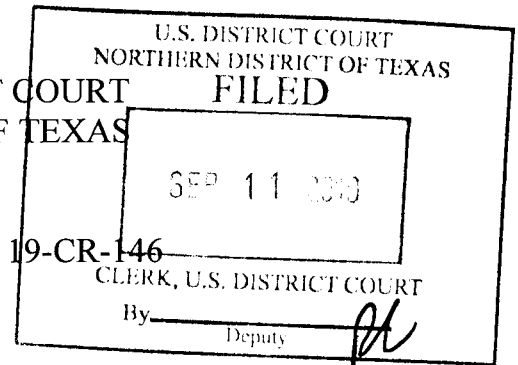


ORIGINAL

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



UNITED STATES OF AMERICA

Criminal No. 19-CR-146

v.

LEAH HAGEN (01)  
MICHAEL HAGEN (02)

**SUPERSEDING INDICTMENT**

The Grand Jury charges:

**General Allegations**

At all times material to this superseding indictment, unless otherwise specified:

**The Defendants and Related Entities**

1. In or around the charged period, Metro DME Supply, LLC (“Metro DME Supply”) and Ortho Pain Solutions, LLC (“Ortho Pain Solutions”) were Texas business entities purportedly doing business in Arlington, Texas.
2. In or around the charged period, **Leah Hagen**, a resident of Tarrant County, Texas, was an owner and operator of Metro DME Supply and Ortho Pain Solutions.
3. In or around the charged period, **Michael Hagen**, a resident of Tarrant County, Texas, was an owner and operator of Metro DME Supply and Ortho Pain Solutions.
4. In or around the charged period, Herb Kimble was the founder, part-owner, and manager of Company A and Company B, which operated international call centers.

**The Medicare Program and Durable Medical Equipment (Generally)**

5. The Medicare Program (“Medicare”) was a federal healthcare program providing benefits to individuals who were sixty-five years of age or older, or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services (“CMS”), a federal agency under the United States Department of Health and Human Services. Medicare was a “healthcare benefit program” as defined by Title 18, United States Code, Section § 24(b).

6. Medicare was subdivided into multiple Parts. Medicare Part A covered health services provided by hospitals, skilled nursing facilities, hospices, and home health agencies. Medicare Part B covered physician services and outpatient care, including an individual’s access to durable medical equipment (“DME”), such as orthotic devices and wheelchairs. Parts A and B were known as the “original fee-for-service” Medicare program, in which Medicare paid health care providers fees for services rendered to beneficiaries.

7. Individuals who qualified for Medicare benefits were commonly referred to as Medicare “beneficiaries.” Each beneficiary was given a Medicare identification number.

8. Orthotic devices were a type of DME that included rigid and semi-rigid devices such as ankle braces, knee braces, back braces, elbow braces, wrist braces and hand braces (collectively “orthotics”).

9. DME companies, physicians, and other healthcare providers that provided services to Medicare beneficiaries were referred to as Medicare “providers.” To

participate in Medicare, providers were required to submit an application in which the providers agreed to comply with all Medicare-related laws and regulations. If Medicare approved a provider's application, Medicare assigned the provider a Medicare "provider number." A healthcare provider with a Medicare provider number could file claims with Medicare to obtain reimbursement for services rendered to beneficiaries.

10. Enrolled Medicare providers agreed to abide by the policies and procedures, rules, and regulations governing reimbursement. To receive Medicare funds, enrolled providers were required to abide by the Anti-Kickback Statute and other laws and regulations. Providers were given access to Medicare manuals and services bulletins describing billing procedures, rules, and regulations.

11. Medicare reimbursed DME companies and other healthcare providers for services rendered to beneficiaries. To receive payment from Medicare, providers submitted or caused the submission of claims to Medicare, either directly or through a billing company.

12. A Medicare claim for DME reimbursement was required to set forth, among other things, the beneficiary's name and unique Medicare identification number, the equipment provided to the beneficiary, the date the equipment was provided, the cost of the equipment, and the name and unique physician identification number of the physician who prescribed or ordered the equipment.

13. A claim for DME submitted to Medicare qualified for reimbursement only if it were medically necessary to the treatment of the beneficiary's illness or injury and prescribed by the beneficiary's physician.

Part C - Medicare Advantage

14. Medicare Part C, also known as the “Medicare Advantage” Program, provided Medicare beneficiaries with the option to receive their Medicare benefits through private managed care plans, including health maintenance organizations and preferred provider organizations. Medicare Advantage provided beneficiaries with all of the same services provided by an original fee-for-service Medicare plan, in addition to mandatory supplemental benefits and optional supplemental benefits.

15. To receive Medicare Advantage benefits, a beneficiary was required to enroll in a managed care plan operated by a private company approved by Medicare. Those companies were often referred to as Medicare Advantage plan “sponsors.” A beneficiary’s enrollment in a Medicare Advantage plan was voluntary.

16. Rather than reimbursing based on the extent of the services provided, as CMS did for providers enrolled in original fee-for-service Medicare, CMS made fixed, monthly payments to a plan sponsor for each Medicare Advantage beneficiary enrolled in one of the sponsor’s plans, regardless of the services rendered to the beneficiary that month or the cost of covering the beneficiary’s health benefits that month.

17. Medicare Advantage beneficiaries chose to enroll in a managed care plan administered by private health insurance companies, health maintenance organizations, or preferred provider organizations. A number of entities were contracted by CMS to provide managed care to Medicare Advantage beneficiaries through various approved plans. Such plans covered DME and related health care benefits, items, and services. Among its responsibilities, these Medicare Advantage plans received, adjudicated and

paid the claims of authorized suppliers seeking reimbursements for the cost of DME and related health care benefits, items, or services supplied to Medicare Advantage beneficiaries.

**COUNT ONE**

**Conspiracy to Defraud the United States and to  
Pay and Receive Health Care Kickbacks  
(Violation of 18 U.S.C. § 371 (42 U.S.C. §§ 1320a-7b(b)(1) and (2))**

18. All previous paragraphs of this superseding indictment are realleged and incorporated by reference as though fully set forth herein.

19. From in or around March 2016 through in or around January 2019, the exact dates being unknown to the Grand Jury, in the Dallas Division of the Northern District of Texas, and elsewhere, **Leah Hagen** and **Michael Hagen** did knowingly and willfully combine, conspire, confederate and agree with each other, and others known and unknown to the grand jury, to 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 United States Department of Health and Human Services in its administration and oversight of the Medicare program; and

b. to violate Title 42, United States Code, Section 1320a-7b(b)(1), by knowingly and willfully soliciting and receiving remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in return for referring individuals for the furnishing and arranging for the furnishing of any item and service for which payment

may be made in whole or in part by Medicare; and for the purchasing, leasing, ordering and arranging for and recommending the purchasing, leasing and ordering of any good, item and service for which payment may be made in whole and in part by a Federal health care program, that is, Medicare; and

c. to violate Title 42, United States Code, Section 1320a-7b(b)(2), by knowingly and willfully offering and paying remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in return for referring individuals for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part by Medicare; and for the purchasing, leasing, ordering and arranging for and recommending the purchasing, leasing and ordering of any good, item and service for which payment may be made in whole and in part by a Federal health care program, that is, Medicare.

**Object/Purpose of the Conspiracy**

20. It was an object/purpose of the conspiracy for **Leah Hagen** and **Michael Hagen** and their co-conspirators to unlawfully enrich themselves and others known and unknown to the Grand Jury by offering, paying, soliciting and receiving kickbacks and bribes in exchange for the referral of Medicare beneficiary information that could be used to submit and cause the submission of false claims to Medicare on behalf of Metro DME Supply and Ortho Pain Solutions.

**Manner and Means of the Conspiracy**

21. The manner and means by which **Leah Hagen, Michael Hagen**, and their co-conspirators sought to accomplish the purpose and objects of the conspiracy included, among other things:

22. On or about February 7, 2013, **Leah Hagen** and **Michael Hagen** enrolled Metro DME Supply as a Medicare provider, promising to comply with all Medicare rules and regulations, including that Metro DME Supply would refrain from violating the federal Anti-Kickback Statute.

23. Thereafter, **Leah Hagen** and **Michael Hagen**, through Metro DME Supply, paid illegal kickbacks and bribes in the amount of approximately \$6.6 million to Herb Kimble, through Company A and Company B, in exchange for completed, signed prescriptions for DME and other Medicare-required documents (collectively referred to as “doctors’ orders”).

24. Over the course of the conspiracy, Metro DME Supply billed Medicare for DME services purportedly provided to Medicare beneficiaries who resided in Dallas County, Texas.

25. As the result of an audit, in or about August 2017, CMS suspended Medicare payments to Metro DME Supply, notifying **Leah Hagen** that its medical review of approximately 833 claims resulted in a 100% denial rate.

26. In or about September 2017, Metro DME Supply voluntarily terminated its operations and its certification with original fee-for-service Medicare.

27. Beginning in or about September 2017, **Leah Hagen** and **Michael Hagen**, through Ortho Pain Solutions, paid illegal kickbacks and bribes in the amount of approximately \$8.2 million to Herb Kimble, through Company A and Company B, in exchange for doctors' orders.

28. **Leah Hagen** and **Michael Hagen** submitted claims to fee-for-service Medicare and Medicare Advantage plan sponsors for reimbursement based on doctors' orders generated often in the absence of any preexisting doctor-patient relationship or physical examination, and frequently based solely on a short telephonic conversation.

29. To facilitate and conceal the payment of kickbacks and bribes from Medicare and state regulators, **Leah Hagen**, **Michael Hagen**, Herb Kimble through Company A and Company B, and others created sham contracts, invoices, and other documentation that disguised the payments as for marketing and business process outsourcing, among other services.

30. **Leah Hagen** and **Michael Hagen** submitted and caused the submission of at least approximately \$17 million in claims to original fee-for-service Medicare for DME, the vast majority of which were the product of illegal kickbacks and bribes. Medicare paid Metro DME Supply at least approximately \$7 million. These false and fraudulent claims were based upon the doctors' orders that Herb Kimble, through Company A and Company B, provided to **Leah Hagen** and **Michael Hagen** in exchange for illegal kickbacks and bribes.



**Overt Acts**

31. 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:

a. On or about January 26, 2019, **Leah Hagen** and **Michael Hagen** discussed with Herb Kimble that they paid him approximately \$280 per DME product in exchange for completed doctors' orders.

b. On or about April 4, 2016, **Leah Hagen**, on behalf of Metro DME Supply, signed a Business Process Outsourcing and Call Center Services Agreement with Company A.

c. On or about April 4, 2016, **Leah Hagen**, on behalf of Metro DME Supply, signed a Marketing Services Agreement with Company B.

d. On or about April 7, 2016, **Leah Hagen** emailed Herb Kimble, **Michael Hagen**, and others, stating, "We are ready to get this marketing campaign rolling. [...] We approved the sample telemed RX that were sent over. We agree to do lumbar and wrist – Medicare for now."

e. On or about August 5, 2016, **Leah Hagen** emailed Herb Kimble and others, expressing her concern that the number of doctors' orders was not on target.

f. On or about September 20, 2017, the **Leah Hagen** emailed representatives of Company A, including Herb Kimble, and **Michael Hagen**, to provide signed agreements, for purported marketing and business process

outsourcing services, on behalf of Ortho Pain Solutions. In the email, **Leah Hagen** stated, “Here are the signed copies, also we have new emails [smiley face] we look forward to doing business with you.”

**COUNT TWO**  
**Conspiracy to Commit Money Laundering**  
**(In violation of 18 U.S.C. § 1956(h))**

32. The Grand Jury re-alleges and incorporates by reference all previous paragraphs as if fully alleged herein.

33. From in or about March 2016 through in or about January 2019, in the Dallas Division of the Northern District of Texas and elsewhere, **Leah Hagen** and **Michael Hagen** did knowingly and willfully combine, conspire, confederate, and agree with others, known and unknown to the Grand Jury, including Herb Kimble, to commit offenses under Title 18, United States Code, Section 1956, namely, to knowingly transport, transmit and transfer monetary instruments and funds from a place in the United States to a place outside of the United States, with the intent to promote the carrying on of specified unlawful activity, namely, conspiracy to defraud the United States and to pay and receive health care kickbacks, in violation of Title 18, United States Code, Section 371, in violation of Title 18, United States Code, Section 1956(a)(2)(A).

All in violation of Title 18, United States Code, Sections 1956(h) and 2.

**Forfeiture Notice**  
**(18 U.S.C. §§ 982(a)(1) and 982(a)(7))**

34. Pursuant to 18 U.S.C. § 982(a)(7), upon conviction of Count One, the defendants, **Leah Hagen** and **Michael Hagen** shall forfeit to the United States, any property, real or personal, which constitutes or is derived from proceeds traceable to the violation.

35. Pursuant to 18 U.S.C. § 982(a)(1), upon conviction of Count Two, **Leah Hagen** and **Michael Hagen** shall forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

36. Pursuant to 21 U.S.C. § 853(p), 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.

(Continued on the next page.)

A TRUE BILL



FOREPERSON

ERIN NEALY COX  
UNITED STATES ATTORNEY

ROBERT ZINK  
U.S. Department of Justice  
Criminal Division, Fraud Section  
Chief

ALLAN J. MEDINA  
U.S. Department of Justice  
Criminal Division, Fraud Section  
Acting Deputy Chief

A handwritten signature in cursive script, reading "Brynn A. Schiess", is written over a horizontal line.

BRYNN A. SCHIESS  
Trial Attorney  
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FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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THE UNITED STATES OF AMERICA

v.

LEAH HAGEN (01)  
MICHAEL HAGEN (02)

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SUPERSEDING INDICTMENT

18 U.S.C. § 371 (42 U.S.C. §§ 1320a-7b(b)(1) and (2))  
Conspiracy to Defraud the United States and to Pay and Receive Health Care Kickbacks  
(Count 1)

18 U.S.C. § 1956(h)  
Conspiracy to Commit International Promotion Money Laundering  
(Count 2)

18 U.S.C. §§ 982(a)(1) and 982(a)(7)  
Forfeiture Notice

2 Counts

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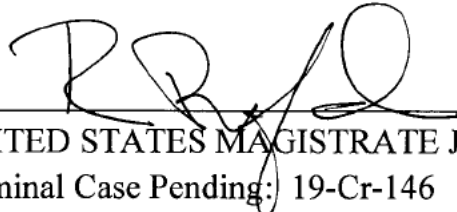
A true bill rendered

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DALLAS

  
~~FOREPERSON~~

Filed in open court this 11 day of September, 2019.

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**No Warrant Needed**  
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UNITED STATES MAGISTRATE JUDGE  
Criminal Case Pending: 19-Cr-146