

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

UNITED STATES OF AMERICA	:	Hon.
	:	
v.	:	Criminal No. 23-
	:	
DAVID HENEGHAN and	:	18 U.S.C. § 371
SCOTT WOHRMAN	:	18 U.S.C. § 1349

I N F O R M A T I O N

The defendants having waived in open court prosecution by Indictment, the Attorney for the United States for the District of New Jersey, acting under authority conferred by 28 U.S.C. § 515, charges:

COUNT ONE
(Conspiracy to Violate the Anti-Kickback Statute)

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

The Defendants and Other Individuals and Entities

- a. American Health Screening (“AHS”) was a company that purportedly provided marketing services to laboratories.
- b. Defendants David Heneghan (“HENEGHAN”) and Scott Wohrman (“WOHRMAN”) were the owners and managers of AHS. HENEGHAN and WOHRMAN, acting through AHS, obtained doctors’ orders for orthotic braces and genetic testing. HENEGHAN and WOHRMAN, in turn, provided these orders in exchange for bribes from certain companies that provided durable medical equipment (“DME”) and performed genetic testing.

c. Individual-1 was a resident of New Jersey who owned, operated, and/or had a financial or controlling interest in a DME supply company located in New Jersey and elsewhere (“DME Company-1”). DME Company-1 primarily supplied orthotic braces, such as knee, ankle, back, wrist, and shoulder braces, to individuals who received benefits under the Medicare Program (“Medicare”), who were typically referred to as “beneficiaries.” DME Company-1 was an approved Medicare provider that submitted claims to Medicare for reimbursement for orthotic braces it provided to beneficiaries.

d. Individual-2 was a resident of Utah. Individual-2 and others owned, operated, and/or had a financial or controlling interest in a clinical laboratory (“Laboratory-1”) that was incorporated in New Jersey. Laboratory-1 conducted and arranged various diagnostic tests, including cardiac genetic tests for Medicare beneficiaries. Laboratory-1 was an approved Medicare provider that submitted claims to Medicare for reimbursement for genetic testing.

Background on the Medicare Program and Genetic Testing

e. Medicare is a federal program that provides free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare is 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). The Medicare Part B program is a federally funded supplemental insurance program that provides Medicare insurance benefits for individuals aged 65 or older, and for certain individuals who were disabled. The Medicare Part B

program pays for various medical services for beneficiaries, including DME and genetic testing.

f. Genetic tests are laboratory tests designed to identify specific inherited mutations in a patient's genes. These genetic variations affect a patient's risk of developing certain diseases or adversely responding to medications. Cardiac tests are genetic tests related to a patient's hereditary predisposition for cardiovascular diseases.

g. To conduct a genetic test, a laboratory must obtain a DNA sample from the patient. Such samples are typically obtained from the patient's saliva by using a cheek (buccal) swab to collect sufficient cells to provide a genetic profile. The DNA sample is then submitted to a laboratory for analysis.

h. If the patient had insurance, the laboratory would typically submit a claim for reimbursement for the test to the patient's insurance carrier. Reimbursement rates for cardiac genetic testing range from \$450 to \$7,681 per test.

i. Medicare excludes from coverage diagnostic genetic tests "that are not reasonable and necessary . . . [f]or the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." 42 C.F.R. § 411.15(k)(1). To be considered "reasonable and necessary," Medicare rules requires that genetic testing "be ordered by the physician who is treating the beneficiary, that is, the physician who furnishes a consultation or treats a beneficiary for a specific medical problem and who uses the results in the management of the beneficiary's specific medical problem." 42 C.F.R. §

410.32(a). “Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary.” *Id.*

j. Non-physician practitioners, such as clinical nurse specialists or physicians’ assistants, may also order genetic tests but are subject to the same requirement as physicians: they must consult or treat the beneficiary for a specific medical problem and use the test results to manage the beneficiary’s specific medical problem. 42 C.F.R. § 410.32(a)(2). Medicare also does not cover preventative cardiac genetic testing for beneficiaries who do not exhibit symptoms of heart disease or are not being treated for a heart disease.

The Conspiracy

2. From in or about July 2020 through in or about January 2021, in the District of New Jersey, and elsewhere, defendants

DAVID HENEGHAN and SCOTT WOHRMAN

did knowingly and intentionally conspire and agree with each other and others to commit an offense against the United States, that is, to knowingly and willfully solicit and receive remuneration, directly and indirectly, overtly and covertly, in cash and in kind, that is, kickbacks and bribes, from any person in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be 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 defendants HENEGHAN, WOHRMAN, and their co-conspirators to unlawfully enrich themselves by soliciting and receiving kickbacks and bribes in exchange for fraudulent DME orders and referrals for genetic testing.

Manner and Means of the Conspiracy

4. The manner and means by which defendants HENEGHAN, WOHRMAN and others sought to accomplish the goal of the conspiracy included, among other things, the following:

Defendants HENEGHAN and WOHRMAN Solicited and Received Kickbacks in Exchange for Fraudulent DME Orders

a. From at least as early as in or about July 2020 through in or about January 2021, defendants HENEGHAN and WOHRMAN—acting through AHS—and others entered into kickback agreements with DME Company-1, through which defendants HENEGHAN, WOHRMAN, and others generated medically unnecessary DME orders. DME Company-1 paid defendants HENEGHAN and WOHRMAN kickbacks ranging from approximately \$150 to \$350 in exchange for each DME Order.

b. In general, defendants HENEGHAN, WOHRMAN, and others obtained DME orders for Medicare beneficiaries located in the United States and elsewhere through the use of foreign marketing call centers. Defendants HENEGHAN, WOHRMAN, and others knowingly utilized telemedicine companies to generate DME orders that were medically unnecessary because they did not

comply with Medicare’s telemedicine requirements and because were generated without any legitimate physician-patient relationship.

c. To conceal the receipt of the kickbacks, defendants HENEGHAN and WOHRMAN submitted sham invoices (the “AHS invoices”) to DME Company-1 to disguise the illicit bribe payments for the DME orders. According to the AHS invoices, defendants HENEGHAN and WOHRMAN falsely billed for having provided marketing services. In reality, however, defendants HENEGHAN, WOHRMAN, and others provided DME orders to Individual-1, and others affiliated with DME Company-1, that consisted of completed doctors’ orders, not marketing services.

d. Once DME Company-1 received the DME orders from defendants HENEGHAN, WOHRMAN, and others, DME Company-1 submitted and/or caused the electronic submission of claims to Medicare for payment.

Defendants HENEGHAN and WOHRMAN Solicited and Received Kickbacks for Genetic Testing Referrals

e. From at least as early as in or about July 2020 through in or about January 2021, defendants HENEGHAN and WOHRMAN—acting through AHS—and others agreed with Laboratory-1 to provide doctors’ orders for genetic testing in exchange for kickbacks from Laboratory-1.

f. In or about December 2020, defendants HENEGHAN, WOHRMAN, and Individual-2 agreed that AHS would provide doctors’ orders to Laboratory-1. In exchange, Individual-2 paid kickbacks in the form of a percentage of the Medicare reimbursements that Laboratory-1 received for the

genetic tests. Specifically, defendants HENEGHAN and WOHRMAN solicited and received kickbacks from Individual-2 of approximately 50 percent of the amount Medicare paid Laboratory-1 for each cardiac test.

g. To conceal the kickback arrangement, from in or around January 2021, Laboratory-1 wired the kickback payments to AHS. Defendants HENEGHAN and WOHRMAN, acting through AHS, submitted sham invoices to Laboratory-1 to make it appear that AHS was engaged in and being paid for legitimate marketing services. The sham invoices showed that AHS provided marketing services to Laboratory-1 based on an hourly rate. In reality, however, Laboratory-1, paid AHS on a per-genetic-test basis using reimbursement payments received from Medicare.

h. As a result of defendants HENEGHAN's and WOHRMAN's participation in the kickback scheme, from in or about July 2020 through in or about January 2021, Medicare paid approximately \$521,898 for DME and cardiac test claims that were the product of the illicit kickback scheme.

Overt Acts

5. In furtherance of the conspiracy and to effect the goal thereof, defendants HENEGHAN and WOHRMAN committed or caused the commission of the following overt acts in the District of New Jersey and elsewhere:

a. From in or around July 2020 through in or around September 2020, HENEGHAN and WOHRMAN caused DME Company-1 to wire kickback payments of approximately \$150,550 to AHS.

b. On or about January 13, 2021, HENEGHAN emailed an invoice to Laboratory-1 requesting payment for \$19,500 for marketing services of 78 hours at a \$250 hourly rate. In reality, the invoice was for 13 patients, \$1,500 per patient, that WOHRMAN had submitted to Laboratory-1. On the same day, Individual-2 wired the money from an established New Jersey based bank account to AHS's business account. WOHRMAN was copied on those email communications.

c. On or about January 27, 2021, HENEGHAN emailed an invoice to Laboratory-1 requesting payment for \$15,000 for marketing services of 60 hours at a \$250 hourly rate. In reality, the invoice was for 10 patients, \$1,500 per patient, that WOHRMAN had submitted to Laboratory-1. On or about January 28, 2021, Individual-2 wired the money from an established New Jersey based bank account to AHS's business account. WOHRMAN was copied on those email communications.

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

COUNT TWO
(Conspiracy to Commit Health Care Fraud)

6. The allegations in Paragraphs 1 and 3 through 5 of Count One are realleged here.

7. From in or about July 2020 through in or about January 2021, in the District of New Jersey, and elsewhere, defendants

DAVID HENEGHAN and
SCOTT WOHRMAN

did knowingly and intentionally conspire and agree with others to knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, money owned by, and under the custody and control of, a health care benefit program, as defined by Title 18, United States Code, Section § 24(b), in connection with the delivery of or payment for health care benefits, items and services, contrary to Title 18, United States Code, Section 1347.

Goal of the Conspiracy

8. The goal of the conspiracy was for defendants HENEGHAN, WOHRMAN, and their co-conspirators to unlawfully enrich themselves by soliciting and receiving kickbacks and bribes from Medicare reimbursement payments in exchange for medically unnecessary DME orders and cardiac testing referrals.

Manner and Means

9. The manner and means by which defendants HENEGHAN, WOHRMAN, and others sought to accomplish the goal of the conspiracy included, among other things, the following:

a. In order to generate doctors' orders for DME and cardiac testing, defendants HENEGHAN, WOHRMAN, and others used a variety of methods, including making direct "cold" telephone calls to elderly beneficiaries; Internet advertising; and in-person solicitations to beneficiaries across the United States. Through defendants HENEGHAN, WOHRMAN, and others, targeted beneficiaries and questioned them to determine whether they met certain eligibility requirements for DME and cardiac tests. Once an eligible beneficiary was identified, defendants HENEGHAN and WOHRMAN submitted a DME order to DME Company-1 or a cardio testing kit to Laboratory-1.

b. Defendants HENEGHAN and WOHRMAN knowingly provided DME Company-1 with DME orders for medically unnecessary DME that were procured without complying with the Medicare telemedicine regulations and without establishing a physician-patient relationship.

c. As a result of the DME orders that defendants HENEGHAN and WOHRMAN generated, DME Company-1, and/or other billing companies, Individual-1 and others submitted and/or caused the submission of false or fraudulent claims to Medicare for orthotic braces that were: (1) not medically

necessary; (2) never requested by a Medicare beneficiary; or (3) never received by a Medicare beneficiary.

d. Defendants HENEGHAN and WOHRMAN received payments per patient referral from DME Company-1. Indeed, to conceal the receipt of the kickbacks, defendants HENEGHAN and WOHRMAN submitted AHS invoices to DME Company-1 to disguise the illicit bribe payments for the DME orders. According to the AHS invoices, defendants HENEGHAN and WOHRMAN falsely billed for having provided marketing services. In reality, however, defendants HENEGHAN, WOHRMAN, and others provided DME orders to Individual-1, and others affiliated with DME Company-1, that consisted of completed doctors' orders, not marketing services.

e. With respect to genetic testing, a company associated with AHS mailed testing kits to each beneficiary. Beneficiaries then completed the buccal swabs or other testing mechanisms contained in the kits—without any involvement by a health care provider—and returned them to Laboratory-1. Laboratory-1 then submitted or caused to be submitted claims to Medicare for payment for each cardio test.

f. Defendants HENEGHAN and WOHRMAN knowingly provided Laboratory-1 with cardio test kits in furtherance of the fraudulent submissions to Medicare. In exchange, Individual-2 paid kickbacks in the form of a percentage of the Medicare reimbursements that Laboratory-1 received for the genetic tests. Specifically, defendants HENEGHAN and WOHRMAN solicited and received

kickbacks from Individual-2 of approximately 50 percent of the amount Medicare paid Laboratory-1 for each cardiac test.

g. To conceal the kickback arrangement, from in or around January 2021, Laboratory-1 wired the kickback payments to AHS. Defendants HENEGHAN and WOHRMAN, acting through AHS, submitted sham invoices to Laboratory-1 to make it appear that AHS was engaged in and being paid for legitimate marketing services. The sham invoices showed that AHS provided marketing services to Laboratory-1 based on an hourly rate. In reality, however, Laboratory-1, paid AHS on a per-genetic-test basis using reimbursement payments received from Medicare.

In violation of Title 18, United States Code, Section 1349.

FORFEITURE ALLEGATIONS

10. Upon conviction of the offense alleged in Counts One and Two, defendants HENEGHAN and WOHRMAN 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 offense (as defined in 18 U.S.C. § 24) alleged in this Information, including, but not limited to, a sum of money equal to \$562,447.85.

SUBSTITUTE ASSETS PROVISION **(Applicable to All Forfeiture Allegations)**

11. 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 person;
- (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 subdivided without difficulty;

the United States shall be entitled to forfeiture of substitute property, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b).



VIKAS KHANNA

Attorney for the United States,
Acting Under Authority Conferred
By 28 U.S.C. § 515