



Department of Justice

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Medical Technology Company President Convicted in \$77 Million COVID-19 and Allergy Testing Scheme

A federal jury convicted the president of a Silicon Valley-based medical technology company yesterday of participating in a scheme to mislead investors, commit health care fraud, and pay illegal kickbacks in connection with the submission of over \$77 million in false and fraudulent claims for COVID-19 and allergy testing.

Mark Schena, 59, of Los Altos, California, served as the president of Arrayit Corporation. According to court documents and evidence presented at trial, Schena engaged in a scheme to defraud Arrayit's investors by claiming that he had invented revolutionary technology to test for virtually any disease using only a few drops of blood. In meetings with investors, Schena and his publicist claimed that Schena was the "father of microarray technology" and falsely stated that he was on the shortlist for the Nobel Prize. The evidence at trial showed that Schena also falsely represented to investors that Arrayit could be valued at \$4.5 billion based on purported revenues of \$80 million per year.

In furtherance of the scheme, the evidence at trial showed that Schena, among other things, failed to release Arrayit's SEC-required financial disclosures and concealed that Arrayit was on the verge of bankruptcy. Schena lulled investors who were concerned that the company was a "scam" by inviting them to private meetings and issuing false press releases and tweets stating that Arrayit had entered into lucrative partnerships with companies, government agencies, and public institutions, including a children's hospital and a major California health care provider. The tweets and press releases falsely claimed that such entities had agreed to use the Arrayit technology, when in fact no such agreements existed or were of minimal value.

Schena also orchestrated an illegal kickback and health care fraud scheme that involved submitting fraudulent claims to Medicare and private insurance for unnecessary allergy testing. Arrayit ran allergy screening tests on every patient for 120 different allergens (ranging from hornet stings to codfish) regardless of medical necessity. In order to obtain patient blood specimens, Schena paid kickbacks to marketers in violation of the Eliminating Kickbacks in Recovery Act and orchestrated a deceptive marketing plan that falsely claimed that the Arrayit test was highly accurate in diagnosing allergies, when it was not, in fact, a diagnostic test. Arrayit billed more per patient to Medicare for blood-based allergy testing than any other laboratory in the United States, the evidence at trial showed, and billed some commercial insurers over \$10,000 per test.

In early 2020, Arrayit's allergy testing business declined because the COVID-19 pandemic and stay-at-home orders reduced demand for allergy testing. Schena then falsely announced that Arrayit "had a test for COVID-19" based on Arrayit's blood testing technology, before developing such a test. Seeking to capitalize on the nationwide shortage of COVID-19 testing, Schena orchestrated a deceptive marketing scheme that falsely claimed that Dr. Anthony Fauci and other prominent government officials had mandated testing for COVID-19 and allergies at the same time and required that patients receiving the Arrayit COVID-19 test also be tested for allergies. Schena also falsely claimed that the Arrayit COVID-19 test was more accurate than a PCR test for diagnosing COVID-19 infections, while concealing from investors and patients taking the test that the Food and Drug Administration had informed him that the Arrayit test was not accurate enough to receive an Emergency Use Authorization for use in the United States.

Schena was convicted of one count of conspiracy to commit health care fraud and conspiracy to commit wire fraud, two counts of health care fraud, one count of conspiracy to pay kickbacks, two counts of payment of kickbacks, and three counts of securities fraud. He is scheduled to be sentenced on Jan. 30, 2023 and faces a maximum penalty 20 years imprisonment for the conspiracy to commit health care fraud and conspiracy to commit wire fraud; 10 years of imprisonment for each count of health care fraud; five years imprisonment for conspiracy to pay kickbacks; 10 years imprisonment for each count of payment of kickbacks; and 20 years imprisonment for each count of securities fraud. U.S. District Judge Edward J. Davila will determine any sentence after considering the U.S. Sentencing Guidelines and other statutory factors.

Assistant Attorney General Kenneth A. Polite, Jr. of the Justice Department's Criminal Division; U.S. Attorney Stephanie M. Hinds for the Northern District of California; Special Agent in Charge Craig D. Fair of the FBI's San Francisco Field Office; Acting Special Agent in Charge Steven J. Ryan of the U.S. Department of Health and Human Services Office of Inspector General (HHS-OIG); Inspector in Charge Delany De Leon-Colon of the U.S. Postal Inspection Service (USPIS) – Criminal Investigations Group; Special Agent in Charge Kim R. Lampkins of the Veterans Affairs Office of Inspector General (VA-OIG); and Special Agent in Charge Bryan D. Denny of the Defense Criminal Investigative Service (DCIS) Western Field Office made the announcement.

HHS-OIG's San Francisco Regional Office and Detroit Regional Office, USPIS, the FBI, VA-OIG and DCIS investigated the case.

Acting Principal Assistant Chief Jacob Foster and Trial Attorney Laura Connelly of the Justice Department's Fraud Section and Assistant U.S. Attorney Christina Liu for the Northern District of California are prosecuting the case.

The Fraud Section uses the Victim Notification System (VNS) to provide victims with case information and updates related to this case. Victims with questions may contact the Fraud Section's Victim Assistance Unit by calling the Victim Assistance phone line at 1-888-549-3945 or by emailing Victimassistance.fraud@usdoj.gov. To learn more about victims' rights, please visit: <https://www.justice.gov/criminal-vns/victim-rights-derechos-de-las-v-ctimas>. If you believe you are a victim who has invested in Arrayit, or you have taken a COVID-19 test prepared or marketed by Arrayit, please visit <https://www.justice.gov/criminal-vns/case/Arrayit>.

Topic(s):

Coronavirus

Health Care Fraud

Component(s):

Criminal Division

Criminal - Criminal Fraud Section

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