

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No. 14-
 :
 v. :
 :
 DOUGLAS BIENSTOCK : 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, DOUGLAS BIENSTOCK, 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. William Dailey ("Dailey") worked for BLS.

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

e. 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."

f. 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.

g. 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.

h. Private health insurance companies (hereafter, "Private Payors"), were corporations in the business of providing health care insurance to individuals and entities under various insurance policies (the "insureds"), pursuant to which the 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 2008 through in or about October 2009, in Morris County, in the District of New Jersey, and elsewhere, defendant

DOUGLAS BIENSTOCK

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 2008, Dailey, with Nicoll's knowledge and approval, offered, and defendant DOUGLAS BIENSTOCK accepted, bribes paid to induce defendant DOUGLAS BIENSTOCK to refer the blood specimens of his patients to BLS for testing and related services. To disguise those bribes, BLS and defendant DOUGLAS BIENSTOCK entered into a sham service agreement pursuant to which the monthly bribe payments to defendant DOUGLAS BEINSTOCK from BLS were characterized as "service" payments. Additionally, Dailey then offered, and defendant DOUGLAS BIENSTOCK then accepted, a cash fee

per test arrangement pursuant to which defendant DOUGLAS BIENSTOCK would be paid \$100 in cash for every NMR Cardio test ordered and referred to BLS.

b. Under the sham service agreement, BLS paid defendant DOUGLAS BIENSTOCK \$2,560 per month to perform basic blood drawing tasks. The monthly fee substantially exceeded, and was not determined in a manner consistent with, the fair market value of those blood drawing services.

c. Under the cash fee per test arrangement, defendant DOUGLAS BIENSTOCK also received an undetermined amount of cash for referring NMR Cardio tests to BLS.

d. Between in or about February 2008 and October 2009, BLS used the sham service agreement and the cash fee per NMR Cardio test to pay defendant DOUGLAS BIENSTOCK bribes exceeding \$51,600. In return, defendant DOUGLAS BIENSTOCK referred patient blood specimens to BLS that BLS used to submit claims to Medicare and the Private Payors and collect from those payors approximately \$640,000.

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 DOUGLAS BIENSTOCK in return for bribe payments.

f. On or about February 10, 2009, Medicare paid BLS - by an electronic transfer of funds that originated outside of the State of New Jersey and was received by BLS inside the State of New

Jersey - a sum of money for claims and related items submitted by BLS for blood testing on Medicare beneficiaries. A portion of the money paid by Medicare to BLS was for tests performed by BLS on blood specimens referred to BLS by or at the direction of defendant DOUGLAS BIENSTOCK in return for bribe payments.

g. In or about October 2009, David Nicoll caused a check to be delivered to defendant DOUGLAS BIENSTOCK to induce defendant DOUGLAS BIENSTOCK to refer the blood specimens of defendant DOUGLAS BIENSTOCK's patients to BLS for testing and related services. The check, bearing #20771, was drawn on a BLS account in the amount of \$2,560 and signed by David Nicoll.

h. In or about October 2009, defendant DOUGLAS BIENSTOCK caused check #20771 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, DOUGLAS BIENSTOCK, 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 \$79,695, 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, DOUGLAS BIENSTOCK, up to the value of the property described in the preceding paragraph.



PAUL J. FISHMAN
UNITED STATES ATTORNEY

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INFORMATION

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