

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 13-  
 :  
 v. :  
 :  
 :  
 : 18 U.S.C. §1952(a)(3) and 2  
 FRANKLIN DANA FORTUNATO, M.D. : 26 U.S.C. §7206(1)

COUNT I

(Bribery in Violation of the Travel Act)  
18 U.S.C. §1952(a)(3)

1. At all times relevant to this Information:

a. The defendant, FRANKLIN DANA FORTUNATO, was a medical doctor licensed to practice medicine in the State of New Jersey, who did so through a corporate entity owned and controlled by him - F. Dana Fortunato M.D., P.A. - located at 127 Pine Street, Montclair, New Jersey (the "Medical Office").

b. Biodiagnostic Laboratory Services, LLC ("BLS") was a clinical blood laboratory headquartered in Parsippany, New Jersey that, among other things, performed tests on the blood specimens of patients referred to BLS by doctors, and then billed payors and others for those tests and related services.

c. Peter Breihof worked for BLS.

d. David Nicoll was an owner and the President of BLS, and generally directed and supervised Peter Brieihof's activities at BLS.

e. DR 2 was a medical doctor licensed to practice medicine in the State of New Jersey, and did so through his own medical practice, which was separate and distinct from F. Dana Fortunato M.D., P.A.

f. The Medicare Program ("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 "Federal health care program" as defined in Title 42, United States Code, Section 1320a-7b(f) and a "health care benefit program" as defined in Title 18, United States Code, Section 24(b). Individuals who receive benefits under Medicare are commonly referred to as "beneficiaries."

g. The Medicare Part B program was a federally funded supplemental insurance program that provided supplementary Medicare insurance benefits for individuals aged sixty-five or older, and certain individuals who are disabled. The Medicare Part B program paid for various medical services for beneficiaries, including blood tests and related services.

h. BLS was an approved Medicare provider, and Medicare paid BLS for performing blood tests and related services on beneficiaries who were referred to BLS by physicians participating in Medicare.

i. Private health insurance companies (hereafter, "Private Payors") including Horizon Blue Cross/Blue Shield ("Blue Cross/Blue Shield"), were corporations in the business of

providing health care insurance to individuals and entities under various insurance policies (the "insureds"), pursuant to which Blue Cross/Blue Shield and other Private Payors paid BLS for blood tests and related services performed for insureds who had been referred to BLS by physicians participating in their provider networks.

2. From at least in or about March of 2006 until in or about the fall of 2009, in Morris County, in the District of New Jersey, and elsewhere, defendant

FRANKLIN DANA FORTUNATO

knowingly and intentionally used and caused to be used the mail and any facility in interstate commerce with the intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, that is, commercial bribery, contrary to N.J.S.A. §2C:21-10 and Title 18, United States Code, Section 1952(a)(3) and, thereafter, did perform and attempt to perform acts to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of such unlawful activity, to include, as follows:

a. In or about March 2006, Peter Breihof, with David Nicoll's knowledge and approval, offered, and defendant FRANKLIN DANA FORTUNATO accepted, bribes paid to induce defendant FRANKLIN DANA FORTUNATO to refer the blood specimens of his patients to BLS for testing and related services. To disguise

those bribes, BLS and defendant DANA FRANKLIN FORTUNATO entered into a sham lease agreement and, thereafter, a sham service agreement, pursuant to which the monthly bribe payments to defendant FRANKLIN DANA FORTUNATO from BLS were characterized as "lease" and "service" payments.

b. Among other things, under the sham lease agreement, BLS paid defendant FRANKLIN DANA FORTUNATO first \$1,500 and then \$1,800 per month concerning one examination room that defendant FRANKLIN DANA FORTUNATO shared with DR 2, whom BLS also paid first \$1,500 and then \$1,800 per month under a separate lease agreement for the same room. In both of those lease agreements, the square footage of the space being used by BLS was also substantially overstated and the rental paid was not determined in a manner consistent with the fair market value of the space actually used by BLS.

c. Under the sham service agreement, BLS paid defendant FRANKLIN DANA FORTUNATO more than \$3,400 per month to perform basic blood drawing tasks. That monthly fee was not determined in a manner consistent with the fair market value of those blood drawing services.

d. Between in or about March 2006 and the fall of 2009, BLS used the sham lease agreement and sham service agreement to pay defendant FRANKLIN DANA FORTUNATO bribes that, in the aggregate, exceeded \$100,000. In return, defendant FRANKLIN DANA FORTUNATO, among other things, referred patient

blood specimens to BLS that BLS used to submit claims to Medicare and the Private Payors and collect from those payors at least in or about \$430,000.

e. The claims BLS submitted for blood testing and other services to Medicare and the Private Payors included charges for tests on blood specimens referred to BLS by defendant FRANKLIN DANA FORTUNATO in return for bribe payments.

f. In or about January 2009, Blue Cross/Blue Shield paid BLS - by check mailed to and received by BLS - approximately \$110,000 for claims and related items submitted by BLS for blood testing on Blue Cross/Blue Shield insureds. A portion of those funds was for tests performed by BLS on blood specimens referred to BLS by defendant FRANKLIN DANA FORTUNATO in return for bribe payments.

g. In or about February 2009, Peter Breihof caused a check to be delivered to defendant FRANKLIN DANA FORTUNATO to induce defendant FRANKLIN DANA FORTUNATO to refer the blood specimens of defendant FRANKLIN DANA FORTUNATO's patients to BLS for testing and related services. The check, bearing #7549, was drawn on a BLS account in the amount of \$3,466 and signed by David Nicoll. Defendant FRANKLIN DANA FORTUNATO then caused check #7549 to be deposited into a bank account that he controlled.

In violation of Title 18, United States Code, Section 1952(a)(3) and Title 18, United States Code, Section 2.

COUNT II  
(Filing of a False Tax Return)  
26 U.S.C. § 7206(1)

1. Paragraphs 1 and 2(a) through 2(d) of Count One of this Information are realleged as if set forth in full herein.

2. At all times relevant to this Information, at least nine companies in addition to BLS provided various healthcare related imaging, diagnostic, and other services to individual patients in the State of New Jersey (collectively, the "Other Companies").

3. During calendar years 2004, 2005, 2006, 2007, and 2008 the defendant FRANKLIN DANA FORTUNATO and his legal entity, F. Dana Fortunato M.D., P.A. were paid: (a) substantial sums of money by the Other Companies (the "Third-party Payments") for the use of a portion of the Medical Office and/or to provide services to defendant FRANKLIN DANA FORTUNATO'S patients; and (b) co-pays by defendant FRANKLIN DANA FORTUNATO's patients (the "co-pays").

4. Defendant FRANKLIN DANA FORTUNATO failed to disclose and report as income any of these Third-party Payments or co-pays on his United States individual or corporate tax returns filed for calendar years 2004, 2005, 2006, 2007, and 2008, thereby causing those tax returns to understate an amount of the income that he received. In this fashion, defendant FRANKLIN DANA FORTUNATO failed to report more than \$640,000 in income from BLS, the Other Companies, and as co-pays upon which

an additional tax was due and owing to the United States.

Specifically:

a. The return defendant FRANKLIN DANA FORTUNATO filed for calendar year 2004 did not include approximately \$41,000 in additional income defendant FRANKLIN DANA FORTUANTO received from various of the Other Companies and as co-pays in 2004. Upon this income, an additional tax of approximately \$6,140 was due and owing the United States.

b. The return defendant FRANKLIN DANA FORTUNATO filed for calendar year 2005 did not include approximately \$73,400 in additional income defendant FRANKLIN DANA FORTUANTO received from various of the Other Companies and as co-pays in 2005. Upon this income, an additional tax of approximately \$11,000 was due and owing the United States.

c. The return defendant FRANKLIN DANA FORTUNATO filed for calendar year 2006 did not include approximately \$172,187 in additional income defendant FRANKLIN DANA FORTUANTO received from BLS, various of the Other Companies, and as co-pays in 2006. Upon this income, an additional tax of approximately \$52,300 was due and owing the United States.

d. The return defendant FRANKLIN DANA FORTUNATO filed for calendar year 2007 did not include approximately \$197,712 in income defendant FRANKLIN DANA FORTUANTO received from BLS, various of the Other Companies, and as co-pays in 2007.

Upon this income, an additional tax of approximately \$59,913 due and owing to the United States.

e. The return defendant FRANKLIN DANA FORTUNATO filed for calendar year 2008 did not include approximately \$195,793 in additional income defendant FRANKLIN DANA FORTUANTO received from BLS, various of the Other Companies, and as co-pays in 2008. Upon this income, an additional tax of approximately \$59,331 was due and owing the United States.

5. On or about April 15, 2008, defendant FRANKLIN DANA FORTUNATO signed, filed, and caused to be filed with the Internal Revenue Service the 2007 Tax return, which contained a written declaration that it was signed under penalties of perjury.

6. As set forth in paragraph 4.d, above, the 2007 tax return was not true and correct in every material matter, in that the return failed to report a significant portion of the income that defendant FRANKLIN DANA FORTUNATO received from BLS, various of the Other Companies, and as co-pays during calendar year 2007, upon which a substantial tax was due and owing.

7. On or about April 15, 2008, in Morris County, in the District of New Jersey, and elsewhere, defendant

FRANKLIN DANA FORTUNATO

did knowingly and willfully make and subscribe a 2007 United States Individual Income Tax return, Form 1040, as described in paragraph 4.b of this information, which he did not believe to be



true and correct as to every material matter, as described in paragraph 6 of this Information.

In violation of Title 26, United States Code, Section 7206(1).

**FORFEITURE ALLEGATION**

1. The allegations contained in this Information are hereby realleged and incorporated by reference for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Section 982(a)(7).

2. Upon conviction of the offense in violation of Title 18, United States Code, Sections 1952(a)(3) and 2, the defendant, FRANKLIN DANA FORTUNATO, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), all right, title, and interest in the sum of \$639,948, which constitutes or is derived, directly or indirectly, from gross proceeds traceable to the offense of conviction.

3. 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 shall be entitled, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section

982(a) (7), to forfeiture of any other property of the defendant,  
FRANKLIN DANA FORTUNATO, up to the value of the property  
described in the preceding paragraph.

  
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PAUL J. FISHMAN  
UNITED STATES ATTORNEY

CASE NUMBER: \_\_\_\_\_

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**United States District Court  
District of New Jersey**

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**FRANKLIN DANA FORTUNATO**

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**INFORMATION**

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26 U.S.C. §7206(1)

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**PAUL J. FISHMAN**

*U.S. ATTORNEY NEWARK, NEW JERSEY*

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