IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

RODNEY SOSA M.D. (01)

No. 3-23CR0266-B

INFORMATION

The United States Attorney charges that:

General Allegations

At all times material to this Information,

The Defendant and Related Entities

1. In or around the charged period, defendant **Rodney Sosa**, a resident of Southlake, Texas, was a licensed physician who signed prescriptions and other Medicare-required documents for certain tests and medical devices, as **Rodney Sosa** knew and intended, that were, among other things, not legitimately prescribed, not needed, not used, or induced through unlawful kickbacks and bribes.

2. In or around the charged period, Company A, a purported telemedicine company, was owned and operated by Marc Sporn and Steven Goldberg. **Rodney Sosa** worked as an independent contractor for purported telemedicine and marketing companies, including Company A, as further described below.

3. In or around the charged period, **Rodney Sosa**, Marc Sporn, Steven Goldberg, and their co-conspirators unlawfully submitted and caused to be submitted

approximately $1.4 million in false and fraudulent claims to Federal health care programs, including Medicare, for prescriptions for genetic tests and durable medical equipment. Medicare paid approximately $574,000 on these false and fraudulent claims. These prescriptions, as **Rodney Sosa** knew and intended, were, among other things, medically unnecessary, not provided as represented, not eligible for reimbursement, and induced through the payment and receipt of unlawful kickbacks and bribes in violation of the Federal Anti-Kickback Statute.

The Medicare Program

4. The Medicare Program ("Medicare") was a federal program providing health care benefits to individuals who were the age of 65 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."

5. 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).

6. Medicare covered, among other things, medical services, provided by physicians, medical clinics, laboratories, and other qualified health care providers (collectively, "providers"), and office services and outpatient care—including the ordering of diagnostic testing—that were medically necessary and ordered by licensed

medical doctors or other qualified providers.

7. Providers that rendered services to Medicare beneficiaries were able to apply for and obtain a "provider number." A provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries.

8. To receive Medicare reimbursement, providers had to apply and execute a written provider agreement, known as CMS Form 855. The Medicare application was required to be signed by an authorized representative of the provider. The application contained certifications that the provider agreed to abide by the Medicare laws and regulations, including the Federal Anti-Kickback Statute, and 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."

9. Medicare paid for claims only if the items or services were medically reasonable, medically necessary for the treatment or diagnosis of the beneficiary's illness or injury, documented, and actually provided as represented to Medicare. Medicare would not pay for items or services that were procured through kickbacks and bribes.

Genetic Testing

10. 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. Pharmacogenetic ("PGx") testing used DNA sequencing to assess how the body's genetic makeup would affect the response to certain medications. Genetic tests that could

predict future risks of cardiac conditions and diseases such as Parkinson's and Alzheimer's were also available. All such tests were generally referred to as "genetic testing." Genetic testing was not a method of diagnosing whether an individual had a disease, such as cancer, at the time of the test.

11. To conduct genetic testing, a laboratory needed to obtain a DNA sample ("specimen") from the beneficiary. Specimens were typically obtained from the beneficiary's saliva by using a cheek swab to collect sufficient cells to provide a genetic profile. The specimen was then submitted to the laboratory to conduct a genetic test.

12. DNA specimens were submitted along with laboratory requisition forms that identified the beneficiary, the beneficiary's insurance information, and the specific test to be performed. In order for laboratories to submit claims to Medicare for genetic testing, the tests had to be approved by a physician or other authorized medical professional who attested to the medical necessity of the test.

13. 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).

14. 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 that "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." It also provided that "[t]ests not ordered by the physician who is treating the beneficiary are not reasonable and necessary." *Id.*

Durable Medical Equipment

15. Medicare covered an individual's access to DME, such as off-the-shelf ("OTS") ankle braces, knee braces, back braces, elbow braces, wrist braces, and hand braces (collectively, "braces"). OTS braces required minimal self-adjustment for appropriate use and did not require expertise in trimming, bending, molding, assembling, or customizing to fit the individual.

16. 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.

17. For certain DME products, Medicare promulgated additional requirements that a DME order must have met for an order to be considered "reasonable and necessary." For example, for OTS knee braces billed to Medicare under the Healthcare Common Procedures Coding System ("HCPCS") Codes L1833 and L1851, an order would be deemed "not reasonable and necessary" and reimbursement would be denied unless the ordering/referring physician documented the beneficiary's knee instability

using an objective description of joint laxity determined through a physical examination of the beneficiary.

COUNT ONE
Conspiracy to Defraud the United States and to
Make Materially False Statements
(Violation of 18 U.S.C. § 371 (18 U.S.C. § 1035(a))

18. All previous paragraphs of this information are realleged and incorporated by reference as if fully alleged herein.

19. From in or around March 2019, and continuing through in or around May 2019, the exact dates being unknown, in the Dallas Division of the Northern District of Texas, and elsewhere, **Rodney Sosa** did knowingly and willfully combine, conspire, confederate, and agree with Marc Sporn, Steven Goldberg, and others known and unknown, to knowingly and willfully commit certain offenses against the United States, that is,

a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the HHS and CMS in the administration and oversight of Medicare; and

b. to violate Title 18, United States Code, Section 1035(a), by falsifying, concealing, or covering up by trick, scheme, and device material facts; and by making materially false, fictitious, and fraudulent statements and representations, and by making and using materially false writings and documents, knowing the same to contain any materially false, fictitious, and fraudulent

statements and entries, in the connection with the delivery of or payment for health care benefits, items, and services, all involving a health care benefit program, that is, Medicare.

Object/Purpose of the Conspiracy

20. It was an object/purpose of the conspiracy for **Rodney Sosa** and his co-conspirators to unlawfully enrich themselves and others by, among other things, falsifying and making materially false statements in authorizing prescriptions for genetic testing and DME without examining or speaking to patients and without any physician-patient relationship. These completed, signed prescriptions for genetic testing or DME and other Medicare-required documents (collectively referred to as "doctors' orders"), as **Rodney Sosa** knew and intended, were, among other things, materially false in that the genetic testing and DME were not legitimately prescribed, not needed, or not used; ineligible for reimbursement; and not provided as represented.

Manner and Means of the Conspiracy

21. 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:

22. In or around November 2013, **Rodney Sosa**, as a Medicare provider, promised to comply with all Medicare rules and regulations, and federal laws, including that he would not knowingly present or cause to be presented false and fraudulent claims for payment by Medicare and that he would comply with the Federal Anti-Kickback

Statute. Despite these certifications, **Rodney Sosa** proceeded to present or cause to be presented false and fraudulent claims for payment by Medicare as described below.

23. **Rodney Sosa** worked as an independent contractor for various purported telemedicine and staffing companies, including Company A, that arranged for physicians to prescribe genetic testing and DME for Medicare beneficiaries.

24. **Rodney Sosa** agreed with his co-conspirators to sign doctors' orders for genetic testing and DME for Medicare beneficiaries in exchange for approximately $50 per purported telemedicine "consultation" and to provide few, if any, medical treatment options for beneficiaries besides genetic testing or orthotic braces during the purported telemedicine "consultations."

25. **Rodney Sosa** made, and caused to be made, false entries in beneficiaries' orders for orthotic braces and genetic testing, including statements that the beneficiaries needed the braces and tests, and that **Rodney Sosa** consulted with and/or examined the beneficiaries to substantiate the false claims, knowing that the statements were untrue.

26. **Rodney Sosa** and others falsified, fabricated, altered, and caused the falsification, fabrication, and alteration of patient files, orders, and other records, all to support claims to Medicare that were obtained through kickbacks and bribes, medically unnecessary, ineligible for Medicare reimbursement, and not provided as represented.

27. **Rodney Sosa** transmitted and caused to be transmitted signed doctors' orders for genetic testing and orthotic braces to his co-conspirators knowing that the orders, along with the beneficiaries' specimens, would be provided to laboratories and

DME suppliers for the purpose of submitting and causing the submission of false and fraudulent claims to Medicare.

28. Upon receipt of the signed doctors' orders, laboratories and DME suppliers, that purportedly processed genetic testing and provided orthotic braces to beneficiaries, submitted claims to Medicare for the orders authorized by **Rodney Sosa**.

29. **Rodney Sosa** and others concealed and disguised the scheme by preparing and causing to be prepared false and fraudulent documentation, and submitting and causing the submission of false and fraudulent documentation to Medicare, including documentation in patient files and orders in which:

a. **Rodney Sosa** falsely stated that he determined through his interaction with the Medicare beneficiary that a particular course of treatment, including the prescription of orthotic braces and/or genetic testing, was reasonable and medically necessary;

b. **Rodney Sosa** falsely attested that the information in the medical record was true, accurate, and complete;

c. **Rodney Sosa** falsely diagnosed the Medicare beneficiary with certain conditions to support the prescription of certain braces and/or genetic testing; and

d. **Rodney Sosa** concealed the fact that his interaction with the Medicare beneficiary was brief and telephonic, if at all.

Overt Acts

30. In furtherance of the conspiracy, and to accomplish its object and purpose, the conspirators committed and caused to be committed, in the Dallas Division of the Northern District of Texas, and elsewhere, the following overt acts:

	Approximate Date	**Medicare Beneficiary**	**Record Containing False Statements and/or Concealment of Material Facts**
a.	4/11/2019	J.R.	Medical records and requisition form for CGx testing
b.	5/9/2019	M.M.	Medical records and requisition form for CGx testing

All in violation of 18 U.S.C. § 371.

Forfeiture Notice
(18 U.S.C. § 982(a)(7), 21 U.S.C. § 853(p), and 28 U.S.C. § 2461)

31. Pursuant to 18 U.S.C. § 982(a)(7), upon conviction of Count One, **Rodney Sosa** shall forfeit to the United States, any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to Count One.

32. Pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), if any of the property described above, as a result of any act or omission of a 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 intends to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

Respectfully Submitted:

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