

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-10676

D.C. Docket No. 9:18-cr-80122-DMM-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARMAN ABOVYAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(February 22, 2021)

Before WILLIAM PRYOR, Chief Judge, HULL and MARCUS, Circuit Judges.

HULL, Circuit Judge:

After a jury trial, Arman Abovyan appeals his convictions and sentences for

conspiring to commit healthcare fraud, conspiring to possess with intent to dispense controlled substances, and seven counts of unlawfully dispensing a controlled substance. On appeal, he argues that insufficient evidence supported his convictions, the jury instructions were improper, and his sentences were improperly calculated. After review, and with the benefit of oral argument, we affirm Abovyan's convictions and sentences.

I. FACTUAL BACKGROUND

This healthcare fraud conspiracy was orchestrated by Kenneth Chatman, a convicted felon with no medical training. Chatman owned and operated two substance-abuse treatment centers, Reflections Treatment Center (“Reflections”) and Journey to Recovery (“Journey”), in South Florida.¹ The Facilities offered various levels of outpatient substance-abuse treatment for individuals suffering from drug and alcohol addiction, some of whom resided at separate “sober homes” and “halfway houses.”²

The defendant Arman Abovyan was a primary-care physician, board-certified in internal medicine, with a private medical practice. Although Abovyan

¹When we refer to Reflections and Journey collectively, we use the term “Facilities.” On paper, Chatman's wife owned the Facilities because Chatman was a convicted felon. But in reality, Chatman was the true owner and operator.

²At trial, the terms “sober homes” and “halfway houses” were used for residences for patients attending outpatient drug treatment.

had no prior experience in substance-abuse medicine, Chatman recruited him to be the medical director of the Facilities.

In July 2016, Abovyan became medical director of Reflections and of Journey when it opened in October 2016. As medical director, Abovyan's duties included providing substance-abuse treatment, authorizing and ordering drug testing, and prescribing drug-treatment medication. Abovyan's employment contract specified that he would work around 18.5 hours per week and be paid \$11,000 per month. In practice, Abovyan was present at the Facilities only about nine hours per week or less. Abovyan remained the Facilities' medical director until federal authorities executed search warrants and shut them down in December 2016. Below, we describe the healthcare fraud scheme and Abovyan's role in it.

A. The Healthcare Fraud Scheme

Chatman's healthcare fraud scheme involved over 20 individuals.³ Chatman paid kickbacks to the owners of sober homes and halfway houses in exchange for them sending their patients to the Facilities for treatment and drug testing.

For example, Anthony Jackson testified that he met Chatman around August

³Before Abovyan's trial, Chatman pled guilty to conspiring to commit healthcare fraud, conspiring to commit money laundering, and conspiring to commit sex trafficking and was sentenced to imprisonment terms of 120 months on the healthcare fraud conspiracy, 240 months on the money laundering conspiracy, and 330 months on the sex trafficking conspiracy, all to run concurrent.

2015, when Jackson owned a sober home.⁴ Most of Jackson's residents had insurance. Chatman paid Jackson to send his sober home residents to attend Reflections for treatment and testing. Jackson later became program director at Reflections.

Chatman required his employees at the Facilities to collect urine and saliva from their patients three times per week and send them for drug testing to specific toxicology labs, including Smart Lab and Ally Clinical Diagnostics ("Ally"). The labs charged thousands of dollars per specimen tested, for which the labs billed the Facilities' patients' insurance. In return, Chatman received kickbacks for sending specimens to Smart Lab and Ally for testing.

For example, from the summer of 2016 until 2017, Bosco Vega was a sales representative for Smart Lab. Its CEO was Hawkeye Wayne. Vega testified that the more testing he procured for Smart Lab, the more he was paid in commissions and the more kickbacks Chatman received. Vega had an arrangement with Chatman and Wayne, whereby Vega gave Chatman half of his net commissions as a kickback on all urine testing Reflections ordered from Smart Lab through Vega.⁵ During Vega's time as a Smart Lab sales rep, he paid Chatman kickbacks of

⁴Before Abovyan's trial, Jackson pled guilty to conspiring to commit healthcare fraud and was sentenced to 42 months' imprisonment.

⁵Before Abovyan's trial, Vega pled guilty to money laundering but had not been sentenced.

approximately \$40,000 in cash. Vega also was paid between \$10,000 and \$20,000 per month to “oversee[]” the organization and transportation of samples to Smart Lab.

Similarly, Stefan Gatt worked for Ally as a medical sales representative. Gatt testified that, starting in February 2016, he paid Chatman kickbacks to use Ally for saliva testing.⁶ Gatt was a partial owner of Journey with Chatman. Gatt admitted that he oversaw the urine and saliva testing that both Smart Lab and Ally provided for the Facilities’ patients.

B. Abovyan’s Role in Ordering Tests

To help Chatman submit as many specimens as possible to Smart Lab and Ally, Abovyan ordered and authorized excessive lab drug testing that was medically unnecessary. Abovyan’s predecessor at Reflections was Dr. Aron Tendler. Chatman fired Dr. Tendler after he attempted to curtail the excessive and medically unnecessary testing at Reflections. Chatman recruited Abovyan as Tendler’s replacement.

When Abovyan started at Reflections, he wrote a letter adopting the testing regime that Dr. Tendler had unsuccessfully tried to curtail. The July 15, 2016, letter, typed on Reflections letterhead and signed by Abovyan, stated:

⁶Before Abovyan’s trial, Gatt pled guilty to conspiring to commit healthcare fraud and finished serving his 18 months’ sentence.

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