

FILED by **CG** D.C.

Sep 7, 2021

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
21-80136-CR-SMITH/MATTHEWMAN

Case No. _____
18 U.S.C. § 1349
18 U.S.C. § 982

UNITED STATES OF AMERICA

vs.

**NICHOLAS PAPE and
NICHOLAS JENKINS,**

Defendants.

_____ /

INFORMATION

The Acting United States Attorney charges:

GENERAL ALLEGATIONS

At all times material to this Information:

The Medicare Program

1. The Medicare Program (“Medicare”) was a federal health care program that provided free or below-cost health care benefits to individuals who were sixty-five years of age 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 Center for Medicare and Medicaid Services (“CMS”), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare “beneficiaries.”

2. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

3. Medicare was subdivided into multiple program “parts.” Medicare Part A covered

health care 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.

Durable Medical Equipment

4. Orthotic devices were a type of DME that included rigid and semi-rigid devices, such as knee braces, back braces, shoulder braces, and wrist braces (collectively, "braces").

5. 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 and regulations. If Medicare approved a provider's application, Medicare assigned the provider a Medicare "provider number." A health care provider with a Medicare provider number could file claims with Medicare to obtain reimbursement for services rendered to beneficiaries.

6. Enrolled Medicare providers agreed to abide by the policies, 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 service bulletins describing billing procedures, rules, and regulations.

7. Medicare reimbursed DME companies and other health care providers for services and items 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.

8. 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.

9. A claim for DME submitted to Medicare qualified for reimbursement only if it was medically necessary for the treatment of the beneficiary's illness or injury and prescribed by a licensed physician, and accompanied by a completed prescription for braces and other Medicare-required documents (collectively referred to as "doctors' orders").

The Defendants and Related Entities

10. Leverage Management Solutions, LLC ("Leverage") was a Florida limited liability company with its principal place of business in Palm Beach County, in the Southern District of Florida.

11. Defendant **NICHOLAS PAPE**, a resident of Broward County, was an owner of Leverage.

12. Defendant **NICHOLAS JENKINS**, a resident of Palm Beach County, was an owner of Leverage.

**CONSPIRACY TO COMMIT HEALTH CARE FRAUD
(18 U.S.C. § 1349)**

From in or around January 2017, and continuing through in or around July 2020, in Palm Beach and Broward Counties, in the Southern District of Florida, and elsewhere, the defendants,

**NICHOLAS PAPE and
NICHOLAS JENKINS,**

did knowingly and willfully, that is, with the intent to further the object of the conspiracy, combine, conspire, confederate, and agree with each other and with others known and unknown to the Acting United States Attorney, to commit certain offenses against the United States, that is, to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347.

Purpose of the Conspiracy

13. It was a purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) offering, paying, soliciting, and receiving kickbacks and bribes in exchange for signed doctors' orders for braces prescribed to Medicare beneficiaries that were medically unnecessary, not eligible for reimbursement, and not provided as represented; (b) submitting and causing the submission of false and fraudulent claims to Medicare; (c) concealing and causing the concealment of false and fraudulent claims to Medicare; and (d) diverting fraud proceeds for their personal use and benefit, the use and benefit of others, and to further the fraud.

Manner and Means of the Conspiracy

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:

14. **NICHOLAS PAPE, NICHOLAS JENKINS**, and their co-conspirators falsely

certified to Medicare that they, as well as Leverage, would comply with all federal laws and regulations, including that they would not knowingly present and cause to be presented a false and fraudulent claim for payment by a federal health care program and that they would comply with the Federal Anti-Kickback Statute.

15. **NICHOLAS PAPE, NICHOLAS JENKINS**, and their co-conspirators, through Leverage, obtained access to thousands of Medicare beneficiaries by paying kickbacks and bribes to purported marketers, telemedicine companies, and others.

16. **NICHOLAS PAPE, NICHOLAS JENKINS**, and their co-conspirators paid kickbacks and bribes in exchange for doctors' orders for braces. In many instances, the braces ordered for these recruited beneficiaries were medically unnecessary. The doctors who signed the doctors' orders purchased by defendants and their co-conspirators often signed them regardless of medical necessity, in the absence of a pre-existing doctor-patient relationship, without a physical examination, and frequently based solely on a short telephonic conversation or without any conversation with the Medicare beneficiary.

17. **NICHOLAS PAPE, NICHOLAS JENKINS**, and their co-conspirators disguised the nature and source of these kickbacks and bribes through fraudulent invoices that falsely described the payments as compensation for purported marketing or similar services.

18. **NICHOLAS PAPE, NICHOLAS JENKINS**, and their co-conspirators, through Leverage, submitted and caused the submission of false and fraudulent claims to Medicare in the approximate amount of \$1,595,570 and received Medicare reimbursement in the approximate amount of \$937,427 for braces that were: (a) procured through the payment of kickbacks and bribes; (b) medically unnecessary and ineligible for Medicare reimbursement; and (c) not provided

as represented.

19. **NICHOLAS PAPE, NICHOLAS JENKINS**, and their co-conspirators diverted fraud proceeds from the scheme for their personal use and benefit, the use and benefit of others, and to further the fraud.

All in violation of Title 18, United States Code, Section 1349.

FORFEITURE
(18 U.S.C. § 982)

1. The allegations of this Information are hereby re-alleged and by this reference fully incorporated herein for the purpose of alleging forfeiture to the United States of certain property in which the defendants, **NICHOLAS PAPE** and **NICHOLAS JENKINS**, have an interest.

2. Upon conviction of the violation of Title 18, United States Code, Section 1349, as alleged in this Information, the defendant so convicted 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, pursuant to Title 18, United States Code, Section 982(a)(7).

3. The property subject to forfeiture as a result of the alleged offense with respect to **NICHOLAS PAPE** is \$213,000, which the United States will seek as a forfeiture money judgment. The property subject to forfeiture as a result of the alleged offense with respect to **NICHOLAS JENKINS** is \$213,000, which the United States will seek as a forfeiture money judgment.

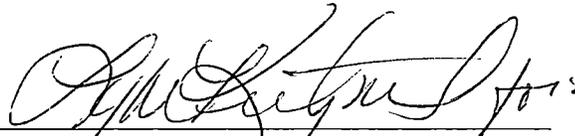
4. If any of the property described above, as a result of any act or omission of a defendant:

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 shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p).

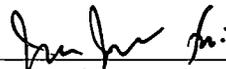
All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth in Title 21, United States Code, Section 853, as incorporated by Title 18, United States Code Section 982(b)(1).



JUAN ANTONIO GONZALEZ
ACTING UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

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ACTING CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

ALLAN MEDINA
DEPUTY CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE



TIMOTHY P. LOPER
TRIAL ATTORNEY
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. _____

v.
NICHOLAS PAPE and
NICHOLAS JENKINS,

CERTIFICATE OF TRIAL ATTORNEY*
Superseding Case Information:

_____ Defendants/

Court Division: (Select One)

- Miami Key West FTL
- WPB FTP

New defendant(s) Yes No

Number of new defendants _____

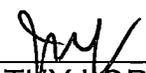
Total number of counts _____

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) **No** _____
List language and/or dialect _____
4. This case will take 0 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

- | | | | |
|----------------------|-------------------------------------|------------------|-------------------------------------|
| (Check only one) | | (Check only one) | |
| I 0 to 5 days | <input checked="" type="checkbox"/> | Petty | <input type="checkbox"/> |
| II 6 to 10 days | <input type="checkbox"/> | Minor | <input type="checkbox"/> |
| III 11 to 20 days | <input type="checkbox"/> | Misdemeanor | <input type="checkbox"/> |
| IV 21 to 60 days | <input type="checkbox"/> | Felony | <input checked="" type="checkbox"/> |
| V 61 days and over | <input type="checkbox"/> | | |

6. Has this case previously been filed in this District Court? (Yes or No) **No** _____
If yes: Judge _____ Case No. _____
(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) **No** _____
If yes: Magistrate Case No. _____
Related miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the District of _____
Is this a potential death penalty case? (Yes or No) **No** _____

7. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to August 9, 2013 (Mag. Judge Alicia O. Valle)? (Yes or No) **No** _____
8. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard)? (Yes or No) **No** _____
9. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss)? (Yes or No) **No** _____



TIMOTHY LOPER
 DOJ Trial Attorney
 Court ID No. A5502016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: NICHOLAS PAPE

Case No: _____

Count #: 1

Title 18, United States Code, Section 1349

Conspiracy to Commit Health Care Fraud

*Max Penalty: Ten (10) years' imprisonment

*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: NICHOLAS JENKINS

Case No: _____

Count #: 1

Title 18, United States Code, Section 1349

Conspiracy to Commit Health Care Fraud

*Max Penalty: Ten (10) years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

United States of America

v.

Nicholas Jenkins,

Defendant

)
)
)
)
)

Case No.

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: _____

Defendant's signature

Signature of defendant's attorney

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

United States of America)

v.)

Case No.)

Nicholas Pape,)

Defendant)

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: _____

Defendant's signature

Signature of defendant's attorney

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title