

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 19-693 (BRM)
 :
 v. : Hon. Brian R. Martinotti
 :
 JEREMY RICHEY : 18 U.S.C. § 371

SUPERSEDING 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 Violate the Anti-Kickback Statute)

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

The Defendant, Ark Laboratory Network LLC, and Relevant Individuals

a. Defendant JEREMY RICHEY (“defendant RICHEY”) resided in Mars, Pennsylvania and was a managing partner and part owner of Ark Laboratory Network LLC (“Ark”). Ark was a Florida limited liability company that purported to operate a nationwide network of laboratories and laboratory partners that facilitated genetic testing. Ark’s primary business premises was co-conspirator Edward B. Kostishion’s (“co-conspirator Kostishion”) residence in Lakeland, Florida. Defendant RICHEY, co-conspirator Kostishion, and co-conspirator Kacey C. Plaisance (“co-conspirator Plaisance”) co-owned and managed Ark.

b. Through Ark, defendant RICHEY, co-conspirator Kostishion, co-conspirator Plaisance, and others submitted or caused to be submitted referrals

for genetic tests and patients' DNA samples to various clinical laboratories across the country. The laboratories paid Ark in exchange for these referrals on a per-sample basis or based on the revenue the laboratories received from insurance companies and government health care programs.

c. Jeffrey Tamulski ("co-conspirator Tamulski") resided in Tampa, Florida.

Background on the Medicare Program and Genetic Testing

d. Medicare was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare was a "health care program" as defined in 18 U.S.C. § 24(b) and a "Federal health care program" as defined in 42 U.S.C. § 1320a-7b(f). Individuals who received benefits under Medicare were commonly referred to as "beneficiaries."

e. The Medicare Part B program was a federally funded supplemental insurance program that provided Medicare insurance benefits for individuals aged 65 or older, and for certain individuals who were disabled. The Medicare Part B program paid for various medical services for beneficiaries, including diagnostic genetic tests.

f. Genetic tests were laboratory tests designed to identify specific inherited mutations in a patient's genes. These genetic variations affected a patient's risk of developing certain diseases or how the patient responded to medications.

g. Genetic tests related to a patient's hereditary predisposition for cancer were commonly referred to as "CGx" tests. Pharmacogenomic genetic tests related to identifying how a patient's genes affect the patient's response to drugs were commonly referred to as "PGx" tests.

h. To conduct a genetic test, a laboratory must obtain a DNA sample from the patient. Such samples were typically obtained from the patient's saliva by using a cheek (buccal) swab to collect sufficient cells to provide a genetic profile. The DNA sample was then submitted to the laboratory for analysis, such as CGx or PGx.

i. If the patient had insurance, the laboratory would typically submit a claim for reimbursement for the test to the patient's insurance carrier. Reimbursement rates for CGx tests may have exceeded \$10,000 per test, while reimbursement rates for PGx may have exceeded \$6,500 per test.

j. Medicare excluded from coverage diagnostic genetic tests "that are not reasonable and necessary . . . [f]or the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 C.F.R. § 411.15(k)(1). To be considered "reasonable and necessary," Medicare rules required that genetic testing "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." 42 C.F.R. § 410.32(a).

“Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary.” *Id.*

k. Non-physician practitioners, such as clinical nurse specialists or physicians assistants, may also order genetic tests but were subject to the same requirement as physicians: they must consult or treat the beneficiary for a specific medical problem and use the test results to manage the beneficiary’s specific medical problem. 42 C.F.R. § 410.32(a)(2).

The Clinical Laboratories

1. The following clinical laboratories (collectively, the “DNA Labs”) performed genetic testing and submitted claims to Medicare:

1. “Laboratory 1,” located in New Jersey;
2. “Laboratory 2,” located in Mississippi;
3. “Laboratory 3,” located in Tennessee;
4. “Laboratory 4” located in Georgia;
5. “Laboratory 5” located in Texas;
6. “Laboratory 6” located in Pennsylvania;
7. “Laboratory 7” located in Georgia; and
8. “Laboratory 8” located in Texas.

m. “Individual-1” was an employee of Laboratory 1.

n. Each of the DNA Labs entered into separate agreements with Ark under which the DNA Labs paid Ark in exchange for genetic test referrals and DNA samples that Ark submitted or caused to be submitted to the DNA Labs.

o. From in or about January 2018 to in or about January 2019, the DNA Labs billed Medicare over approximately \$13 million in connection with genetic tests that Ark referred or caused to be referred to the DNA Labs.

p. From in or about January 2018 to in or about January 2019, Medicare paid the DNA Labs at least approximately \$4.6 million for genetic tests that Ark referred or caused to be referred to the DNA Labs.

q. In turn, from in or about May 2018 to in or about January 2019, the DNA Labs paid Ark at least \$1.8 million in exchange for the genetic test referrals that Ark delivered to the DNA Labs.

r. Defendant RICHEY and co-conspirators Kostishion and Plaisance shared in the payments that Ark received from the DNA Labs.

The Conspiracy

2. From in or about 2017 through in or about September 2019, in the District of New Jersey and elsewhere, defendant

JEREMY RICHEY

did knowingly and intentionally conspire and agree with co-conspirators Kostishion, Plaisance, Tamulski, and others to commit certain offenses against the United States, that is, to knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, in exchange for referring an individual to a person for the furnishing and arranging for the furnishing of items and services for which payment was made in whole or in part under a Federal health care program,

namely, Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b)(1)(A).

Goal of the Conspiracy

3. The goal of the conspiracy was to unlawfully solicit and receive kickbacks and bribes for defendant RICHEY, co-conspirators Kostishion, Plaisance, Tamulski, and others.

Manner and Means of the Conspiracy

4. The manner and means by which defendant RICHEY, co-conspirators Kostishion, Plaisance, Tamulski, and others sought to accomplish the goal of the conspiracy, included, among other things, the following:

a. Ark entered into sham agreements with clinical laboratories, including Laboratories 1, 2, and 3 (the “Three DNA Labs”) under which Ark offered to provide various consulting, marketing, and other services (the “Sham Agreements”) in exchange for charging the Three DNA Labs an hourly basis and rate for Ark’s services.

b. In reality, the Three DNA Labs paid Ark and co-conspirator Tamulski in exchange for referrals based on the revenue that the Three DNA Labs received from federal health care programs.

c. Specifically, defendant RICHEY, co-conspirators Kostishion, Plaisance, and/or Tamulski generally agreed with each of the Three DNA Labs that each laboratory would determine the amount of kickbacks and bribes paid to Ark and co-conspirator Tamulski based on the following formula (the “Kickback

and Bribe Formula”): (i) calculating the amount of Medicare revenue that the laboratory received as a result of genetic tests that Ark referred to the laboratory; (ii) deducting a negotiated costs of goods sold (“COGS”) amount that the laboratory incurred in connection with the tests and, in some cases, a billing fee; and (iii) paying Ark and co-conspirator Tamulski a percentage of the remaining profit.

d. The Three DNA Labs and defendant RICHEY, co-conspirators Kostishion, Plaisance, and Tamulski made efforts to track: (i) the amounts paid as kickbacks and bribes to defendant RICHEY, co-conspirators Kostishion, Plaisance, and Tamulski; (ii) the genetic tests that defendant RICHEY, co-conspirators Kostishion, Plaisance, and Tamulski referred or caused to be referred; and (iii) the revenue that these genetic tests generated for each of the Three DNA Labs.

e. To conceal the solicitation and receipt of kickbacks and bribes from the Three DNA Labs, defendant RICHEY, co-conspirators Kostishion, Plaisance, and Tamulski drafted, submitted, and facilitated the submission of sham Ark invoices to the Three DNA Labs based on hourly services and rates.

f. Specifically, Ark submitted invoices for hourly services to conceal the fact that the Three DNA Labs, defendant RICHEY, co-conspirators Kostishion, Plaisance, Tamulski, and others, had already determined and agreed upon the amount that each of the Three DNA Labs would pay Ark based on the Kickback and Bribe Formula in exchange for referring and arranging for referrals of genetic tests for Medicare beneficiaries to the Three DNA Labs.

g. Defendant RICHEY and co-conspirators Kostishion and Plaisance shared in the payments that Ark received from the Three DNA Labs.

h. From in or about January 2018 to in or about January 2019, Medicare paid the Three DNA Labs over \$480,000 for genetic tests that Ark referred or caused to be referred to the Three DNA Labs.

i. In turn, from in or about May 2018 to in or about January 2019, the Three DNA Labs paid Ark over \$250,000 in exchange for the genetic test referrals that Ark delivered to the DNA Labs.

Overt Acts

5. In furtherance of the conspiracy, and to effect its goal, defendant RICHEY, co-conspirators Kostishion, Plaisance, Tamulski, and others committed or caused the commission of the following acts in the District of New Jersey and elsewhere:

a. On or about October 26, 2018, co-conspirator Kostishion, on behalf of Ark, executed an agreement with Individual-1 at Laboratory 1, in which Ark would be paid “50% . . . of the total gross reimbursement by on [sic] all paid adjudicated specimens tested by [Laboratory 1] . . . for all [Ark] related business.”

b. In or about November 2018, co-conspirators Plaisance and Kostishion submitted to Individual-1 ten DNA samples and corresponding patient requisitions, all from Medicare beneficiaries.

c. On or about December 20, 2018, co-conspirator Kostishion explained to Individual-1 that, although Laboratory 1 would pay Ark based on the

Kickback and Bribe Formula, Ark would invoice Laboratory 1 on an hourly basis and that “other labs like [for Ark] to bill at \$500 an hour increments” and Ark would “back into the number” of the bribe by billing for “services, like . . . all the quote ‘marketing’ services: sales, meetings, ah, accounting, and then we bill you by the hour, which basically totals whatever that amount of money is you owe us.” Co-conspirator Kostishion further informed Individual-1 that the “benefit” of using this fake invoice method was that “it looks more compliant.”

d. On or about January 2, 2019, co-conspirator Kostishion explained to Individual-1 that Ark would invoice Laboratory 1 “at an hourly rate . . . we kind of leave off the cents, and either round it up or round it down.” Co-conspirator Kostishion further informed Individual-1 that the benefit of the bogus invoice method was that it “protects us, it protects you” and that: “What this will look like my friend, it will be an invoice, . . . remember there’s three partners [in Ark] so it could say 24 hours slash three at \$500 an hour equals . . . I don’t know, \$52,000 for general marketing services, blah, blah, blah, OK?”

e. On or about January 7, 2019, Ark received payment of approximately \$36,860.52 pursuant to the Kickback and Bribe Formula.

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

FORFEITURE ALLEGATIONS

1. The allegations contained in this Information are realleged here for the purpose of alleging forfeiture, pursuant to 18 U.S.C. § 982(a)(7).

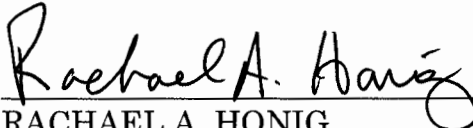
2. Upon conviction of the conspiracy offense alleged in this Superseding Information, defendant RICHEY shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, he obtained that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the conspiracy to solicit and receive kickbacks and bribes, contrary to 42 U.S.C. § 1320a-7b(b)(1)(A), in violation of 18 U.S.C. § 371.

SUBSTITUTE ASSETS PROVISION **(Applicable to All Forfeiture Allegations)**

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

- 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 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c) and 18 U.S.C. § 982(b)), to forfeiture of any other property of the defendant up to the value of the above-described forfeitable property.


RACHAEL A. HONIG
Acting United States Attorney

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