

FILED

MAR 26 2024

GJS/2023R00080

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

AT 8:30 *2:30*
CLERK, U.S. DISTRICT COURT - DNJ

UNITED STATES OF AMERICA	:	Hon. Michael E. Farbiarz
	:	
v.	:	Criminal No. 24-00211
	:	
ALAN VAUGHAN	:	18 U.S.C. § 371
	:	

INDICTMENT

The Grand Jury for the District of New Jersey charges:

(Conspiracy to Violate the Federal Anti-Kickback Statute)

1. Unless otherwise indicated, at all times relevant to this Indictment:

The Defendant and Other Individuals and Entities

a. Defendant ALAN VAUGHAN was a citizen of the United Kingdom. Defendant VAUGHAN owned, operated, and had a financial interest in various entities located in New Jersey and elsewhere (collectively, the "VAUGHAN Companies").

Aaron Williamsky and Nadia Levit, co-conspirators not charged in this Indictment, were residents of New Jersey who owned, operated, and had financial and controlling interests in numerous durable medical equipment ("DME") supply companies located in New Jersey and elsewhere (collectively, the "Subject DME Companies").

Luis Roa, a co-conspirator not charged in this Indictment, was a citizen and resident of Chile. Roa owned, operated, had a financial interest in,

and had financial relationships with various marketing entities located in Chile and elsewhere (collectively, the “Roa Companies”).

Nicholas Defonte and Christopher Cirri, co-conspirators not charged in this Indictment, were residents of New Jersey. Defonte and Cirri controlled and had financial interests in various entities located in New Jersey (collectively, the “Cirri/Defonte Companies”) through which they obtained DME orders.

Andrew McCubbins and Jordan Bunnell, co-conspirators not charged in this Indictment, were residents of Utah. McCubbins, Bunnell, and others owned, operated, and had a financial interest in a clinical laboratory in Florida (“Laboratory-1”) that conducted or arranged for various diagnostic tests, including cancer genetic tests (“CGx tests”).

f. David Rae, a co-conspirator not charged in this Indictment, was a resident of the United Kingdom. Rae and co-conspirators owned, operated, controlled, and utilized a shell company located in New Zealand (the “New Zealand Company”).

g.

The Medicare Program

Medicare was a federally funded program established by the Social Security Act of 1965 (codified as amended in various sections of Title 42, United States Code) to provide medical insurance benefits for individuals age 65 and older and certain disabled individuals who qualify under the Social Security Act. Individuals who received benefits under Medicare were referred to as “Medicare beneficiaries.” Medicare was administered by the Center for Medicare

and Medicaid Services (“CMS”), a federal agency under the United States Department of Health and Human Services. Medicare was a “health care benefit program,” as defined by 18 U.S.C. § 24(b), and a “Federal health care program,” as defined by 42 U.S.C. § 1320a-7b(f), that affected commerce.

Medicare was divided into four parts, which help cover specific services: Part A (hospital insurance), Part B (medical insurance), Part C (Medicare^h Advantage), and Part D (prescription drug coverage). Medicare Part B covered non-institutional care that included physician services and supplies, such as DME and CGx tests, that were needed to diagnose or treat medical conditions and that met accepted standards of medical practice.

i. Medicare-authorized suppliers of health care services, such as DME or CGx tests, could only submit claims to Medicare for reasonable and medically necessary services. Medicare would not reimburse claims for services that it knew were procured through kickbacks or bribes. Such claims were deemed false and fraudulent because they violated Medicare laws, regulations, and program instructions, as well as violating federal criminal law. For example, where a DME order or CGx test was procured through the payment of a kickback in violation of the Federal Anti-Kickback Statute, a claim to Medicare for reimbursement for that order was fraudulent. By implementing these restrictions, Medicare aimed to preserve its resources, which were largely funded

by United States taxpayers, for those elderly and other qualifying beneficiaries who had a genuine need for medical services.

The Conspiracy

2. From in or around October 2018 through in or around April 2019, in the District of New Jersey, and elsewhere, defendant

ALAN VAUGHAN

did knowingly and intentionally conspire and agree with others to commit certain offenses against the United States, that is:

a. to knowingly and willfully solicit and receive remuneration, including any kickback, bribe, and rebate, directly and indirectly, overtly and covertly, in cash and in kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, namely Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b)(1)(A); and

b. to knowingly and willfully offer and pay remuneration, including any kickback, bribe, and rebate, directly and indirectly, overtly and covertly, in cash and in kind, to any person to induce such person to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under a Federal health care program, namely Medicare, contrary to Title 42, United States Code, Section 1320a-7b(b)(2)(A).

Goal of the Conspiracy

3. The goal of the conspiracy was for defendant VAUGHAN and others to profit by paying and receiving kickbacks and bribes in exchange for DME orders and CGx tests that were reimbursed by Medicare.

Manner and Means of the Conspiracy

4. It was a part of the conspiracy that:

***Defendant Vaughan Offered, Paid, Solicited, and Received Kickbacks
In Exchange for Fraudulent DME orders***

In or around October 2018, defendant VAUGHAN agreed with Williamsky and Levit to provide DME orders, for items like orthotic braces, to the Subject DME Companies in exchange for kickbacks. These orders included DME for beneficiaries of federally funded health care benefit programs. Defendant VAUGHAN received kickbacks in return for each DME order that resulted in reimbursement from Medicare.

b.

In or around November 2018, defendant VAUGHAN began traveling between the United Kingdom and New Jersey and living and working out of residences and offices associated with Williamsky and Levit in New Jersey.

Defendant VAUGHAN paid kickbacks to Roa and others to identify beneficiaries of health care benefit programs who were located in New Jersey and elsewhere and who were eligible to receive DME. Once Roa and others identified these beneficiaries, they would transmit the beneficiaries' information to the VAUGHAN Companies, which, as explained below, would use telemedicine companies to obtain DME orders signed by physicians. The amount of the

kickbacks paid from defendant VAUGHAN to Roa were calculated based on the number of braces the health care benefit programs paid for.

Defendant VAUGHAN had relationships with other marketers like Roa to whom he paid kickbacks for patient referrals. For example, in an email dated January 30, 2019, defendant VAUGHAN explained to a marketer that the marketer would earn kickbacks once the marketer provided usable beneficiary information to defendant VAUGHAN that was later converted into a reimbursable DME order: "You pass the calls over with the patient details....Patients are Sent to Network, if Doctors complete they will issue prescription. I then send to DME for Order Process, if order is OK. Then the DME pays out on these, i then owe yourselves \$100 per completed patient."

e. Once VAUGHAN had obtained beneficiary information from Roa and other marketers, the VAUGHAN Companies used telemedicine companies to obtain DME orders for the beneficiaries. Specifically, defendant VAUGHAN transmitted the beneficiary information to the Cirri/Defonte Companies, which in turn had relationships with telemedicine companies. Defendant VAUGHAN agreed to pay a kickback of approximately \$93.50 to the Cirri/Defonte Companies for each DME order they returned that was signed by a physician.

To conceal the nature of these payments, the Cirri/Defonte Companies sent sham invoices to the VAUGHAN Companies that falsely described the nature of their work. Specifically, the invoices made it appear that the VAUGHAN Companies were paying the Cirri/Defonte Companies for

business process outsourcing (“BPO”) services and marketing fees, and not for obtaining signed DME orders on a per-beneficiary basis. For example, on or about December 11, 2018, the Cirri/Defonte Companies provided defendant VAUGHAN with a sham invoice requesting payment of approximately \$1,309, purportedly for “BPO Services” of \$325 and “Marketing Fees” of \$984. But, in reality, defendant VAUGHAN owed them kickbacks for obtaining 14 DME orders for approximately \$93.50 per patient.

After obtaining the signed DME orders from the Cirri/Defonte Companies, defendant VAUGHAN then steered the DME orders to the Subject DME Companies for processing. The Subject DME Companies in turn billed Medicare for DME that was procured through kickbacks.

h. Defendant VAUGHAN received a kickback of approximately \$280 from the Subject DME Companies, run by Williamsky and Levit, for each reimbursed DME order. If a DME order provided by defendant VAUGHAN was not reimbursed by a health care benefit program, he was not paid a kickback unless¹ he replaced the DME order with one that triggered reimbursement.

Like the telemedicine companies did, defendant VAUGHAN sent sham invoices to the Subject DME Companies that falsely described the nature of the work being performed to conceal the nature of the kickbacks. Specifically, the invoices made it appear that the Subject DME Companies were paying the VAUGHAN Companies for BPO and marketing services, and not for reimbursed DME orders on a per-order basis. For example, on or about October 8, 2018, one of the VAUGHAN Companies provided the Subject DME Companies

with a sham invoice requesting payment of approximately \$10,500, purportedly for “BPO Expenses” of \$3,500 and “Marketing Fees” of \$7,000. But, in reality, that bill was for kickbacks for DME orders provided by defendant VAUGHAN.

After receiving the DME orders from defendant VAUGHAN, Williamsky and Levit submitted claims to Medicare for the DME orders.

j. In this manner, defendant VAUGHAN submitted and caused the submission of claims to Medicare for signed DME orders that were obtained through the payments of kickbacks and bribes. They were therefore not eligible for federal reimbursement.

k. During the kickback conspiracy involving DME orders, Defendant VAUGHAN received kickbacks totaling more than approximately \$330,000. As a result of the kickback scheme, Medicare paid more than approximately \$430,000 in reimbursements for DME orders procured by defendant VAUGHAN.

***Defendant Vaughan Offered, Paid, Solicited, and Received Kickbacks
m. In Exchange for Fraudulent Referrals for CGx tests***

In or around November 2018, Williamsky and Levit agreed with McCubbins, Bunnell, defendant VAUGHAN, and others that defendant VAUGHAN would provide referrals for CGx tests to Laboratory-1 in exchange for kickbacksⁿ. Williamsky and Levit, in turn, paid kickbacks to marketers (including defendant VAUGHAN) for each reimbursed CGx test referral.

Specifically, Williamsky, Levit, and defendant VAUGHAN agreed that defendant VAUGHAN would receive approximately 5% of the net kickbacks from Laboratory-1, as well as approximately \$900 for each CGx test

referral submitted by the VAUGHAN Companies to Laboratory-1 that resulted in reimbursement from Medicare.

To generate referrals for CGx tests, Williamsky and Levit provided defendant VAUGHAN with a list of the beneficiaries who had previously been provided with DME by the Subject DME Companies. Defendant VAUGHAN then used call centers to contact the beneficiaries on the list. Defendant VAUGHAN then transmitted information about those beneficiaries to entities associated with McCubbins, Bunnell, and Laboratory-1.

After receiving the CGx test referrals from defendant VAUGHAN and others, Laboratory-1 and others worked with telemedicine health care providers who contacted the beneficiaries that defendant VAUGHAN and others had referred. Then, a company associated with Laboratory-1 mailed a testing kit to each beneficiary. Beneficiaries completed the buccal swabs or other testing mechanisms contained in the kits and returned them to Laboratory-1. Laboratory-1 then submitted or directed the submission of claims to Medicare for payment for each CGx test even though they were obtained through kickbacks.

To conceal the kickback arrangement, from in or around November 2018 through in or around April 2019, Laboratory-1 wired the kickbacks owed to Williamsky, Levit, defendant VAUGHAN, and others to the New Zealand Company controlled by Rae, Williamsky, and Levit. Defendant VAUGHAN and others entered into sham contracts with the New Zealand Company to make it appear that defendant VAUGHAN and others were engaged in and being paid for legitimate marketing and referral services for the New

Zealand Company (the "NZ CGx Agreements"). The NZ CGx Agreements provided that the New Zealand Company would pay defendant VAUGHAN and others for marketing services based on the hours and expenses incurred. In reality, however, Laboratory-1, via the New Zealand Company, paid defendant VAUGHAN and others on a per-CGx test basis based on reimbursements from health care benefit programs.

Defendant VAUGHAN and others also created false invoices for hourly referral services for the New Zealand Company and sent them to Laboratory-1 and/or the New Zealand Company in an attempt to conceal the true nature of the NZ CGx Agreement. The New Zealand Company, in turn, wired the kickbacks to defendant VAUGHAN and others.

s. From in or around February 2019 through in or around April 2019, Laboratory-1 transferred kickbacks for CGx tests of approximately \$6,605,406 to the New Zealand Company for the benefit of Williamsky, Levit, defendant VAUGHAN, and others.

As a result of the kickback scheme, Medicare paid Laboratory-1 more than approximately \$80,000,000 in reimbursements for CGx tests procured by defendant VAUGHAN and his co-conspirators.

Overt Acts

5. In furtherance of the conspiracy, and to effect its unlawful objects, defendant VAUGHAN and others committed or caused the commission of the following overt acts in the District of New Jersey and elsewhere:

a. On or about November 28, 2018, defendant VAUGHAN wired a payment of approximately \$2,618 to one of the Cirri/Defonte Companies.

b. On or about February 20, 2019, defendant VAUGHAN wired a kickback of approximately \$1,275 to one of the Roa Companies.

c. On or about March 26, 2019, the Subject DME Companies wired a kickback of approximately \$25,200 to one of the VAUGHAN Companies located in New Jersey.

d. On or about March 28, 2019, at the direction of Williamsky and Levit, the New Zealand Company wired a kickback of approximately \$74,407 to one of the VAUGHAN Companies. Defendant VAUGHAN had previously invoiced the New Zealand Company for the exact same amount for "Marketing Services" to disguise the true nature of the payment.

In violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATION

1. Upon conviction of the offense alleged in the Indictment, defendant VAUGHAN shall forfeit to the United States, pursuant to 18 U.S.C. § 982(a)(7), all property, real or personal, that constitutes or is derived, directly and indirectly, from gross proceeds traceable to the commission of the offense (as defined in 18 U.S.C. § 24) alleged in this Indictment.

SUBSTITUTE ASSETS PROVISION

2. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty,

the United States shall be entitled to forfeiture of substitute property, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b).



FOREPERSON

Handwritten signature of Vikas Khanna in black ink.

VIKAS KHANNA
Attorney for the United States
Acting Under Authority Conferred
By 28 U.S.C. § 515

CASE NUMBER: 24-cr-00211

**United States District Court
District of New Jersey**

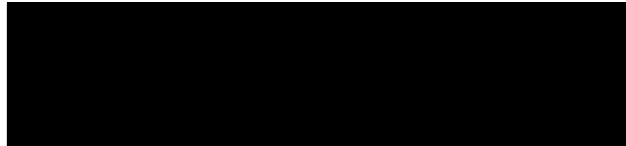
UNITED STATES OF AMERICA

v.

ALAN VAUGHAN

INDICTMENT FOR

18 U.S.C. § 371



Foreperson

VIKAS KHANNA
ATTORNEY FOR THE UNITED STATES
ACTING UNDER AUTHORITY CONFERRED
By 28 U.S.C. § 515

GARRETT J. SCHUMAN
ASSISTANT U.S. ATTORNEY
973-645-2700
