

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA	:	Hon. Anne E. Thompson
	:	
v.	:	Crim. No. 20-
	:	
KIMBERLY SCHMIDT	:	18 U.S.C. § 371

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

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

The Defendant and Coconspirator

- a. Defendant KIMBERLY SCHMIDT (“SCHMIDT”) resided in Pennsylvania and worked at the medical office of Dr. Lee Besen in Peckville, Pennsylvania (the “Besen Office”).

- b. Dr. Lee Besen (“Besen”), a coconspirator not charged in this Information, was a physician licensed in Pennsylvania. He resided in Waverly, Pennsylvania and owned and practiced medicine at the Besen Office.

Background on the Medicare Program and Genetic Testing

- c. Medicare was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare was a “health care benefit program” as defined in 18 U.S.C.

§ 24(b) and a “Federal health care program” as defined in 42 U.S.C. § 1320a-7b(f). Individuals who received benefits under Medicare were commonly referred to as “beneficiaries.”

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

e. Genetic tests were laboratory tests designed to identify specific inherited mutations in a patient’s genes. These genetic variations may affect a patient’s risk of developing certain diseases or the patient’s response to medications.

f. Pharmacogenomic genetic tests related to identifying how a patient’s genes affect the patient’s response to drugs were commonly referred to as “PGx” tests. Genetic tests related to a patient’s hereditary predisposition for cancer were commonly referred to as “CGx” tests.

g. To conduct a genetic test, a laboratory had to obtain a DNA sample from the patient, typically from the patient’s saliva by using a cheek (buccal) swab to collect sufficient cells to provide a genetic profile. The DNA sample was then submitted with a requisition form to the laboratory for analysis, such as PGx and CGx. The requisition form typically included information about

the patient, the swab being submitted, and the referring physician. That physician or another authorized person had to confirm on the form that the genetic test was medically necessary.

h. If the patient had insurance, the laboratory typically submitted a claim for reimbursement for the test to the patient's insurance carrier.

Reimbursement rates for PGx at times exceeded \$1,900 per test, while reimbursement rates for CGx at times exceeded \$6,000 per test.

The Clinical Laboratories and "Individual-1"

i. "Laboratory-1," located in New Jersey, and "Laboratory-2," located in Pennsylvania, were clinical laboratories that each collected genetic tests and submitted reimbursement claims to Medicare.

j. In most cases, Laboratory-1 and Laboratory-2 did not perform the actual genetic testing onsite. Instead, both typically outsourced the testing to "Laboratory-3," located in New Jersey.

k. "Individual-1" resided in New Jersey and worked as a sales representative for Laboratory-1 and Laboratory-2. Individual-1's compensation from each laboratory was based, in part, on the volume of genetic tests that Individual-1 generated for Laboratory-1 or Laboratory-2 through Individual-1's physician accounts.

The Conspiracy

2. From in or about December 2018 through in or about June 2020, in the District of New Jersey and elsewhere, defendant

KIMBERY SCHMIDT

did knowingly and intentionally conspire and agree with Besen and others to knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, in exchange for the furnishing and arranging for the furnishing of items and services, namely, the referral of genetic screening tests, for which payment was made in whole or in part under a Federal health care program, namely Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b)(1)(A).

Goal of the Conspiracy

3. The goal of the conspiracy was for Besen, SCHMIDT, and others, to unlawfully enrich themselves by receiving bribes and kickbacks in exchange for collecting genetic samples from Medicare patients and steering those samples to Laboratory-1 and Laboratory-2.

Manner and Means of the Conspiracy

4. It was part of the conspiracy that:

a. In or about the fall of 2018, Besen agreed to steer genetic tests for his Medicare patients to Laboratory-1 and, in exchange, Individual-1 would pay Besen kickbacks and bribes of approximately \$1,000 to \$1,500 per month.

b. Besen enlisted SCHMIDT to facilitate the scheme by, among other things, filling out paperwork for the genetic tests sent to Laboratory-1. At Besen's request, Individual-1 agreed to pay SCHMIDT for her assistance.

c. Consistent with the agreement, starting in or about December 2018, Besen, aided by SCHMIDT, collected genetic samples, primarily PGx, from Besen's Medicare patients and then sent those samples to Laboratory-1 for genetic testing.

d. Individual-1 typically paid Besen and SCHMIDT monthly kickbacks and bribes in exchange for the genetic tests by traveling from New Jersey to the Besen Office, where Individual-1 handed Besen and SCHMIDT cash payments.

e. When Besen did not receive his kickback and bribe payments from Individual-1, the volume of genetic tests that Besen and his staff, including SCHMIDT, generated from Medicare patients decreased. In turn, that volume increased when the kickback and bribe payments resumed.

f. In or about July 2019, after asking Individual-1 how he and Individual-1 could make more money, Besen agreed to work to increase the volume of genetic tests that he, aided by SCHMIDT, collected and sent to Laboratory-1.

g. Consistent with that agreement, in or about August 2019, Besen, aided by SCHMIDT, increased his genetic testing volume by sending more genetic tests to Laboratory-1.

h. In or about January 2020, Besen and Individual-1 agreed to shift from steering genetic tests from Laboratory-1 to Laboratory-2, which, according to Besen, collected high reimbursement rates for CGx genetic tests.

i. Individual-1 subsequently began working for Laboratory-2, and on or about February 20, 2020, Besen and Individual-1 agreed that for each CGx genetic test that Besen steered to Laboratory-2, Besen would receive half of Individual-1's commissions of approximately \$2,500 per genetic test. Besen also enlisted Individual-1 to continue paying kickbacks and bribes to SCHMIDT for genetic tests steered to Laboratory-2.

j. After the COVID-19 pandemic began, Besen expressed a desire to continue collecting high volumes of CGx genetic swabs from Medicare patients so that, among other things, he could use the cash generated from the scheme to pay for his pool house.

k. In total, Medicare paid approximately a combined \$350,374 for genetic tests that Besen, SCHMIDT, and others steered from the Besen Office to both Laboratory-1 and Laboratory-2.

Overt Acts

5. In furtherance of the conspiracy, and to achieve its illegal objectives, Besen, SCHMIDT, and others committed, and caused to be committed, the following overt acts in the District of New Jersey and elsewhere:

a. On or about July 31, 2019, Besen, at the Besen Office, accepted from Individual-1, who had traveled from New Jersey, a cash kickback and bribe of approximately \$1,500 cash.

b. On or about September 12, 2019, Besen, at the Besen Office, accepted from Individual-1, who had traveled from New Jersey, a cash kickback and bribe of approximately \$1,500 cash.

c. On or about September 24, 2019, SCHMIDT texted Individual-1 that she and Besen were “up to 19” genetic tests for the month.

d. On or about October 17, 2019, in the Besen Office, Besen accepted from Individual-1, who had traveled from New Jersey, a kickback and bribe of approximately \$1,500 cash.

e. On or about October 17, 2019, in the Besen Office, SCHMIDT accepted from Individual-1, who had traveled from New Jersey, a kickback and bribe of approximately \$500 cash.

f. On or about November 21, 2019, in the Besen Office, Besen accepted from Individual-1, who had traveled from New Jersey, kickbacks and

bribes of approximately \$500 cash for himself and approximately \$100 cash for SCHMIDT.

g. On or about June 18, 2020, in the parking lot of a fast food restaurant in New Jersey, Besen accepted from Individual-1 a kickback and bribe of approximately \$8,445 cash.

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

FORFEITURE ALLEGATION

1. Upon conviction of the Federal health care offense (as defined in 18 U.S.C. § 24) alleged in this Information, the defendant shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real or personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the alleged offense (as defined in 18 U.S.C. § 24).

SUBSTITUTE ASSETS PROVISION

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



CRAIG CARPENITO
United States Attorney

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