

UNITED STATES OF AMERICA	*	CRIMINAL NO. 14-36
VERSUS	*	SECTION: "R"
DAVID LEE KILLEN		

## FACTUAL BASIS

Records provided by the Louisiana Secretary of State would establish that Back on Track Clinic, LLC (BOTC) and The Spine and Joint Center of Washington Parish (S&JC) listed **DAVID LEE KILLEN (KILLEN)** as the Manager and Registered Agent.

Witnesses from Blue Cross Blue Shield of Louisiana (BCBSLA), United Health Care (United), Cigna (Medicare), Humana (Humana), Louisiana Medicaid (Medicaid), and Gilsbar (Gilsbar) would testify that **KILLEN**, and physicians operating in his practice, were authorized to provide certain services and equipment to covered beneficiaries, as long as the services and equipment were medically necessary.

A witness from a health care benefit plan (HCBP) would testify that suppliers such as **KILLEN** were required to accurately describe equipment being provided to patients using the Healthcare Common Procedure Coding Systems (HCPCS) code. The witness would describe

HCPCS L0631 as a back brace entitled “Lumbar-Sacral Orthosis” and testify that it would be required to extend from the “Sacrococcygeal Junction to T-9 Vertebra.” The witness would also describe HCPCS L0627 as a back brace entitled “Lumbar Orthosis” that would be required to extend from “L-1 to below L-5 Vertebra.” The witness would testify that HCBPs paid higher reimbursements for HCPCS L0631 than L0627 because L0631 was required to cover a larger area of the back vertebra.

The witness would also testify that claims submitted to HCBPs by **KILLEN** were generally paid at 80% of the pre-approved contracted amount for each claim. The witness would testify that unless a beneficiary held secondary or supplemental insurance, the beneficiary was responsible for paying the remaining 20% of the claim, known as the co-insurance. The witness would testify that this co-insurance could not generally be waived.

Two physicians would testify that they worked for **KILLEN**: one on Mondays and Thursdays at S&JC, and the other approximately four hours per week.

A witness from Cell Science Systems Corporation (Cell Science) would testify that Cell Science operated a laboratory that conducted antigen leukocyte antibody testing, otherwise known as ALCAT (ALCAT). The witness would testify that the lab received blood samples and conducted testing on the blood, returning the results to the provider who submitted the specimens. The witness would testify that **KILLEN** submitted blood specimens to its lab and that it maintained a record of those test results.

Krista Bradford (Bradford), a Special Agent (SA) with the Federal Bureau of Investigation, (FBI) would testify that she, along with special agents from the FBI, and the US Department of

Health and Human Services Office of Inspector General, executed a federal search warrant on **KILLEN'S** chiropractic office on April 26, 2013. SA Bradford would testify that **KILLEN'S** computer records were imaged, and that other original patient records were seized.

SA Bradford would testify that during her investigation into **KILLEN'S** practice, she interviewed patients, interviewed office staff, and reviewed records seized during the search warrant. Based on her investigation, SA Bradford would testify that she identified several patients who claimed not to have received services billed on their behalf, and others who claimed they did not receive durable medical equipment billed on their behalf. SA Bradford would testify that she identified the following billing schemes in **KILLEN'S** practice during her investigation:

- a) Billing for chiropractic manipulation that was not performed: SA Bradford identified a personal friend of **KILLEN'S** – patient ScFo – who had never been a patient of **KILLEN'S**, but had his insurance billed for approximately 40 chiropractic services totaling \$3,100. Patient ScFo would testify that he had never been to **KILLEN'S** office and that **KILLEN** never performed the services he billed on his behalf;
- b) Billing for ALCATs that were not performed: SA Bradford identified three patients for whom **KILLEN** billed an ALCAT, but for whom bloodwork was never drawn or submitted for testing, causing approximate billings to BCBSLA of \$8,960 and United of \$4,480;
- c) Incentivized ALCATS: SA Bradford identified instances where **KILLEN** offered incentives to patients to receive the ALCAT, that **KILLEN** routinely ordered and billed the most expensive test that Cell Science offered, and that there was no

documentation to show the patient's need for the test. SA Bradford identified, through beneficiary interviews, approximately \$125,440 in billings to insurers from **KILLEN** that were incentivized or induced by **KILLEN** with no documentation to show the patient's need for the test;

- d) Unauthorized use of physician provider numbers: SA Bradford identified \$18,263 in billings under a physician's provider number that occurred after that physician's affiliation with **KILLEN** terminated, or were performed on days that the physician did not work at BOTC or the S&JC, or that were for procedures the physician neither rendered, nor supervised nor oversaw. The physician would testify that he did not perform the \$18,263 in billings under his provider number, and that he did not oversee or supervise these services. SA Bradford also identified \$36,981 in billings under a second physician's provider number that occurred after his affiliation with **KILLEN** terminated, or were performed on days the physician did not work at BOTC or the S&JC, or that were for procedures he neither rendered, nor supervised nor oversaw. That physician would testify that he did not perform the \$36,981 in billings under his provider number, and that he did not oversee or supervise these services;
- e) Billing for X-rays not performed: SA Bradford identified \$13,080 in billings **KILLEN** submitted for X-rays, but for which no X-ray existed in the patient chart or were not otherwise documented;

- f) Billing for L0631 back braces that were not provided: SA Bradford identified three instances in which no back brace was ever provided to the patient, but which **KILLEN** billed the patient's insurance as having provided. These billings totaled \$2,997;
- g) Billing for L0631 back braces, but providing a cheaper substitution: SA Bradford reviewed **KILLEN'S** purchase history of back braces and compared that to his billings. SA Bradford would testify that **KILLEN** billed and caused to be billed back braces coded as L0631s, but that **KILLEN** instead provided back braces that should have been coded as L0627, a back brace that would have been reimbursed at a lower rate. SA Bradford identified \$71,933 in false billings to insurers for the more highly reimbursed back brace L0631.

HuMa would testify that he/she was a patient of **KILLEN'S**, and that **KILLEN** told him/her that if his/her whole family would agree to have the ALCAT, **KILLEN** would waive the balances for the family's account, and would only charge them a \$10 co-payment in the future instead of \$20. HuMa would testify that his/her whole family submitted to the ALCAT. A witness from BCBSLA would testify that it received billings from **KILLEN** for the ALCAT on behalf of HuMa, JeMa, and RoPi, for a total of \$13,440. Of the \$13,440 submitted, HuMa's individual ALCAT billing to BCBSLA totaled \$4,480.

SA Bradford would testify that she identified approximately \$285,234 in billings for the above-referenced schemes, and that of that amount, **KILLEN** was paid approximately \$183,674.14:

- **KILLEN** billed or caused BCBSLA to be billed approximately \$223,627 and was

paid approximately \$163,758.23;

- **KILLEN** billed or caused United to be billed approximately \$15,870 and was paid approximately \$7,601.63;
- **KILLEN** billed or caused Louisiana Medicaid to be billed approximately \$6,934 and was paid approximately \$0 ;
- **KILLEN** billed or caused Medicare to be billed approximately \$31,051 and was paid approximately \$9,095.69;
- **KILLEN** billed or caused Humana to be billed approximately \$5,645 and was paid approximately \$3,080.62;
- **KILLEN** billed or caused Gilsbar to be billed approximately \$2,107 and was paid approximately \$137.97.

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JULIANA ETLAND  
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Bar Roll No. 25115

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DATE

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DAVID LEE KILLEN  
Defendant

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DATE

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BRIAN CAPITELLI  
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DATE