

DOJ's Robust 2020 Pandemic Response Signals Increasing Focus on COVID-19-Related Fraud in 2021

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Who Needs to Know

All Corporations.

Why It Matters

As evidenced in the recently published [2020 Year in Review Report \(Report\)](#), the Department of Justice's Fraud Section (Fraud Section) demonstrated its resilience despite the COVID-19 pandemic, as well as its swift response to the evolution of pandemic-induced fraud — a trend we expect will continue throughout 2021.

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Several areas of COVID-19-related fraud have emerged throughout the past year — the most prominent associated with personal protective equipment (PPE), COVID-19 testing, and the Paycheck Protection Program (PPP) — which DOJ has successfully prosecuted under price gouging, health care, and securities fraud laws.

Personal Protective Equipment

Since the formation of its COVID-19 Hoarding and Price Gouging Task Force in March 2020, DOJ has focused on combatting hoarding and price gouging of medical supplies critical to the pandemic, especially PPE.

In June 2020, Crawford Technology Group (HK) Co. Ltd., a Chinese digital electronics company, was charged with selling approximately 140,000 falsely labeled and defective KN95 masks (which are similar to N95 masks) to a New Jersey company in violation of the Federal Food, Drug, and Cosmetic Act. Crawford falsely advertised that its KN95 masks were 95% efficient at filtering harmful airborne particles when, in reality, the average filtering efficiency for Crawford's masks was only 22.3%.

Just last week, New York-resident Imran Selcuk pled guilty to price gouging of designated scarce material in violation of the Defense Production Act, for purchasing approximately 125,000 KN95 and surgical-style masks and selling them online and at his pizzeria at up to a 500% markup.

COVID-19 Testing

The interagency COVID-19 fraud working group, chaired by the DOJ Fraud Section's Health Care Fraud Unit, has used both health care and securities fraud laws to target fraudulent schemes related to COVID-19 testing, particularly those involving test bundling and misrepresentations concerning medical technology companies' capacity to provide testing.

In May 2020, Ashley Hoobler Parris was charged with conspiracy to commit health care fraud for her role in a scheme to submit false and fraudulent claims to Medicare for COVID-19 and other laboratory testing. Parris solicited and received kickbacks from a diagnostic testing laboratory in exchange for referring Medicare beneficiaries to the laboratory, which would bundle COVID-19 tests with more expensive respiratory pathogen panel tests for Medicare reimbursement. Parris pled guilty to conspiracy to commit health care fraud in November 2020.

In June 2020, Mark Schena, the president of publicly traded medical technology company Arrayit Corporation, was charged with securities fraud and conspiracy to commit health care fraud for his role in alleged schemes to mislead investors, manipulate the stock price, and commit health care fraud by submitting over \$69 million in false and fraudulent claims for allergy and COVID-19 testing. Schena allegedly made false claims about Arrayit's ability to provide COVID-19 tests and misrepresented Arrayit's future prospects for COVID-19 testing to potential investors. Schena is currently awaiting trial.

In December 2020, Keith Berman, the CEO of medical device company Decision Diagnostics, Inc. (DECN), was charged with securities fraud and making false statements for misrepresenting to investors that DECN had developed a finger-prick COVID-19 test on the verge of receiving emergency-use, FDA authorization. DECN's stock price rose by over 1,400% in connection with Berman's statements. Berman is currently awaiting trial.

Paycheck Protection Program

As of February 2021, the Fraud Section's Market Integrity and Major Frauds (MIMF) Unit has charged 109 defendants in 74 PPP-related cases across 20 federal districts involving attempted losses of more than \$268 million, and has seized more than \$65 million. Between the end of 2020 and the publication of the Report, the MIMF Unit charged an additional 12 individuals in seven cases.

DOJ's PPP fraud prosecutions involve PPP loans of every size. The largest PPP fraud scheme in 2020 involved 14 individuals charged with wire fraud, bank fraud, and conspiracy after preparing at least 90 fraudulent PPP applications totaling more than \$24 million. These individuals allegedly used the \$17.4 million paid out in PPP loans to purchase luxury goods and pay for other personal expenses. At the other end of the spectrum, DOJ entered into its first civil settlement in January for PPP fraud for \$100,000 with a California-based internet retail company that fraudulently obtained a \$350,000 PPP loan after repeatedly misrepresenting its bankrupt status on several loan applications.

Takeaways

Fraud is inevitable when the government distributes substantial amounts of money to address a nationwide crisis, let alone a global pandemic. But DOJ showed that it could quickly adapt its focus to identify and prosecute the most pervasive types of fraud arising from the pandemic. COVID-19-related fraud will remain a mainstay of

securities and health care fraud for the foreseeable future, and we should anticipate that DOJ, with a year of pandemic prosecution experience under its belt, will only intensify its efforts moving forward.

The Fraud Section indicated in its Report that the interagency COVID-19 fraud working group will continue focusing on COVID-19 test bundling schemes, securities fraud involving health care technology companies, and Health Resource and Services (HRS) fraud. Additionally, DOJ's aggressive approach to countering fraudulent schemes involving PPP loans — evidenced by the above statistics — will not only continue, but also will likely expand to cover more organizational borrowers and lenders and other funding programs created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

DOJ is also likely to increase enforcement actions in the area of telemedicine, the use of which has dramatically risen during the pandemic due to relaxed reimbursement requirements for telemedicine services from CMS and other insurers. Telemedicine fraud, particularly [telemedicine kickback schemes](#), has been a corresponding focus of the Fraud Section and will remain so, as telemedicine shows no signs of slowing down once the pandemic eventually subsides.

In light of DOJ's growing emphasis on COVID-19 fraud enforcement, companies should carefully review their compliance programs to ensure that they: (1) provide training on substantive work responsibilities that may have shifted due to regulatory changes during the pandemic; (2) closely monitor transactions that stem from CARES Act funding; and (3) have in place and effectively communicate mechanisms for reporting and investigating suspected misconduct.

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