

ORIGINAL

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NORTHERN DIST. OF TX
FILED

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

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UNITED STATES OF AMERICA

v.

No. **3 - 21 CR 0438 - N**

CLIFFORD H. POWELL III (01)
CHRISTIAN W. ARENDT (02)

INFORMATION

The Acting United States Attorney charges that:

General Allegations

At all times material to this Information,

1. **Clifford Powell, Christian Arendt**, and their co-conspirators unlawfully submitted and caused to be submitted false and fraudulent claims to Federal health care programs, including Medicare, for prescriptions for genetic tests. Medicare paid approximately \$38 million on these false and fraudulent claims. These prescriptions, as the defendants knew and intended, were, among other things, medically unnecessary, not provided as represented, not eligible for reimbursement, and induced through the payment and receipt of unlawful kickbacks and bribes in violation of the Federal Anti-Kickback Statute. **Powell, Arendt**, and their co-conspirators distributed payments from Federal health care programs among themselves to unlawfully enrich and benefit themselves and others.

The Defendants and Related Individuals and Entities

2. In or around the charged period:

a. Momentum Sales & Marketing LLC (“Momentum”) was a business entity operating out of New Jersey and Florida that purported to market genetic tests to Medicare beneficiaries. Momentum maintained an account at Wells Fargo Bank ending in x4188 (the “x4188 Account”), among others.

b. **Clifford Powell**, a resident of Bradenton, Florida, was a part-owner and operator of Momentum.

c. **Christian Arendt**, a resident of Holmes Beach, Florida, was a part-owner and operator of Momentum.

d. The following individuals were marketers and recruiters for Momentum: Matthew Harrington, a United States citizen who resided in Florida; Miranda Harrington, a United States citizen who resided in Florida; and Michael Speer, a United States citizen who resided in Georgia.

e. Matthew Harrington and Miranda Harrington were part-owners and operators of MBM Solutions LLC (“MBM Solutions”), a Florida business entity that received kickbacks and bribes from Momentum through electronic deposit into its bank accounts.

f. Michael Speer, along with Person A, was a part-owner and operator of Center Street Marketing LLC dba Semiotic Concepts (“Center Street”), a Georgia business entity that received kickbacks and bribes from Momentum through electronic deposit into its bank accounts.

Health Insurance Programs

3. The Medicare Program (“Medicare”) was a federal health care program providing benefits to individuals who were the age of 65 or older, or disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services (“HHS”), through its agency, the Centers for Medicare Services (“CMS”), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare “beneficiaries.”

4. 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).

5. Medicare covered, among other things, medical services provided by physicians, medical clinics, laboratories, and other qualified health care providers, and office services and outpatient care—including the ordering of diagnostic testing—that were medically necessary and ordered by licensed medical doctors or other qualified health care providers.

6. Physicians, clinics, laboratories, and other health care providers that provided services to Medicare beneficiaries were able to apply for and obtain a “provider number.” A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries.

7. To receive Medicare reimbursement, providers had to apply and execute a written provider agreement, known as CMS Form 855. The Medicare application was

required to be signed by an authorized representative of the provider. The application contained certifications that the provider agreed to abide by the Medicare laws and regulations, including the Federal Anti-Kickback Statute, and that the provider “will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare and will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.”

8. Medicare paid for claims only if the items or services were medically reasonable, medically necessary for the treatment or diagnosis of the beneficiary’s illness or injury, documented, and actually provided as represented to Medicare. Medicare would not pay for items or services that were procured through kickbacks and bribes.

Genetic Testing

9. Cancer genomic (“CGx”) testing used DNA sequencing to detect mutations in genes that could indicate a higher risk of developing certain types of cancers in the future. Pharmacogenetic (“PGx”) testing used DNA sequencing to assess how the body’s genetic makeup would affect the response to certain medications. Genetic tests that could predict future risks of cardiac conditions and diseases such as Parkinson’s and Alzheimer’s were also available. All such tests were generally referred to as “genetic testing.” Genetic testing was not a method of diagnosing whether an individual had a disease, such as cancer, at the time of the test.

10. To conduct genetic testing, a laboratory needed to obtain a DNA sample (“specimen”) from the beneficiary. Specimens were typically obtained from the beneficiary’s saliva by using a cheek swab to collect sufficient cells to provide a genetic

profile. The specimen was then submitted to the laboratory to conduct a genetic test.

11. DNA specimens were submitted along with laboratory requisition forms that identified the beneficiary, the beneficiary's insurance information, and the specific test to be performed. In order for laboratories to submit claims to Medicare for genetic testing, the tests had to be approved by a physician or other authorized medical professional who attested to the medical necessity of the test.

12. Medicare did not cover diagnostic testing that was "not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." Title 42, United States Code, Section 1395y(a)(1)(A). Except for certain statutory exceptions, Medicare did not cover "examinations performed for a purpose other than treatment or diagnosis of a specific illness, symptoms, complaint or injury." Title 42, Code of Federal Regulations, Section 411.15(a)(1).

13. If diagnostic testing were necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, Medicare imposed additional requirements before covering the testing. Title 42, Code of Federal Regulations, Section 410.32(a) provided that "all 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." It also provided that "[t]ests not ordered by the physician who is treating the beneficiary are not reasonable and necessary."

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))

14. All previous paragraphs of this information are realleged and incorporated by reference as if fully alleged herein.

15. From in or around May 2018 through in or around September 2019, the exact dates being unknown, in the Dallas Division of the Northern District of Texas, and elsewhere, **Clifford Powell** and **Christian Arendt**, did knowingly and willfully combine, conspire, confederate, and agree with Matthew Harrington, Miranda Harrington, Michael Speer, Person A, William Siveter, James Egan, and others known and unknown, to knowingly and willfully 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 Medicare;

b. to violate Title 42, United States Code, Section 1320a-7b(b)(1), by soliciting and receiving remuneration, specifically, 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 a Federal health care program, that is, 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 offering and paying remuneration, specifically, 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 a Federal health care program, that is, 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

16. It was an object/purpose of the conspiracy for **Powell, Arendt**, and their co-conspirators to unlawfully enrich themselves and others known and unknown by: (a) offering, paying, soliciting, and receiving kickbacks and bribes in exchange for beneficiary insurance information and genetic specimens that laboratories used to submit false and fraudulent claims to Medicare; (b) concealing the payment and receipt of kickbacks and bribes and the receipt and transfer of proceeds from the fraud; and (c) diverting proceeds of the fraud for their personal use and benefit, for the use and benefit of others, and to further the fraud.

Manner and Means of the Conspiracy

17. The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

18. **Powell** and **Arendt** and their co-conspirators gained access to Medicare beneficiaries' insurance information and genetic specimens through various means of solicitation, including appearing at health fairs.

19. Through their company Momentum, **Powell** and **Arendt** oversaw a network of recruiters and marketers, including Matthew Harrington, Miranda Harrington, Michael Speer, Person A, and others, who they instructed to target Medicare beneficiaries in the Northern District of Texas and elsewhere, and to induce those beneficiaries to accept genetic tests that were medically unnecessary, not provided as represented, and not eligible for reimbursement.

20. Momentum recruiters and marketers collected genetic specimens and personal identifying information from Medicare beneficiaries, in the Northern District of Texas and elsewhere, which were used to generate completed orders or requisitions for genetic tests and other Medicare-required documents (collectively referred to as "doctors' orders") that were, in turn, used to support false and fraudulent claims to Medicare for those tests.

21. The doctors' orders for genetic tests were signed by physicians and other licensed medical professionals who may have not seen, spoken to, or otherwise treated the Medicare beneficiaries, and in the absence of any physician-patient relationship. The

physicians and other licensed medical professionals were not treating the beneficiaries for whom they signed orders for CGx tests for cancer or symptoms of cancer, and they did not use the test results in the treatment of those beneficiaries.

22. In order to increase revenue for themselves and their co-conspirators, **Powell** and **Arendt** paid or caused payments to be made to physicians and other licensed medical professionals to induce them to sign doctors' orders for genetic testing.

23. The specimens and signed doctors' orders collected by co-conspirator recruiters and marketers, including Matthew Harrington, Miranda Harrington, Michael Speer, Person A, and others, were provided to laboratories that billed Medicare for genetic tests that were medically unnecessary, not provided as represented, and not eligible for reimbursement.

24. **Powell** and **Arendt** received kickbacks and bribes in exchange for the referral of beneficiary insurance information, specimens, and the accompanying doctors' orders for the genetic testing. In turn, **Powell** and **Arendt** paid kickbacks and bribes to the Momentum recruiters and marketers, including Matthew Harrington, Miranda Harrington, Michael Speer, Person A, and others, in exchange for the referral of beneficiary insurance information and specimens.

25. **Powell** and **Arendt** charged Momentum's recruiters and marketers a "telemedicine" or "teledoc" fee—approximately \$100—for each test authorized by a physician or other medical professional. This fee was to cover the cost of obtaining a physician's signature on the doctors' orders for genetic tests.

26. In exchange for providing laboratories with the doctors' orders for each beneficiary, **Powell** and **Arendt** received kickbacks and bribes from those laboratories and associated entities through electronic deposits into Momentum's bank accounts, including the x4188 Account. **Powell** and **Arendt** then in turn paid kickbacks and bribes to Momentum's marketers and recruiters out of those same bank accounts.

27. **Powell** and **Arendt** utilized an online money transfer platform, among other methods, to pay or cause payments to be made to the physicians and licensed medical professionals to sign doctors' orders for genetic testing.

28. To conceal the kickbacks and bribes, **Powell** and **Arendt** instructed their marketers and recruiters, including Matthew Harrington, Miranda Harrington, Michael Speer, Person A, and others, to create sham invoices documenting a fabricated number of hours worked instead of what payment was actually for: beneficiary insurance information and genetic specimens that laboratories used to submit false and fraudulent claims to Medicare.

29. From in or around May 2018, and continuing through in or around September 2019, Momentum received kickbacks and bribes in the amount of approximately \$16.8 million from laboratories and associated entities in exchange for beneficiary insurance information, specimens, and doctors' orders that laboratories used to submit false and fraudulent claims to Medicare.

30. From in or around May 2018, and continuing through in or around September 2019, laboratories associated with Momentum submitted and caused the

submission of claims to Medicare and were paid approximately \$38 million for genetic tests, which were the product of kickbacks and bribes paid to **Powell** and **Arendt**.

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:

32. In or around January 2019, Michael Speer and Person A oversaw the collection of specimens and personal identifying information from Medicare beneficiary G.C.M.R., in the Northern District of Texas.

33. On or about January 11, 2019, Michael Speer and Person A referred G.C.M.R.'s specimens and attendant doctor's orders to Momentum.

34. For G.C.M.R.'s referral, on or about February 25, 2019, **Powell** and **Arendt**, through Momentum, paid a kickback from the x4188 Account to Michael Speer and Person A at the Center Street bank account, in the approximate amount of \$1,000.00.

35. In or around January 2019, Michael Speer and Person A oversaw the collection of specimens and personal identifying information from Medicare beneficiary G.S.R., in the Northern District of Texas.

36. On or about January 14, 2019, Michael Speer and Person A referred G.S.R.'s specimens and attendant doctor's orders to Momentum.

37. For G.S.R.'s referral, on or about February 25, 2019, **Powell** and **Arendt**, through Momentum, paid a kickback from the x4188 Account to Michael Speer and Person A at the Center Street bank account, in the approximate amount of \$1,000.00.

38. On or about March 14, 2019, **Arendt** sent an email to Momentum's recruiters and marketers, including Matthew Harrington, Miranda Harrington, and Michael Speer, among others, with **Powell** copied, subject "Please Review," and attached "a sample invoice," showing how to falsely document purported hours worked.

39. On or about April 5, 2019, **Arendt** sent an email to Matthew Harrington and Miranda Harrington, with **Powell** copied, subject "Re: Good time," and stated, "1. I'm going to get you an accession report for this pay period so you can prepare your invoice to us and prepare your payouts. This will get you 90% of the way complete, because, 2. The accession report will indicate Genetic; the type of CGX info will not be available from the lab until Wed. 3. The other part of what we would have discussed today you will cover with Cliff in your training."

40. In or around March or April 2019, **Powell** explained on a teleconference with Momentum's recruiters and marketers, including Matthew Harrington, Miranda Harrington, and others, "You guys are going to continue working, continue putting up great volume. We are going to continue paying you guys, just as strong or better as we always have. But the big things we cannot do, we cannot send reporting very specific where it talks about volume through email, because we're just leaving this big paper trail, if you would. When you have a question on a commission that is being paid out or payment per hour that are being worked, we cannot ask those questions. 'Hey, I did 333 samples, I have sent this invoice and you are telling me that this is wrong.' We can't do that through email. [. . .] And so any kind of paper trail created that points to volume is a bad, bad thing."

41. On or about April 13, 2019, Matthew Harrington and Miranda Harrington oversaw the collection of specimens and personal identifying information from Medicare beneficiary T.D., in the Northern District of Texas.

42. On or about April 13, 2019, Matthew Harrington and Miranda Harrington referred T.D.'s specimens and attendant doctor's orders to Momentum.

43. For T.D.'s referral, on or about May 24, 2019, **Powell** and **Arendt**, through Momentum, paid a kickback from the x4188 Account to Matthew Harrington and Miranda Harrington, at the MBM Solutions bank account, in the approximate amount of \$850.00.

44. On or about April 13, 2019, Matthew Harrington and Miranda Harrington oversaw the collection of specimens and personal identifying information from Medicare beneficiary N.B., in the Northern District of Texas.

45. On or about April 13, 2019, Matthew Harrington and Miranda Harrington referred N.B.'s specimens and attendant doctor's orders to Momentum.

46. For N.B.'s referral, on or about May 24, 2019, **Powell** and **Arendt**, through Momentum, paid a kickback from the x4188 Account to Matthew Harrington and Miranda Harrington, at the MBM Solutions bank account, in the approximate amount of \$1,050.00.

All in violation of 18 U.S.C. § 371.

COUNT TWO

Payment and Receipt of Kickbacks

(Violations of 42 U.S.C. § 1320a-7b(b)(1) and (2) and 18 U.S.C. § 2)

47. Paragraphs 1 through 13 and 16 through 46 of this information are realleged and incorporated by reference as though fully set forth herein.

48. On or about the date listed below, in the Dallas Division of the Northern District of Texas, and elsewhere, **Clifford Powell** and **Christian Arendt**, aiding and abetting and aided and abetted by Matthew Harrington, Miranda Harrington, Michael Speer, Person A, William Siveter, James Egan, and others known and unknown, 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 direct deposit, wire transfer, and check, for referring an individual for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole or in part under a Federal health care program, that is, Medicare; and for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal health care program, that is, Medicare:

Count	Defendants	Medicare Beneficiary	Approximate Date of Payment	Approximate Amount of Kickback Payment and Details
2	Clifford Powell Christian Arendt	T.D.	5/24/2019	\$850.00 payment from Momentum x4188 Account to MBM Solutions account, for the benefit of Matthew Harrington, Miranda Harrington, and others

All in violation of 42 U.S.C. § 1320a-7b(b)(1) and (2) and 18 U.S.C. § 2.

Forfeiture Notice

(18 U.S.C. §§ 981(a)(1)(C), 982(a)(7), and 28 U.S.C. § 2461)

49. Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, upon conviction of Count One, **Clifford Powell** and **Christian Arendt** shall forfeit to the United States, any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to Count One.

50. Pursuant to 18 U.S.C. § 982(a)(7), upon conviction of Count Two, **Clifford Powell** and **Christian Arendt**, shall forfeit to the United States, any property, real or personal, which constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

51. Pursuant to 21 U.S.C. § 853(p), as incorporated by 28 U.S.C. § 2461(c), 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.

Respectfully Submitted:

PRERAK SHAH
ACTING UNITED STATES ATTORNEY

JOSEPH S. BEEMSTERBOER
U.S. Department of Justice
Criminal Division, Fraud Section
Acting Chief

A handwritten signature in black ink, appearing to read 'Brynn A. Schiess', is written over a horizontal line.

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