

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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CLERK, US DISTRICT COURT
MIDDLE DISTRICT FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

CASE NO. **8:20-cr-298730 AAS**
18 U.S.C. § 1349

v.

FERNANDO MENDEZ

INFORMATION

The United States Attorney charges:

COUNT ONE
(Conspiracy to Commit Health Care Fraud)

A. Introduction

At all times material to this Information:

The Conspirators and Their Enterprises

1. Fernando Mendez was a resident of the Southern District of Florida and the owner, chief executive officer, and founder of Mendez Digital, LLC dba Upshot Digital ("Upshot Digital"). Beginning in or about August 2019, Fernando Mendez also was the owner and chief executive officer of two durable medical equipment companies, Arrowhead Medical, LLC ("Arrowhead") and Envision Life Medical, LLC ("Envision Life").
2. Upshot Digital was a telemarketing call center located in Broward County in Southern District of Florida.

3. Arrowhead was a durable medical equipment company located in St. Lucie County in Southern District of Florida.

4. Envision Life was a durable medical equipment company located in St. Lucie County in the Southern District of Florida.

5. Willie McNeal, IV (“McNeal”) was a resident of the Middle District of Florida and owner, president, founder, chief executive officer, and the registered agent of Integrated Support Plus, Inc. (“Integrated”) and other associated companies (collectively, the “Integrated Support Network”).

6. Integrated was a purported telemedicine company located in in Hernando County in the Middle District of Florida.

The Medicare Program

7. The Medicare Program (“Medicare”) was a federal health insurance program that provided medical benefits, items, and services to beneficiaries:

- a. aged 65 and older,
- b. under 65 with certain disabilities, and
- c. of all ages with end-stage renal disease (permanent kidney failure requiring dialysis or a kidney transplant).

8. The Centers for Medicare and Medicaid Services (“CMS”) was an agency of the U.S. Department of Health and Human Services (“HHS”), and was the federal government body responsible for the administration of Medicare.

9. Medicare programs covered different types of benefits were separated into different program parts. Medicare Part B covered, among other things, doctors' services, outpatient care, and certain medical equipment that were medically necessary.

DME Claims Submitted under Medicare Part B

10. Durable medical equipment ("DME") were reusable medical equipment such as orthotic devices, walkers, canes, or hospital beds. Orthotic devices were a type of DME that included knee braces, back braces, shoulder braces, and wrist braces (collectively, "braces").

11. DME companies, physicians, and other health care 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, rules, 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 medically necessary items and services rendered to beneficiaries. Medicare providers were given access to Medicare manuals and service bulletins describing billing procedures, rules, and regulations.

12. Medicare reimbursed DME providers and other health care providers for medically necessary items and 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.

13. A Medicare claim for DME reimbursement was required to set forth, among other information, 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.

14. Medicare would pay a claim for the provision of DME only if the equipment was medically necessary, ordered by a licensed provider, and actually provided to the beneficiary. Medicare claims were required to be properly documented in accordance with Medicare rules and regulations. Medicare would not reimburse providers for claims that were procured through the payment of kickbacks and bribes.

B. The Conspiracy

15. From in or about May 2018 through in or about May 2020, in the Middle District of Florida, and elsewhere, the defendant,

FERNANDO MENDEZ

did knowingly and willfully combine, conspire, confederate, and agree with others, including Willie McNeal, IV, to commit health care fraud, in violation of 18 U.S.C. § 1347.

C. Purpose of the Conspiracy

16. It was a purpose of the conspiracy for Fernando Mendez, Willie McNeal, IV, and others to unlawfully enrich themselves by, among other things: (a) offering and paying kickbacks and bribes in exchange for signed doctors' orders for braces; (b) submitting and causing the submission of false and fraudulent claims to Medicare for braces that were ineligible for Medicare reimbursement and not medically necessary; (c) concealing and causing the concealment of kickbacks and bribes and false and fraudulent claims; and (d) diverting fraud proceeds for their personal use and benefit, the use and benefit of others, and to further the fraud.

D. Manner and Means of the Conspiracy

17. The manner and means by which the defendant and his conspirators sought to accomplish the purposes of the conspiracy included, among others, the following:

a. It was a part of the conspiracy that Fernando Mendez would and did own and control Upshot Digital, Arrowhead, and Envision Life.

b. It was further a part of the conspiracy that Fernando Mendez certified to Medicare that Arrowhead would comply with all Medicare rules and regulations, including that he and Arrowhead would refrain from violating the federal Anti-Kickback Statute.

c. It was further a part of the conspiracy that Fernando Mendez certified to Medicare that Envision Life would comply with all Medicare rules and

regulations, including that he and Envision would refrain from violating the federal Anti-Kickback Statute.

d. It was further a part of the conspiracy that Fernando Mendez and others would and did obtain access to hundreds of thousands of vulnerable Medicare beneficiaries' patient information from others, including telemarketers, who targeted them with advertising and inducing them to accept braces regardless of medical necessity by touting the braces as "free or low-cost."

e. It was further a part of the conspiracy that Fernando Mendez and others would and did offer and pay, and cause the offering and payment of, illegal kickbacks and bribes to Willie McNeal, IV and others in exchange for arranging for medical providers to sign orders for DME regardless of medical necessity.

f. It was further a part of the conspiracy that Fernando Mendez, Willie McNeal, IV, and others would and did disguise the nature and source of these kickbacks and bribes by entering into sham contracts and by generating and causing the generation of fraudulent invoices that falsely identified the payments as "tech fees" and for "business process outsourcing."

g. It was further a part of the conspiracy that Willie McNeal, IV and others would and did cause medical providers to sign DME orders for braces regardless of medical necessity, in the absence of a pre-existing relationship with the patient, and without a physical examination of the Medicare beneficiary.

h. It was further a part of the conspiracy that Fernando Mendez and others would and did choose which braces medical providers would sign orders for DME, including braces, based on which braces Medicare would pay for, how much Medicare would reimburse, and the cost of obtaining the braces, not based on the medical need of the patients.

i. It was further a part of the conspiracy that Fernando Mendez and others would and did solicit and receive illegal kickbacks and bribes from DME providers in exchange for the referral of DME orders, which the DME companies used to support false and fraudulent claims to Medicare.

j. It was further a part of the conspiracy that Fernando Mendez and others would and did disguise the nature and source of these kickbacks and bribes by entering into sham contracts for “marketing,” and by generating and causing the generation of fraudulent invoices that falsely identified the payments as for a flat or hourly rate, when in reality the conspirators paid a set amount per brace order.

k. It was further a part of the conspiracy that Fernando Mendez and others would and did submit, and cause the submission of, false and fraudulent claims to Medicare for the fraudulently generated DME orders.

l. It was further a part of the conspiracy that, from in or about September 2019 to in or about May 2020, Fernando Mendez and others submitted, and caused the submission of, approximately \$1,148,202.54 in false and fraudulent claims for braces to Medicare, on behalf of Arrowhead, that were procured through

the payment of kickbacks and bribes, medically unnecessary, ineligible for Medicare reimbursement, and not provided as represented. Medicare paid approximately \$452,570.63 on those false and fraudulent Arrowhead claims.

m. It was further a part of the conspiracy that, from in or about September 2019 through in or about May 2020, Fernando Mendez and others submitted, and caused the submission of, approximately \$1,607,457.99 in false and fraudulent claims for braces to Medicare, on behalf of Envision Life, that were procured through the payment of kickbacks and bribes, medically unnecessary, ineligible for Medicare reimbursement, and not provided as represented. Medicare paid approximately \$669,598.96 on those false and fraudulent Envision Life claims.

n. It was further a part of the conspiracy that, from in or about May 2018 through in or about May 2020, Fernando Mendez would and did pay at least \$1,564,612 in illegal kickbacks and bribes in exchange for signed brace orders to his conspirators at purported telemedicine companies, including Integrated Support Plus, Inc.

o. It was further a part of the conspiracy that, from in or about May 2018 through in or about May 2020, Fernando Mendez would and did receive at least \$3,043,936.60 in illegal kickbacks and bribes in exchange for brace orders from his conspirators at DME companies.

All in violation of 18 U.S.C. § 1349.

FORFEITURE

1. The allegations contained in Count One are re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to 18 U.S.C. § 982(a)(7).

2. Upon conviction for the violations alleged in Count One, the defendant shall forfeit to the United States of America, pursuant to 18 U.S.C. § 982(a)(7), any and all property, real or personal, that constitutes or is derived, directly or indirectly, from the gross proceeds traceable to the commission of the offenses.

3. The property to be forfeited includes, but is not limited to, an order of forfeiture in the amount of \$4,166,106.19, which is the amount the defendant obtained as a result of the commission of the offense, and the following asset which constitutes proceeds traceable to the commission of the offense.

4. If any of the property described above, 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 of America shall be entitled to forfeiture of substitute property under the provisions of 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1).

MARIA CHAPA LOPEZ
United States Attorney

A handwritten signature in cursive script, appearing to read "Daniel Kahn".

DANIEL KAHN
Acting Chief, Fraud Section
U.S. Department of Justice

A handwritten signature in cursive script, appearing to read "Catherine Wagner".

CATHERINE WAGNER
Trial Attorney
Fraud Section, Criminal Division
U.S. Department of Justice