

CAUSE NO. _____

AETNA HEALTH INC.

Plaintiff,

vs.

MICHAEL L. BLACKWELL, M.D.;
IFEOLUMIPO O. SOFOLA, M.D.;
BATJAC SURGICAL GROUP, PLLC;
and STARLIGHT SURGICAL, PLLC,

Defendants.

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IN THE DISTRICT COURT

HARRIS COUNTY, TEXAS

JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Aetna Health Inc. ("Aetna") files this Original Petition ("Original Petition") against Defendants Michael L. Blackwell, M.D. ("Dr. Blackwell"), Ifeolumipo O. Sofola, M.D. ("Dr. Sofola"), Batjac Surgical Group, PLLC ("Batjac"), and Starlight Surgical, PLLC ("Starlight") (collectively, "Defendants") asserting claims for permanent injunction, equitable accounting, and money had and received, in support of which Aetna shows as follows:

I.
DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under Texas Rule of Civil Procedure 190.4, Level 2.

II.
INTRODUCTION

2. For several years, Defendants have engaged in an elaborate scheme to accept illegal kickbacks in exchange for referring patients to Humble Surgical Hospital, LLC ("Humble"), an out-of-network healthcare facility in which Drs. Blackwell and Sofola have a direct financial interest, unjustly profiting at Aetna's plan sponsors' and members' expense.

These business practices violate Texas law, amount to insurance fraud, and undermine Aetna's efforts to provide affordable healthcare benefits to its members.

3. Drs. Blackwell and Sofola are owners of Humble and have a direct financial interest in its profits. Drs. Blackwell and Sofola are also owners and managing members of shell practice companies that secretly contracted with Humble to accept a percentage of Humble's hospital facility fees as kickbacks for referring their patients, many of whom are Aetna members, to Humble. The shell practice companies are not healthcare facilities, nor do they provide any type of healthcare services, and are not otherwise licensed to do so. Rather, they were formed for the sole purpose of accepting kickbacks in exchange for the doctors' improper patient referrals, using names that hide the fact that the payments are going to the doctors. Specifically, Drs. Blackwell and Sofola, referred patients to Humble and then, through their shell companies, secretly accepted 30% of the hospital facility fees collected from Aetna for hospital services provided to their patients.

4. In addition, Drs. Blackwell¹ and Sofola² each had Specialist Physician Agreements ("SPAs") with Aetna pursuant to which they were part of Aetna's nationwide network of contracted healthcare providers. As participating providers in Aetna's network, Drs. Blackwell and Sofola benefitted from Aetna's efforts to steer patients to them through participating provider directories and other sources readily available to Aetna beneficiaries. Among other things, the SPAs required Drs. Blackwell and Sofola to accept Aetna's contracted

¹ Dr. Blackwell entered an Amended Specialist Physician Agreement with Aetna, which became effective on January 1, 2005. Aetna sent Dr. Blackwell a Letter of Termination, dated November 22, 2013, notifying Dr. Blackwell that his SPA with Aetna will be terminated effective December 23, 2013.

² Dr. Sofola entered a Specialist Physician Agreement with Aetna, which became effective on March 1, 2009. Aetna terminated Dr. Sofola effective June 5, 2012.

rates as *payment in full* for their professional services provided to Aetna members. The SPAs also required Drs. Blackwell and Sofola to refer patients in need of surgery to healthcare facilities that are part of Aetna's network when available. Finally, the SPAs required Drs. Blackwell and Sofola to hold members harmless and "in no event . . . bill, charge, collect a deposit from, seek remuneration or reimbursement from, or have any recourse against" a plan member.

5. Instead, beginning in August 2010, Drs. Blackwell and Sofola improperly referred their Aetna patients to Humble, an out-of-network facility, despite the presences of available in-network facilities in the Houston and Humble area that could have provided the same medical services. Drs. Blackwell's and Sofola's goal was to collect a percentage of Humble's hospital facility fees as kickbacks through their shell practice companies.

6. Texas law prohibits the acceptance of fees in exchange for patient referrals. *See, e.g.,* TEX. OCC. CODE §§ 102.001 (soliciting patients), 102.006 (failure to disclose), 165.155 (physicians' solicitation of patients); TEX. PENAL CODE § 32.43 (commercial bribery). Moreover, Drs. Blackwell and Sofola's acceptance of these payments violates their in-network agreements.

7. Dr. Blackwell's and Sofola's wrongful participation in this scheme began as early as August 2010 and is continuing. As a result of the scheme, Defendants together unjustly obtained in excess of \$1.5 million from Aetna. Aetna seeks permanent injunctive relief as well as an equitable accounting. Aetna also seeks equitable disgorgement of these payments pursuant to its claim for money had and received.

III.
PARTIES

8. Aetna Health Inc. is a Texas corporation with its principal place of business in Texas.

9. Dr. Blackwell is a physician licensed to practice medicine in Texas. Dr. Blackwell may be served with process at 425 Holderrieth Blvd., Suite 110, Tomball, Texas 77375 or 17202 Red Oak Drive, Suite 307, Houston, Texas 77090-2639.

10. Batjac Surgical Group, PLLC is a professional limited liability company registered to do business in the State of Texas. Batjac's principal place of business is located in Harris County, Texas, and it may be served with process by and through its registered agent, Michael L. Blackwell, at 425 Holderrieth Blvd., Suite 110, Tomball, Texas 77375 or 17202 Red Oak Drive, Suite 307, Houston, Texas 77090-2639.

11. Dr. Sofola is a physician licensed to practice medicine in Texas. Dr. Sofola may be served with process at 6777 Woodlands Parkway, Suite 300, The Woodlands, Texas 77382, 2000 Crawford Street, Houston, Harris County, Texas, or 9301 Pinecroft Drive, The Woodlands, Montgomery County, Texas.

12. Starlight Surgical, PLLC is a professional limited liability company registered to do business in the State of Texas. Starlight's principal place of business is located in Harris County Texas, and it may be served with process by and through its registered agent, K&S Consulting, LLC, at 5120 Woodway Dr., Suite 7012, Houston, Texas 77056.

IV.
JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this matter because the amount in controversy exceeds the minimum jurisdictional limit of this Court.

14. Venue is proper in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1)-(3) and § 15.005.

V.

DEFENDANTS' SCHEME TO REFER PATIENTS IN EXCHANGE FOR KICKBACKS

15. On August 3, 2010, Dr. Blackwell, on behalf of Batjac, entered into a Hospital Outpatient Surgical Center Use Agreements ("Use Agreements") with Humble.³ On July 30, 2010, Dr. Sofola, on behalf of Starlight, entered into a Use Agreement with Humble.⁴

16. Pursuant to these Use Agreements, the parties agreed to an illegal kickback and fee-splitting arrangement. The intent of the Use Agreements is to create a legal fiction that the shell companies were leasing space from Humble when, in fact, a percentage of the hospital facility fee payments paid to the shell companies were nothing more than illegal kickbacks in exchange for patient referrals. Specifically, Defendants agreed to accept and did accept 30% of every hospital facility fee payment collected from Aetna as a kickback for each Aetna patient that Drs. Blackwell and Sofola referred to Humble.⁵

17. Since August 2010, Dr. Blackwell, through his shell company, accepted kickbacks in excess of \$1 million, and Dr. Sofola, through his shell company, accepted kickbacks in excess of \$500,000. These kickbacks were in addition to the professional fees that Drs. Blackwell and Sofola sought and received from Aetna, which were supposed to be *payment in full* for the services they provided to Aetna members.

³ Batjac Use Agreement, executed by Dr. Blackwell, attached hereto as **Exhibit A**.

⁴ Starlight Use Agreement, executed by Dr. Sofola, attached hereto as **Exhibit B**.

⁵ Exhibit A ¶ 7; Exhibit B ¶ 7.

VI.
CLAIMS FOR RELIEF

COUNT ONE
(Injunctive Relief)

18. Aetna realleges and incorporates by reference the allegations in the forgoing paragraphs of the Original Petition.

19. Defendants are engaging in practices that violate Texas law, their in-network agreements, and other applicable standards of conduct that prohibit them from receiving facility fees as kickbacks in exchange for patient referrals.

20. Aetna seeks injunctive relief that Defendants cease and desist these unlawful practices. Specifically, Aetna requests that Drs. Blackwell and Sofola be enjoined from accepting facility fees as kickbacks in exchange for patient referrals.

21. Aetna also requests that Drs. Blackwell and Sofola be required to fully notify and apprise all patients, including Aetna's members, when they are referring patients to out-of-network facilities, such as Humble, in which Drs. Blackwell and Sofola are paid a kickback from the facility for patient referrals and to provide Aetna members with available in-network alternative options.

22. A permanent injunction is proper because: (i) there will be immediate and irreparable harm if Drs. Blackwell and Sofola continue to refer Aetna member patients to out-of-network facilities in exchange for receiving a percentage of the hospital's facility fees as kickbacks; (ii) Aetna has no other adequate remedy at law; (iii) a greater injury will result from denying the injunction than from its being granted; and (iv) the injunction will not disserve the public interest.

COUNT TWO
(Equitable Accounting)

23. Aetna realleges and incorporates by reference the allegations in the forgoing paragraphs of the Original Petition.

24. Drs. Blackwell and Sofola each had SPAs with Aetna and, during the effective dates, were part of Aetna's nationwide provider network. The SPAs require Drs. Blackwell and Sofola to accept Aetna's contracted rate as payment in full for their healthcare services and prohibit them from referring and performing healthcare services to Aetna members at non-participating facilities when in-network options are available.

25. Drs. Blackwell and Sofola participated in an elaborate scheme through which they wrongfully referred patients to an out-of-network facility, wrongfully established shell companies designed to accept a percentage of Aetna's facility fee payments as illegal kickbacks in exchange for referring patients to that facility, and unjustly received in excess of \$1.5 million in kickbacks at Aetna's and its members' expense.

26. On November 22, 2013, Aetna demanded that Defendants account for all the Aetna patients they referred and the kickbacks they received for each referral so that Aetna may properly return the funds to either the member or the Aetna plan sponsor. Aetna further demanded that Defendants repay Aetna the kickbacks they received in exchange for the patient referrals. To date, Defendants have failed to render an accounting or repay the money.

27. An accounting will reveal that, as part of the illegal kickback and fee-splitting arrangement described herein, Dr. Blackwell received in excess of \$1 million, and Dr. Sofola received in excess of \$500,000. Further, an accounting is necessary to determine the specific

amounts Defendants received for each patient referral so that Aetna may properly return the funds to the proper Aetna member or Aetna plan sponsor.

COUNT THREE
(Money Had and Received)

28. Aetna realleges and incorporates by reference the allegations in the forgoing paragraphs of the Original Petition.

29. Drs. Blackwell and Sofola participated in an elaborate scheme through which they wrongfully referred patients to Humble, wrongfully established shell companies designed to accept a percentage of the hospital facility fees Aetna paid Humble as illegal kickbacks in exchange for referring patients to Humble, and inequitably received in excess of \$1.5 million in kickbacks.

30. Texas law prohibits Drs. Blackwell and Sofola's acceptance of kickbacks in exchange for patient referrals. Moreover, the SPAs prohibit Drs. Blackwell and Sofola's acceptance of more than their contracted rates for the medical services they provided to Aetna patients. Drs. Blackwell and Sofola received payment from Aetna for their professional services, and also accepted kickbacks for their patient referrals in the amount of 30% of the hospital facility fees Aetna paid. Accordingly, Drs. Blackwell and Sofola hold money that in equity and good conscience should be returned to Aetna.

VIII.
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff Aetna Health Inc. respectfully requests that Defendants Michael L. Blackwell, M.D.; Ifeolumipo O. Sofola, M.D.; Batjac

Surgical Group, PLLC; and Starlight Surgical, PLLC be cited to appear, and that on final trial hereof, Aetna have judgment against Defendants, jointly and severally, for the following:

- a. Equitable relief as requested above;
- b. Injunctive relief as requested above;
- c. Costs of court; and
- d. Such other and further equitable relief to which Aetna may be justly entitled.

Respectfully submitted,

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