

# COVID-19 Oversight and Enforcement

PRESIDENT OF MEDICAL TECHNOLOGY COMPANY CHARGED FOR PROMOTING FAKE COVID-19 TREATMENT | By: Matthew Lin

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Last week, the Department of Justice charged the president of a medical technology company for acts related to promoting a fake COVID-19 test. The case demonstrates the government's vigilance in prosecuting COVID-19-related fraud, and warns all businesses to avoid making misrepresentations when responding to COVID-19.

On Tuesday, June 9, 2020, the United States Attorney's Office for the Northern District of California charged the president of California medical technology company Arrayit Corporation for his alleged participation in schemes to mislead investors, to manipulate the company's stock price, and to conspire to commit health care fraud related to the submission of over \$69 million in false and fraudulent claims for allergy and COVID-19 testing. Mark Schena, president of Arrayit, was charged with one count of Conspiracy to Commit Health Care Fraud and one count of Securities Fraud in what the Department of Justice called its "first criminal securities fraud prosecution related to the COVID-19 pandemic."

According to the Department of Justice, Schena claimed that Arrayit was the world's only laboratory that offered microarray technology allowing it to test for allergies and COVID-19 based on a drop of blood 250,000 times smaller than the technology touted by Theranos. From about 2018 to February 2020, Schena and others paid kickbacks and bribes to recruiters and doctors to run over 120 allergens regardless of medical necessity and made numerous misrepresentations to investors about Arrayit's allergy test sales, financial condition, and future prospects. As the COVID-19 pandemic worsened in March 2020, Schena and others made false claims about Arrayit's ability to provide accurate, fast, reliable and cheap COVID-19 tests in compliance with state and federal regulations, and made misrepresentations about its COVID-19 tests to potential investors. Arrayit's stock price doubled in mid-March, while Schena and others failed to disclose that there were uncertainties about its data and COVID-19 testing accuracy.

While early COVID-19-related enforcement actions like this have involved clear and intentional acts of fraud, the government will likely expand its search to include businesses that make unintentional representations or fail to prevent misconduct by their employees. Businesses must guard against potential future liability by taking proper precautions today.

Sheppard Mullin's COVID 19 Oversight and Enforcement Response Team helps our clients navigate the multifaceted scrutiny they face as a result of the government's COVID 19-related oversight and enforcement. Our team consists of attorneys experienced in regulatory compliance, agency oversight, congressional investigations, civil and criminal law enforcement and crisis management. It includes former prosecutors, high-level DOJ and DHS officials and congressional staff, as well as prominent white collar, IG defense and False Claims Act experts. We rely on our range of prior experiences to forecast oversight and enforcement priorities and action, and monitor the governmental response to the pandemic. In so doing, we help our clients identify opportunities, assess risks and protect their reputations. We help our clients make informed business decisions and, if necessary, defend their actions in the face of oversight agency, law enforcement, or public scrutiny.

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