

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  
PAUL OSTERGAARD, M.D. :

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, PAUL OSTERGAARD, was a medical doctor licensed to practice medicine in the State of 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 worked for BLS.

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

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") 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 December 2006 until in or about July 2009, in Morris County, in the District of New Jersey, and elsewhere, defendant

PAUL OSTERGAARD

knowingly and intentionally used and caused to be used the mail and facilities 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 December 2006, William Dailey, with David Nicoll's knowledge and approval, offered, and defendant PAUL OSTERGAARD accepted, bribes paid to induce defendant PAUL OSTERGAARD to refer the blood specimens of his patients to BLS for testing and related services. To disguise those bribes, BLS and defendant PAUL OSTERGAARD entered into a sham lease agreement and, thereafter, a sham service agreement, pursuant to which the monthly bribe payments to defendant PAUL OSTERGAARD from BLS were characterized as "lease" and "service" payments.

b. Among other things, under the sham lease agreement, BLS paid defendant PAUL OSTERGAARD \$1,200 per month during the 2006-2009 period for the purported use of 720 square feet in defendant PAUL OSTERGAARD's medical office when, in fact, the space allocated to BLS in that office was actually approximately 80 square feet, one half of a shelf in one examination room, one or two shelves in a refrigerator, and the use of a centrifuge, as needed, to spin blood prior to pick-up. This agreement 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 PAUL OSTERGAARD \$600 per month to perform basic blood drawing tasks. This monthly fee was also not determined in a manner consistent with the fair market value of those blood drawing services.

d. Between in or about December 2006 and in or about July 2009, BLS used the sham lease agreement and sham service agreement to pay defendant PAUL OSTERGAARD bribes that, in the aggregate, exceeded \$50,000. In return, defendant PAUL OSTERGAARD, 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 \$150,000.

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 PAUL OSTERGAARD 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. Approximately \$1,300 of that \$110,000 payment was for tests performed by BLS on blood specimens referred to BLS by defendant PAUL OSTERGAARD in return for bribe payments.

g. In or about February 2009, David Nicoll caused a check to be delivered to defendant PAUL OSTERGAARD to induce defendant PAUL OSTERGAARD to refer the blood specimens of defendant PAUL OSTERGAARD's patients to BLS for testing and related services. The check, bearing #7614, was drawn on a BLS account in the amount of \$1,200 and signed by David Nicoll.

h. In or about February 2009, defendant PAUL OSTERGAARD caused check #7614 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, PAUL OSTERGAARD, 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 \$53,900, 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, PAUL OSTERGAARD, up to the value of the property described in the preceding paragraph.

  
PAUL J. FISHMAN  
UNITED STATES ATTORNEY

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

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**UNITED STATES OF AMERICA**

**v.**

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**INFORMATION**

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**PAUL J. FISHMAN**

*U.S. ATTORNEY NEWARK, NEW JERSEY*

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