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Former Lab Owners, Compliance Officer Face Prison Time Over False Claims

In two recent cases, former owners of a Missouri clinical laboratory and a Kentucky toxicology lab face prison time over false claim convictions. In one case, the former owner could be sentenced to up to five years in prison for a scheme to dupe the federal government into paying for tests that it did not perform. In the second case, the owner and compliance officer of the toxicology lab have already started serving their prison sentences.

The former owner of a Missouri healthcare company and clinical laboratory has admitted submitting more than $3.8 million in fraudulent claims to Medicare, Medicaid and private healthcare benefit programs and faces up to five years in prison, a fine of up to $250,000, or both.

Carlos Himpler, 44, now of Baton Rouge, La., pleaded guilty Feb. 9, 2024, in U.S. District Court in St. Louis to a felony conspiracy charge. He is scheduled to be sentenced May 15.

Himpler, who at the time lived in St. Louis County, described himself as a "business development strategist" and owned or operated a series of healthcare-related businesses. Himpler's co-defendant, Franco Sicuro, MD, a psychiatrist, also owned businesses, including Advanced Geriatric Management LLC in Creve Coeur, Mo. In the fall of 2014, Himpler and Sicuro opened an in-house testing lab at AGM. They also opened Genotec DX, which they represented was a clinical testing laboratory, and agreed to split profits 50-50. Genotec was in the same building and used the same testing machine as AGM's lab.

According to the U.S. Attorney's Office for the Eastern District of Missouri, Himpler's and Sicuro's goal was to maximize their profits from the lab testing business. They sought accreditation for both labs under the Clinical Laboratory Testing Amendments of 1988 (CLIA). However, they did not disclose that both labs would employ the same part-time employee who would perform tests using the same machine, Himpler admitted in his plea.

To convince the state CLIA agency to grant Genotec a final certificate of compliance in November 2015, Himpler participated in causing Genotec to make misrepresentations to CLIA, including that Genotec's testing hours changed so that they no longer overlapped with AGM, that Genotec and AGM kept separate laboratory logs and that AGM stopped running lab samples and transferred its employee to Genotec in July 2015, when Genotec began running urine toxicology tests, the plea says.

They also concealed Sicuro's co-ownership of Genotec from Medicare, Medicaid and private healthcare insurers, while referring urine specimens from Sicuro's own practice, AGM, to Genotec.

Two Labs Billed for Same Testing

Himpler and Sicuro and other healthcare providers at AGM ordered urine toxicology tests for patients and referred those tests to AGM's lab and Genotec, which in turn sent the samples to outside reference laboratories. Both men knew that AGM and Genotec did not have the necessary testing equipment to confirm the amount of given toxin in the urine testing to a high degree of certainty, Himpler's plea says. They then billed health insurers for the testing.

Karen Lovitch

Under Medicare rules, the lab performing the testing must bill the Medicare program and cannot reassign the right to bill unless an exception applies, notes Karen Lovitch, chair of the Health Law Practice and co-chair of the Health Care Enforcement Defense Practice with Mintz (Washington, D.C.).

"If Genotec had complied with Medicare's 70/30 rule, it could have billed testing performed by another laboratory, but it presumably could not have done so given that it did not even have the necessary equipment," says Lovitch.

In March 2015, Himpler and Sicuro incorporated another laboratory company, Midwest Toxicology Group LLC, but never obtained CLIA certification or any lab equipment. Midwest was a lab in name only and was not authorized to perform tests on human specimens. When health insurers began scrutinizing claims submitted by Genotec and became resistant to paying them, Himpler and Sicuro created Midwest for the purpose of billing health insurers, the plea says. In many instances, each lab submitted a claim for the testing of the same specimen obtained from the same person on the same day of service, which Lovitch notes appears to be blatant fraud. The pair used Genotec's CLIA number.

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Himpler admitted in his plea agreement that Medicare, Medicaid and private health insurers paid $3.8 million in fraudulent claims. Sicuro pleaded guilty in 2022 and was ordered to pay restitution. He also agreed to forfeit $3.1 million in assets.

Lovitch notes that a criminal prosecution related to misrepresentations to CLIA is a rare occurrence but adds that in this case it isn't surprising given the lengths to which these two individuals went to defraud third-party payers.

"It is also not surprising that the authorities detected this fraud given that urine toxicology testing continues to be under heavy government scrutiny," she says.