

U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2022 JUL 14 P 3 50
CAROL ANN...
[Signature]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

FELONY

INDICTMENT FOR
CONSPIRACY TO COMMIT HEALTH CARE FRAUD,
HEALTH CARE FRAUD, CONSPIRACY TO PAY AND RECEIVE KICKBACKS,
AND OFFER AND PAYMENT OF KICKBACKS

UNITED STATES OF AMERICA

v.

DAVID CHRISTOPHER THIGPEN

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CRIMINAL NO.

SECTION:

VIOLATIONS:

18 U.S.C. § 1349
18 U.S.C. § 1347
18 U.S.C. § 371
42 U.S.C. § 1320a-7b(b)(2)
18 U.S.C. § 2

**22-00149
SECT. A MAG. 1**

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times material herein:

The Medicare Program

1. The Medicare Program ("Medicare") was a federal health insurance program, affecting commerce, that provided benefits to persons who were 65 years of age and older or disabled. Medicare was administered by the United States Department of Health and Human

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Services, through its agency, the Centers for Medicare and Medicaid Services (“CMS”). Individuals who qualified for Medicare benefits were commonly referred to as “beneficiaries.”

2. 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).

3. Medicare covered different types of benefits and was separated into different program “parts,” including hospital services (“Part A”), physician services (“Part B”), and prescription drug coverage (“Part D”). Part B covered outpatient physician services, such as office visits, minor surgical procedures, and laboratory services, when certain criteria were met.

4. Medicare “providers” included physicians, independent clinical laboratories, and other health care providers who provided services to beneficiaries. To bill Medicare, a provider was required to submit a Provider Enrollment Application to Medicare. The Provider Enrollment Application contained certifications that the provider was required to make before the provider could enroll with Medicare. Specifically, the Provider Enrollment Application required the provider to certify, among other things, that the provider would abide by the Medicare laws, regulations, and program instructions, including the Federal Anti-Kickback Statute, and that the provider would not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare.

5. A Medicare “provider number” was assigned to a provider upon approval of the Provider Enrollment Application. A provider that obtained a Medicare provider number was able to file claims with Medicare to obtain reimbursement for benefits, items, or services rendered to beneficiaries. When seeking reimbursement from Medicare for provided benefits, items, or services, providers submitted the cost of the benefit, item, or service provided together with a

description and the appropriate “procedure code,” as set forth in the Current Procedural Terminology (“CPT”) Manual or the Healthcare Common Procedure Coding System (“HCPCS”).

6. When submitting claims to Medicare for reimbursement, providers certified that: (1) the contents of the forms were true, correct, and complete; (2) the forms were prepared in compliance with the laws and regulations governing Medicare; and (3) the services purportedly provided, as set forth in the claims, were medically necessary.

7. Medicare, in receiving and adjudicating claims, acted through fiscal intermediaries called Medicare administrative contractors (“MACs”), which were statutory agents of CMS for Medicare Part B. The MACs were private entities that reviewed claims and made payments to providers for services rendered to beneficiaries. The MACs were responsible for processing Medicare claims arising within their assigned geographical area, including determining whether the claim was for a covered service.

8. Medicare would not reimburse providers for claims that were not medically necessary or were procured through the payment of kickbacks and bribes.

Diagnostic Testing

9. Except for limited statutory exceptions, Medicare only reimbursed clinical laboratories for tests that were “reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of malformed body member.” 42 U.S.C. § 1395y(a)(1)(A). Further, to be reimbursable by Medicare, “[a]ll 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.” 42 C.F.R. § 410.32(a).

Urine Drug Testing

10. Urine drug testing was a type of diagnostic testing used to determine whether a patient was taking drugs that might interfere with a planned medical treatment, or to ensure that a patient was compliant with a prescription regime. Urine drug testing can include one or more levels of testing: presumptive tests (*i.e.*, drug screens) and definitive tests (*i.e.*, confirmations). Presumptive tests were used to identify which substances, if any, were present in a urine specimen, and were therefore considered *qualitative*. Definitive tests were used to identify how much of a particular substance was present in a urine specimen and were therefore considered *quantitative*.

11. Definitive tests were typically administered after presumptive tests, with limited exceptions made for certain substances, such as certain synthetic opioids, that were not included in screens. Where a presumptive test produced an inconsistent or unexpected result for a particular substance, Medicare considered a definitive test to be medically necessary and appropriately reimbursable for that particular substance. Medicare generally would not reimburse providers for “confirming” results of presumptive tests that were consistent or expected.

12. Medicare rates of reimbursement for definitive testing generally increased based on the number of substances tested, with CPT code G0483 (definitive testing of over twenty-two classes of substances) yielding the highest reimbursement rate for a provider. Conversely, Medicare rates of reimbursement for presumptive testing did not vary based on the number of substances screened.

Genetic Testing

13. Cancer genetic tests (“CGx” tests) were laboratory tests that used DNA sequencing to detect mutations in genes that could indicate a higher risk of developing certain types of cancers in the future. Pharmacogenetic tests (“PGx” tests) were laboratory tests that used DNA sequencing

to assess how genetic makeup would affect the response to certain medications. CGx and PGx testing was referred to collectively as “genetic testing.” Neither type of genetic testing determined whether an individual had a disease, such as cancer, at the time of the test.

14. To conduct genetic testing, a laboratory had to 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 genetic sample was then submitted to the laboratory to conduct the tests. Tests could then be run on different groups or “panels” of genes. Genetic testing typically involved multiple laboratory procedures that could result in billing Medicare using certain billing codes, each with their own reimbursement rate.

15. Because neither CGx testing nor PGx testing diagnosed diseases or conditions, Medicare only covered such tests in limited circumstances, such where the genetic testing was ordered by a physician in treating a beneficiary’s cancer or to inform a beneficiary’s drug therapy, and the results were used in the management of the beneficiary’s cancer or drug therapy.

Telemedicine

16. Telemedicine was a means of connecting patients to doctors by using telecommunications technology, such as the internet or telephone, to interact with a patient.

17. Telemedicine companies provided telemedicine, or telehealth services, to individuals by hiring doctors and other health care providers. In order to generate revenue, telemedicine companies typically either billed insurance or were paid directly by patients.

18. Medicare Part B covered expenses for specific telehealth services if certain requirements were met. These requirements included that: (a) the beneficiary was located in a rural or health professional shortage area; (b) services were delivered via an interactive audio and video telecommunications system; and (c) the beneficiary was in a provider’s office or a specified

medical facility—not at the beneficiary’s home—during the telehealth service with a remote provider. In or around March 2020, in response to the COVID-19 pandemic, some of these requirements were amended temporarily to, among other things, cover telehealth services for certain office and hospital visits, even if the beneficiary was not located in a rural or health professional shortage area and allow services to be furnished to beneficiaries in their home.

The Defendants and Relevant Individuals and Entities

19. Akrivis Laboratories LLC (“AKRIVIS”) was a limited liability company with a principal place of business in Hammond, Louisiana. AKRIVIS was a clinical laboratory enrolled with Medicare that provided laboratory services to individuals, including Medicare beneficiaries. AKRIVIS was licensed under the Clinical Laboratory Improvement Amendments of 1988 (“CLIA”) to provide toxicology testing and chemical testing. AKRIVIS held a bank account at Bank 1 ending in x5915 (the “Akrivis Account”).

20. Dynamic Diagnostics LLC (“DYNAMIC”) was a limited liability company with a principal place of business in Bay St. Louis, Mississippi. DYNAMIC was a clinical laboratory enrolled with Medicare that purportedly provided laboratory services to individuals, including Medicare beneficiaries. DYNAMIC was licensed under CLIA to provide molecular genetic testing, but not toxicology testing. DYNAMIC held a bank account at Bank 2 ending in x2322 (the “Dynamic Account”).

21. Defendant **David Christopher Thigpen** (“**THIGPEN**”) was a resident of Hammond, Louisiana. **THIGPEN** was the sole owner and chief executive officer of AKRIVIS and DYNAMIC and the sole signatory on the Akrivis Account and the Dynamic Account.

Urine Drug Testing Individuals and Entities

22. Company 1 was a limited liability company doing business in Madison, Mississippi. Company 1 was owned by Individual 1 and Individual 2, residents of Madison, Mississippi.

23. Company 2 was a limited liability company doing business in Hattiesburg, Mississippi. Company 3 was a corporation doing business in Madisonville, Louisiana. Company 2 and Company 3 were owned by Individual 3, a resident of Hattiesburg, Mississippi.

24. Company 4 was a limited liability company doing business in Slidell, Louisiana. Company 4 was owned by Individual 4, a resident of Slidell, Louisiana.

25. Company 5 was a limited liability company doing business in Slidell, Louisiana. Company 5 was owned by Individual 5, a resident of Slidell, Louisiana.

26. Five urine drug testing companies, Company 1, Company 2, Company 3, Company 4, and Company 5 (collectively, the “UDT Companies”) were purported marketing companies that solicited providers for AKRIVIS’s urine drug testing services and were paid, on a per specimen basis, by **THIGPEN**, through AKRIVIS, for specimens referred to AKRIVIS, by the providers they solicited. The UDT Companies were generally paid only if AKRIVIS was reimbursed by health care benefit programs, including Medicare.

Genetic Testing Individuals and Entities

27. Company 6 was a limited liability company doing business in South Carolina that purported to provide marketing services to laboratories by providing them DNA samples and accompanying doctors’ orders for genetic testing in exchange for payments. Individual 6 owned and/or controlled Company 6.

28. Company 7 was a limited liability company doing business in Florida that also purported to provide marketing services to laboratories by providing them DNA samples and doctors' orders for genetic testing in exchange for payments. Individual 7 co-owned and operated Company 7.

29. Telemedicine Company 1 was a telemedicine company doing business in Florida that arranged for telemedicine providers to sign off on physicians' orders for genetic testing procured by Individual 6 and Individual 7, in exchange for payment. Individual 6 and Individual 7 then sold the signed physicians' orders, along with DNA samples, to laboratories.

30. Reference Laboratory 1 was a limited liability company doing business in Tifton, Georgia. Reference Laboratory 1 was a clinical laboratory enrolled with Medicare that provided laboratory services, including genetic testing, to individuals, including beneficiaries, and procured signed orders for genetic testing, including through telemedicine.

COUNT 1

(Conspiracy to Commit Health Care Fraud)

A. THE CONSPIRACY:

1. The General Allegations section of this Indictment is re-alleged and incorporated as if fully set forth herein.

2. Beginning in or around March 2014, and continuing through in or around January 2021, in the Eastern District of Louisiana, and elsewhere, the defendant, **DAVID CHRISTOPHER THIGPEN**, did knowingly and willfully conspire and agree with others known and unknown to the Grand Jury, to execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money owned by, and under the custody and control of,

Medicare, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

B. PURPOSE OF THE CONSPIRACY:

It was a purpose of the conspiracy for **THIGPEN** and his co-conspirators, both known and unknown to the Grand Jury, to unlawfully enrich themselves by, among other things:

1. offering, paying, soliciting, and receiving kickbacks and bribes in exchange for the furnishing and arranging for the furnishing of orders for definitive urine drug testing and genetic testing, including the furnishing and arranging of doctors' orders along with other documentation necessary to submit claims for definitive urine drug testing and genetic testing to Medicare (collectively, "doctors' orders");

2. submitting and causing the submission of false and fraudulent claims to Medicare for definitive urine drug testing and genetic testing that was not medically necessary, procured by the payment of kickbacks and bribes, and not eligible for Medicare reimbursement, including for services purportedly rendered to beneficiaries located in the Eastern District of Louisiana and elsewhere;

3. concealing the offering, paying, soliciting, and receiving of kickbacks and bribes, and the submission of false and fraudulent claims for definitive urine drug testing and genetic testing to Medicare; and

4. diverting proceeds of the fraud for the personal use and benefit of **THIGPEN** and his co-conspirators, and to further the conspiracy.

C. MANNER AND MEANS OF THE CONSPIRACY:

The manner and means by which **THIGPEN** and his co-conspirators sought to accomplish the objects and purpose of the scheme included, among others, the following:

Urine Drug Testing

1. In 2014, and periodically thereafter, **THIGPEN** signed, on behalf of AKRIVIS, a Medicare Provider Enrollment Application (CMS Form 855B). In 2019, **THIGPEN** signed a CMS Form 855B on behalf of DYNAMIC. In so doing, **THIGPEN** certified to Medicare that AKRIVIS and DYNAMIC would comply with all Medicare rules and regulations and federal laws, including prohibitions on fraud, waste, and abuse and the Federal Anti-Kickback Statute. **THIGPEN** and other employees of AKRIVIS and DYNAMIC further received education from Medicare on the illegality of paying kickbacks for the referral of orders for items and services.

2. Beginning as early as May 2015, **THIGPEN** sent emails and text messages concerning the Federal Anti-Kickback Statute to the UDT Companies and others, including articles and links to press releases concerning different diagnostic laboratories under investigation for paying illegal kickbacks in exchange for referrals of specimens for urine drug testing, and specific safe harbor provisions under the Federal Anti-Kickback Statute.

3. Despite his knowledge of the Federal Anti-Kickback Statute, starting in or around August 2014, **THIGPEN**, through AKRIVIS, knowingly and willfully began transferring large sums of money, including funds deposited by Medicare, to the UDT Companies, as kickback payments in exchange for referring urine samples and doctors' orders to AKRIVIS, and later DYNAMIC, for definitive drug testing, based on the volume and value of the doctors' orders referred.

4. In order to conceal the illegal kickbacks, **THIGPEN** generally did not memorialize the arrangements with the UDT Companies in a written contract, opting instead to communicate terms of compensation informally, by email, and through written designations on checks issued by AKRIVIS. However, in or around January 1, 2019, following passage of the Eliminating Kickbacks in Recovery Act (“EKRA”), **THIGPEN** entered into sham “independent contractor agreements” for “marketing and sales services,” with Company 1 and Company 4. Each contract included a cut-and-pasted statement of work, a flat rate for “marketing” services, a false representation that the UDT Company had not received kickbacks in the past ten years, and a false warranty that flat rate did not “relate” to the value of referrals. In reality, the “flat rate,” actually equated to roughly a per-month average of what each of the UDT Companies was previously paid by **THIGPEN** for referrals, and the UDT Companies continued to refer specimens.

5. Most of the doctors’ orders obtained by AKRIVIS and DYNAMIC from the UDT Companies were for definitive drug testing that was medically unnecessary, as **THIGPEN** knew.

6. Most of the doctors’ orders obtained by AKRIVIS and DYNAMIC from the UDT Companies were for definitive drug testing that was not requested by the referring provider, as **THIGPEN** knew.

7. Specifically, **THIGPEN** instructed the UDT Companies to solicit providers for AKRIVIS’s urine drug testing services by signing a so-called “standing order test protocol” provided by **THIGPEN**. Once a provider was solicited, AKRIVIS’s check-the-box requisition form, drafted by **THIGPEN**, and generally filled out by the UDT Companies or staff trained by AKRIVIS, authorized AKRIVIS to perform definitive urine testing for a set panel of over twenty-two substances, without a physician signature, for all patients, pursuant to a “standing order.” Patients and providers were instructed to direct all billing inquiries to AKRIVIS. Due to the

“standing order test protocol,” and although providers generally only requested presumptive urine drug testing, with limited exception, AKRIVIS ran and billed for fixed panels of definitive urine drug testing, for nearly every patient, on a standing basis.

8. From in or around March 2016 through May 2017, **THIGPEN**, through AKRIVIS, received education letters from Novitas Solutions, Inc., the MAC for Louisiana and Mississippi, containing specific guidance on Medicare’s medical necessity requirements for presumptive and definitive urine drug testing, including certain prohibitions on standing orders for definitive urine drug testing. **THIGPEN**, through AKRIVIS, also received numerous inquiries and claim denials from Humana Inc., a private insurance provider, again, concerning the medical necessity of definitive drug testing.

9. In response to the renewed scrutiny, **THIGPEN** did not stop the scheme but instead took steps to conceal it. In part, **THIGPEN** directed providers to sign a new “Toxicology Services Agreement,” which removed AKRIVIS’s prior *explicit* accommodations for standing orders, but **THIGPEN** did not inform providers as to the true nature, permissibility, and extent of the definitive urine drug tests AKRIVIS was running. To this end, the scheme remained unchanged, with providers continuing to request presumptive tests, while AKRIVIS ran and billed for definitive urine drug testing for full panels of substances on a standing basis.

10. In or around October 2019, CMS notified **THIGPEN**, through AKRIVIS, that CMS had suspended AKRIVIS from receiving Medicare payments effective September 27, 2019, citing “credible allegations of fraud” related to definitive urine drug testing.

11. Instead of ceasing urine drug testing, **THIGPEN**, in order to circumvent the suspension, did not notify providers of the suspension, and instead began billing for definitive urine drug testing for Medicare beneficiaries through DYNAMIC, but running the tests through

AKRIVIS, even though DYNAMIC was not licensed to provide urine drug testing. This practice continued until in or around January 2021, when CMS suspended DYNAMIC on “credible allegations of fraud” related to AKRIVIS’s suspension.

12. In total, **THIGPEN** and his co-conspirators, both known and unknown to the Grand Jury, submitted and caused AKRIVIS and DYNAMIC to submit approximately \$25.7 million in false and fraudulent claims to Medicare for definitive urine drug testing that was not medically necessary, procured through the payment of kickbacks and bribes, and not eligible for reimbursement.

Genetic Testing

13. Despite his knowledge of the Federal Anti-Kickback Statute, starting in or around April 2018, and while the definitive urine drug testing scheme was ongoing, **THIGPEN**, through AKRIVIS and DYNAMIC, began knowingly and willfully purchasing signed doctors’ orders and DNA specimens procured through the guise of telemedicine from Individual 6, Individual 7, and Reference Laboratory 1, for medically unnecessary genetic testing, for the purpose of submitting false and fraudulent claims to Medicare for reimbursement.

14. Individual 6, Individual 7, and other co-conspirators, both known and unknown to the Grand Jury, obtained access to thousands of elderly beneficiaries through in-person and telemarketing campaigns, inducing them to provide DNA samples and sign orders for purportedly free genetic testing. Individual 6 and Individual 7 forwarded the orders to physicians, employed by Telemedicine Company 1, among others, which the physicians would robo-sign, under the guise of telemedicine, in exchange for kickbacks. The physicians were not treating the beneficiaries, did not use the test results in any treatment of the beneficiaries, and did not conduct a proper telemedicine visit or consultation.

15. Individual 6 and Individual 7 then sold the samples and signed orders to laboratories, including AKRIVIS, in exchange for kickbacks and bribes paid by **THIGPEN**. Neither AKRIVIS nor DYNAMIC could perform genetic testing, so when **THIGPEN** received the samples and signed orders, he sent the samples to another laboratory to conduct the genetic tests, while he, through AKRIVIS and DYNAMIC, billed Medicare and collected the reimbursement.

16. **THIGPEN**, through DYNAMIC, paid Company 6 kickbacks in exchange for genetic testing orders referred to and billed by AKRIVIS.

17. **THIGPEN** drafted AKRIVIS-branded requisition forms for genetic testing, incorporating Medicare rules and regulations for diagnostic testing, as well as other AKRIVIS-branded materials, and emailed materials to Individual 6 and Individual 7 for forwarding onto numerous physicians employed by Telemedicine Company 1.

18. **THIGPEN** and his co-conspirators, both known and unknown to the Grand Jury, then replicated the above referenced scheme with Reference Laboratory 1, while also creating a sham contract for so-called “reference laboratory services” to disguise the nature of the kickbacks.

19. In reality, the payments were not for legitimate reference laboratory services, but rather were kickbacks and bribes paid to Reference Laboratory 1 in exchange for procuring and testing DNA specimens and signed doctors’ orders, often through purported telemedicine. These tests could then be billed by AKRIVIS and DYNAMIC, which **THIGPEN** and Reference Laboratory 1 did, because they believed that there was a more favorable regulatory environment in AKRIVIS’s MAC region than the region of Reference Laboratory 1.

20. The signed doctors' orders and DNA specimens obtained by AKRIVIS and DYNAMIC from Reference Laboratory 1, Individual 6, and Individual 7 were for medically unnecessary genetic testing, as **THIGPEN** knew.

21. In total, **THIGPEN** and his co-conspirators, both known and unknown to the Grand Jury, submitted and caused AKRIVIS and DYNAMIC to submit approximately \$28.9 million in false and fraudulent claims to Medicare for genetic testing that was not medically necessary, was procured through the payment of kickbacks and bribes, and was not eligible for reimbursement.

Scope of Scheme

22. From in or around March 2014, and continuing through in or around January 2021, in the Eastern District of Louisiana, and elsewhere, **THIGPEN** caused AKRIVIS and DYNAMIC to submit over \$54 million in false and fraudulent claims to Medicare for definitive urine drug testing and genetic testing that was ineligible for Medicare reimbursement because the testing was not medically necessary and was procured through the payment of illegal kickbacks and bribes. Of these claims, Medicare reimbursed AKRIVIS and DYNAMIC over \$9.5 million.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2 – 8
(Health Care Fraud)

A. AT ALL TIMES RELEVANT:

The General Allegations Section of this Indictment is re-alleged and incorporated by reference as if fully set forth herein.

B. HEALTH CARE FRAUD:

On or about the dates set forth below, with respect to each count, in the Eastern of Louisiana, and elsewhere, the defendant, **DAVID CHRISTOPHER THIGPEN**, in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and

willfully execute, and attempt to execute, and aided and abetted others in executing, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money owned by, and under the custody and control of, Medicare.

C. PURPOSE OF THE SCHEME:

The Purpose of the Conspiracy section of Count 1 of this Indictment is re-alleged and incorporated by reference as if fully set forth herein.

D. THE SCHEME AND ARTIFICE:

The Manner and Means section of Count 1 of this Indictment is re-alleged and incorporated by reference as a description of the scheme and artifice.

E. ACTS IN EXECUTION OF THE SCHEME:

In order to execute and attempt to execute the scheme to defraud and to obtain money and property, and to accomplish the objects of the scheme, the defendant, **DAVID CHRISTOPHER THIGPEN**, submitted, caused others to submit, and aided and abetted others in submitting, the following false and fraudulent claims, seeking the identified dollar amounts, and representing that such benefits, items, and services were medically necessary and eligible for Medicare reimbursement, with each execution set forth below forming a separate count:

Count	Beneficiary	Approx. Claim Date	Billing Lab	Description of Claim	Principal Diagnosis Code	Approx. Amount Billed
2	Beneficiary 1	02/07/2018	AKRIVIS	Definitive urine drug testing, 22+ substances	Long term (current) use of opiate analgesic	\$800
3	Beneficiary 2	03/18/2018	AKRIVIS	Definitive urine drug testing, 22+ substances	Long term (current) use of opiate analgesic	\$800

Count	Beneficiary	Approx. Claim Date	Billing Lab	Description of Claim	Principal Diagnosis Code	Approx. Amount Billed
4	Beneficiary 3	10/25/2018	AKRIVIS	Definitive urine drug testing, 22+ substances	Long term (current) use of opiate analgesic	\$805
5	Beneficiary 4	08/27/2020	DYNAMIC	Definitive urine drug testing, 22+ substances	Long term (current) use of opiate analgesic	\$805
6	Beneficiary 5	12/13/2018	AKRIVIS	Gene Analysis; Molecular Pathology Procedure	Personal history of other malignant neoplasm of bronchus and lung	\$19,320
7	Beneficiary 6	03/21/2019	AKRIVIS	Gene Analysis; Molecular Pathology Procedure	Genetic susceptibility to other malignant neoplasm	\$19,370
8	Beneficiary 7	05/30/2019	AKRIVIS	Gene Analysis; Molecular Pathology Procedure	Family history of malignant neoplasm of breast	\$19,370

Each of the above is a violation of Title 18, United States Code, Sections 1347 and 2.

COUNT 9

(Conspiracy to Pay and Receive Health Care Kickbacks)

A. AT ALL TIMES RELEVANT:

The General Allegations section of this Indictment is re-alleged and incorporated by reference as if fully set forth herein.

B. THE CONSPIRACY:

Beginning in or around August 2014, and continuing through in or around March 2020, in the Eastern District of Louisiana, and elsewhere, the defendant, **DAVID CHRISTOPHER THIGPEN**, did knowingly and willfully, that is, with the intent to further the objects of the conspiracy, combine, conspire, confederate, and agree with others known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

a. to violate Title 42, United States Code, Sections 1320a-7b(b)(2)(A)-(B), by offering and paying any remuneration, including kickbacks and bribes, directly and indirectly,

overtly and covertly, in cash and in kind, including by wire transfer, to a person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, that is, Medicare, and to purchase, lease, order, and arrange for and recommend purchasing, leasing, and ordering any good, facility, services, and item for which payment may be made in whole or in part under a Federal health care program, that is, Medicare; and

b. to violate Title 42, United States Code, Sections 1320a-7b(b)(1)(A)-(B), by soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by wire transfer, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, that is, Medicare, and 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 or in part under a Federal health care program, that is, Medicare.

C. PURPOSE OF THE CONSPIRACY:

It was a purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves and others by, among other things:

1. offering and paying kickbacks and bribes in exchange for the referral of beneficiaries and doctors' orders for definitive urine drug testing and genetic testing to AKRIVIS and DYNAMIC;
2. submitting and causing the submission of claims to Medicare through AKRIVIS and DYNAMIC for definitive urine drug testing and genetic testing;
3. concealing and causing the concealment of kickbacks and bribes; and

4. diverting kickback proceeds for the personal use and benefit of the defendant and others and to further the conspiracy.

D. MANNER AND MEANS OF THE CONSPIRACY:

The manner and means by which the defendant and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things, the following:

1. **THIGPEN** falsely certified to Medicare that he, as well as AKRIVIS and DYNAMIC, would comply with all Medicare rules and regulations, and federal laws, including that he would not knowingly present or cause to be presented a false and fraudulent claim for payment by Medicare and that he would comply with the Federal Anti-Kickback Statute.

Urine Drug Testing

2. **THIGPEN** and his co-conspirators, both known and unknown to the Grand Jury, offered and paid kickbacks and bribes from AKRIVIS, to purported marketers, including the UDT Companies, in exchange for referring beneficiaries of solicited providers for definitive urine drug testing that was medically unnecessary in order to bill Medicare for definitive urine drug testing and collect reimbursement.

3. **THIGPEN** paid the UDT Companies a specific dollar amount based on the volume and value of the referrals. For example, **THIGPEN** paid Company 1 approximately \$125 per referral. **THIGPEN** paid Company 2 approximately 50% of the reimbursements obtained from Medicare in exchange for their referrals. In some cases, the UDT Companies also worked in-house at the providers' clinic and filled out the requisition forms to ensure definitive urine drug testing was ordered, communicating with **THIGPEN** regularly.

4. In order to conceal the illegal kickbacks, **THIGPEN** generally did not memorialize the arrangements with the UDT Companies in a written contract, opting instead to communicate

arrangements informally, either by email or through written designations on checks issued by AKRIVIS. However, in or around January 1, 2019, **THIGPEN** and others, including Company 1 and Company 4, drafted and/or executed sham contracts to conceal the nature and source of the kickbacks and bribes by describing them as payments for legitimate “marketing” services when, in fact, the “flat fee” was just a historical average monthly rate of kickback payments.

5. In exchange for the referrals, **THIGPEN**, through AKRIVIS, paid kickbacks and bribes to the UDT Companies in the following amounts:

- a. from in or around August 2014 through March 2020, **THIGPEN** paid Individual 1 and Individual 2, through Company 1, approximately \$1.29 million;
- b. from in or around October 2014 through March 2019, **THIGPEN** paid Individual 3, through Company 2 and Company 3, approximately \$753,000;
- c. from in or around September 2014 through August 2019, **THIGPEN** paid Individual 4, through Company 4, approximately \$663,000; and
- d. from in or around November 2014 through December 2017, **THIGPEN** paid Individual 5, through Company 5, approximately \$181,000.

6. As the result of the false and fraudulent claims submitted to Medicare by **THIGPEN** for definitive urine drug testing, Medicare paid AKRIVIS and DYNAMIC approximately \$5 million.

Genetic Testing

7. **THIGPEN** and his co-conspirators, both known and unknown to the Grand Jury, offered and paid kickbacks and bribes from AKRIVIS and DYNAMIC to purported marketers, including Individual 6 and Individual 7 (through Company 6) and Reference Laboratory 1, in

exchange for referrals of beneficiaries and signed doctors' orders for medically unnecessary genetic testing, in order to bill Medicare for the medically unnecessary testing and collect reimbursement. **THIGPEN** knew that the doctors' orders were procured through the guise of telemedicine and were medically unnecessary.

8. In order to conceal the illegal kickbacks, **THIGPEN** did not memorialize the payment arrangement with Company 6 in a written contract for services, but instead communicated arrangements with Individual 6 and Individual 7 informally, often in person or email.

9. **THIGPEN** and others also executed a sham contract to conceal the nature and source of the kickbacks and bribes to Reference Laboratory 1 by describing them as payments for legitimate "reference laboratory" services when, in fact, they were kickbacks, and the rate of compensation—ninety percent of collections (defined as reimbursement received from Medicare for testing performed) plus cost of goods sold—was vastly in excess of the market rate for reference laboratory services and was tied to the volume and value of reimbursement.

10. In total, **THIGPEN** caused at least \$10,000 in kickbacks and bribes to be paid to Company 6 and at least \$2 million in kickbacks and bribes to be paid to Reference Laboratory 1, all in exchange for referrals of beneficiaries and signed doctors' orders for genetic testing.

11. As the result of the false and fraudulent claims submitted to Medicare by **THIGPEN** for genetic testing, Medicare paid AKRIVIS and DYNAMIC approximately \$4.5 million.

E. OVERT ACTS:

In furtherance of the conspiracy, and to accomplish its objects and purpose, at least one co-conspirator committed and caused to be committed, in the Eastern District of Louisiana, and elsewhere, at least one of the following overt acts, among others:

Urine Drug Testing

1. On or about October 24, 2018, **THIGPEN** issued a check, on behalf of AKRIVIS, from the Akrivis Account, to Company 1, for \$28,250.00, with the memo line reading “226-Aug,” which meant 226 samples referred and equated to \$125 per sample.

2. On or about January 1, 2019, **THIGPEN**, on behalf of AKRIVIS, entered into a contract with Company 1 that falsely stated that payments to Company 1 would not take into account any volume or value of referrals generated between the parties and purported to compensate Company 1 on a flat-fee basis and included a backwards-looking certification that Company 1 had not accepted any kickbacks over the past ten years.

3. On or about February 27, 2019, **THIGPEN** issued a check on behalf of AKRIVIS, from the Akrivis Account to Company 1 for \$26,500.00, with the memo line reading “Dec 212,” which meant 212 samples referred, and equated to \$125 per sample.

Genetic Testing

4. On or about April 20, 2018, **THIGPEN** emailed Individual 6 a Non-Disclosure Agreement between AKRIVIS and Company 6 that governed the sharing of confidential and proprietary information concerning “the testing of PGX samples.”

5. On or about April 30, 2018, **THIGPEN** emailed Individual 6, “I’m ready to get started and do a test run as soon as possible of 20 tests.”

6. On or about July 1, 2018, **THIGPEN**, on behalf of AKRIVIS, entered into a contract with Reference Laboratory 1 that purported to compensate Reference Laboratory 1 for certain reference laboratory services, but paid Reference Laboratory 1 the cost of goods sold for PGx and CGx testing plus ninety percent of net collections for PGx and CGx testing, with “net collections,” defined as “the total sum amounts received by AKRIVIS for laboratory testing

services provided in the agreement less [cost of goods sold].”

7. On or about March 19, 2019, **THIGPEN** emailed an employee of Reference Laboratory 1, “I already have a reference agreement in place and am the billing laboratory for specimens that are marketed by [Reference Laboratory 1], however I would like a separate reference agreement for those that are directly marketed and acquired by AKRIVIS.”

8. On or about April 23, 2019, **THIGPEN** issued a check, on behalf of AKRIVIS, from the Akrivis Account, to Reference Laboratory 1, for \$375,916.14, with the memo line reading “Invoice 997 Net Coll,” with “net coll” meaning “net collections.”

9. On or about December 23, 2019, **THIGPEN** issued a check, on behalf of DYNAMIC, from the Dynamic Account, to Company 6, for \$10,085.66.

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

COUNTS 10 – 12

(Offering and Paying Health Care Kickbacks)

A. AT ALL TIMES RELEVANT:

The General Allegations section of this Indictment is re-alleged and incorporated by reference as if fully set forth herein.

B. OFFERING AND PAYING HEALTH CARE KICKBACKS:

On or about the dates set forth below, with respect to each count, in the Eastern District of Louisiana, and elsewhere, the defendant, **DAVID CHRISTOPHER THIGPEN**, did knowingly and willfully offer and pay remuneration, that is, kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, including by wire transfer, to a person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, that is, Medicare, and to purchase, lease, order, and arrange for and recommend

purchasing, leasing, and ordering any good, facility, services, and item for which payment may be made in whole or in part under a Federal health care program, that is, Medicare, as set forth below:

Count	Approx. Date of Kickback Payment	Approx. Amount	Description
10	10/24/18	\$28,250	Check issued from Akrivis Account to Company 1
11	02/27/19	\$26,500	Check issued from Akrivis Account to Company 1
12	04/23/19	\$375,916	Check issued from Akrivis Account to Reference Laboratory 1

Each of the above is a violation of Title 42, United States Code, Sections 1320a-7b(b)(2) and Title 18, United States Code, Section 2.

NOTICE OF FORFEITURE

1. The allegations of Counts 1 through 12 of this Indictment are incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States.

2. As a result of the offenses alleged in Counts 1 through 12, the defendant shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any and all property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses.

3. If any of the property described above as being subject to forfeiture, 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 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 shall seek a money judgment and, pursuant to Title 21, United States Code, Section 853(p), forfeiture of any other property of the defendant up to the value of said property.

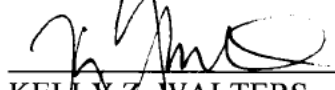
A TRUE BILL:

DUANE A. EVANS
UNITED STATES ATTORNEY



NICHOLAS MOSES
Assistant United States Attorney

LORINDA I. LARYEA
ACTING CHIEF, FRAUD SECTION
UNITED STATES DEPARTMENT OF JUSTICE



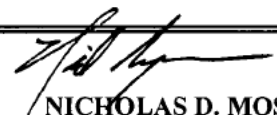
KELLY Z. WALTERS
Trial Attorney
Criminal Division, Fraud Section
United States Department of Justice

New Orleans, Louisiana
July 14, 2022

No. _____

UNITED STATES DISTRICT COURTEastern *District of* LouisianaCriminal *Division***THE UNITED STATES OF AMERICA**

vs.

DAVID CHRISTOPHER THIGPEN**INDICTMENT****INDICTMENT FOR CONSPIRACY TO COMMIT
HEALTH CARE FRAUD, HEALTH CARE FRAUD,
CONSPIRACY TO PAY AND RECEIVE KICKBACKS,
AND OFFER AND PAYMENT OF KICKBACKS****VIOLATIONS:****18 U.S.C. §§ 1349, 1347, 371, and 2
42 U.S.C. § 1320a-7b(b)(2)***A true bill.**Filed in open court this* _____ *day of* _____
_____ *A.D. 2022.**Clerk**Bail, \$* _____
NICHOLAS D. MOSES
Assistant United States Attorney