IN THE DISTRICT COURT OF THE UNITED STATES

for the Western District of New York

MARCH GRAND JURY
(Impaneled March 28, 2025)

THE UNITED STATES OF AMERICA

-vs-

JOEL DURINKA

INDICTMENT

Violations:
Title 18, United States Code,
Sections 1349, 1347, 1035, and 2.

(11 Counts and 1 Forfeiture Allegation)

INTRODUCTION

The Grand Jury Charges That:

At all times relevant to this Indictment:

The Defendant and Related Entities

1. The defendant, JOEL DURINKA, was a licensed medical doctor residing in the Western District of New York.

2. The defendant, JOEL DURINKA, was participating in a post-graduate surgical residency program at the University at Buffalo School of Medicine and Biomedical Sciences and was working at hospitals in the Western District of New York.

3. Co-conspirator 1, a person known to the Grand Jury, owned and operated a medical billing company.

4. Co-conspirator 1 used the medical billing company to submit claims to Medicare seeking reimbursement for services allegedly performed by medical doctors, including the defendant, JOEL DURINKA.

5. Co-conspirator 2, a person known to the Grand Jury, owned and operated telemarketing companies which were engaged in the business of identifying and contacting Medicare beneficiaries who were eligible to receive Durable Medical Equipment. Specifically, Co-conspirator 2 used the telemarketing companies to: (a) identify Medicare beneficiaries who were eligible to receive Medicare-reimbursed Durable Medical Equipment; (b) contact eligible Medicare beneficiaries telephonically to collect information from the beneficiary to support Durable Medical Equipment orders; and (c) connect Medicare beneficiaries via telephone with medical doctors, including the defendant, JOEL DURINKA, who were authorized to prescribe Durable Medical Equipment, and who caused such Durable Medical Equipment to be billed to Medicare.

The Medicare Program

6. The Medicare Program ("Medicare") provided benefits to individuals who are 65 years or older or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency under the United States Department of Health and Human Services ("HHS"). Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."

7. Medicare was a "health care benefit program," as defined by Title 18, United States Code, Section 24(b), and a "Federal Health Care Program," as defined in Title 42, United States Code, Section1320a-7b(f).

8. Medicare was subdivided into different parts designed to address coverage for specific services. Medicare "Part B" covered physician services and outpatient care, including an individual's eligibility for Durable Medical Equipment. Medicare paid participating health care providers fees for services they rendered to beneficiaries.

9. In order for health care providers such as medical doctors to participate in Medicare and receive reimbursement for covered services, they were required to apply, and execute a written provider agreement, known as a "CMS Form 855."

10. On or about September 11, 2020, the defendant, JOEL DURINKA, submitted a Medicare provider agreement, CMS Form 855, in which he certified that: (a) he agreed "to abide by the Medicare laws, regulations and program instructions that appl[ied] to [him];" (b) he understood that "payment of [a] claim by Medicare [was] conditioned upon the claim and the underlying transaction complying with such laws, regulations and program instructions;" and (c) he "w[ould] not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare and w[ould] not submit claims with deliberate ignorance or reckless disregard of their truth or falsity."

11. After September 11, 2020, the defendant, JOEL DURINKA, was approved by Medicare as a provider and as a result, DURINKA was eligible to submit claims to Medicare

seeking reimbursement for patient visits and became eligible to order Durable Medical Equipment for beneficiaries. Medicare only reimbursed providers for "reasonable and necessary services for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

Telehealth

12. Medicare Part B allowed patient visits to take place remotely, "using two-way, real-time interactive telecommunication" between the beneficiary and the health care provider under certain specified circumstances. The provision of services in this manner was referred to as "telehealth" or "telemedicine." Medicare did not reimburse a provider for a telehealth or telemedicine visit unless that visit was "reasonable and necessary."

13. Beginning in or about March 2020, as a result of the COVID-19 public health emergency, Medicare expanded telehealth but continued to require that the telehealth visit be "reasonable and necessary", and that it be provided via a "two-way, real-time interactive telecommunication" between the beneficiary and the health care provider.

14. In expanding beneficiary access to telehealth, Medicare allowed for patient visits via telephone and established specific billing codes to be used by Medicare providers to submit claims for such services.

Durable Medical Equipment or DME

15. In addition to covering services provided by a participating medical doctor, Medicare Part B covered beneficiaries' access to Durable Medical Equipment. Durable

Medical Equipment or DME included various types of medical equipment such as braces for ankles, knees, backs, hips, and elbows.

16. In order for Medicare to provide payment for DME, the DME had to be ordered for the beneficiary by a participating provider who certified that the DME in question was "reasonable and necessary" for the treatment of the beneficiary's illness or injury. Medicare referred to the prescriptions for DME as "orders." Payment by Medicare for the DME was made to the entity that provided the DME to the beneficiary based on the provider's order.

COUNT 1

(Conspiracy to Commit Health Care Fraud)

The Grand Jury Further Charges That:

17. The allegations of the Introduction are re-alleged and incorporated by reference as if fully set forth herein.

18. Beginning on or around September 11, 2020, and continuing to on or about May 26, 2022, in the Western District of New York, and elsewhere, the defendant, JOEL DURINKA**,** did knowingly and willfully combine, conspire, and agree with others, known and unknown to the Grand Jury, including Co-conspirator 1 and Co-conspirator 2, to commit certain offenses against the United States, that is, to knowingly and willfully execute and attempt to execute a scheme and artifice to defraud a health care benefit program, as defined in Title 18, United States Code, Section 24(b), that is Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money owned by, and under the custody and control of said 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.

Object of the Conspiracy

19. The object of the conspiracy was for the defendant, JOEL DURINKA, Co-conspirator 1, Co-conspirator 2, and others known and unknown to the Grand Jury, to unlawfully enrich themselves by submitting and causing to be submitted false and fraudulent claims for reimbursement to Medicare for telehealth services that had not been provided and for DME that was not medically necessary.

Manner and Means of the Conspiracy

20. The manner and means by which the conspiracy was sought to be accomplished included, among other things, the following:

a. The defendant, JOEL DURINKA, a Medicare provider, entered into an agreement with Co-conspirator 2 to participate in a scheme whereby employees of Co-conspirator 2's telemarketing companies: (i) received information identifying Medicare beneficiaries who were eligible for Medicare-reimbursed DME braces; (ii) contacted those beneficiaries via telephone to collect personal and health related information from the beneficiaries; and (iii) forwarded the calls with beneficiaries to DURINKA, who spoke briefly with the beneficiaries and submitted orders for the beneficiaries to receive the DME.

b. The defendant, JOEL DURINKA, a Medicare provider, entered into an agreement with Co-conspirator 1 to use Co-conspirator 1's medical billing company to

submit claims for reimbursement to Medicare for telehealth medical services the defendant falsely claimed to have provided to the Medicare beneficiaries identified by Co-conspirator 2's telemarketing companies. As part of the agreement with Co-conspirator 1, DURINKA agreed to pay Co-conspirator 1 approximately five percent of all money received for telehealth claims billed on DURINKA's behalf.

c. The defendant, JOEL DURINKA, a Medicare provider, created documents which falsely stated that the Medicare beneficiaries with whom he had the claimed telehealth medical visits were in medical need of particular DME. These false documents included treatment records and "Rx/Medical Necessity Forms" for the DME which falsely stated that the ordered DME was "medically indicated and necessary."

d. To ensure that the defendant, JOEL DURINKA, continued to participate in the fraudulent scheme by signing orders for DME and falsely certifying that the DME was reasonable and medically necessary, Co-conspirator 1 and Co-conspirator 2 had an agreement whereby Co-conspirator 2 and the DME Supply companies were directed not to question any medical decision made by DURINKA.

The Scheme to Defraud and to Obtain Money from Medicare by Means of Materially False and Fraudulent Pretenses, Representations, and Promises

21. It was part of the scheme to defraud Medicare that the defendant, JOEL DURINKA, provided Co-conspirator 2 and Co-conspirator 2's telemarketing companies his availability and schedule to serve as an "on-call" telehealth doctor to speak with Medicare beneficiaries. Prior to connecting the beneficiaries to DURINKA, the telemarketing companies

called Medicare beneficiaries and collected personal and health related information from each beneficiary on a "Brace Form" questionnaire. At about the same time, the telemarketing companies emailed DURINKA certain information about each beneficiary, including the beneficiary's responses to the Brace Form questionnaire, which information indicated the type of DME (braces) that DURINKA should order for the beneficiary.

22. It was further part of the scheme to defraud that the defendant, JOEL DURINKA, typically spoke to each beneficiary for less than one minute, and at times did not speak to the beneficiary at all.

23. It was further part of the scheme to defraud that, although the defendant, JOEL DURINKA, did not provide Medicare beneficiaries with any qualifying telehealth medical services or engage them in any qualifying telehealth medical discussions, DURINKA submitted and caused to be submitted claims to Medicare, via Co-conspirator 1's medical billing company, fraudulently seeking reimbursement for telehealth services.

24. It was further part of the scheme to defraud that, although the defendant, JOEL DURINKA, did not provide Medicare beneficiaries with any qualifying telehealth medical services or engage them in any qualifying telehealth medical discussions, he fraudulently wrote orders for DME for those beneficiaries.

25. It was further part of the scheme to defraud that the defendant, JOEL DURINKA, having typically spent less than one minute speaking with the Medicare beneficiary, and having failed to engage the beneficiary in any discussion regarding the

beneficiary's medical history, physical condition, or need for a brace or any other type of DME, routinely diagnosed the beneficiary with osteoarthritis, or similar diagnosis, and used that diagnosis to claim that each DME brace he ordered for the beneficiary was "medically indicated and necessary and consistent with current accepted standards of medical practice and treatment."

26. It was further part of the scheme to defraud that the defendant, JOEL DURINKA, used an order form, called an "Rx/Medical Necessity Form," where he checked boxes for the particular DME brace or DME braces to be ordered for Medicare beneficiaries, listed a diagnosis code, and signed a "physician verification" which stated that "[b]y my signature, I am prescribing the items listed above and certify that the above-prescribed item(s) is medically indicated and necessary and consistent with current accepted standards of medical practice and treatment of the patient's physical condition."

27. It was further part of the scheme to defraud that the defendant, JOEL DURINKA, created patient records and reports that contained diagnoses that DURINKA lacked sufficient information to make and false representations that the DME being ordered was reasonable and medically necessary. DURINKA, in consultation with Co-conspirator 1, also made false certifications to this effect and submitted such false documents and certifications to Co-conspirator 1's medical billing company to support false and fraudulent claims for reimbursement for both telehealth medical services and DME orders.

28. It was further part of the scheme to defraud that the defendant, JOEL DURINKA, in response to claim denials from Medicare and complaints from beneficiaries that

the beneficiaries had not had telehealth visits with him, altered and falsified, and caused to be altered and falsified, Medicare beneficiary files, orders, and other records in an attempt to establish that the questioned telehealth visit had occurred and that DURINKA's ordering of the DME in question had been reasonable and medically necessary.

29. It was further part of the scheme to defraud that the defendant, JOEL DURINKA, submitted the altered and falsified beneficiary files, orders, and records to Co-conspirator 1's medical billing company, which in turn submitted the altered and falsified documents to Medicare to contest claim denials and respond to audits.

30. It was further part of the scheme to defraud that between on or about September 11, 2020, and on or about May 26, 2022, the defendant, JOEL DURINKA, and Co-conspirator 1 submitted and caused to be submitted approximately $5,613,250 in claims for reimbursement from Medicare for telehealth medical services that DURINKA falsely claimed to have provided to Medicare beneficiaries.

31. It was further part of the scheme to defraud that between on or about September 11, 2020, and on or about May 26, 2022, the defendant, JOEL DURINKA, Co-conspirator 1, and other co-conspirators known and unknown to the Grand Jury, submitted and caused to be submitted to Medicare approximately $29,562,161 in claims for reimbursement for DME braces that DURINKA, falsely certified were reasonable and medically necessary.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2 to 6

(Health Care Fraud)

The Grand Jury Further Charges That:

32. The allegations of the Introduction and those contained in paragraphs 19 to 31 of Count 1 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

33. Between on or about September 11, 2020, and on or about May 26, 2022, in the Western District of New York, and elsewhere, the defendant, JOEL DURINKA**,** did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud a health care benefit program, as defined in Title 18, United States Code, Section 24(b), that is Medicare, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money owned by, and under the custody and control of said health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, specifically, reimbursement for telehealth medical services provided to the beneficiaries on or about the dates set forth in the below chart, which telehealth medical services the defendant knew he had not provided:

Count	Approximate Date of Telehealth Medical Services	Amount Billed to Medicare	Beneficiary
2	11/16/2020	$350	PP
3	3/6/2021	$400	SK

Count	Approximate Date of Telehealth Medical Services	Amount Billed to Medicare	Beneficiary
4	6/17/2021	$350	JH
5	8/23/2021	$350	CB
6	7/28/2021	$400	GN

All in violation of Title 18, United States Code, Sections 1347 and 2.

COUNTS 7 to 11

(False Statements Relating to Health Care Matters)

The Grand Jury Further Charges That:

34. The allegations of the Introduction and those contained in paragraphs 19 to 31 of Count 1 of this Indictment are re-alleged and incorporated by reference as if fully set forth herein.

35. On or about the dates set forth below, in the Western District of New York and elsewhere, the defendant, JOEL DURINKA, did knowingly and willfully make and use, and cause to be made and used, materially false writings and documents, knowing the same to contain materially false, fictitious, and fraudulent statements and entries, in connection with the delivery of a payment for health care benefits, items, and services involving a health care benefit program, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, in that the defendant, JOEL DURINKA, submitted, and caused to be submitted to Medicare,

claims seeking reimbursement for DME, namely braces, ordered for the beneficiaries on or about the dates set forth in the below chart, which DME braces the defendant, JOEL DURINKA, knew were not medically necessary for the beneficiary in question:

Count	Approximate Date of DME Order	Records Containing False Statement	Beneficiary
7	11/16/2020	Beneficiary's Medical Records and "Rx/Medical Necessity Form" for DME	PP
8	3/6/2021	Beneficiary's Medical Records and "Rx/Medical Necessity Form" for DME	SK
9	6/17/2021	Beneficiary's Medical Records and "Rx/Medical Necessity Form" for DME	JH
10	8/23/2021	Beneficiary's Medical Records and "Rx/Medical Necessity Form" for DME	CB
11	7/27/2021	Beneficiary's Medical Records and "Rx/Medical Necessity Form" for DME	GN

All in violation of Title 18, United States Code, Sections 1035 and 2.

FORFEITURE ALLEGATION

The Grand Jury Alleges That:

Upon conviction of any Count of this Indictment, the defendant, JOEL DURINKA, shall forfeit to the United States, all his right, title, and interest in any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses, including but not limited to the following:

FORFEITURE MONEY JUDGMENT:

The sum of approximately nine hundred seventy-one thousand, three hundred twenty-six dollars and twenty cents ($971,326.20) in United States currency, or an amount to be determined by the Court, which sum of money is equal to the total amount of proceeds obtained as a result of the offenses for which the defendant, JOEL DURINKA, is charged. In the event that the above sum is not available, then a forfeiture money judgment for the same amount will be entered against JOEL DURINKA.

SEIZED FUNDS FROM FINANCIAL ACCOUNTS:

a. The approximate sum of three hundred five thousand, five hundred fifty-eight dollars and seven cents ($305,558.07), seized from Fidelity Investments account number Z28-371184, held in the name of JOEL DURINKA, on or about August 13, 2024; and

b. The approximate sum of twenty thousand one hundred twenty-five dollars ($20,125.00), seized from Fidelity Investments account number X85-743212, held in the name of JOEL DURINKA, on or about August 13, 2024.

If any of the property described above as being subject to forfeiture, 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 divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1).

All pursuant to Title 18, United States Code, Sections 982(a)(7) and 982(b)(1), and Title 21, United States Code, Section 853(p).

DATED: Buffalo, New York, June 12, 2025.

MICHAEL DIGIACOMO
United States Attorney

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A TRUE BILL:

S/FOREPERSON
FOREPERSON