

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 13-
 :
 v. :
 :
 CHARLES GOLDBERG : 18 U.S.C. §1952(a)(3) and 2

I N F O R M A T I O N

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

1. At all times relevant to this Information:

a. The defendant, CHARLES GOLDBERG, was a medical doctor licensed to practice medicine in the State of New Jersey with an office in the New Jersey.

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 ("Breihof") worked for BLS.

d. David Nicoll ("Nicoll") was an owner and the President of BLS, and directly supervised Breihof's activities.

e. Franklin Dana Fortunato ("Fortunato") 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 the medical practice of defendant CHARLES GOLDBERG.

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 February 2007 through in or about February 2009, in Morris County, in the District of New Jersey, and elsewhere, defendant

CHARLES GOLDBERG

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 February 2007, Breihof, with Nicoll's knowledge and approval, offered, and defendant CHARLES GOLDBERG accepted, bribes paid to induce defendant CHARLES GOLDBERG to refer

the blood specimens of his patients to BLS for testing and related services. To disguise those bribes, BLS and defendant CHARLES GOLDBERG entered into a sham lease agreement pursuant to which the monthly bribe payments to defendant CHARLES GOLDBERG from BLS were characterized as "lease" payments.

b. Among other things, under the sham lease agreement, BLS identified the defendant CHARLES GOLDBERG's office waiting room, bathroom, and one examination room as the area being leased, and paid defendant CHARLES GOLDBERG \$1,800 per month. Fortunato was then being paid \$1,800 a month by BLS under a separate lease agreement for the same examination room. In both of those lease agreements, the rental paid was not determined in a manner consistent with the fair market value of the space actually used by BLS.

c. Between in or about February 2007 and February 2009, BLS used the sham lease agreement to pay defendant CHARLES GOLDBERG bribes exceeding \$43,000. In return, defendant CHARLES GOLDBERG referred patient blood specimens to BLS that BLS used to submit, and collect, claims to Medicare and the Private Payors from which BLS realized just under \$200,000.

d. 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 CHARLES GOLDBERG in return for bribe payments.

e. Beginning in or about February 2007 and continuing through February 2009, Blue Cross/Blue Shield paid BLS - by check mailed to and received by BLS - sums of money 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 CHARLES GOLDBERG in return for bribe payments.

f. In or about February 2009, Breihof caused a check to be delivered to defendant CHARLES GOLDBERG to induce defendant CHARLES GOLDBERG to refer the blood specimens of defendant CHARLES GOLDBERG 's patients to BLS for testing and related services. The check, bearing #7550, was drawn on a BLS account in the amount of \$1,800 and signed by Nicoll. Defendant CHARLES GOLDBERG then caused check #7550 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.

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, CHARLES GOLDBERG, 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 \$58,000, 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, CHARLES GOLDBERG, up to the value of the property described in the preceding paragraph.

A handwritten signature in blue ink that reads "Paul J. Fishman". The signature is written in a cursive style with a horizontal line underneath the name.

PAUL J. FISHMAN
UNITED STATES ATTORNEY

CASE NUMBER: _____

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District of New Jersey

UNITED STATES OF AMERICA

v.

CHARLES GOLDBERG

INFORMATION

18 U.S.C. § 1952(a)(3) and 2

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