

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA	:	Hon. Susan D. Wigenton
	:	
	:	Crim. No. 23- 484
v.	:	
	:	18 U.S.C. § 371
	:	
MARK WEISBERG	:	

I N F O R M A T I O N

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

(Conspiracy to Pay and Receive Kickbacks)

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

Background

- a. Defendant MARK WEISBERG was a resident of New Jersey.
- b. Laboratory 1 was a diagnostic testing laboratory located in Hackensack, New Jersey, owned and operated by Individual 1.
- c. Laboratory 2 was a diagnostic testing laboratory located in Houston, Texas and Irvine, California, owned by operated by Individual 2.
- d. Individual 3 was a resident of California.

The Medicare Program

- e. 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, a federal

agency under the United States Department of Health and Human Services. Individuals who received benefits under Medicare were referred to as Medicare “beneficiaries.”

f. Medicare was a “Federal health care program” as defined in Title 42, United States Code, Section 1320a-7b(f), and a “health care benefit program” as defined in Title 18, United States Code, Section 24(b).

g. 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.

h. Physicians, clinics, laboratories, and other health care providers (collectively, “providers”) that provided services to Medicare beneficiaries were able to apply for and obtain a provider number. Providers that received a Medicare provider number were able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries.

i. Medicare paid for services only if they were medically necessary and reasonable, and actually provided as represented. Medicare did not pay for services that were procured through kickbacks and bribes.

Genetic Tests

j. Genetic tests were laboratory tests designed to identify specific inherited mutations in an individual’s genes.

k. Genetic tests were performed to identify mutations that could increase an individual’s risk of developing various diseases and conditions such

as cancer, cardiovascular disease, dementia, Parkinson's disease, and diabetes, or that could increase susceptibility to adverse drug reactions. Certain types of genetic tests could also assist in the treatment or management of disease.

l. Cardiovascular tests were laboratory tests designed to identify mutations in genes that could increase an individual's risk of developing various cardiovascular diseases and conditions in the future, or to assist in the treatment or management of individuals with a confirmed or suspected diagnosis of an inherited cardiovascular disease. This type of testing was not intended as a routine screening tool for the general population, nor was it indicated for individuals with a history of common conditions such as hypertension. Instead, the tests were used by cardiologists in limited circumstances, for example, to identify an individual's future risk when a genetic variant related to cardiovascular disease had previously been found in a family member, or to inform clinical management of an individual diagnosed with a condition resulting from an inherited genetic mutation.

m. Genetic tests related to an individual's hereditary predisposition to cancer were commonly referred to as cancer genetic tests or "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 tests did not diagnose whether an individual presently had cancer.

n. To conduct a genetic test, a laboratory was required to obtain a DNA sample from the individual ("specimens"). Such specimens were typically obtained from the individual's saliva by using a cheek (buccal) swab to collect

sufficient cells to provide a genetic profile. The specimens were then submitted to the laboratory for testing.

o. DNA specimens were submitted to laboratories together with doctors' orders for diagnostic testing that identified the individual, the individual's insurance and other personally identifiable information, the diagnosis purportedly supporting the test, and the specific type of test to be performed. In order for laboratories to submit claims to Medicare for genetic tests, doctors' orders had to be signed by a physician or other authorized medical professional, who attested to the medical necessity of the test.

p. Medicare did not cover diagnostic tests, including genetic tests, that were "not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 U.S.C. § 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." 42 C.F.R. § 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.*

q. If diagnostic tests 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 tests. 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."

The Conspiracy

2. From in or around March 2018 through in or around May 2022, in the District of New Jersey and elsewhere, defendant

MARK WEISBERG

did knowingly and willfully conspire and agree with Individual 1, Individual 2, Individual 3, Laboratory 1, Laboratory 2, and others to commit certain offenses against the United States, that is,

a. to violate Title 42, United States Code, Section 1320a-7b(b)(1)(B), 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 purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part by a Federal health care program; and

b. 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, to any person to induce such person to purchase, lease,

order, and arrange for and recommend purchasing, leasing, and ordering any good, facility, service, and item for which payment may be made in whole and in part by a Federal health care program.

Goal of the Conspiracy

3. It was the goal of the conspiracy for defendant MARK WEISBERG and his co-conspirators to profit by receiving and paying kickbacks and bribes in return for orders for diagnostic tests, including genetic tests, for which Laboratory 1 and Laboratory 2 submitted false and fraudulent claims to Medicare, and diverting the proceeds of the fraud for their personal use and benefit.

Manner and Means of the Conspiracy

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

a. WEISBERG, together with others, agreed to and did solicit and receive illegal kickbacks and bribes from Individual 1, Individual 2, and others, in exchange for arranging for the ordering of diagnostic testing, including genetic testing, that was billed to Medicare.

b. WEISBERG negotiated kickback arrangements with certain laboratories, including Laboratory 1 and Laboratory 2, under which WEISBERG connected individuals acting as “marketers,” including Individual 3, with the laboratories so that the marketers could arrange for the ordering of diagnostic

testing to be sent to the laboratories in exchange for kickbacks paid to WEISBERG and the marketers.

c. To conceal and disguise the kickbacks paid by the laboratories, including Laboratory 1 and Laboratory 2, WEISBERG, Individual 1, Individual 2, and others created and caused the creation of sham contracts or employment arrangements.

d. For the diagnostic testing that WEISBERG arranged to be ordered and sent to Laboratory 1 and Laboratory 2, Laboratory 1 and Laboratory 2 submitted false and fraudulent claims to Medicare. Those claims were procured through illegal kickbacks and bribes and were therefore ineligible for Medicare reimbursement. These claims were ultimately for services that were medically unnecessary and not provided as represented, for which Medicare paid approximately \$6,140,000.

e. In turn, Laboratory 1 and Laboratory 2 paid WEISBERG approximately \$913,000 in illegal kickbacks in exchange for the diagnostic testing that WEISBERG arranged to be ordered and sent to Laboratory 1 and Laboratory 2.

Overt Acts

5. In furtherance of the conspiracy and to accomplish its goals, defendant MARK WEISBERG and his co-conspirators committed, and caused to be committed, the following acts in the District of New Jersey and elsewhere:

a. On or about March 18, 2019, WEISBERG received an illegal kickback and bribe in the amount of approximately \$5,000 from Laboratory 1 in

exchange for the diagnostic testing that WEISBERG caused to be ordered and sent to Laboratory 1.

b. On or about August 31, 2020, WEISBERG texted Individual 2 stating, “[Doctor 1] is starting today w Cardio so u will get samples tomorrow or Wednesday. So far he has done 2 Medicare today.”

c. On or about September 25, 2020, WEISBERG texted Individual 2 stating, “So [Marketer 1’s] doctor did nine today and he called me and I said big deal [Marketer 2’s] doctor did 25 LOL.” On the same day, WEISBERG texted Individual 2 stating, “[Marketer 2’s] Dr did 28 cardio n 22 CGX. You will get tomorrow or Monday.”

d. On or about November 5, 2020, WEISBERG received an illegal kickback and bribe in the amount of approximately \$25,000 from Laboratory 2 in exchange for the diagnostic testing that WEISBERG arranged to be ordered and sent to Laboratory 2.

e. On or about September 20, 2021, WEISBERG received an illegal kickback and bribe in the amount of approximately \$30,000 from Laboratory 2 in exchange for the diagnostic testing that WEISBERG arranged to be ordered and sent to Laboratory 2.

f. On or about March 18, 2022, WEISBERG received an illegal kickback and bribe in the amount of approximately \$7,809 from Laboratory 1 in exchange for the diagnostic testing that WEISBERG arranged to be ordered and sent to Laboratory 1.

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

FORFEITURE ALLEGATIONS

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


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

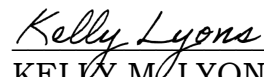
3. If any of the above-described forfeitable property, as a result of any act or omission of defendant MARK WEISBERG:

- 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 MARK WEISBERG up to the value of the forfeitable property described above.


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INFORMATION FOR

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