti-Kickback Statute.

21. **FRANK BIANCO**, Co-Conspirator 1, and their co-conspirators paid kickbacks and bribes to purported “marketers,” telemedicine companies, and others in exchange for the referral of doctors’ DME orders. In many instances, the DME ordered was medically unnecessary. The doctors who signed the doctors’ orders purchased by the defendant and his co-conspirators often signed them regardless of medical necessity, in the absence of a pre-existing doctor-patient relationship, without a physical examination, and/or frequently based solely on a short telephonic conversation or without any conversation with the Medicare beneficiary.

22. **FRANK BIANCO**, Christine Pawlak, Co-Conspirator 1, and their co-conspirators, through Anointed, submitted and caused the submission of false and fraudulent claims to Medicare in the approximate amount of \$1,425,810, and received reimbursement in the approximate amount of \$685,537, for braces that were: (a) procured through the payment of kickbacks and bribes; (b) medically unnecessary and ineligible for Medicare reimbursement; and/or (c) not provided as represented.

23. **FRANK BIANCO**, Christine Pawlak, Co-Conspirator 1, and their co-conspirators diverted fraud proceeds from the scheme for their personal use and benefit, the use and benefit of others, and to further the fraud.

All in violation of Title 18, United States Code, Section 1349.

FORFEITURE
(18 U.S.C. § 982)

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

2. Upon conviction of the violation of Title 18, United States Code, Section 1349, as alleged in this Information, the defendant shall forfeit to the United States any property, real or personal, which 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). The property subject to forfeiture as a result of the alleged offense includes: a forfeiture money judgment in the amount of \$342,768, which sum represents the value of the property subject to forfeiture.

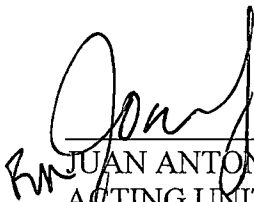
3. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred, 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 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
SOUTHERN DISTRICT OF FLORIDA

JOSEPH 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

By:


EMILY GURSKIS
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.

FRANK BIANCO,

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 _____

- 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.
- 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)		(Check only one)	
I 0 to 5 days	<input checked="" type="checkbox"/>	Petty	<input type="checkbox"/>
II 6 to 10 days	<input type="checkbox"/>	Minor	<input type="checkbox"/>
III 11 to 20 days	<input type="checkbox"/>	Misdemeanor	<input type="checkbox"/>
IV 21 to 60 days	<input type="checkbox"/>	Felony	<input checked="" type="checkbox"/>
V 61 days and over	<input type="checkbox"/>		

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** _____

- 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** _____
- 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** _____
- 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** _____



 EMILY GURSKIS

DOJ Trial Attorney

Court ID No. A5502499

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: FRANK BIANCO

Case No: _____

Count #: 1

Title 18, United States Code, Section 1349

Conspiracy to Commit Health Care Fraud

***Max Penalty:** Ten (10) 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

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

United States of America

v.

Frank Bianco,

Defendant

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)
)
)
)

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

Robert N. Nicholson, Esq.

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title