

FILED BY **KS** D.C.
May 24, 2021
ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIAMI

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
21-80080-CR-CANNON/REINHART
Case No. _____

18 U.S.C. § 371
18 U.S.C. § 982(a)(7)

UNITED STATES OF AMERICA

vs.

JUAN NAVA RUIZ and
ERIC FRANK,

Defendants.

_____ /

INFORMATION

The Acting United States Attorney charges that:

GENERAL ALLEGATIONS

At all times material to this Information:

Medicare Program

1. The Medicare Program (“Medicare”) was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services (“HHS”), through its agency, the Centers for Medicare and Medicaid Services (“CMS”), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare “beneficiaries.”

2. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b) and a “Federal health care program,” as defined by Title 42, United States Code, Section 1320a-7b(f).

3. Medicare covered different types of benefits, which were separated into different program “parts.” Medicare “Part A” covered health services provided by hospitals, skilled nursing facilities, hospices, and home health agencies. Medicare “Part B” was a medical insurance program that covered, among other things, medical services provided by physicians, medical clinics, laboratories, and other qualified health care providers, such as office visits, minor surgical procedures, and laboratory testing, that were medically necessary and ordered by licensed medical doctors or other qualified health care providers.

4. Physicians, clinics, and other health care providers, including laboratories, that provided services to beneficiaries were able to apply for and obtain a “provider number.” A health care provider that received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries.

5. A Medicare claim was required to contain certain important information, including: (a) the beneficiary’s name and Health Insurance Claim Number (“HICN”); (b) a description of the health care benefit, item, or service that was provide or supplied to the beneficiary; (c) the billing codes for the benefit, item, or service; (d) the date upon which the benefit, item, or service was provided or supplied to the beneficiary; and (e) the name of the referring physician or other health care provider, as well as a unique identifying number, known either as the Unique Physician Identification Number (“UPIN”) or National Provider Identifier (“NPI”). The claim form could be submitted in hard copy or electronically.

Part B Coverage and Regulations

6. CMS acted through fiscal agents called Medicare administrative contractors (“MACs”), which were statutory agents for CMS for Medicare Part B. The MACs were private entities that reviewed claims and made payments to providers for services rendered to beneficiaries. The MACs were responsible for processing Medicare claims arising within their assigned geographical area, including determining whether the claim was for a covered service.

7. First Coast Services Options, Inc. (“First Coast”) was the MAC for the consolidated Medicare jurisdictions that covered Florida, Puerto Rico, and the U.S. Virgin Islands.

8. To receive Medicare reimbursement, providers had to make appropriate application to the MAC and executed a written provider agreement. The Medicare provider enrollment application, CMS Form 855B, was required to be signed by an authorized representative of the provider. CMS Form 855B contained a certification that stated:

I agree to abide by the Medicare laws, regulations and program instructions that apply to this supplier. The Medicare laws, regulations, and program instructions are available through the Medicare contractor. I understand that payment of a claim by Medicare is conditioned upon the claim and the underlying transaction complying with such laws, regulations, and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), and on the supplier’s compliance with all applicable conditions of participation in Medicare.

9. CMS Form 855B contained additional certifications that the provider “will not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare,” and “will not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.”

10. Payments under Medicare Part B were often made directly to the health care provider rather than to the patient or beneficiary. For this to occur, the beneficiary would assign the right of payment to the health care provider. Once such an assignment took place, the health

care provider would assume the responsibility for submitting claims to, and receiving payments from, Medicare.

Laboratory Tests

COVID-19 Testing and Respiratory Pathogen Panel (“RPP”) Testing

11. COVID-19 testing assessed whether an individual had the novel coronavirus disease 2019, commonly referred to as “COVID-19.”

12. RPP testing detected certain respiratory viruses and bacterial pathogens. The RPP test did not and could not test for COVID-19. Medicare reimbursement rates for RPP testing were approximately four times higher than Medicare reimbursement rates for the COVID-19 test.

Genetic Testing

13. Various forms of genetic testing existed using DNA sequencing to detect mutations in genes that could indicate a higher risk of developing certain diseases or health conditions in the future, including certain types of cancers (known as cancer genetic or “CGx” testing), cardiovascular disease, diabetes, obesity, Parkinson’s disease, Alzheimer’s disease, and dementia. Pharmacogenetic tests (“PGx” tests) were laboratory tests that used DNA sequencing to assess how the body’s genetic makeup would affect the response to certain medications.

Medicare Regulations

14. Except for certain statutory exceptions, Medicare did not cover laboratory testing that was “not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.” Title 42, United States Code, Section 1395y(a)(1)(A).

15. If laboratory testing was necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member, Medicare imposed additional

requirements before covering the testing. Title 42, Code of Federal Regulations, Section 410.32(a) provided, “All diagnostic x-ray tests, diagnostic laboratory tests, and other diagnostic tests must 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.” “Tests not ordered by the physician who is treating the beneficiary are not reasonable and necessary.” *Id.*

16. In or around May 2020, in response to the public health emergency for the COVID-19 pandemic, Medicare amended Title 42, Code of Federal Regulations, Section 410.32(a) to remove the requirement that COVID-19 tests and certain, defined RPP tests were covered only based on the order of a treating physician. Under the interim policy, Medicare covered COVID-19 tests and certain, defined RPP tests when ordered by any healthcare professional authorized to do so under state law. This interim policy did not amend Title 42, Code of Federal Regulations, Section 410.32(a) as it applied to genetic testing.

The Defendants and Related Entities and Individuals

17. Boca Toxicology, LLC (d/b/a Lab Dynamics) (“Boca Toxicology”) was a limited liability company formed under the laws of Florida, with its principal place of business in Palm Beach County, Florida, and held a bank account ending in 7233 at TD Bank (the “Boca Toxicology Account”).

18. Boca Toxicology purportedly provided genetic, RPP, COVID-19, and other laboratory testing services to beneficiaries.

19. Christopher Licata, a resident of Palm Beach County, Florida, was the owner of Boca Toxicology.

20. CCMG Enterprises, Inc. (“CCMG”) was a company incorporated under the laws of Florida, with its principal place of business in Broward County, Florida.

21. Defendant **JUAN NAVA RUIZ**, a resident of Broward County, Florida, co-owned CCMG and held an account ending in 8592 at USAA Bank (the “**JUAN NAVA RUIZ Account**”).

22. Defendant **ERIC FRANK**, a resident of Broward County, Florida, co-owned CCMG.

23. Company A was a company formed under the laws of Florida, with its principal place of business in Palm Beach County, Florida.

24. Individual A, a resident of Palm Beach County, owned and operated Company A.

Conspiracy to Solicit and Receive Health Care Kickbacks
(18 U.S.C. § 371)

25. From in or around December 2018, and continuing through in or around June 2020, in Palm Beach County, in the Southern District of Florida, and elsewhere, the defendants,

JUAN NAVA RUIZ and
ERIC FRANK,

did knowingly and willfully, that is, with the intent to further the object of the conspiracy, combine, conspire, confederate, and agree with Christopher Licata, Individual A, and others known and unknown to the Acting United States Attorney to commit an offense against the United States, that is, to violate Title 42, United States Code, Section 1320a-7b(b)(1)(A), by soliciting and receiving any remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part by a Federal health care program, that is, Medicare.

Purpose of the Conspiracy

26. It was a purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by: (a) soliciting and receiving kickbacks and bribes in return for recruiting and referring beneficiaries to Boca Toxicology; (b) submitting and causing the submission of claims to Medicare for COVID-19, RPP, genetic, and other forms of laboratory testing that Boca Toxicology purported to provide to those beneficiaries; (c) concealing the kickbacks and bribes; and (d) diverting proceeds for their personal use and benefit, the use and benefit of others, and to further the conspiracy.

Manner and Means of the Conspiracy

The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

27. **JUAN NAVA RUIZ** and **ERIC FRANK** referred beneficiaries to Boca Toxicology for COVID-19, RPP, genetic, and other forms of laboratory testing, without regard to the medical necessity of such testing and knowing that Boca Toxicology would bill Medicare for laboratory testing purportedly provided by Boca Toxicology to these beneficiaries.

28. **JUAN NAVA RUIZ** and **ERIC FRANK** solicited and received at least \$193,240 in kickbacks from Christopher Licata, through Boca Toxicology, in exchange for the recruitment and referral of beneficiaries to Boca Toxicology, knowing that Boca Toxicology would bill for testing purportedly provided to the recruited beneficiaries.

29. From in or around December 2018, to in or around June 2019, **JUAN NAVA RUIZ** and **ERIC FRANK** received these kickback payments through a broker, Individual A, who received the kickback payments from Christopher Licata, through Boca Toxicology, and passed the kickback payments along to **RUIZ** and **FRANK**, as payments from Company A to CCMG.

30. From in or around July 2019, to in or around June 2020, **JUAN NAVA RUIZ** received kickback payments directly from Christopher Licata, through Boca Toxicology, in the form of purported salary payments under a W2 agreement, which were deposited into the **JUAN NAVA RUIZ** Account. **RUIZ** then split the kickback payments with **ERIC FRANK**.

31. **JUAN NAVA RUIZ, ERIC FRANK**, Individual A, Christopher Licata, and other co-conspirators created and caused to be created sham documentation that disguised the kickbacks and bribes as payments from Boca Toxicology for other services, including legitimate employment and for hourly marketing services.

32. **JUAN NAVA RUIZ, ERIC FRANK**, Individual A, Christopher Licata, and other co-conspirators caused Boca Toxicology to submit claims to Medicare, via interstate wire communications, for COVID-19, RPP, genetic and other forms of laboratory testing supposedly provided to beneficiaries who were referred to Boca Toxicology in exchange for kickbacks and bribes. As a result of these claims, Medicare made payments to Boca Toxicology in at least the approximate amount of \$811,005.

Overt Acts

In furtherance of the conspiracy, and to accomplish its object and purpose, at least one co-conspirator committed and caused to be committed, in the Southern District of Florida, at least one of the following overt acts, among others:

1. In or around January 2019, **JUAN NAVA RUIZ, ERIC FRANK**, Christopher Licata, and Individual A negotiated an arrangement whereby **RUIZ** and **FRANK**, through CCMG, would receive a percentage of Medicare's reimbursements for testing of beneficiaries that **RUIZ** and **FRANK** referred to Boca Toxicology. Under the agreed arrangement, payments from Licata to **RUIZ** and **FRANK** would flow through Individual A, who the parties agreed would also receive

a portion of the Medicare reimbursements, to be paid to Company A, in exchange for Individual A's role in brokering the agreement. Company A would transfer the kickback to **RUIZ** and **FRANK**, through CCMG.

2. On or about April 29, 2019, Christopher Licata signed check no. 687 in the amount of approximately \$5,000 from the Boca Toxicology Account made payable to Company A, which was a kickback for beneficiaries that **JUAN NAVA RUIZ** and **ERIC FRANK** referred to Boca Toxicology for laboratory testing.

3. On or about April 30, 2019, **JUAN NAVA RUIZ** emailed Individual A a false and fraudulent invoice from CCMG to Company A, which was prepared in order to disguise the kickback payment from Christopher Licata that Company A would be passing on to **RUIZ** and **ERIC FRANK**, through CCMG. The invoice falsely reflected that CCMG had performed "Genomics education and assessments" for 10 hours at the rate of \$450 per hour, for a total of \$4,500.

4. On or about May 1, 2019, Company A transferred approximately \$4,500 to **JUAN NAVA RUIZ** and **ERIC FRANK**, through CCMG, via wire transfer, which represented the portion of the kickback Christopher Licata owed to **RUIZ** and **FRANK**.

5. On or about June 8, 2019, Christopher Licata signed check no. 710 in the amount of approximately \$5,000 from the Boca Toxicology Account made payable to Company A, which was a kickback for beneficiaries that **JUAN NAVA RUIZ** and **ERIC FRANK** referred to Boca Toxicology for laboratory testing.

6. On or about June 11, 2019, **JUAN NAVA RUIZ** emailed Individual A a false and fraudulent invoice from CCMG to Company A, which was prepared in order to disguise the kickback payment from Christopher Licata that Company A would be passing on to **RUIZ** and

ERIC FRANK, through CCMG. The invoice falsely reflected that CCMG had performed “Genomics education and assessments” for 10 hours at the rate of \$450 per hour, for a total of \$4,500.

7. On or about June 12, 2019, Company A transferred approximately \$4,470 to **JUAN NAVA RUIZ** and **ERIC FRANK**, through CCMG, via wire transfer, which represented the portion of the kickback Christopher Licata owed to **RUIZ** and **FRANK**, minus the wire transfer fee.

8. On or about July 3, 2019, after Christopher Licata had observed the volume of referrals from **JUAN NAVA RUIZ** and **ERIC FRANK** for several months, Licata sent an iMessage to **RUIZ** enclosing a copy of Internal Revenue Service (“IRS”) Form W-4, so that **RUIZ** could be reflected as a salaried employee of Boca Toxicology, when in fact **RUIZ** was not an employee of Boca Toxicology. Licata and **RUIZ** negotiated a purported monthly salary of approximately \$24,000 to reflect the historical volume of referrals and the taxes that **RUIZ** would have to pay on salary payments. Licata and **RUIZ** agreed that only **RUIZ**, not **FRANK**, would be reflected as an employee and that **RUIZ** would split the purported salary payments with **FRANK**.

9. On or about July 12, 2019, Christopher Licata signed check no. 10002 in the amount of approximately \$7,199 from the Boca Toxicology Account made payable to **JUAN NAVA RUIZ**, which represented a kickback payment in exchange for beneficiaries that **RUIZ** and **ERIC FRANK** referred to Boca Toxicology for laboratory testing.

10. On or about September 20, 2019, **JUAN NAVA RUIZ** and **ERIC FRANK**, through the **JUAN NAVA RUIZ** Account, received, in the form of a direct deposit from Payroll Company 1 that was funded by the Boca Toxicology Account, a transfer of approximately \$8,473

from Christopher Licata, through Boca Toxicology, which represented a kickback payment in exchange for beneficiaries that **RUIZ** and **FRANK** referred to Boca Toxicology for laboratory testing.

11. On or about June 25, 2020, **JUAN NAVA RUIZ** and **ERIC FRANK**, through the **JUAN NAVA RUIZ** Account, received, in the form of a direct deposit from Payroll Company 1 that was funded by the Boca Toxicology Account, a transfer of approximately \$7,944 from Christopher Licata which represented a kickback payment in exchange for beneficiaries that **RUIZ** and **FRANK** referred to Boca Toxicology.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATIONS
(18 U.S.C. § 982(a)(7))

1. The allegations of this Information are re-alleged and by this reference fully incorporated herein for alleging criminal forfeiture to the United States of certain property in which the defendants have an interest.

2. Upon conviction of a violation of, or a criminal conspiracy to violate, a “Federal health care offense,” as defined in Title 18, United States Code, Section 24(a), as alleged in this Information, the defendant so convicted shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to such violation.

3. The property subject to forfeiture includes, but is not limited to, the sum of money equal in value to the gross proceeds traceable to the commission of the violation alleged in this Information, which the United States will seek as a forfeiture money judgment as part of each defendant’s sentence.

4. 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 co-mingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures outlined at Title 21, United States Code, Section 853, as made applicable by Title 18, United States Code, Section 982(b)(1).

 for:

JUAN ANTONIO GONZALEZ
ACTING UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

DANIEL KAHN
ACTING CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

ALLAN MEDINA
DEPUTY CHIEF
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

 for:

JAMIE DE BOER
TRIAL ATTORNEY
CRIMINAL DIVISION, FRAUD SECTION
U.S. DEPARTMENT OF JUSTICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

CASE NO. _____

v.

JUAN NAVA RUIZ, et al.

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

_____ /
Defendant.

Court Division: (Select One)

- Miami Key West FTL
- WPB FTP

New defendant(s) Yes No

Number of new defendants _____

Total number of counts _____

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) **No**
List language and/or dialect _____

4. This case will take 0 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

- | | | | |
|----------------------|-------------------------------------|------------------|-------------------------------------|
| (Check only one) | | (Check only one) | |
| I 0 to 5 days | <input checked="" type="checkbox"/> | Petty | <input type="checkbox"/> |
| II 6 to 10 days | <input type="checkbox"/> | Minor | <input type="checkbox"/> |
| III 11 to 20 days | <input type="checkbox"/> | Misdemeanor | <input type="checkbox"/> |
| IV 21 to 60 days | <input type="checkbox"/> | Felony | <input checked="" type="checkbox"/> |
| V 61 days and over | <input type="checkbox"/> | | |

6. Has this case previously been filed in this District Court? (Yes or No) **No**

If yes: Judge _____ Case No. _____

(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) **No**

If yes: Magistrate Case No. _____

Related miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

Rule 20 from the District of _____

Is this a potential death penalty case? (Yes or No) **No**

7. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to August 9, 2013 (Mag. Judge Alicia O. Valle)? (Yes or No) **No**
8. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek Maynard)? (Yes or No) **No**
9. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to October 3, 2019 (Mag. Judge Jared Strauss)? (Yes or No) **No**



 JAIME DE BOER
 DOJ Trial Attorney
 Court ID No. A5502601

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

PENALTY SHEET

Defendant's Name: JUAN NAVA RUIZ

Case No: _____

Count #1:

Conspiracy to Solicit and Receive Health Care Kickbacks

Title 18, United States Code, Section 371

*** Max. Penalty:** Five (5) years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ERIC FRANK

Case No: _____

Count #: 1

Conspiracy to Solicit and Receive Health Care Kickbacks

Title 18, United States Code, Section 371

***Max Penalty:** Five (5) years' imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

United States of America)
v.) Case No.
JUAN NAVA RUIZ,)
Defendant)

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: _____

Defendant's signature

Signature of defendant's attorney

FAIRUZE SOFIA, ESQ.

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

United States of America

v.

ERIC FRANK,

Defendant

)
)
)
)
)

Case No.

WAIVER OF AN INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: _____

Defendant's signature

Signature of defendant's attorney

JOE NASCIMENTO, ESQ.

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title