

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA	:	Hon. Anne E. Thompson
	:	
v.	:	Crim. No. 20-
	:	
SHANELYN KENNEDY	:	18 U.S.C. § 371

INFORMATION

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

1. Unless otherwise indicated, at all times relevant to this Information:

The Defendant and Coconspirators

- a. Defendant SHANELYN KENNEDY (“KENNEDY”) resided in Lackawanna County, Pennsylvania and worked as a medical assistant for Dr. Yitzachok Kurtzer, a/k/a Barry Kurtzer (“Barry Kurtzer”).

- b. Barry Kurtzer, a coconspirator not charged in this Information, resided in Rockland County, New York and practiced medicine in three Pennsylvania offices (collectively the “Kurtzer Offices”), located in Scranton (the “Scranton Office”), Lake Ariel (the “Lake Ariel Office”), and Greentown (the “Greentown Office”).

c. Robin Kurtzer (“Robin Kurtzer”), Barry Kurtzer’s wife and a coconspirator not charged in this Information, also resided in Rockland County, New York and helped manage the Kurtzer Offices.

d. Amber Harris (“Harris”), a coconspirator not charged in this Information, resided in Pennsylvania and worked as a medical assistant in the Kurtzer Offices.

Background on the Medicare Program and Genetic Testing

e. 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 “health care benefit program” as defined in 18 U.S.C. § 24(b) and a “Federal health care program” as defined in 42 U.S.C. § 1320a-7b(f). Individuals who received benefits under Medicare were commonly referred to as “beneficiaries.”

f. The Medicare Part B program was a federally funded supplemental insurance program that provided Medicare insurance benefits for individuals aged 65 or older, and for certain individuals who were disabled. The Medicare Part B program paid for various medical services for beneficiaries, including diagnostic genetic tests.

g. Genetic tests were laboratory tests designed to identify specific inherited mutations in a patient’s genes. These genetic variations may affect a

patient's risk of developing certain diseases or how the patient responds to medications.

h. Pharmacogenomic genetic tests related to identifying how a patient's genes affect the patient's response to drugs were commonly referred to as "PGx" tests. Genetic tests related to a patient's hereditary predisposition for cancer were commonly referred to as "CGx" tests.

i. To conduct a genetic test, a laboratory had to obtain a DNA sample from the patient, typically from the patient's saliva by using a cheek (buccal) swab to collect sufficient cells to provide a genetic profile. The DNA sample was then submitted with a requisition form to the laboratory for analysis, such as PGx and CGx. The requisition form typically included information about the patient, the swab being submitted, and the referring physician. That physician or another authorized person had to confirm on the form that the genetic test was medically necessary.

j. If the patient had insurance, the laboratory typically submitted a claim for reimbursement for the test to the patient's insurance carrier. Reimbursement rates for PGx may have exceeded \$1,900 per test, while reimbursement rates for CGx may have exceeded \$6,000 per test.

The Clinical Laboratories and "Individual-1"

k. "Laboratory-1," located in New Jersey, and "Laboratory-2," located in Pennsylvania, were clinical laboratories that each collected genetic tests

and submitted reimbursement claims to Medicare.

l. In most cases, Laboratory-1 and Laboratory-2 did not perform the actual genetic testing onsite. Instead, both typically outsourced the testing to “Laboratory-3,” located in New Jersey.

m. “Individual-1” resided in New Jersey and worked as a sales representative for Laboratory-1 and Laboratory-2. Individual-1’s compensation from each laboratory was based in part on the volume of genetic tests that Individual-1 generated for Laboratory-1 or Laboratory-2 through Individual-1’s physician accounts.

The Conspiracy

2. From in or about October 2018 to in or about July 2020, in the District of New Jersey and elsewhere, defendant

SHANELYN KENNEDY

did knowingly and intentionally conspire and agree with Barry Kurtzer, Robin Kurtzer, Harris, and others to knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, in exchange for the furnishing and arranging for the furnishing of items and services, namely, the referral of genetic screening tests, for which payment was made in whole or in part under a Federal health care program, namely Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b)(1)(A).

Goal of the Conspiracy

3. The goal of the conspiracy was for Barry Kurtzer, Robin Kurtzer, KENNEDY, Harris, and others, to unlawfully enrich themselves by receiving bribes and kickbacks in exchange for collecting genetic samples from Medicare patients and steering those samples to Laboratory-1 and Laboratory-2.

Manner and Means of the Conspiracy

4. It was part of the conspiracy that:

a. In or about the fall of 2018, soon after establishing a business relationship with Individual-1, Barry Kurtzer and Robin Kurtzer agreed that Barry Kurtzer would steer genetic tests for his Medicare patients to Laboratory-1 and, in exchange, Individual-1 would pay Barry Kurtzer and Robin Kurtzer kickbacks and bribes of approximately \$2,000 per month.

b. Consistent with that agreement, starting in or about October 2018, Barry Kurtzer, aided by KENNEDY and Harris, collected genetic samples, primarily PGx, from Barry Kurtzer's Medicare patients and then sent those samples to Laboratory-1 for genetic testing.

c. Individual-1 typically paid Barry Kurtzer monthly kickbacks and bribes in exchange for the genetic tests by traveling from New Jersey to one of the Kurtzer Offices, where Individual-1 handed Barry Kurtzer \$2,000 cash in \$100 denominations.

d. When Barry Kurtzer did not receive his kickback and bribe payments from Individual-1, the volume of genetic tests that Barry Kurtzer and his staff, including KENNEDY, generated from Medicare patients decreased. In turn, that volume increased when the kickback and bribe payments resumed.

e. In or about September 2019, after receiving a kickback and bribe payment of approximately \$2,000 cash from Individual-1, Barry Kurtzer and Robin Kurtzer negotiated an increase to their monthly kickback and bribe payments to \$3,000 in exchange for steering approximately 30 genetic tests to Laboratory-1 each month.

f. Also in or about September 2019, KENNEDY and Harris agreed to accept monthly kickback and bribe payments of approximately \$250 each in exchange for collecting genetic swabs from Barry Kurtzer's Medicare patients and sending those swabs to Laboratory-1 for PGx testing.

g. KENNEDY and Harris subsequently texted Individual-1 about the high volume of genetic tests they were generating and asked when they would receive their kickback and bribe payments.

h. In or about February 2020, Barry Kurtzer, KENNEDY, and Harris agreed to start transitioning from sending genetic tests from Laboratory-1 to sending them to Laboratory-2, which, they learned, collected higher Medicare reimbursements per genetic test, including up to approximately \$6,000 for each CGx.

i. After the COVID-19 pandemic began, Barry Kurtzer and Robin Kurtzer agreed not to receive kickback and bribe payments in person and instead accepted those payments by wire and using an app that allowed users to transfer money to one another with their cell phones (the “App”). KENNEDY and Harris also accepted kickback and bribe payments using the App.

j. As the COVID-19 pandemic continued, Barry Kurtzer, KENNEDY, Harris, and others continued to collect and attempted to collect genetic swabs from Medicare patients.

k. In total, Medicare paid approximately a combined \$755,241 for genetic tests that Barry Kurtzer, KENNEDY, Harris, and others steered from the Kurtzer Offices to both Laboratory-1 and Laboratory-2.

Overt Acts

5. In furtherance of the conspiracy, and to achieve its illegal objectives, Barry Kurtzer, Robin Kurtzer, KENNEDY, Harris, and others committed, and caused to be committed, the following overt acts in the District of New Jersey and elsewhere:

a. On or about July 31, 2019, Barry Kurtzer, at the Lake Ariel Office, accepted a cash kickback and bribe from Individual-1 of approximately \$2,000 cash.

- b. On or about September 12, 2019, Barry Kurtzer and Robin Kurtzer, at the Greentown Office, accepted a cash kickback and bribe from Individual-1 of approximately \$2,000 cash.
- c. On or about September 12, 2019, Harris, in the Greentown Office, agreed to receive and split approximately \$500 a month with KENNEDY in exchange for collecting genetic swabs and sending them to Laboratory-1.
- d. On or about October 17, 2019, in the Scranton Office, Barry Kurtzer accepted from Individual-1 a kickback and bribe of approximately \$5,000 cash.
- e. On or about November 21, 2019, in the Greentown Office, Barry Kurtzer and Robin Kurtzer accepted from Individual-1 a kickback and bribe of approximately \$3,000 cash.
- f. On or about January 14, 2020, in the Greentown Office, Barry Kurtzer accepted from Individual-1 a kickback and bribe of approximately \$3,000 cash, and Harris accepted a bribe of approximately \$500 cash to split with KENNEDY.
- g. On or about February 20, 2020, in the Greentown Office, Barry Kurtzer accepted from Individual-1 a kickback and bribe of approximately \$3,000 cash.
- h. On or about March 17, 2020, Individual-1 wired a kickback and bribe of approximately \$3,000 from New Jersey to Barry Kurtzer's bank

account, and Individual-1 also used the App in New Jersey to send KENNEDY and Harris each a kickback and bribe of approximately \$400.

i. On or about April 28, 2020, Individual-1 used the App in New Jersey to pay KENNEDY and Harris each a kickback and bribe of approximately \$300.

j. In or about April 2020, Individual-1 used the App in New Jersey to send Barry Kurtzer two kickback and bribe payments of approximately \$2,000, each time through Robin Kurtzer's App account.

In violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATION

1. Upon conviction of the Federal health care offense (as defined in 18 U.S.C. § 24) alleged in this Information, the defendant shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real or personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the alleged offense (as defined in 18 U.S.C. § 24).

SUBSTITUTE ASSETS PROVISION

2. If any of the above-described forfeitable property, 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 21 U.S.C. § 853(p) (as incorporated by 28 U.S.C. § 2461(c) and 18 U.S.C. § 982(b)), to forfeiture of any other property of the defendant up to the value of the above-described forfeitable property.



CRAIG CARPENITO
United States Attorney

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