UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-mj-03663-Goodman

IN RE SEALED COMPLAINT

_____/

CRIMINAL COVER SHEET

1. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to August 9, 2013 (Mag. Judge Alicia O. Valle)? __ Yes X No

2. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to August 8, 2014 (Mag. Judge Shaniek M. Maynard)?__ Yes X No

3. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to August 8, 2014 (Mag. Judge Jared M. Strauss)? ___ Yes X No

Respectfully submitted,

ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

DANIEL KAHN, ACTING CHIEF
U.S. DEPARTMENT OF JUSTICE
CRIMINAL DIVISION, FRAUD SECTION

By: */s/ James V. Hayes*

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AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

United States of America)
v.)
Mark Hernandez) Case No. 20-mj-03663-Goodman
)
)
)
)

Defendant(s)

CRIMINAL COMPLAINT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of March 2015 to September 2019 in the county of Miami-Dade in the Southern District of Florida, the defendant(s) violated:

Code Section	*Offense Description*
18 U.S.C. 1349	Conspiracy to commit health care fraud
18 U.S.C. 1347	Health care fraud

This criminal complaint is based on these facts:

Please see the attached affidavit of Special Agent Richard Gianforcaro, Federal Bureau of Investigation ("FBI"), which is attached hereto and incorporated fully herein by reference.

☑ Continued on the attached sheet.

Complainant's signature

Special Agent Richard Gianforcaro, FBI
Printed name and title

Attested to by the Applicant in accordance with the requirements of Fed.R.Crim.P. 4.1 by FaceTime

Date: 9/21/20

Judge's signature

City and state: Miami, Florida Hon. Jonathan Goodman, U.S. Magistrate Judge
Printed name and title

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Special Agent Richard Gianforcaro, being duly sworn, do hereby depose and state:

I. INTRODUCTION AND AGENT'S BACKGROUND

1. I am a Special Agent with the Federal Bureau of Investigation ("FBI"), currently assigned to the Miami Division. I have been employed with the FBI for over four years. I am presently assigned to investigate a wide variety of health care fraud matters, including schemes to defraud Medicare, Medicaid, and other health care benefit programs. In this capacity, I am authorized to conduct investigations into criminal violations committed against the United States, including, but not limited to, health care fraud, payment and receipt of illegal health care kickbacks, making false statements in connection with a health care benefit program, and related conspiracies. I am authorized to apply for and execute arrest warrants for offenses enumerated in Titles 18, 21, and 42 of the United States Code, and to execute search warrants. I have received training in investigations of fraud related to the United States health care system.

2. I am personally involved in this investigation along with other federal agents. The statements contained in this affidavit are based upon a review of both public and private records and interviews conducted by me and other federal agents of witnesses knowledgeable about the facts underlying this investigation. Because this affidavit is provided for the limited purpose of establishing probable cause for an arrest, it does not include every known fact concerning this investigation, but rather sets forth only those facts that I believe are necessary to establish probable cause.

3. I am submitting this affidavit in support of a criminal complaint charging DR. MARK HERNANDEZ ("DR. HERNANDEZ") with Conspiracy to Commit Health Care Fraud

and Wire Fraud, in violation of 18 U.S.C. § 1349, and Health Care Fraud, in violation of 18 U.S.C. § 1347.

4. Because this affidavit is provided for the limited purpose of establishing probable cause for an arrest, I have not included all information known to me regarding this investigation, but rather, have set forth only those facts necessary to establish probable cause to believe that the defendant has committed the charged offenses.

II. THE CHARGED OFFENSES

5. Federal law makes it a crime for anyone to knowingly or willfully execute or attempt to execute a scheme or artifice: (1) to defraud any health care benefit program or (2) to obtain by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by or under the custody or control of a health care benefit program, in connection with the delivery of or payment for health care benefits, items, or services. 18 U.S.C. § 1347(a). Conspiracies and attempts to commit health care fraud also are violations of federal law. 18 U.S.C. § 1349.

6. A "health care benefit program" is defined as "any public or private plan to contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract." 18 U.S.C. § 24(b). In this case, the private insurance plans that were billed fell under the definition of "health care benefit programs."

7. Federal law further makes it a crime for anyone who, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, to transmit by means of wire, radio, or

television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purposes of executing such scheme or artifice. 18 U.S.C. § 1343. Conspiracies and attempts to commit wire fraud also are violations of federal law. 18 U.S.C. § 1349.

III. RELEVANT ENTITIES AND INDIVIDUALS

A. The Treatment Center

8. According to records on file with the Florida Secretary of State, Safe Haven Recovery, Inc. ("Safe Haven") was a corporation organized under the laws of Florida, with its principal place of business located in Miami-Dade County, in the Southern District of Florida. Safe Haven was incorporated on or about July 31, 2014. Safe Haven was a substance abuse treatment center that ceased operations in late 2019 after its owner, Peter Port ("Port"), its Vice President of Operations, Brian Dublynn ("Dublynn"), and a patient recruiter who referred people to Safe Haven for purported treatment, Jennifer Sanford ("Sanford"), were indicted by a grand jury in the Southern District of Florida in September 2019 (United States v. Port, et al., Case No. 19-CR-20583-SINGHAL), and arrested on various criminal charges stemming from this investigation, including Conspiracy to Commit Health Care and Wire Fraud (18 U.S.C. § 1349), Health Care Fraud (18 U.S.C. § 1347), Conspiracy to Commit Money Laundering (18 U.S.C. § 1956(h)), and Money Laundering (18 U.S.C. §§ 1956 (a)(1)(B)(i) and 18 U.S.C. 1957).

B. The Clinical Laboratories

9. Safe Haven used several independent clinical laboratories to perform definitive urine drug tests, and other urine drug tests ("urinalysis" or "UAs") for Safe Haven patients who were admitted to Safe Haven for substance abuse treatment. These included Laboratory 1 ("Lab 1"), Laboratory 2 ("Lab 2"), Laboratory 3 ("Lab 3"), Laboratory 4 ("Lab 4"), and Laboratory 5 ("Lab 5") (collectively, the "Clinical Laboratories").

10. According to records obtained from numerous private insurance plans, both Safe Haven and the Clinical Laboratories electronically submitted claims, via interstate wires from within the Southern District of Florida, to numerous private insurance companies located outside of the State of Florida, to bill for substance abuse treatment and/or urine drug tests for Safe Haven patients.

C. The Defendant

11. According to the Florida Department of Health, DR. HERNANDEZ is a Medical Doctor, license number ME83014. His license was issued on or about July 25, 2001. The license is clear and active as of the date of this complaint, and expires on or about January 31, 2021.

12. On or about April 23, 2007, DR. HERNANDEZ filed documents with the Florida Secretary of State, effectively organizing and incorporating Mark A. Hernandez, MD, PA, for the purpose of providing medical services. Its principal place of business was in Miami-Dade County, in the Southern District of Florida.

13. Since at least in or around 2014, DR. HERNANDEZ has worked for numerous substance abuse treatment facilities, often serving as the Medical Director.

14. Between in or around 2014 and in or around 2019, DR. HERNANDEZ worked for approximately 25 substance abuse treatment facilities. During this same period, DR. HERNANDEZ received approximately $9 million in deposits, including at least approximately $1.5 million in payments from treatment facilities, and approximately $460,000 from Safe Haven.

15. Since approximately in or around March 2015 until its closing in or around September 2019, DR. HERNANDEZ served as the Medical Director for Safe Haven. Under DR. HERNANDEZ's directorship, Safe Haven billed insurance companies approximately $59 million dollars, for which Safe Haven was paid approximately $14 million.

16. As Medical Director of Safe Haven, DR. HERNANDEZ authorized excessive laboratory testing for Safe Haven patients, which resulted in the submission of approximately $13 million in additional claims, for which the Clinical Laboratories were paid over $1 million.

17. Thus, in total, DR. HERNANDEZ and his co-conspirators submitted and caused to be submitted claims totaling approximately $72 million dollars, causing insurance companies to pay approximately $14 million to Safe Haven, and approximately $1 million to the various laboratories with which Safe Haven worked.

18. DR. HERNANDEZ prescribed buprenorphine[1] in the form of Suboxone, Subutex, and Zubsolv to many opioid-addicted patients, at Safe Haven and elsewhere. From in or around October 2014 through in or around October 2019, DR. HERNANDEZ prescribed approximately 170,000 doses of buprenorphine to approximately 5,000 patients. Although, as described further in Paragraph 34, DR. HERNANDEZ was only authorized to prescribe buprenorphine to 100 patients at any given time, he exceeded this amount many times.

[1] Buprenorphine is a Drug Enforcement Administration ("DEA") Schedule II opioid that has a strong potential for abuse. It is the only medication approved for the treatment of opioid abuse disorder that can be dispensed by a pharmacy and used at home. Buprenorphine can suppress withdrawal symptoms, decrease opioid cravings, and block the effects of other opioids. Suboxone and Zubsolv are commercial names for buprenorphine combined with naloxone, an opioid antagonist. Subutex is the commercial name for buprenorphine without naloxone. If a substance containing buprenorphine and naloxone is crushed and snorted or injected, the naloxone effect can block buprenorphine's euphoric effects and potentially bring on opioid withdrawal symptoms. Because it lacks naloxone, Subutex is generally prescribed to pregnant women and individuals who are allergic to naloxone. While Suboxone, Zubsolv, and Subutex have been approved by the Food and Drug Administration ("FDA") for clinical use in connection with treatment of opioid dependency, because buprenorphine is itself an addictive opioid and its side effects mirror those of other opioids, it can be misused, and safety precautions and clinical guidelines must be followed. Its use is heavily regulated at both federal and state levels. Clinicians are responsible for ensuring that medications like buprenorphine, with high potential for misuse, diversion, and abuse, are used with caution to ensure patients are taking them appropriately and not diverting them. A drug test that is positive for an opioid, such as morphine, and does not show signs that the patient is taking their prescribed buprenorphine, should prompt the healthcare provider to consider a change in the treatment plan, including ending the buprenorphine prescription, since the patient may be diverting the drug.

19. As detailed further herein, despite duties owed to the patients under his care, and his knowledge of medical necessity criteria and requirements for provision of treatment services, DR. HERNANDEZ used his patients' insurance information, and/or enabled his co-conspirators to use their insurance information, to seek and obtain reimbursements at their expense: for testing and services that did not aid their care; were not medically necessary; did not occur as represented; and in some cases, were never rendered at all. Specifically, DR. HERNANDEZ served as an absentee physician who was seldom at Safe Haven, who hardly ever saw patients there, and who barely supervised the subordinate practitioners and medical extenders who saw patients in his stead. DR. HERNANDEZ authorized medically unnecessary urine drug tests, ignored evidence of patients using illegal drugs, ignored the fact that patients were billed for therapy that was never provided or was provided by unqualified personnel, provided an empty signature on medical records, and allowed Safe Haven to use his credentials to prescribe controlled substances to patients without proper medical oversight. DR. HERNANDEZ also allowed the unlawful dispensing and distribution of buprenorphine, a controlled substance. In sum, the investigation has revealed that DR. HERNANDEZ conspired with the owners and operators of Safe Haven, and others, to submit and cause the submission of false and fraudulent claims for substance abuse treatment services and laboratory testing services for drug-addicted patients purportedly under his care, which were medically unnecessary, not rendered properly, or never rendered at all.

20. Based on open source information, DR. HERNANDEZ is currently listed as the Medical Director at Unity Behavioral Health ("UBH"). Data from the Florida Prescription Drug Monitoring Program ("PDMP") database[2], known as E-FORCSE, queried on or about August 4,

[2] The PDMP is an electronic database that tracks controlled substance prescriptions in a state. PDMP data can provide health authorities and prescribers up to date information about controlled substance prescription patterns and patient behaviors. Prescribers have access to PDMP data.

2020, indicates that DR. HERNANDEZ continued prescribing controlled substances, including buprenorphine and benzodiazepines[3], even after his co-conspirators' arrests and indictment. The address listed for many of the patients to whom DR. HERNANDEZ recently prescribed controlled substances is 2349 SW Cary St., Port Saint Lucie, Florida, a location associated with UBH.

IV. BACKGROUND ON DRUG AND ALCOHOL REHABILITATION

A. Substance Abuse Treatment

21. Based on my training and experience, I know that substance abuse treatment is regulated under state and federal law. Federal law defines "substance abuse" as "the abuse of alcohol or other drugs." 42 U.S.C. § 290cc-34(4). "Treatment" is defined as "the care of a patient suffering from a substance use disorder, a condition which is identified as having been caused by the substance use disorder, or both, in order to reduce or eliminate the adverse effects upon the patient." 42 C.F.R. § 2.11.

22. Substance abuse treatment regulations describe a continuum of care including, from most intensive to least intensive, detox, partial hospitalization ("PHP")[4], intensive outpatient ("IOP"), and outpatient ("OP"). The varying levels of treatment provided are based on the severity of the addiction. Persons undergoing treatment on an outpatient basis, whether in PHP, IOP, or OP, will often elect to live in a "recovery residence," also known as a "sober home," "halfway house," or in some cases "community housing," with other persons who are also in treatment and

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[3] Benzodiazepines are depressants that produce sedation and hypnosis, relieve anxiety, and muscle spasms, and reduce seizures.

[4] The Florida Department of Children and Families, which regulates and licenses treatment facilities in Florida, refers to PHP as Day or Night Treatment. These terms may be used interchangeably in this Affidavit. Facilities can be licensed for Day or Night Treatment either with or without community housing. In a Day Night or Treatment with Community Housing program, room, board, and transportation are provided by the program for PHP patients.

committed to a drug- and alcohol-free lifestyle. While these terms for the residences are commonly interchanged, they are referred to herein as "sober homes."

23. Detox is intended for individuals who are still addicted to and are using controlled substances and/or alcohol. Detox facilities can be inpatient or outpatient and assist patients in dealing with the effects of withdrawal from the complete cessation of using drugs and/or alcohol. After successfully completing detox, patients receive treatment for their underlying addiction in the form of outpatient care, through either PHPs, IOPs, and/or OPs. PHP, IOP, and OP patients attend facilities on an ongoing basis where treatment is rendered, generally in the form of group and individual therapy sessions. The distinction among the three different treatments plans relates to, among other things, the amount of therapy time on a daily or weekly basis. Patients generally transition from detox to PHP, then to IOP, and finally to OP as they overcome their addiction.

24. Medical and osteopathic doctors play an essential role in substance abuse treatment. Without a doctor, patients at the substance abuse treatment centers would not receive prescriptions for drugs, receive treatment, or have urine, blood, or other bodily fluid testing. Bodily fluid tests, which are prescribed by the doctors, are billed to health plans by the substance abuse treatment centers and/or laboratories, as are patient evaluations performed by a physician.

25. Substance abuse treatment programs, particularly PHPs and IOPs, generally include the following core services: orientation and intake; bio-psychosocial assessment; individual treatment planning; group and individual counseling; case management; integration into mutual-help and community-based support groups; 24-hour crisis coverage; medical treatment; substance evaluation and psychotherapy; medication management; and transition or discharge planning.

26. Sober homes, conversely, typically do not provide medical care or clinical services to their residents but operate solely as group residences where residents can live with a support network of others in recovery. Except for facilities whose licensing includes community housing (such as those licensed to provide Day or Night Treatment with Community Housing),[5] residents of sober homes are expected to pay their own rent and utilities, allowing the sober homes to recover its costs, as in any typical landlord-tenant relationship. In an effort to maintain a safe and sober environment for all other residents, if any patient is found to be using drugs or alcohol while living in a legitimate sober home or community housing, they should be removed from the facility.

27. The Florida Department of Children and Families ("DCF") is responsible for licensure and oversight of addiction treatment facilities that provide detox, PHP, IOP, and OP programs in the State of Florida. One of the requirements that DCF places on certain facilities is that they have a medical director.

28. In Florida, substance abuse treatment services are governed by the "Hal S. Marchman Alcohol and Other Drug Services Act" ("the Marchman Act"), Fl. Stat. § 397.301. Under the Marchman Act, private substance abuse service providers' policies regarding payment for services have to comply with federal and state law. Fl. Stat. § 397.431.

29. All "clinical treatment" under the Marchman Act, including detox, PHP, IOP, and OP must be "a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle." Fl. Stat. § 397.311(26)(a). The Florida Department of State

[5] Put another way: under Florida regulations, programs licensed to provide day and night treatment with community housing are required to provide or manage community housing for their patients. See Fla. Admin. Code R. 65D-30.0081. However, this applies only to those patients undergoing PHP-level treatment. Safe Haven was licensed to provide Day or Night Treatment with Community Housing as well as outpatient detox, IOP, and OP treatment. At any given time, the majority of patients at Safe Haven were not PHP patients, and thus were not entitled to free room and board.

promulgates rules for substance abuse treatment services, including standards for detox, PHP, IOP and OP. Fl. Admin. Code §§ 65D-30.006, 65D-30.0081, 65D-30.0091 and 65D-30.010.

B. Federal Guidelines for Substance Abuse Treatment

30. The U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment ("SAMHSA"), also promulgated guidelines for substance abuse treatment. Those guidelines referred to varying levels of treatment provided based on the severity of the addiction, including, for purposes of this affidavit, IOP.

31. The American Society of Addiction Medicine ("ASAM") is a professional medical society representing over 6,000 physicians, clinicians, and associated professionals in the field of addiction medicine. ASAM published the ASAM Criteria, which was a collection of objective guidelines that give clinicians a way to standardize treatment planning and where patients are placed in treatment, as well as how to provide continuing, integrated care and ongoing service planning, including for detox, PHP, IOP, and OP treatment services.

32. One form of treatment for substance abuse involves the use of a prescription controlled opioid, buprenorphine, in order to wean addicts off of illegal opioids, including heroin. Brand names of these medications include Suboxone and Zubsolv (which also contain naloxone) and Subutex. Only licensed physicians can prescribe these medications. Because drugs containing buprenorphine are Schedule III controlled substances, meaning that there is a strong potential for abuse, resulting in fatal and non-fatal overdoses, prescribing physicians also must have two registrations with the U.S. Drug Enforcement Administration ("DEA"). The first registration is the standard "DEA number," required to prescribe any controlled substance. The second registration is a "DEA X-number," which is granted to a limited number of physicians with valid "DEA

numbers," who have completed a training program on substance abuse treatment and have fulfilled other regulatory requirements.

33. The Drug Addiction Treatment Act ("DATA") of 2000 amended the Controlled Substances Act to permit physicians to treat opioid addiction using Schedules III-V, FDA-approved narcotic drug products without having to obtain a separate DEA registration as a narcotic treatment program. Those registered with the DEA as DATA-waived physicians could treat 30 or 100 patients at any one time. In 2016, Congress passed the Comprehensive Addiction and Recovery Act ("CARA"), which amended the Controlled Substances Act to permit nurse practitioners and physician assistants registered with the DEA to also treat opioid addiction based on state authority. In 2016, the Department of Health and Human Services published a Federal Register Notice which increased the patient limitation to 275 for physicians.

34. DR. HERNANDEZ was assigned DEA Registration Number BH7411351 on or about August 3, 2001. On or about September 10, 2013, DR. HERNANDEZ obtained his Practitioner-DW/100, a designation by the DEA that allowed DR. HERNANDEZ to treat up to 100 opioid addicted patients using Schedules III-V FDA-approved narcotics, such as buprenorphine, without having to obtain a separate DEA registration as a narcotic treatment program.

C. <u>Payment for Substance Abuse Treatment and Urine Drug Testing</u>

35. Insurance coverage for substance abuse treatment and testing is available through a number of avenues, including, but not limited to, the following private insurance companies: Aetna Health Management LLC and Aetna Life Insurance for Members ("Aetna"), Blue Cross/Blue Shield ("BCBS"), Cigna Healthcare ("Cigna"), Humana Inc. ("Humana"), United Behavioral Health and United Health Group, Inc. ("United"), and Optum Health ("Optum")

(collectively referred to hereinafter as the "Insurance Plans"). The Insurance Plans offer health care coverage directly to consumers and through employers, including ERISA and non-ERISA plans. They also manage health care plans offered to federal employees. The Insurance Plans cover medical and clinical treatment costs of rehabilitation in accordance with the terms of their policies and state and federal law, including requirements that addiction treatment services and testing be medically necessary. All of the Insurance Plans paid Safe Haven for claims in this case during the relevant period.

D. Urine Drug Testing in Substance Abuse Treatment

36. Urine drug testing is one monitoring strategy used by substance abuse treatment centers to detect recent drug or alcohol use by a patient. There are two primary categories of testing: immunoassay testing (e.g., a drug screen or point of care ("POC") testing) and specific drug identification (e.g., definitive, or confirmatory testing).

37. POC urine testing involves collecting urine in a specific cup designed for testing. The specimen is analyzed using a color band or numbered dipstick, allowing for visual positive or negative results. POC urine testing usually tests for the presence of 9 to 13 specific types of drugs. POC tests typically cost between $5 and $10 and can be read easily by a layperson. This testing is convenient, and less costly, and the results can be read quickly. POC testing is the most common form of urine testing performed at treatment facilities.

38. Definitive (or confirmatory) urine drug tests ("DUDTs") use gas liquid chromatography-mass spectrometry ("LCMS") and/or gas chromatography, or high-performance liquid chromatography, to analyze the urine specimen. These techniques are highly sensitive, and accurately and definitively identify specific substances and the quantitative concentrations of the drugs or their metabolites. This testing is more precise, more sensitive, and detects more substances

than other types of urine testing. Results of definitive testing take longer, and the tests are significantly more expensive; single urine specimens that undergo drug screen analyzers and LCMS testing can be billed to insurance companies for thousands of dollars.

39. Insurance plans often provide guidance to service providers, including physicians, substance abuse treatment centers, and laboratories, on the type and frequency of testing that will be reimbursable. This guidance is based on policy statements from ASAM, publications by expert researchers in the area of substance abuse treatment, and policies of federal and state government agencies. For example, BCBS issued guidance on or about November 15, 2013, stating that, in certain circumstances, drug-screening tests could be used in connection with substance abuse treatment where a patient is suspected of drug misuse and there was a suspicion of continued substance abuse. The guidance indicated that drug screening tests would not be deemed medically necessary, however, where simultaneous blood and urine testing was occurring or where testing was merely a routine part of a physician's treatment protocol.

40. In or around 2014, BCBS provided more specific guidance, stating that, in an outpatient substance abuse treatment setting, weekly POC/screening tests could be medically necessary, and thus eligible for reimbursement, during the stabilization phase of treatment for a maximum of four weeks. Once patients reached the maintenance phase, such screening would be appropriate only once every 1-3 months, and such tests should be limited to 15 total during a 12-month period. The guidance further indicated that more sophisticated definitive laboratory testing should be used only in specific situations, such as where an unexpected positive test was inadequately explained by the patient or there was a need for quantitative levels to compare with established benchmark, and should be limited to 12 tests in a 12-month period.

41. BCBS specified that urine drug testing did not meet the definition of medical necessity, and thus would not be eligible for reimbursement, in the case of: (1) routine qualitative or quantitative urine drug testing (e.g., testing at every visit, without consideration for specific patient risk factors or without consideration for whether quantitative testing was required for clinical decision making); (2) more sophisticated definitive laboratory testing is used instead of or as a routine supplement to ordinary screening/POC testing; (3) simultaneous blood and urine specimen testing; and (4) testing for residential monitoring.

42. To bill insurance companies for urine drug testing and other bodily fluid testing, substance abuse facilities often submit claims on Form CMS 1450, also known as the Health Insurance Claim Form ("HICF"), to the client's respective insurance company. Before billing for the urine drug test, providers must first obtain a prescription from the patient's medical doctor, who must deem the UA medically necessary. HICFs contain, among other information, the client's name and biographical information, his or her insurance information, diagnosis, date and place of service, the standardized procedure codes, the number of units provided, the total dollar amount being charged and name and location of the billing company. The procedure code and the unit volume assist in determining the dollar amount at which the client's insurance company will reimburse the provider. Completed HICFs can be printed and mailed to insurance companies or they can be submitted electronically. When the HICF is submitted, the provider certifies that the contents of the HICF are true, correct, and complete.

V. PROBABLE CAUSE TO BELIEVE CRIMES HAVE BEEN COMMITTED

A. Overview of DR. HERNANDEZ's Role in the Conspiracy

43. DR. HERNANDEZ served as the Medical Director at Safe Haven for approximately four years, from in or around March 2015 until its closure in September 2019.

44. According to Safe Haven's Policy and Procedure Manual, which was filed with DCF, DR. HERNANDEZ, as the Medical Director, had final decision-making authority on whether a client was appropriate for admission and/or discharge. His duties also included reviewing all patients' medical charts, meeting with each patient for evaluation, ordering necessary medications, overseeing medical staff, and preparing all medical protocols and procedures. DR. HERNANDEZ was authorized to have subordinate practitioners but was responsible for countersigning all results of their physical health assessments. As such, DR. HERNANDEZ was responsible for ordering and authorizing each of the tests conducted on Safe Haven patients, and for ensuring those results were reviewed and incorporated into each patient's treatment plan.

45. This investigation has revealed that most Safe Haven patients never even met DR. HERNANDEZ, and thus were never evaluated by him. Some employees, including medical staff, never met DR. HERNANDEZ in person either, as he was seldom at the facility. If a consultation did occur, it was often via phone or text message. DR. HERNANDEZ's absentee method of serving as Medical Director was not unique to Safe Haven; DR. HERNANDEZ was also fired from a different facility by its owner, Cooperating Defendant 1 ("CD1"), because he was not sufficiently involved in patient care.

46. DR. HERNANDEZ also provided Safe Haven with standing orders that authorized laboratory testing for patients at their facilities, without regard to medical necessity, and authorized the use of his DEA number to facilitate the ordering of controlled substances, specifically buprenorphine. DR. HERNANDEZ did not evaluate the patients at Safe Haven for whom lab orders were submitted, or for whom controlled substances were prescribed. In the vast majority of cases, medical extenders such as nurses or Advanced Registered Nurse Practitioners ("ARNPs") purportedly supervised by DR. HERNANDEZ were the only ones who evaluated these patients,

often prescribing controlled substances and/or providing services that they were not appropriately qualified or licensed to provide. DR. HERNANDEZ and his medical extenders routinely failed to use the results of the testing DR. HERNANDEZ ordered to create or revise treatment plans.

47. Based on a review of the medical records and interviews with patients and former Safe Haven employees, DR. HERNANDEZ and his medical extenders contributed to the claims submitted to the Insurance Plans for services that were either medically unnecessary (and not used in treatment), improperly provided (by unqualified personnel), or not provided at all.

48. Despite not being present at Safe Haven, DR. HERNANDEZ directly participated in fraudulent activities there as its authorizing physician. DR. HERNANDEZ had access to Safe Haven's medical records, which he frequently signed as a reviewing physician, albeit in a very delayed manner long after services were documented. In these files, DR. HERNANDEZ could see the excessive frequency of laboratory testing, the failed drug test results, and the orders for controlled substances.

49. DR. HERNANDEZ also communicated with Port, the owner of Safe Haven, and some of Safe Haven's medical staff regarding prescriptions for controlled substances, including buprenorphine. DR. HERNANDEZ had access to E-FORCSE,[6] and discussed with Port the fact that he (DR. HERNANDEZ) was checking his controlled substance prescription history.

50. Furthermore, a medical extender of DR. HERNANDEZ informed DR. HERNANDEZ of Safe Haven's practices, and that he no longer wished to see patients there.

[6] E-FORCSE was not able to locate any query history by DR. HERNANDEZ, or a listed designee, over the last four years. However, as detailed later in this affidavit at Paragraph 94, DR. HERNANDEZ told Port that he was checking his controlled substance prescription history on E-FORCSE. Indeed, this was required by Florida law.

According to the medical extender, DR. HERNANDEZ ignored this request, however, because he wanted to continue to be paid by Safe Haven.

51. Safe Haven's patients were sometimes procured through kickbacks that included free flights to South Florida, and other means. DR. HERNANDEZ did not directly participate in such conduct, but as Medical Director, his authorization and signature allowed Safe Haven and his other co-conspirators to fraudulently bill for substance abuse treatment services for patients whose referrals to Safe Haven were induced by kickbacks. DR. HERNANDEZ also benefited financially as more patients were admitted at Safe Haven, in that he was able to obtain higher fees when the patient census was 20 or more.

52. Safe Haven was licensed by DCF for outpatient detox, day or night treatment with community housing (equivalent to a PHP level of care), IOP, and OP. Based on a review of insurance claim records, submitted between March 2015 and September 2019, the period during which DR. HERNANDEZ served as Medical Director, Safe Haven submitted approximately $59 million in claims to the Insurance Plans for various addiction treatment services, including detox, PHP, IOP, and OP. The insurance claim records show that, based on the submission of these claims via interstate wire, the Insurance Plans paid Safe Haven approximately $14 million.

53. As Medical Director of Safe Haven, DR. HERNANDEZ authorized excessive laboratory testing (primarily urine drug testing) for patients, which resulted in the submission of approximately $13 million in additional claims, for which the Clinical Laboratories were paid over $1 million.

54. Based on evidence set forth below, along with my training and experience, I submit that there is probable cause to believe that many of the claims that Safe Haven submitted to the Insurance Plans for reimbursement for detox, PHP, IOP and OP treatment services, and urine drug

testing, during DR. HERNANDEZ's tenure as Medical Director were false and fraudulent. DR. HERNANDEZ, as Safe Haven's Medical Director, and his co-conspirators committed health care and wire fraud while they owned, operated, and oversaw Safe Haven. Specifically, the treatment provided at Safe Haven was fraudulent because:

- Safe Haven patients used illicit drugs (including marijuana, cocaine, and opiates) while admitted at Safe Haven, tested positive for drugs and/or were visibly intoxicated and/or seen using drugs, with no ramifications or changes to their treatment plans, which undercut the very purpose of the substance abuse treatment services supposedly provided;

- Safe Haven patients missed some or all of certain required therapy sessions, but Safe Haven nevertheless billed for such services as if they in fact occurred;

- DR. HERNANDEZ and the medical staff did not properly document patients' admissions, and did not conduct required assessments upon admission;

- Patients were billed for therapy sessions that did not qualify as actual substance abuse treatment;

- DR. HERNANDEZ allowed Safe Haven's owner, Port, to dictate which substance abuse treatment services to bill in order to generate revenue, based upon the expected payout from the patient's insurance, not based on medical need;

- DR. HERNANDEZ failed to provide the required individualized substance abuse treatment to patients;

- DR. HERNANDEZ failed to provide required medical oversight of Safe Haven's medical staff;

- DR. HERNANDEZ authorized excessive and medically unnecessary urine drug tests but did not timely review the results of such tests, if at all. Further, these tests were not used in patient treatment, but were done to generate revenue;

- DR. HERNANDEZ allowed controlled substances to be prescribed to Safe Haven's patients by unqualified personnel, and sometimes took responsibility by signing such orders days later; and

- DR. HERNANDEZ prescribed controlled substances without medical justification, and outside the scope of common medical practice, despite indications that the medications were being diverted.

B. Expert Consultant Findings

55. The law enforcement team investigating this matter consulted with an expert in addiction treatment, Dr. Kelly J. Clark. Dr. Clark is a licensed Medical Doctor (M.D.) in Florida (and in several other states) and has a Master's in Business Administration (M.B.A.). She has over 20 years of experience in the addiction treatment field; is board-certified in addiction medicine and psychiatry; is a distinguished fellow of the American Psychiatric Association and the American Society of Addiction Medicine; has been a Chief Medical Officer for two multi-state addiction treatment companies; and worked on various national guidelines establishing the standards of care for addiction treatment and testing. Since April 2019, Dr. Clark has served as the Immediate Past President of the American Society of Addiction Medicine (and was a former President) and remains on its Board.

56. Dr. Clark recently provided expert testimony at trial in the Southern District of Florida in two cases regarding allegations of addiction treatment fraud, one of which was against a physician (United States v. Abovyan, Case No. 18-CR-80122- MIDDLEBROOKS (physician defendant); United States v. Ahmed, Case No. 19-CR-60200-COHN) (owner and executive of sober homes and addiction treatment facility). Dr. Clark has been retained as an expert in other addiction treatment fraud cases and was admitted as an expert witness after a Daubert hearing on June 26, 2019 (United States v. Snyder, et al., Case No. 18-CR-80111-ROSENBERG). Finally, Dr. Clark has been noticed as an expert in the case involving DR. HERNANDEZ's co-conspirators (United States v. Port, et al., Case No. 19-CR-20583-SINGHAL).

57. Dr. Clark reviewed a subset of Safe Haven patient records and billing claims (for Safe Haven and several labs with which it was affiliated). Dr. Clark found that the medical records and billing data for Safe Haven indicated that the staff, including DR. HERNANDEZ, did not meet

even a minimal standard of care in the addiction treatment field. The documents show a pattern of medically unnecessary, excessive, and inappropriate prescriptions and urine drug testing intended to increase Safe Haven's profits, and not the patients' wellbeing.

58. Dr. Clark found that Safe Haven patient records were confused and inadequate, and that DR. HERNANDEZ paid little attention to patient care, illustrated by his signing blank or outdated assessment forms, failing to review urine drug test results, neglecting to incorporate progress notes into patient files, and failing to address clear indications of continued drug abuse and diversion, including failed drug tests.

59. Dr. Clark found that the ARNPs were acting outside the scope of practice, and that Safe Haven and DR. HERNANDEZ were utilizing them outside their credentialed abilities. She determined that ARNPs under DR. HERNANDEZ's supervision routinely prescribed controlled substances, including Suboxone, prior to 2017, even though such prescriptions were forbidden in the state of Florida, and despite the fact that they lacked the appropriate DEA certifications.

60. Dr. Clark found no medical reason for the vast majority of the urine drug testing conducted at Safe Haven. Testing was done at an inappropriately high frequency, for an inappropriately high number of substances. The tests were done in large panels without evidence of individualization. The tests were not reviewed in a timely enough manner (if at all) to allow them to be used effectively for treatment purposes, nor to allow them to be integrated into patients' treatment plans. Dr. Clark therefore concluded that there was no medical justification for the vast majority of drug tests ordered by Safe Haven under DR. HERNANDEZ's signature. In addition,

there is little evidence in the reviewed medical files that when patients failed the urine drug tests, these results were ever discussed with the patient or used in treatment.

61. Dr. Clark observed that prescriptions for abuseable medications, such as Gabapentin and Seroquel, were routinely provided without appropriate medical justification. Suboxone was prescribed to patients without clear indication of medical necessity. Prescriptions for these medications were provided while ignoring possible evidence of diversion, such as drug tests not showing positive results for controlled substances that they were prescribed.

C. Fraud Related to Substance Abuse Treatment Services

62. Based on evidence set forth below, along with my training and experience, I submit that there is probable cause to believe that many of the claims that Safe Haven submitted to the Insurance Plans for reimbursement of detox, PHP, IOP, and OP treatment services during DR. HERNANDEZ's tenure were false and fraudulent.

1. Evidence of Substance Abuse Treatment Fraud Based on Fact Witnesses.

63. Numerous confidential witnesses, including former employees and patients at Safe Haven, provided statements to federal agents regarding these fraudulent practices at Safe Haven:

Former Employees

a. Confidential Witness 1 ("CW1"), who worked as a behavioral health technician at Safe Haven from in or around July 2018 to early 2019, witnessed drug use in Safe Haven's housing, and drug deals, and that Safe Haven imposed no consequences for this drug use. CW1 stated that his/her/their direct supervisor, T.B., would try to kick out patients when they broke the rules, but the clients would be brought right back in, sometimes on the same day that they were kicked out. According to CW1, if a client had a good insurance policy, they would be allowed to stay at Safe Haven. Patients would only be kicked out and not allowed to return if their insurance hit the maximum limit.

b. Confidential Witness 2 ("CW2"), who worked as Director of Operations at Safe Haven from in or around July 2017 to September 2017, stated that he/she/they believed Port paid some clients $500 to attend Safe Haven, that patients used drugs while in treatment at Safe Haven, and that Dublynn and Port were aware of such drug use. CW2 also stated that Safe Haven was months behind on review of patient charts.

According to CW2, behavioral techs at Safe Haven lacked training, and therapists would tell patients in group sessions to just talk among themselves.

c. Confidential Witness 3 ("CW3"), who was the Director of Operations from in or around September 2017 to June 2018, told federal agents during an interview that the majority of therapy sessions at Safe Haven consisted of patients just watching TV, that patients in treatment smoked marijuana, which Dublynn and Port allowed, and that patients would be kicked out of Safe Haven once their insurance stopped paying for services. CW3 also stated that Sanford recruited patients and sometimes "smudged" [i.e., falsified] pre-assessments so that patients would qualify for admission to detox treatment, which was the highest and most expensive level of care Safe Haven offered.

d. Confidential Witness 4 ("CW4"), who worked as a registered mental health counseling intern at Safe Haven off and on between in or around 2016 and 2018, both part-time and full-time, and conducted group and individual therapy sessions, described Safe Haven to federal agents as a "nightmare twilight zone." On one occasion, CW4 was unable to conduct any clinical activity and Dublynn told him/her to "fudge it." CW4 told federal agents that on other occasions, he/she discussed with Dublynn and Port that patients were testing positive for drugs while in treatment, and Dublynn and Port would "just let it go and not impose any consequences."

e. Confidential Witness 5 ("CW5"), who worked for Safe Haven as a behavioral health technician for approximately 15 months, told federal agents that drug use was frequent by patients at Safe Haven, and that Dublynn and Port were aware of such drug use. CW5 stated that there was no repercussion for missing group therapy, and some patients stayed outside during group therapy sessions.

f. Confidential Witness 6 ("CW6"), who has worked in the substance abuse treatment field for approximately 30 years, told federal agents that he/she worked at Safe Haven as a behavioral technician for only two weeks before Dublynn fired her, which he/she believes was due to the fact that he/she was asking a lot of questions about Safe Haven's practices. CW6 told federal agents that he/she observed group therapy sessions that, based on his/her 30 years of experience, were not legitimate. For example, CW6 observed clients sitting in a room and playing on their phones and/or vaping, while a group facilitator/therapist hung out to ensure that they did not leave. CW6 also observed drug use at Safe Haven, and told federal agents that there were no consequences for using drugs while at Safe Haven or for failing drug tests.

g. Confidential Witness 7 ("CW7"), who was a behavioral health technician at Safe Haven for approximately seven months, told federal agents that Dublynn and Port created an environment where patients would stay at Safe Haven because they could get whatever they wanted. According to CW7, this included frequently purchasing and using drugs while at Safe Haven. CW7 told federal agents that patients at Safe Haven used Cashapp on their phones to pay drug dealers and that the dealers would drop drugs in

the yards of the sober homes used by Safe Haven patients. CW7 also told federal agents that patients would be assessed by nurses but never saw a doctor.

Former Patients

h. Confidential Witness 8 ("CW8") was a patient at Safe Haven for 2.5 months in early November 2017. CW8 stated that he/she never saw a doctor at Safe Haven, that he/she was told to sign in for group therapy that did not occur, and that he/she witnessed patients doing drugs while at Safe Haven. CW8 also told federal agents that Sanford offered to pay CW8 $500 to go to Safe Haven and that Safe Haven was low on clients, and was paying to keep them there. According to bank records from Bank of America, Port paid for a plane ticket to fly CW8 from Seattle, Washington to Miami, Florida the day before CW8 was admitted to Safe Haven.

i. Confidential Witness 9 ("CW9") stated that he/she "routinely" got high while at Safe Haven but was not kicked out because of this drug use. According to CW9, Safe Haven would discharge some patients if insurance companies raised an issue with lab tests. Furthermore, CW9 told federal agents that he/she overdosed five (5) times while she was a patient at Safe Haven, requiring the administration of Narcan each time, and that 911 was never called any of the times that he/she overdosed, and he/she was never brought to the hospital. According to CW9, behavioral health technicians at Safe Haven advised patients not to call 911, stating that they had Narcan available if an overdose occurred. CW9 stated that he/she never saw or spoke with a doctor while he/she was at Safe Haven and that his/her individual therapy, which occurred once per week, would typically last five minutes.

j. Confidential Witness 10 ("CW10") was a patient at Safe Haven in or around July and October 2017. CW10 stated that Sanford arranged his/her travel from Atlanta to Florida and that Port paid for his/her flight, and this is corroborated by bank records. CW10 told federal agents that he/she signed for group therapy that he/she did not attend, that when he/she did attend group therapy it consisted of patients just sitting around on their phones and getting yelled at, that he/she never saw the therapist who was assigned to him/her, and that he/she witnessed drug use at Safe Haven. According to CW10, Safe Haven did not want to help people, they just wanted the insurance money.

k. Confidential Witness 11 ("CW11") was a patient at Safe Haven for approximately 90 days, having left in or around the end of 2018. CW11 told federal agents that patients go to Safe Haven because they know it is a "flop," meaning patients get high "constantly" at Safe Haven and there are no consequences. CW11 told federal agents that he/she/they personally informed Dublynn about patients getting high at Safe Haven and that nothing was done about this. According to CW11, there was no actual "therapy" in the group setting at Safe Haven, and once you sign in for a session, you can leave. CW11 missed a few group therapy sessions to go to a doctor's appointment but was still told to sign in as if he/she attended the session. CW11 never saw a doctor at Safe Haven, only a nurse practitioner. CW11 did not pay rent, was given $75 Walmart gift cards for food, and was also provided cigarettes every day as inducements to stay at Safe Haven.

l. Confidential Witness 12 ("CW12") was a patient at Safe Haven from on or about January 12, 2019 to on or about February 28, 2019. CW12 told federal agents that he/she told Dublynn about patients' drug use while at Safe Haven and Dublynn told CW12 "not to worry about it, and to only worry about himself/herself." During group therapies, patients would be on their phones or vaping, and were allowed to leave. CW12 never saw a doctor at Safe Haven and never saw a prescription bottle with his/her name on it. CW12 told federal agents that he/she/they left Safe Haven to get legitimate treatment.

2. Evidence of Fraud Based on Review of EMR Records.

64. Over the course of this investigation, the investigative team obtained over 1,400 electronic medical records ("EMRs")[7] of more than 850 patients of Safe Haven.

65. Based on a review of approximately 159 EMRs for approximately 65 patients, Safe Haven patients frequently tested positive for drugs, including marijuana, opiates, and cocaine while admitted at Safe Haven, and often were not discharged after positive drug test results.

66. This EMR review also showed multiple instances where initial psychiatric evaluations, which were required to be conducted during the admissions process, were either not signed, were signed by an ARNP or NP instead of DR. HERNANDEZ, and/or were signed after a patient was discharged. Multiple patient files were missing these evaluations altogether.

D. <u>Fraud Related to Urine Drug Testing</u>

67. Based on evidence gathered in this investigation, along with my training and experience, I submit that there is probable cause to believe that many of the urine drug tests, particularly the DUDT claims that Safe Haven and DR. HERNANDEZ caused the clinical laboratories to submit to Insurance Plans for reimbursement, were false and fraudulent in that, among other things, the DUDTs were not medically necessary.

68. More specifically, based on interviews of witnesses, including former employees and patients of Safe Haven, and a review of medical records of Safe Haven patients, I know that

[7] Safe Haven utilized Kipu Systems LLC (now Kipu Health) for their EMR interface.

Safe Haven and DR. HERNANDEZ ordered DUDTs for patients as frequently as three times a week, mostly on Mondays, Wednesdays, and Fridays. In most instances, each DUDT ordered by Safe Haven and DR. HERNANDEZ was a routine supplement to a POC drug screen, meaning that a patient's urine specimen was first collected in a specific cup and analyzed using a color band or numbered dipstick (the POC test) and then the specimen was sent to a clinical laboratory for a DUDT to confirm the result of the POC.

1. Evidence of Fraud Based on Safe Haven Patient's Medical Files and Claims Data.

69. Based on a review of patient medical files and interviews of Safe Haven patients and employees, in most instances, Safe Haven and DR. HERNANDEZ ordered successive DUDTs without DR. HERNANDEZ, his subordinate practitioners, or any other Safe Haven employee first reviewing the result of the previous DUDT or even the result of the previous POC that Safe Haven was purportedly "confirming" with the DUDT. Indeed, a review of Safe Haven patient records reveals a pattern of delayed reviews of drug tests; tests sometimes took as long as four months to be reviewed, and were often not reviewed prior to patient discharge.

70. Based on a review of claims data, clinical laboratories billed as much as $4,000 for each DUDT that Safe Haven and DR. HERNANDEZ ordered to purportedly confirm the result of a POC that, in most instances, records show that no one had reviewed.

71. By way of example, on or about July 24, 2017, Safe Haven sent to a clinical laboratory an order for a DUDT (the "7/24 DUDT") for CW10, a patient then-admitted at Safe Haven. Based on a review of CW10's medical file and insurance claims data, the 7/24 DUDT for CW10 was identical to four (4) prior DUDTs ordered for CW10 on or about July 14, 17, 19, and 21, 2017. CW10's medical file does not contain the lab results of the 7/24 DUDT or any of the four previous, identical DUDTs. Furthermore, based on a review of the medical file, along with

my experience and training, it appears that CW10's 7/24 DUDT, and the four previous DUDTs for CW10, were ordered as a supplement to POC drug screens occurring on the same dates, and none of those POCs were signed as being reviewed until on or about December 13, 2017, which was approximately five months after CW10 was discharged from Safe Haven.

72. Based on a review of the claims data for patient CW10, Safe Haven caused the clinical laboratory to bill Aetna $3,404 for each of the DUDTs ordered for CW10, for a total of $17,024 in submitted claims. Based on these claims, Aetna paid the clinical lab $11,440.

73. Safe Haven changed labs several times. However, in EMR for patients of Safe Haven, lab orders for Lab 1, listing DR. HERNANDEZ as the ordering physician, can be found with identical medical necessity statements, which read:

> "Urine drug testing is medically necessary for diagnostic, clinical, and therapeutic purposes, to detect the use of prescription medications and illegal substances of concern for the purpose of assessment and treatment and to monitor compliance with the medication protocol of the Program."

The Lab 1 orders note the tests are to be conducted Mondays, Wednesdays, and Fridays, and were not individualized by patient, indicating a "drug screen-19, urine w/confirm on positives," and a "Safe Haven Custom Tox Panel." For these orders, insurance companies were billed over $3,000 per submission.

74. The same medical necessity statement can be found in the EMR for orders for Lab 2, listed as being ordered by DR. HERNANDEZ. However, Lab 2 orders included drug screens for various drugs (cannabinoids, antidepressants, oxycodone, opiates, methadone, cocaine, buprenorphine, barbiturates, amphetamines, and heroin metabolite), confirmatory tests for various drugs (cannabinoids, sedative hypnotics, gabapentin, fentanyl, benzodiazepines, buprenorphine, amphetamines, alcohol, and antidepressants), pH validity, and creatinine validity. These orders

were also not individualized by patient. For these tests, insurance companies could be billed approximately $4,500 per submission.

75. A review of Safe Haven patients' EMR related to laboratory testing showed that the results were often not reviewed in a timely manner, if at all. Many tests were reviewed weeks or months after testing was conducted, and sometimes after the patient had already left the facility. The date/time stamps on the signatures demonstrate that those for a particular patient were often signed all at once. As such, this evidence suggests it is highly unlikely that a health care provider conducted a substantive review of the test results. For example:

a. Patient 1 and Patient 2 had lab orders submitted to Lab 2. DR. HERNANDEZ signed nine drug screens for Patient 1 on September 1, 2019 within approximately two minutes. These drug screens were dated from August 13, 2019 to August 30, 2019, and several had laboratory results from Lab 2 attached. Approximately fifteen minutes later, DR. HERNANDEZ spent approximately two minutes signing ten drug screens for Patient 2, dating from August 9, 2019 to August 30, 2019, several of which had laboratory results from Lab 2 attached. For both patients, DR. HERNANDEZ signed the screens in reverse chronological order. Collectively, for Patients 1 and 2, Lab 2 billed BCBS approximately $65,000.

b. DR. HERNANDEZ signed approximately 25 drug screens for Patient 3, on October 18, 2016 within approximately 15 minutes of each other. Results from the laboratory that tested these samples, Laboratory 5 ("Lab 5"), were uploaded into the EMR for many of these drug screens. The screens dated from August 22, 2016 to October 17, 2016 but were also signed in reverse chronological order. Lab 5 billed BCBS approximately $181,000 for these tests.

2. Evidence of Urine Drug Testing Fraud Based on Fact Witnesses.

76. In addition, based on interviews of witnesses, Safe Haven's staff rarely reviewed the results of DUDTs with patients and, in some instances, ordered DUDTs for one patient using another patient's urine.

a. CW3, a former Director of Operations at Safe Haven, stated that if a patient had trouble urinating into the POC test cup, a sample would be grabbed from another client to be sent to the lab.

b. Confidential Witness 13 ("CW13"), a former patient, stated that he/she was drug tested three to four times per week. CW13 was getting high, but the results of his/her drug screens were never discussed with him/her.

c. CW12, a former patient, underwent drug tests every Monday, Wednesday, and Friday, but the results were never discussed with him/her.

3. Evidence of Urine Testing Fraud From a Cooperating Defendant.

77. Advanced Registered Nurse Practitioner 1 ("ARNP 1") worked as a subordinate practitioner to DR. HERNANDEZ at multiple facilities, including Safe Haven. ARNP 1 expects to be charged with federal health care fraud conspiracy charges (18 U.S.C. § 1349) related to his/her conduct in another federal case in the near future, and is cooperating in hopes of obtaining a favorable plea agreement or charging benefit.

78. ARNP 1 told agents that DR. HERNANDEZ signed a standing order that subjected all patients at the facility to the same testing regimen, regardless of their drug of choice, status of their sobriety, diagnosis, or history. ARNP 1 stated that DR. HERNANDEZ authorized testing at whatever frequency was required by Port and Dublynn, two individuals with no medical training or credentials.

79. ARNP 1 also informed DR. HERNANDEZ that he/she/they did not want to continue working at Safe Haven. DR. HERNANDEZ asked ARNP 1 to continue seeing patients there, as Safe Haven was one of the few facilities still paying DR. HERNANDEZ.

80. ARNP 1 told agents that DR. HERNANDEZ allowed controlled substances to be prescribed under his license at Serenity Ranch.[8] In addition, ARNP 1 referred DR. HERNANDEZ to several substance abuse treatment facilities that needed a Medical Director to sign standing

[8] In July 2019, four individuals, including the facility's owners and operators, were indicted on various criminal charges (United States v. Ahmed, et al., Case No. 19-60200-CR-COHN) related to Serenity Ranch Recovery, also known as Jacob's Well, Arnica Health, and Medi MD, another group of purported substance abuse treatment related centers based in South Florida.

orders, similar to those DR. HERNANDEZ signed for Safe Haven, and that these facilities would often send such standing orders to ARNP 1 to then send to DR. HERNANDEZ.

4. Other Documentary Evidence.

81. Based on an affidavit he signed in an unrelated civil case, (Living Tree Laboratories, LLC v. United Health Care Services, Inc., Case No. 16-CV-24680-GAYLES), DR. HERNANDEZ was aware of what constituted medical necessity for proper urine drug testing, and thus was aware, or should have been aware, of the lack of medical necessity for excessive and fraudulent urine drug testing he authorized and made possible for Safe Haven.

82. In or around March 2017, DR. HERNANDEZ signed an affidavit [D.E. 199-3] related to the above mentioned civil case, attesting that samples should only be sent to a lab for additional expensive laboratory testing if at least one of two circumstances occurred: first, a positive result of the qualitative or presumptive POC test; or second, the patient presented on a given day and appeared to be under the effects of drugs or alcohol or indicated that he/she had taken drugs or alcohol.

83. In or around April 2019, DR. HERNANDEZ created a drug testing policy for Safe Haven, in which the medical necessity criteria for definitive testing was detailed. However, at Safe Haven, samples were routinely sent for definitive laboratory testing, regardless of whether the POC result was positive or negative and irrespective of the patient's attitude or demeanor, in violation of Safe Haven's own purported policy.

84. After signing the aforementioned affidavit, and creating the drug testing policy for Safe Haven, DR. HERNANDEZ continued to sign as reviewing the laboratory results in Safe Haven's EMRs, often weeks after the tests were conducted and in reverse chronological order. The frequency of testing would be evident to anyone reviewing these records.

5. Evidence of DR. HERNANDEZ's and Port's Joint Criminal Conduct.

85. Port, Safe Haven's owner, had access to patient records and reviewed all bills. Port routinely communicated with DR. HERNANDEZ via text, and was thus aware, and in a position to be aware, that (a) DR. HERNANDEZ signed urine drug testing orders that were not individualized for each patient, and (b) the results of those tests were not timely reviewed or used in patient treatment, and thus were not medically necessary.

86. Although Safe Haven did not directly bill for DUDTs, Port and Safe Haven staff profited from these unnecessary tests because patient recruiters working for or with the laboratories agreed to send patients to Safe Haven (where they could be billed for treatments and tests that were unnecessary or not provided) on the condition that Safe Haven send those patients' urine and/or blood samples to be tested at their affiliated laboratories.

E. Unlawful Drug Distribution

87. Although DR. HERNANDEZ was only authorized by the DEA to treat 100 patients at any given time with buprenorphine starting on or about September 10, 2013 (as previously explained in Paragraph 34), he exceeded this limit approximately 50 times between 2015 and 2016, which were also the years DR. HERNANDEZ earned the most money.

88. Based on my review of medical records, and interviews of ARNPs and Registered Nurses ("RNs") purportedly working under DR. HERNANDEZ, I know that prescriptions for controlled substances, specifically buprenorphine, were ordered using DR. HERNANDEZ's DEA license, sometimes without DR. HERNANDEZ having seen the patient, reviewed his/her file, or even consulted on the decision.

89. ARNP 1 informed agents that he/she/they almost never consulted with DR. HERNANDEZ on a patient, but that DR. HERNANDEZ was aware his DEA license was being

used for controlled substance prescriptions. ARNP 1 also set DR. HERNANDEZ up with Serenity Ranch Recovery in a similar capacity, where DR. HERNANDEZ could be paid for buprenorphine prescriptions in his name, without having to see patients.

90. Advanced Registered Nurse Practitioner 2 ("ARNP 2"), who did not have a DEA license but prescribed buprenorphine using DR. HERNANDEZ' DEA license, had a supervisory agreement ("protocol") with DR. HERNANDEZ, but had never physically met him.

91. Safe Haven ARNPs did not work every day. When an ARNP was not on duty, a RN would evaluate incoming Safe Haven patients. Registered Nurse 1 ("RN 1") told agents he/she would text ARNP 2 and DR. HERNANDEZ to receive permission to send a prescription to the pharmacy. Text messages obtained from Port's phone[9] indicate that DR. HERNANDEZ asked little to no follow-up questions regarding the patients' conditions and approved such requests.

92. For example, on or about April 19, 2019, Port texted DR. HERNANDEZ in a group message including RN 1 and other medical staff, asking if a new client could be given Subutex[10] in lieu of Suboxone, stating the client was allergic to Suboxone. Without asking any questions, DR. HERNANDEZ replied, "Yes, same doses apply."

93. DR. HERNANDEZ authorized controlled substance prescriptions when requested by Port, a man with no medical training or licensing. On or about February 9, 2019, in a group text between Port, DR. HERNANDEZ, and RN 1, Port requested an Ativan taper for five patients, who were at Safe Haven with RN 1. The patients had already been admitted at Safe Haven for several days but had left the morning prior and relapsed on Xanax. DR. HERNANDEZ approved a new

[9] Port's phone was seized at the time of his arrest pursuant to a search warrant, on or about September 13, 2019.

[10] As stated in footnote 1, Subutex contains only buprenorphine, whereas Suboxone contains buprenorphine and naloxone. Naloxone is an opioid antagonist, which means that it blocks the effects of opioids at the receptor sites, making Suboxone more difficult to abuse than Subutex.

prescription for Ativan, a benzodiazepine, even though a previous Ativan taper had been ordered several days prior. DR. HERNANDEZ, who had access to Safe Haven's EMR, did not sign the new orders for Ativan, which had already been filled and dispensed to the patients, until over one month later, on or about March 19, 2019. DR. HERNANDEZ was frequently late on signing orders for controlled substances. The medical records indicate that patients were often being dispensed medications, including controlled substances, days, or weeks before the orders were reviewed and signed by DR. HERNANDEZ. In text messages with ARNP 2, ARNP 2 alerts Port that orders were not being signed by DR. HERNANDEZ. Port replies, "Dr Hernandez signed all the Dr orders for those clients 6/26/19. He falls behind and then dies [sic] them all at once."

94. Text messages between Port and DR. HERNANDEZ in or around August 2019 indicate that DR. HERNANDEZ told Port he was using E-FORCSE, to check approximately eight months' worth of controlled substances prescribed in his name. Per Florida Statute 893.055(8), for scheduled drugs other than nonopioids listed in Schedule V, "a prescriber or dispenser or a designee of a prescriber or dispenser must consult the system to review a patient's controlled substance dispensing history *before* prescribing or dispensing a controlled substance for a patient age 16 or older." Despite DR. HERNANDEZ's text message to Port, as indicated in footnote six herein, E-FORCSE was not able to locate any query history by DR. HERNANDEZ, or a listed designee, over the last four years.

95. ARNP 1 told agents that he/she participated in a phone call during which Port stated he wanted to use DR. HERNANDEZ's DEA number to prescribe Suboxone to Safe Haven patients, as other treatment facilities were doing. ARNP 1 stated that it was understood that DR. HERNANDEZ would not be personally consulted on individual prescriptions, although he would

be able to track those orders in patients' EMRs and his own E-FORCSE data. DR. HERNANDEZ did not push back on Port's request.

96. Subsequently, as corroborated by my review of Safe Haven patients' EMR, ARNP 1 routinely ordered Suboxone for patients using DR. HERNANDEZ's DEA number, despite the fact that: (a) ARNP 1 was not waivered to prescribe buprenorphine, (b) ARNP1 had no way of knowing whether DR. HERNANDEZ had exceeded his buprenorphine patient limit, and (c) DR. HERNANDEZ did not see the patients or review their medical files prior to the prescription.

97. According to Dr. Kelly Clark, a medical expert in the substance abuse treatment field (discussed above in Paragraphs 55 to 61), when prescribing drugs of abuse to patients with known addiction, care must be taken to monitor for misuse or diversion. DR. HERNANDEZ's aforementioned delayed review of drug test results, and his allowance of the use of his DEA license to prescribe drugs of abuse without his required medical oversight demonstrate a gross deviation from the standard of care.

CONCLUSION

98. Based upon the foregoing, I submit that this affidavit sets forth sufficient facts to establish probable cause to believe that, from in or around March 2015 until in or around September 2019, in Miami-Dade and Broward Counties, in the Southern District of Florida, and elsewhere, DR. MARK HERNANDEZ, together with the owners and operators of Safe Haven and others, conspired to commit (a) health care fraud, that is, to knowingly and willfully execute, and attempt to execute, a scheme to defraud any health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, any of the money and property owned by, and under the custody and control of, any health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title

18, United States Code, Section 1347, and (b) wire fraud, that is, having devised a scheme or artifice to defraud, transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice; all in violation of Title 18, United States Code 1349, and committed substantive health care fraud, in violation of Title 18, United States Code, Section 1347.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief this 21st day of September 2020, in Miami, Florida.

FURTHER AFFIANT SAYETH NAUGHT.

RICHARD GIANFORCARO
Special Agent
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of FedR.Crim.P. 4.1 by Face Time this 21st day of September 2020.

HON. JONATHAN GOODMAN
UNITED STATES MAGISTRATE JUDGE