

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 10 -
v. : 18 U.S.C. § 371
DOUGLAS DONOFRIO : INFORMATION

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

From in or about 2002 through in or about 2008, in the District of New Jersey and elsewhere, the defendant

DOUGLAS DONOFRIO

did knowingly and willfully combine, conspire, confederate, and agree with others to commit an offense against the United States, that is to violate the Anti-Kickback statute by entering into financial arrangements with orthopedic surgeons who were offered or who solicited payments from Exactech, Inc. in exchange for, in part, the surgeons' use of Exactech, Inc.'s hip and knee joint reconstruction and replacement products, contrary to Title 42, United States Code, §§ 1320a - 7b(b)(2), in violation of Title 18, United States Code, § 371.

BACKGROUND

1. At all times relevant to this Information:

A. Exactech, Inc., with a principal place of business in Gainesville, Florida, was a national manufacturer and distributor of orthopedic implant devices and supplies, including hip and knee reconstruction and replacement products.

B. Defendant Douglas Donofrio was an employee of Exactech Tri-State, the New York City metropolitan area sales organization of Exactech, Inc.

C. The United States Department of Health and Human Services (“HHS”), was an agency of the United States and acted through the Administrator of the Centers for Medicare and Medicaid Services to administer and supervise the Medicare program (“Medicare”).

D. Medicare was a federal health care insurance program established to provide benefits to aged, blind, and disabled individuals who qualify for coverage. According to HHS statistics, during the years through and including 2002 to 2008, more than 700,000 hip and knee replacement surgeries were performed annually in the United States. Approximately two-thirds of those surgeries have been performed on patients who were covered by Medicare.

E. The Medicare fraud statute, 42 U.S.C. § 1320a-7b, contains an anti-kickback provision, which prohibited companies from paying, and doctors from receiving, anything of value to influence the referral of federal health care program business.

OBJECT OF THE CONSPIRACY

2. Defendant Douglas Donofrio and others used consulting agreements with orthopedic surgeons, and payments made thereunder, in part as inducements for such surgeons’ use of Exactech, Inc.’s hip and knee reconstruction and replacement products.

MANNER AND MEANS

3. From in or about 2002 through in or about 2008, defendant Douglas Donofrio and his coconspirators offered and entered into consulting agreements with certain orthopedic surgeons. Those agreements were designed and implemented, in part, to induce the surgeons to use, and cause the purchase of, Exactech, Inc.’s hip and knee reconstruction and replacement products.

OVERT ACTS

4. In furtherance of this conspiracy and to effect the unlawful object thereof, defendant Douglas Donofrio and his co-conspirators committed, and caused to be committed, the following overt acts, inter alia, in the District of New Jersey and elsewhere:


A. In or about September 2004, offering a prominent orthopaedic surgeon a consultancy agreement designed and implemented, in part, to induce that surgeon to use, and cause the purchase of, Exactech, Inc.'s hip and knee reconstruction and replacement products;

B. In or about September 2005, offering a prominent orthopaedic surgeon a consultancy agreement designed and implemented, in part, to induce that surgeon to use, and cause the purchase of, Exactech, Inc.'s hip and knee reconstruction and replacement products;

C. In or about September 2005, falsifying certain entries in the quarterly work report of a prominent orthopaedic surgeon to fraudulently justify payments under a consultancy agreement designed and implemented, in part, to induce that surgeon to use, and cause the purchase of, Exactech, Inc.'s hip and knee reconstruction and replacement products.

D. In or about January 2008, falsifying certain entries in the quarterly work report of a prominent orthopaedic surgeon to create the appearance of greater value to Exactech, Inc., under a consultancy agreement designed and implemented, in part, to induce that surgeon to use, and cause the purchase of, Exactech, Inc.'s hip and knee reconstruction and replacement products.

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



J. GILMORE CHILDERS
ATTORNEY FOR THE UNITED STATES.
ACTING UNDER AUTHORITY
CONFERRED BY 28 U.S.C. § 515

CASE NUMBER: 2005R00371

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UNITED STATES OF AMERICA
v.
DOUGLAS DONOFRIO

**INFORMATION CHARGING
VIOLATION OF**

18 U.S.C. § 371

PAUL J. FISHMAN

UNITED STATES ATTORNEY

J. GILMORE CHILDERS

ATTORNEY FOR THE UNITED STATES ACTING UNDER

AUTHORITY CONFERRED BY 28 U.S.C. § 515

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