

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 17-
:
v. :
: 18 U.S.C. §§ 371, 1343, 1952(a)(1)&(3), 2
SALVATORE CONTE : 42 U.S.C. § 1320a-7b(b)(1)(A)

I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,
sitting at Newark, charges:

COUNT ONE

(Conspiracy to Violate the Federal
Anti-kickback Statute and Travel Act
and to Defraud Patients of Honest Services)

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

a. Biodiagnostic Laboratory Services, LLC
("BLS") was a clinical blood laboratory headquartered in
Parsippany, New Jersey that, among other things, performed tests
on the blood specimens of patients referred to BLS by medical
doctors ("Physicians"), and then billed others for those tests
and related services.

b. The Medicare Program ("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 "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). Individuals who receive benefits under Medicare are commonly referred to as "Beneficiaries."

c. The Medicare Part B program was a federally funded supplemental insurance program that provided supplementary Medicare insurance benefits for individuals aged sixty-five or older, and certain individuals who are disabled. The Medicare Part B program paid for various medical services for Beneficiaries, including blood tests and related services.

d. BLS was an approved Medicare provider, and Medicare paid BLS for performing blood tests and related services performed for Beneficiaries who had been referred to BLS by Physicians participating in Medicare.

e. BLS billed, and was paid by, various private health care insurance companies (collectively, the "Private Insurers") in the business of providing health care insurance to individuals and entities under various insurance policies (the "Insureds"), pursuant to which the Private Insurers paid BLS for blood tests and related services performed for Insureds who had been referred to BLS by Physicians.

f. BLS paid sales representatives a commission based on the amount of revenue received by BLS from Medicare and the Private Insurers for the performance of blood tests and related services performed on blood specimens referred to BLS by Physicians the sales representatives recruited or serviced.

g. David Nicoll, who is a co-conspirator not charged herein, was an owner and the President of BLS and generally exercised control over the operations of BLS.

h. Scott Nicoll, who is a co-conspirator not charged herein, was employed by and acted on behalf of BLS.

i. Craig Nordman, who is a co-conspirator not charged herein, was employed by and acted on behalf of BLS as a sales representative. In addition, beginning in or about 2010, Craig Nordman caused the formation of an entity called Advantech Sales, LLC ("Advantech").

The BLS Bribery Scheme

2. Beginning prior to March 2006 and continuing through in or about April 2013, BLS routinely paid Physicians bribes to induce them to refer the blood specimens of their Medicare and Private Insurer patients to BLS for testing.

3. During the BLS bribery scheme, BLS bribed Physicians practicing medicine in New Jersey and in New York. To generate funds to pay bribes in a given month, BLS relied upon and used the monies generated by patient blood specimen referrals from Physicians, wherever located, that had been obtained in prior months.

Defendant SALVATORE CONTE

4. At all times relevant to this Indictment, the defendant, SALVATORE CONTE, was a licensed medical doctor who practiced medicine in Passaic County, New Jersey. As a physician, defendant SALVATORE CONTE owed a fiduciary duty to his patients. In addition, SALVATORE CONTE had a duty of honest services to his patients that included the duty to refrain from accepting, or agreeing to accept, bribes and kickbacks offered in exchange for patient blood specimen referrals.

5. From at least as early as in or about February 2009, defendant SALVATORE CONTE agreed with one or more persons employed by and/or acting on behalf of BLS to refer the blood

specimens of his Medicare and Private Insurer patients to BLS for testing in exchange for monthly bribe payments.

6. From at least as early as in or about February 2009 through April 2013, defendant SALVATORE CONTE accepted bribes in the form of checks and cash in exchange for referring the blood specimens of his Medicare and Private Insurer patients to BLS. SALVATORE CONTE did not advise his patients that he was receiving bribes in exchange for referring their blood specimens to BLS.

7. The referrals from SALVATORE CONTE enabled BLS to collect more than \$525,000 from Medicare and the Private Insurers.

8. From at least as early as in or about February 2009 through in or about April 2013, in the District of New Jersey, and elsewhere, defendant

SALVATORE CONTE

did knowingly and intentionally conspire and agree with David Nicoll, Scott Nicoll, Craig Nordman, and others to commit offenses against the United States, that is:

a. to willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, from BLS through one or more co-conspirators, in order to induce

defendant SALVATORE CONTE to refer patients and cause the referral of patients to BLS for the furnishing and arranging of items and services, that is, the referral of patient blood specimens to BLS for testing and related services, for which payment was made in whole or in part under a Federal health care program, that is, Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b) (1) (A); and

b. to knowingly and intentionally travel in interstate commerce and use and cause to be used the mail and facilities in interstate commerce with intent to promote, manage, establish, carry on, distribute the proceeds of, and facilitate the promotion, management, establishment, carrying on, and distribution of the proceeds of an unlawful activity, that is, commercial bribery, contrary to N.J.S.A. § 2C:21-10 and Title 18, United States Code, Section 1952(a) (1) and (a) (3) and, thereafter, to perform acts to promote, manage, establish, carry on, distribute the proceeds of, and facilitate the promotion, management, establishment, carrying on, and distribution of the proceeds of such unlawful activity, contrary to Title 18, United States Code, Sections 1952(a) (1) and (3); and

c. to knowingly and intentionally devise a scheme and artifice to defraud SALVATORE CONTE's patients of their right to his honest services as their physician and to

transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice, contrary to Title 18, United States Code, Sections 1343 and 1346.

Object of the Conspiracy

9. The object of the conspiracy was to illegally generate large sums of money for defendant SALVATORE CONTE, co-conspirators David Nicoll, Scott Nicoll, Craig Nordman, and others by exchanging concealed bribes for referrals of patient blood specimens that generated revenue for BLS.

Manner and Means of the Conspiracy

10. The manner and means by which defendant SALVATORE CONTE, David Nicoll, Scott Nicoll, Craig Nordman, and others sought to accomplish the object of the conspiracy included, among other things, the following:

a. It was part of the conspiracy that, from in or about February 2009 through in or about August 2010, one or more co-conspirators offered, and defendant SALVATORE CONTE accepted, bribes in the form of sham "rent" checks of approximately \$1,700 per month to induce the referral of patient blood specimens to BLS (the "Rent Bribes").

b. It was further part of the conspiracy that, from in or about February 2009 through in or about August 2010, one or more co-conspirators offered, and defendant SALVATORE CONTE accepted, bribes in the form of sham "Service Agreement" checks of approximately \$3,000 per month to induce the referral of patient blood specimens to BLS (the "Service Agreement Bribes").

c. It was further part of the conspiracy that, beginning in or around September 2010, certain of the bribes paid to Physicians including defendant SALVATORE CONTE began to be paid by BLS through sham LLC entities, such as Advantech, that were formed by co-conspirators to further disguise the bribes being paid by BLS.

d. It was further part of the conspiracy that, from in or about September 2010 through in or about March 2013, one or more co-conspirators offered, and defendant SALVATORE CONTE accepted, bribes in the form of sham "Consulting Agreement" checks of \$1,500 per month to induce the referral of patient blood specimens to BLS (the "Consulting Agreement Bribes"). The Consulting Agreement Bribes were paid by BLS to defendant SALVATORE CONTE through Advantech.

e. It was further part of the conspiracy that BLS paid Rent Bribes, Service Agreement Bribes, and Consulting

Agreement Bribes (collectively, the "Monthly Bribe Payments") to SALVATORE CONTE totaling approximately \$130,000. Many of the Monthly Bribe Payment checks cashed by SALVATORE CONTE were negotiated through interstate banking channels.

f. It was further part of the conspiracy that, in addition to the Monthly Bribe Payments, from at least in or about March 2012 through at least in or about September 2012, defendant SALVATORE CONTE periodically solicited, and one or more co-conspirators agreed to pay, additional bribes to induce the referral of patient blood specimens to BLS, as well as to induce defendant SALVATORE CONTE's ordering of specific test panels. These additional bribes included the payment of fee-per-test cash bribes to SALVATORE CONTE (collectively, the "Additional Bribe Payments").

g. It was further part of the conspiracy that defendant SALVATORE CONTE maintained periodic contact with one or more co-conspirators through interstate communications, including via telephone and text messages.

h. It was further part of the conspiracy that various of the co-conspirators made efforts to track, by month:

- (i) the monies paid as bribes to defendant SALVATORE CONTE;
- (ii) the blood tests defendant SALVATORE CONTE caused to be

ordered and referred to BLS; and (iii) the revenue those blood tests generated for BLS.

Overt Acts

11. In furtherance of the conspiracy and in order to effect the objects thereof, defendant SALVATORE CONTE and his co-conspirators committed or caused the commission of the following overt acts in the District of New Jersey and elsewhere:

a. On or about February 6, 2012, at the direction of BLS and using funds provided by BLS, Advantech issued a Consulting Agreement Bribe check in the amount of \$1,500 made payable to Salvatore Conte MD.

b. On or about February 8, 2012, defendant SALVATORE CONTE caused the Consulting Agreement Bribe check, referenced in Paragraph 11(a) above, to be deposited into a bank account held in the name of Dr. Salvatore A. Conte Inc.

c. On or about March 8, 2012, at the direction of BLS and using funds provided by BLS, Advantech issued a Consulting Agreement Bribe check in the amount of \$1,500 made payable to Salvatore Conte MD.

d. On or about March 12, 2012, defendant SALVATORE CONTE caused the Consulting Agreement Bribe check,

referenced in Paragraph 11(c) above, to be deposited into a bank account held in the name of Dr. Salvatore A. Conte Inc.

e. On or about April 4, 2012, at the direction of BLS and using funds provided by BLS, Advantech issued a Consulting Agreement Bribe check in the amount of \$1,500 made payable to Salvatore Conte MD.

f. On or about April 24, 2012, defendant SALVATORE CONTE caused the Consulting Agreement Bribe check, referenced in Paragraph 11(e) above, to be deposited into a bank account held in the name of Dr. Salvatore A. Conte Inc.

g. On or about May 16, 2012, defendant SALVATORE CONTE caused patient blood tests to be ordered and the resulting blood specimens to be referred to BLS.

h. On or about June 12, 2012, BLS received approximately \$100 from Medicare via an interstate bank wire for patient blood tests ordered by SALVATORE CONTE and processed by BLS, as referenced in Paragraph 11(g) above.

i. On or about June 13, 2012, defendant SALVATORE CONTE caused patient blood tests to be ordered and the resulting blood specimens to be referred to BLS.

j. On or about July 6, 2012, at the direction of BLS and using funds provided by BLS, Advantech issued a

Consulting Agreement Bribe check in the amount of \$1,500 made payable to Salvatore Conte MD.

k. On or about July 18, 2012, defendant SALVATORE CONTE caused the Consulting Agreement Bribe check, referenced in Paragraph 11(j) above, to be deposited into a bank account held in the name of Dr. Salvatore A. Conte Inc.

l. On or about November 9, 2012, defendant SALVATORE CONTE caused patient blood tests to be ordered and the resulting blood specimens to be referred to BLS.

m. On or about December 5, 2012, at the direction of BLS and using funds provided by BLS, Advantech issued a Consulting Agreement Bribe check in the amount of \$1,500 made payable to Salvatore Conte MD.

n. On or about December 10, 2012, BLS received approximately \$300 from Medicare via an interstate bank wire for patient blood tests ordered by SALVATORE CONTE and processed by BLS, as referenced in Paragraph 11(l) above.

o. On or about December 12, 2012, defendant SALVATORE CONTE caused the Consulting Agreement Bribe check, referenced in Paragraph 11(m) above, to be deposited into a bank account held in the name of Dr. Salvatore A. Conte Inc.

p. On or about December 13, 2012, defendant SALVATORE CONTE caused a patient blood test to be ordered and the resulting blood specimen to be referred to BLS.

q. On or about January 28, 2013, BLS received approximately \$300 from Medicare via an interstate bank wire for patient blood tests ordered by SALVATORE CONTE and processed by BLS, as referenced in Paragraph 11(p) above.

r. On or about February 4, 2013, at the direction of BLS and using funds provided by BLS, Advantech issued a Consulting Agreement Bribe check in the amount of \$1,500 made payable to Salvatore Conte MD.

s. On or about February 11, 2013, defendant SALVATORE CONTE caused the Consulting Agreement Bribe check, referenced in Paragraph 11(r) above, to be deposited into a bank account held in the name of Dr. Salvatore A. Conte Inc.

t. On or about February 12, 2013, defendant SALVATORE CONTE caused a patient blood test to be ordered and the resulting blood specimen to be referred to BLS.

u. On or about February 18, 2013, defendant SALVATORE CONTE caused a patient blood test to be ordered and the resulting blood specimen to be referred to BLS.

v. On or about March 5, 2013, defendant SALVATORE CONTE caused a patient blood test to be ordered and the resulting blood specimen to be referred to BLS.

w. On or about March 19, 2013, defendant SALVATORE CONTE caused a patient blood test to be ordered and the resulting blood specimen to be referred to BLS.

x. On or about May 3, 2013, BLS received approximately \$300 from Medicare via an interstate bank wire for patient blood tests ordered by SALVATORE CONTE and processed by BLS, as referenced in Paragraph 11(v) above.

y. On or about May 6, 2013, BLS received approximately \$300 from Medicare via an interstate bank wire for patient blood tests ordered by SALVATORE CONTE and processed by BLS, as referenced in Paragraph 11(u) above.

z. On or about June 20, 2013, BLS received approximately \$540 from Medicare via an interstate bank wire for patient blood tests ordered by SALVATORE CONTE and processed by BLS, as referenced in Paragraph 11(w) above.

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

COUNTS TWO THROUGH FOUR

(Illegal Remuneration in Violation of
the Federal Anti-Kickback Statute)

1. Paragraphs 1 through 7 and 9 through 11 of Count 1 of this Indictment are hereby incorporated and realleged as if fully set forth herein.

2. On or about the dates set forth below, in the District of New Jersey, and elsewhere, defendant

SALVATORE CONTE

did knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, from BLS, in order to induce defendant SALVATORE CONTE to refer patients and cause the referral of patients to BLS for the furnishing and arranging for the furnishing of items and services, that is, the referral of patient blood specimens to BLS for testing and related services, for which payment was made in whole or in part under a Federal health care program, that is, Medicare, as follows:

Count	Approximate Date of Kickback/Bribe
TWO	February 2012
THREE	March 2012
FOUR	April 2012

All in violation of Title 42, United States Code,
Section 1320a-7b(b) (1) (A), and Title 18, United States Code,
Section 2.

COUNTS FIVE THROUGH SEVEN

(Use of the Mail and Facilities in Interstate Commerce
and Interstate Travel to Promote, Carry On
and Facilitate Commercial Bribery)

1. Paragraphs 1 through 7 and 9 through 11 of Count 1 of this Indictment are hereby incorporated and realleged as if fully set forth herein.

2. On or about the dates set forth below, in the District of New Jersey, and elsewhere, defendant

SALVATORE CONTE

did knowingly travel in and use the mail and facilities in interstate commerce and cause the travel in and use of the mail and facilities in interstate commerce with the intent to promote, manage, establish, carry on, distribute the proceeds of, and facilitate the promotion, management, establishment, carrying on, and distribution of the proceeds of an unlawful activity, that is, commercial bribery contrary to N.J.S.A. § 2C:21-10, and, thereafter, did perform and attempt to perform an act to promote, manage, establish, carry on, distribute the proceeds of, and facilitate the promotion, management, establishment, carrying on, and distribution of the proceeds of such unlawful activity as follows:

Count	Approximate Date	Travel or Use of Mail or Facility in Interstate Commerce	Acts Performed Thereafter
FIVE	June 12, 2012	Bank Wire, as set forth in Paragraph 11(h) of Count One	The Acts Set Forth in Paragraphs 11(i) and 11(k) of Count One
SIX	December 10, 2012	Bank Wire, as set forth in Paragraph 11(m) of Count One	The Acts Set Forth in Paragraphs 11(o) and 11(p) of Count One
SEVEN	January 28, 2013	Bank Wire, as set forth in Paragraph 11(q) of Count One	The Acts Set Forth in Paragraphs 11(s) and 11(t) of Count One

All in violation of Title 18, United States Code, Section 1952(a) (1) and (3), and Title 18, United States Code, Section 2.

COUNTS EIGHT THROUGH TEN

(Scheme to Defraud Patients of Honest Services by
Defendant SALVATORE CONTE Accepting Concealed Bribes)

1. Paragraphs 1 through 7 and 9 through 11 of Count 1 of this Indictment are hereby incorporated and realleged as if fully set forth herein.

2. At all times relevant to Counts Eight through Ten of this Indictment, defendant SALVATORE CONTE's patients had an intangible right to his honest services as their physician. Defendant SALVATORE CONTE owed to his patients a duty to refrain from seeking and receiving bribes and kickbacks in exchange for defendant SALVATORE CONTE's actions as their physician.

3. From at least as early as in or about March 2006 through in or about April 2013, in the District of New Jersey, and elsewhere, defendant

SALVATORE CONTE,

with others, knowingly and intentionally did devise and intend to devise a scheme and artifice to defraud defendant SALVATORE CONTE's patients of the right to defendant SALVATORE CONTE's honest services as their physician.

3. The object of this scheme and artifice to defraud was for defendant SALVATORE CONTE and others to deprive defendant SALVATORE CONTE's patients of the honest services of defendant SALVATORE CONTE by defendant SALVATORE CONTE accepting and agreeing to accept concealed and undisclosed bribes and

kickbacks from BLS, in exchange for defendant SALVATORE CONTE's referral of patient blood specimens to BLS.

4. To carry out the scheme and to effect its unlawful object, defendant SALVATORE CONTE, and others, engaged in a number of means and methods, including those referred to in Paragraphs 1 through 7 and 9 through 11 of Count One, among others, as described below.

5. On or about the dates set forth below, in the District of New Jersey, and elsewhere, for the purpose of executing and attempting to execute this scheme and artifice to defraud, defendant

SALVATORE CONTE,

and others, knowingly and intentionally transmitted and caused to be transmitted in interstate commerce by means of wire, radio, and television communication, certain writings, signs, signals, pictures, and sounds, as set forth below:

Count	Approximate Date	Wire Transmission in Interstate Commerce
EIGHT	May 3, 2013	Medicare Payment to BLS via interstate bank wire, as set forth in Paragraph 11(x) of Count One
NINE	May 6, 2013	Medicare Payment to BLS via interstate bank wire, as set forth in Paragraph 11(y) of Count One
TEN	June 20, 2013	Medicare Payment to BLS via interstate bank wire, as set forth in Paragraph 11(z) of Count One

In violation of Title 18, United States Code, Sections 1343 and 1346, and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATION AS TO COUNT ONE

1. As a result of committing the conspiracy offense in violation of 18 U.S.C. § 371 as alleged in Count One of this Indictment, defendant SALVATORE CONTE shall forfeit to the United States:

- (a) Pursuant to 18 U.S.C. § 982(a)(7), all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the conspiracy to violate 42 U.S.C. § 1320a-7b(b)(2)(A) as alleged in Count One of this Indictment;
- (b) Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the conspiracy to violate 18 U.S.C. § 1952(a)(1) and (3) as alleged in Count One of this Indictment; and
- (c) Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the conspiracy to violate 18 U.S.C. § 1343 and 1346 as alleged in Count One of this Indictment;

And all property traceable to such property.

FORFEITURE ALLEGATION AS TO COUNTS TWO THROUGH FOUR

2. As a result of committing the offenses in violation of 42 U.S.C. § 1320a-7b(b) (2) (A) as alleged in Counts Two, Three and Four of this Indictment, defendant SALVATORE CONTE shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a) (7), all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the offenses in violation of 42 U.S.C. § 1320a-7b(b) (2) (A) as alleged in such Counts, and all property traceable to such property.

FORFEITURE ALLEGATION AS TO COUNTS FIVE THROUGH SEVEN

3. As a result of committing the offenses in violation of 18 U.S.C. § 1952(a)(1) and (3), as alleged in Counts Five, Six, and Seven of this Indictment, defendant SALVATORE CONTE shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses in violation of 18 U.S.C. § 1952(a)(1) and (3) as alleged in such Counts, and all property traceable to such property.

FORFEITURE ALLEGATION AS TO COUNTS EIGHT THROUGH TEN

4. As a result of committing the offense in violation of 18 U.S.C. §§ 1343 and 1346, as alleged in Counts Eight, Nine, and Ten of this Indictment, defendant SALVATORE CONTE shall forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses in violation of 18 U.S.C. § 1343 as alleged in such Counts, and all property traceable to such property.

SUBSTITUTE ASSETS PROVISION
APPLICABLE TO ALL FORFEITURE ALLEGATIONS


5. If any of the above-described forfeitable property, 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 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 18 U.S.C. § 982(b) and 28 U.S.C. § 2461(c)), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

A TRUE BILL

FOREPERSON



PAUL J. FISHMAN
United States Attorney

CASE NUMBER:

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

SALVATORE CONTE

INDICTMENT FOR

18 U.S.C. §§ 371, 1343, 1346, 1952(a)(1)&(3), 2
42 U.S.C. § 1320a-7b(b)(1)(A)

A True Bill,

Foreperson

PAUL J. FISHMAN

*U.S. ATTORNEY
NEWARK, NEW JERSEY*

JOSEPH N. MINISH & DANIELLE ALFONZO WALSMAN
*ASSISTANT U.S. ATTORNEYS
(973)645-2700*
