

SCJ:EEA
F#2015R02083

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

GHANSHYAM BHAMBHANI,

Defendant.

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IN MATTER OF THE SEARCH OF THE
PREMISES KNOWN AND DESCRIBED AS
NEW YORK CARDIOLOGY, P.C., 107-06
LIBERTY AVENUE, OZONE PARK, NEW
YORK 11417 WHICH IS LOCATED WITHIN
THE BASEMENT AND FIRST FLOOR OF A
TWO-STORY BUILDING

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EASTERN DISTRICT OF NEW YORK, ss:

EVAN SMITH, being duly sworn, deposes and states that he is a Special Agent with the Federal Bureau of Investigation (FBI), duly appointed according to law and acting as such.

Upon information and belief, in or about and between July 17, 2012 and August 15, 2014, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant GHANSHYAM BHAMBHANI, did knowingly engage in a fraudulent course of conduct that caused losses to Medicare and Medicaid programs, by offering and paying kickbacks, directly and indirectly, overtly and covertly, to induce the referral of

Redacted

~~TO BE FILED UNDER SEAL~~

COMPLAINT AND AFFIDAVIT IN
SUPPORT OF AN APPLICATION FOR
AN ARREST WARRANT
(42 U.S.C. §1320a-7b(b))

17-MJ-604

AFFIDAVIT IN SUPPORT OF AN
APPLICATION FOR A
SEARCH WARRANT
(18 U.S.C. §1347; 42 U.S.C. §1320a-7b(b))

Medicare and Medicaid beneficiaries to defendant GHANSHYAM BHAMBHANI for the furnishing of and arranging for the furnishing of items and services for which payment may be made in whole and in part under Medicare and Medicaid, contrary to Title 42, United States Code, Section 1320a-7b(b)(2).

(Title 42, United States Code, Section 1320a-7b(b))

In addition, upon information and belief, the defendant GHANSHYAM BHAMBHANI also created false medical documentation in order to generate the medical justification required for insurance pre-authorization of cardiac test procedures. There is probable cause to believe that there are kept and concealed within the premises known and described as (1) NEW YORK CARDIOLOGY, P.C., 107-06 LIBERTY AVENUE, OZONE PARK, NEW YORK, 11417, WHICH IS LOCATED WITHIN THE BASEMENT AND FIRST FLOOR OF A TWO-STORY BUILDING ("SUBJECT PREMISES"), patient files, as described on Attachment D (attached hereto and incorporated herein), financial documents and other items, all of which constitute evidence, fruits and instrumentalities of violations of federal law, including violations of Title 42, United States Code, Section 1320a-7b(b) and Title 18, United States Code, Section 1347.

The source of your affiant's information and the grounds for his belief are as follows:

1. I have been an FBI Special Agent since October 2015. I currently am assigned to investigate health care violations, including schemes to defraud the Medicare, Medicaid and programs. During my tenure with the FBI, I have participated in a variety of criminal health care fraud investigations, during the course of which I have interviewed

witnesses, conducted physical surveillance, executed search warrants, and reviewed health care claims data, bank records, telephone records, medical records, invoices, and other business records. I am familiar with the records and documents maintained by health care providers and the laws and regulations related to the administration of the Medicare and Medicaid programs and other health care benefit programs.

2. I have personally participated in the investigation of the offenses discussed below. I am familiar with the facts and circumstances of this investigation from (a) my personal participation in this investigation, (b) reports made to me by other law enforcement authorities, and (c) information obtained from witnesses.

3. Except as explicitly set forth below, I have not distinguished in this affidavit between facts of which I have personal knowledge and facts of which I have hearsay knowledge. Because this affidavit is being submitted for the limited purpose of establishing probable cause for the issuance of an arrest warrant for the defendant GHANSHYAM BHAMBHANI, and a search warrant for the SUBJECT PREMISES, I have not set forth each and every fact learned during the course of this investigation. Instead, I have set forth only those facts, in substance and in pertinent part, which I believe are necessary to establish probable cause for the issuance of arrest and search warrants.

THE MEDICARE AND MEDICAID PROGRAMS

4. The Medicare program ("Medicare") was a federal health care program providing benefits to persons who were over the age of 65 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. Individuals who received benefits under Medicare were referred to as Medicare “beneficiaries.”

5. The New York State Medicaid program (“Medicaid”) was a federal and state health care program providing benefits to individuals and families who met specified financial and other eligibility requirements, and certain other individuals who lacked adequate resources to pay for medical care. CMS was responsible for overseeing the Medicaid program in participating states, including New York. Individuals who received benefits under Medicaid were similarly referred to as “beneficiaries.”

6. Medicare and Medicaid were each a “health care benefit program,” as defined by Title 18, United States Code. Section 24(b).

7. Medicare included coverage under two primary components, hospital insurance (“Medicare Part A”) and medical insurance (“Medicare Part B”). Generally, Medicare Part A covered the costs of physicians’ services for procedures and tests conducted within a hospital or affiliated facility and inpatient care. Medicare Part B covered the costs of physicians’ services and outpatient care. Generally, Medicare covered these costs if, among other requirements, they were medically necessary and ordered by a physician.

8. Medicaid covered the costs of medical services and products ranging from routine preventive medical care for children to institutional care for the elderly and disabled. Generally, Medicaid covered these costs only if, among other requirements, they were medically necessary and ordered by a physician.

9. Medical providers and suppliers that sought to participate in Medicare Part B and Medicaid and to bill Medicare and Medicaid for the cost of their treatment of

Medicare and Medicaid beneficiaries, and related benefits, items and services were required to apply for and receive a provider identification number ("PIN") or provider transaction access number ("PTAN") from each program. The PIN/PTAN allowed medical providers and suppliers to submit bills, known as claims, to Medicare and Medicaid, respectively, to obtain reimbursement for the cost of treatment, and related health care benefits, items and services, which they had supplied or provided to beneficiaries.

10. Providers submitted claims to Medicare and Medicaid using billing codes, also called current procedural terminology or "CPT" codes, which were numbers referring to specific descriptions of the medical services provided to beneficiaries.

11. To receive reimbursement from Medicare for a covered service, a medical provider was required to submit claims, either electronically or in writing, through Forms CMS-1500 or Forms UB-92. To receive reimbursement from Medicaid for a covered service, a medical provider was required to submit claims, either electronically or in writing, through the New York State eMedNY-150003 Claim Forms. Each claim form required certain important information, including (a) the beneficiary's name and identification number; (b) the PIN/PTAN of the doctor or other qualified health care provider who ordered the health care benefit, item or service that was the subject of the claim; (c) the health care benefit, item or service that was provided or supplied to the beneficiary; (d) the billing codes for the benefit, item or service; and (e) the date upon which the benefit, item or service was provided or supplied to the beneficiary. By submitting the claim, the provider was certifying, among other things, that the services were not induced by kickbacks, that the services were rendered to the beneficiary and that the services were medically necessary.

THE ANTI-KICKBACK STATUTE

12. The Anti-Kickback Statute, Title 42, United States Code, Section 1320a-7b(b), prohibits offering, paying, soliciting or receiving anything of value to induce or reward referrals or generate Federal health care program business. The “safe harbor” regulations describe various payment and business practices that, although they potentially implicate the Anti-Kickback Statute, are not treated as offenses if the applicable criteria are met. See 42 CFR §1001.952.

13. For payments to a physician for “space rental” to be considered within a “safe harbor,” the following six standards must be met:

- (1) The lease agreement is set out in writing and signed by the parties.
- (2) The lease covers all of the premises leased between the parties for the term of the lease and specifies the premises covered by the lease.
- (3) If the lease is intended to provide the lessee with access to the premises for periodic intervals of time, rather than on a full-time basis for the term of the lease, the lease specifies exactly the schedule of such intervals, their precise length, and the exact rent for such intervals.
- (4) The term of the lease is for not less than one year.
- (5) The aggregate rental charge is set in advance, is consistent with fair market value in arms-length transactions and is not determined in a manner that takes into account the volume or value of any referrals or business otherwise generated between the parties for which payment may be made in whole or in part under Medicare, Medicaid or other Federal health care programs.
- (6) The aggregate space rented does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purpose of the rental....

42 CFR § 1001.952(b).

CARDIAC PROCEDURES AND TESTS

14. An electrocardiogram (“EKG”) is a noninvasive test used to reflect underlying heart conditions by measuring the electrical activity of the heart.

15. An echocardiogram, sometimes referred to informally as an “echo,” is a type of test that emits ultrasound waves through a device called a transducer. The device detects echoes of the ultrasound waves as they bounce off parts of a patient’s heart. These echoes are converted into video images of the heart that can be seen on a screen.

16. A nuclear stress test is an exercise test used to measure blood flow to the heart while at rest and while the heart is working as a result of exertion or medication. During this procedure, a radioactive substance is injected into the arteries of a patient and is observed through computer images as it travels through a patient’s bloodstream and heart valves.

17. Cardiac catheterization is a procedure that examines how well a patient’s heart is functioning. A thin, hollow tube called a catheter, sometimes referred to informally as a “cath,” is inserted into a large blood vessel in a patient’s arm, groin or neck and is then threaded to the heart. Often, a special type of dye is inserted through the catheter to make coronary arteries visible on X-ray images. This is referred to as an angiogram.

18. An angioplasty is an endovascular procedure to widen narrowed or obstructed arteries or veins, typically to treat arterial atherosclerosis. An empty, collapsed balloon, known as a balloon catheter, is passed over a wire into the narrowed portions of arteries and veins before being inflated to a fixed size.

THE DEFENDANT

19. The defendant GHANSHYAM BHAMBHANI (hereinafter “BHAMBHANI”) is a physician licensed to practice cardiology in New York State. BHAMBHANI graduated from the Sawai Man Singh Medical College, Rajasthan University, Jaipur, Rajasthan, India in 1989. BHAMBHANI practices primarily in Ozone Park, New York, where he specializes in cardiovascular disease and interventional cardiology. According to the New York Department of State, BHAMBHANI is the sole owner of New York Cardiology, P.C. His main office is located at 107-06 Liberty Avenue, Ozone Park, New York 11417. BHAMBHANI has a second office location at 9408 Flatlands Avenue, Brooklyn, NY 11236. BHAMBHANI also uses office space within certain internal and family medicine physicians’ offices in Brooklyn and Queens.

20. From January 1, 2010 through May 31, 2017, BHAMBHANI, along with other employees of New York Cardiology, P.C., submitted approximately 8,618 health insurance claims (“HICs”) to Medicare Part B, for a cumulative total of \$3,725,995.43. During this same time period, BHAMBHANI is listed as the attending physician for claims submitted to Medicare Part A totaling \$7,416,266.08.

THE KICKBACK AND FRAUD SCHEME

21. Based on my investigation to date, the patient referral process for cardiologists typically worked in the following manner. Medical providers referred patients for cardiac testing and treatment to a cardiologist, such as BHAMBHANI. Depending on the tests and procedures needed, the cardiologist would refer patients to diagnostic facilities, typically affiliated with hospitals, for tests and procedures. When a patient was referred to

BHAMBHANI, either BHAMBHANI or another physician employed by BHAMBHANI would administer those tests or procedures, such as nuclear stress tests, cardiac catheterization and angioplasties, at a diagnostic facility. If the tests and procedures were administered to Medicare patients at a diagnostic facility affiliated with a hospital, those tests were billed through the hospital to Medicare Part A.

22. During the course of my investigation, I have learned BHAMBHANI entered into business relationships with certain medical diagnostic facilities, in which the facilities paid BHAMBHANI a stipend or salary.

23. Based on my investigation to date, to generate business for the diagnostic facilities, BHAMBHANI paid kickbacks to primary care physicians in exchange for patient referrals.

24. BHAMBHANI, or physicians employed by BHAMBHANI, would spend one to two days per month in the office of certain primary care physicians to see cardiac patients referred to BHAMBHANI and his practice. As described in more detail below, BHAMBHANI disguised kickback payments to these primary care practices as "rent" for the space he or his employees occupied on the days he or his employees were present at the primary care practices. However, depending on the type of arrangement BHAMBHANI had negotiated with the primary care physicians, the "rent" payments were based on either a per patient price or on the types of cardiac procedures or cardiac tests ordered for referred patients. The payments were not based on how much time or space BHAMBHANI and his employees occupied at the primary care practices. BHAMBHANI would set an arbitrary amount as "rent," which he would pay referring

physicians by check. BHAMBHANI also made additional payments for patient referrals that generated cardiac procedures and tests over the "rent" amount in cash.

25. Also, as described in more detail below, there is reason to believe that BHAMBHANI ordered cardiac tests and procedures for patients that were not medically necessary.

PROBABLE CAUSE

26. There is probable cause to believe that BHAMBHANI's conduct violated the Federal Anti-Kickback Statute, 42 U.S.C. §1320a-7b(b), based on the information obtained during the course of the investigation to date.

27. I have conducted interviews with two licensed physicians who specialize in cardiology and were former employees of BHAMBHANI. Confidential Source 1 ("CS-1") and Confidential Source 2 ("CS-2"). Both physicians have provided reliable information, certain details of which I have independently corroborated through Medicare data, recordings of conversations and a review of bank records. CS-1 and CS-2 both made consensual recordings of conversations they had with BHAMBHANI.

28. Based upon a review of BHAMBHANI's business and personal bank accounts, together with CS-1's and CS-2's statements and recordings, there is probable cause to believe that BHAMBHANI paid kickbacks to medical providers in exchange for patient referrals. This scheme involved BHAMBHANI or his employees performing cardiac tests and procedures on patients, the majority of whom, upon information and belief, were covered by either Medicare or Medicaid.

INTERVIEWS WITH CS-1

29. CS-1 worked for BHAMBHANI in his practice from August 2011 through June 2013. It was CS-1's first position after completing medical school, residency and a fellowship. BHAMBHANI assigned CS-1 to work in the offices of various primary care physicians who referred patients to BHAMBHANI.

30. Over time, CS-1 became suspicious of BHAMBHANI's business practices. BHAMBHANI told CS-1 that BHAMBHANI had contracts with diagnostic facilities and that the compensation BHAMBHANI received was dependent on the volume of patients he brought to the diagnostic facilities. CS-1 eventually learned that BHAMBHANI paid kickbacks to other physicians in the form of grossly inflated monthly "rental" payments in exchange for patient referrals. Specifically, CS-1 learned of one particular arrangement between BHAMBHANI and a primary care provider, Medical Provider 1. According to CS-1, BHAMBHANI and Medical Provider 1 met in or about January 2013 to discuss a disagreement with their arrangement for patient referrals and services. CS-1 was seeing patients twice a month at Medical Provider 1's office on behalf of BHAMBHANI, and Medical Provider 1 complained to CS-1 that the arrangement was not going the way that he expected because CS-1 was seeing more patients than expected. Accordingly, Medical Provider 1 demanded more rent money from BHAMBHANI.

31. At BHAMBHANI's request, CS-1 set up a meeting between BHAMBHANI and Medical Provider 1 in or about January 2013, to discuss the business arrangement. In a video recording of this meeting, which recording bears the date of January 24, 2103, taken by CS-1 during the meeting, BHAMBHANI explained the way he paid kickbacks to

Medical Provider 1 in return for patient referrals.¹ The following dialogue is a draft transcription from CS-1's video recording:

BHAMBHANI: Okay. Assuming, assuming worst came to worst 12 stress [nuclear stress tests]. . . if worst comes to worst four caths [cardiac catheterizations]. Assuming worse comes to worst, two angios [angiograms]. . . . So all these things get added up. All these things get added and let's say the total did come to six . . . thousand five hundred or seven thousand.

And this is three thousand, ah rent will remain constant, constant, constant.

MP 1:² That's what they make in cash?

BHAMBHANI: This is the best I can possibly offer you. If eh this and ah but this shit we have to keep it constant...

MP 1: Uh hmm.

BHAMBHANI: We sign agreement. This is a full-time, goes a lot of hours and he is a very good cardiologist. And this is the maximum you can get out of him. But then you give us a promise that ... there's nobody else getting invasive, you know what I mean. Everything goes through because now you have a stake in every single thing.

According to CS-1, this exchange was in reference to CS-1's work in Medical Provider 1's office and BHAMBHANI's arrangement with Medical Provider 1 was to have BHAMBHANI pay "rent" to Medical Provider 1 in return for patient referrals. In exchange for the "rent" or kickbacks, Medical Provider 1 had to promise BHAMBHANI that Medical Provider 1 was not going to refer patients to any other cardiologist for invasive procedures – BHAMBHANI would

¹ CS-1 made this recording covertly, and did so because he was concerned that BHAMBHANI was engaging in some sort of illicit activity. He suspected that BHAMBHANI was paying for patient referrals and wanted proof of this.

² "MP 1" is an abbreviation for Medical Provider 1 when referring to the transcript.

get all of Medical Provider 1's patients for cardiac intervention ("nobody else getting invasive"). CS-1 further understood that a portion of the kickbacks would be provided as checks in the set amount of \$3,000 so that the checks would appear to be rent payments for office space at Medical Provider 1's practice. The additional kickback amounts above the artificially set "rent" of \$3,000 would be paid in cash.

32. Later in the recording, BHAMBHANI explained to Medical Provider 1 what amounts Medical Provider 1 would receive based on the cardiac tests and procedures ordered for a patient. According to CS-1, during this part of the conversation, BHAMBHANI was writing on a piece of paper and reciting aloud the amounts:

BHAMBHANI: So fifty for consult. [consultation]

MP 1: Okay.

BHAMBHANI: Okay. Hundred for echo. [echocardiograms]

MP 1: Write...write "EC." [echocardiograms]

BHAMBHANI: No no no. EC, EC... [echocardiograms] seventy-five – stress. [nuclear stress tests]

MP 1: Okay.

BHAMBHANI: Hundred for cath [cardiac catheterization] and two hundred for angioplasty if the patient makes it.[....]

CS-1 explained that, in this exchange, BHAMBHANI stated that he would pay Medical Provider 1 \$50 for consultations, \$100 for echocardiograms, \$75 for stress tests, \$100 for cardiac catheterization and \$200 for angioplasty procedures. When the amounts were added up, the first three thousand dollars in kickbacks would be paid by a "rent" check to make the payment appear

legitimate. CS-1 understood, based on this conversation, that the remainder of the kickbacks would be paid in cash.

33. At another point during this recorded meeting, BHAMBHANI offered Medical Provider 1 a check as compensation for the high number of patient referrals in his office. First, BHAMBHANI offered to pay \$1,500 by check and \$1,500 in cash, and stated that a \$3,000 check would be "a little difficult to justify." BHAMBHANI then laughed and said "take a risk." BHAMBHANI can be heard reciting the note line on the check, "Rent Office Dr. [Medical Provider 1]," as he wrote the check out in the amount of \$3,000. The check is dated the same day as the meeting between Medical Provider 1, BHAMBHANI and CS-1. I have acquired a copy of the check detailed above, which is dated the same date as the video recording. It is written to the order of "Cash" in the amount of \$3,000, and the note line on the check reads "Rent Office Dr. [Medical Provider 1]."

34. I have also obtained other checks from BHAMBHANI's practice, written to Medical Provider 1 and other medical providers for differing amounts and at differing times of the month, which would contraindicate that the checks were actually rental payments. Checks from BHAMBHANI's practice to Medical Provider 1 total \$13,500. The first check from BHAMBHANI's practice was in the amount of \$1,500 and was dated July 17, 2012. In the note portion of the check is the notation "Rent Office (Medical Provider 1)."

35. CS-1 also learned during the course of his employment with BHAMBHANI that alterations were made to certain patient files. CS-1 noticed that for one particular patient CS-1 had seen, "Patient 1," CS-1's review notes had been erased and altered. CS-1 called a member of BHAMBHANI's office staff and asked about the alterations. The

office staff member told CS-1 that the alterations were made in order to obtain preauthorization from Patient 1's insurance for a cardiac procedure, which would not have been justified by CS-1's original review notes.

INTERVIEWS WITH CS-2

36. CS-2, another physician who was employed by BHAMBHANI, provided further details about BHAMBHANI's illegal kickback scheme.³ CS-2 worked for BHAMBHANI from approximately July 1, 2013, to approximately August 15, 2014. While working for BHAMBHANI, CS-2 learned that BHAMBHANI had compensation arrangements with diagnostic facilities, including Diagnostic Facility 1, Diagnostic Facility 2, and Diagnostic Facility 3, whereby BHAMBHANI received annual "stipends." Upon CS-2's information and belief, these stipends were approximately \$300,000 or more per year, and were dependent on the number of cardiac tests and procedures BHAMBHANI performed at the diagnostic facilities. During the course of his employment, CS-2 began to suspect that BHAMBHANI had illegal kickback arrangements with primary care physicians to generate sufficient patients to support the large payments made by the diagnostic facilities to BHAMBHANI.

37. A review of BHAMBHANI's bank records shows that certain diagnostic facilities made large payments to BHAMBHANI. For example, BHAMBHANI received checks from Diagnostic Facility 1 in the amount of \$192,499.98 on November 5, 2013 and another check in the amount of \$100,000 on May 20, 2014; BHAMBHANI received a check in the amount of \$78,400 on May 21, 2012 and \$74,800 on October 14, 2012 from Diagnostic

³

Facility 2; and BHAMBHANI received checks in the amount of \$103,733 on April 9, 2015 and \$92,733 on March 5, 2015 from Diagnostic Facility 3.

38. CS-2 eventually learned that BHAMBHANI had agreements to “rent office space” at approximately 10-15 primary care practices, and CS-2 believed that these rental agreements were designed to conceal kickback payments. For instance, in the case of one primary care practice, Medical Provider 2, the practice provided a list of patients to BHAMBHANI for each day that the defendant or one of his employees was in the office of Medical Provider 2. CS-2 once saw a purported lease agreement between Medical Provider 2 and BHAMBHANI, but did not recall its exact terms. During the course of his employment, CS-2 learned BHAMBHANI agreed to pay Medical Provider 2 \$1,800 a month to “rent office space.” In return, BHAMBHANI would get 18 new patients a month, corresponding to \$100 per patient. At one point, when BHAMBHANI told CS-2 that he was not getting his monthly quota of new patients, BHAMBHANI stopped paying rent for a few months to Medical Provider 2 as punishment. A review of BHAMBHANI’s bank records show monthly payments of \$1,800 from BHAMBHANI to Medical Provider 2 from February 26, 2013 to January 28, 2014. However, there were no checks from BHAMBHANI to Medical Provider 2 for September or December 2013. The bank records contain two checks to Medical Provider 2, both with “November rent” in the note portion of the checks, one written on November 3, 2013 and the other on November 17, 2013. The bank records also show payments from BHAMBHANI to Medical Provider 2 in 2012 in the following amounts: \$2,500 on February 13, 2012, labeled “February Rent;” \$3,000 on March 12, 2012, labeled “Rent for March;” \$3000 on April 1, 2012,

labeled "Rent April;" \$1,500 on May 7, 2012, labeled "May Rent;" and \$2,100 on June 8, 2012, labeled "June Rent."

39. BHAMBHANI's bank records further indicate that BHAMBHANI wrote checks to approximately 13 medical providers in various amounts for "rent," at various times during 2009-2014. BHAMBHANI also wrote checks to approximately eight more medical providers where there was no notations on the checks of "rent," but he made round-dollar payments on a semi-regular basis. The irregularity in time and amounts of all these checks provide reason to believe that these checks were for purposes other than rent.

40. CS-2 stated that he was asked to deliver "rent" checks one or two times on BHAMBHANI's behalf to other physicians. These checks were given to him by BHAMBHANI's office manager or another member of BHAMBHANI's office staff. CS-2 recalled that the office manager wrote the so-called rent checks, and BHAMBHANI signed them.

41. BHAMBHANI also asked CS-2 to recruit new doctors and get new business. CS-2 stated that Medical Provider 3 was looking for a cardiologist. BHAMBHANI told CS-2 that he would offer Medical Provider 3 \$1,000 a month in "rent" for working two days a month in Medical Provider 3's office. CS-2 explained that, at times, BHAMBHANI would withhold CS-2's paycheck because CS-2 did not see enough patients at Medical Provider 3's office to justify the \$1,000 monthly payment.

42. While working for BHAMBHANI, CS-2 learned that approximately 60% of the patients treated by BHAMBHANI and his practice were Medicaid beneficiaries, approximately 30% were Medicare beneficiaries, and approximately 10% had private insurance.

Large offices, like Medical Practice 4, generated approximately 80 patients a month, 20-30 of those being new referrals for BHAMBHANI, even though CS-2 worked in these offices only two days a month. CS-2 saw BHAMBHANI give Medical Provider 4 a check, which CS-2 believed was reimbursement from a health benefit program for consultations and echocardiograms conducted by BHAMBHANI or his staff within Medical Provider 4's office, as a payment. BHAMBHANI, in turn, would retain reimbursement amounts for all other cardiac procedures he billed for, plus BHAMBHANI received a salary from certain diagnostic facilities where cardiac procedures were conducted on patients from Medical Provider 4.

43. On one occasion, CS-2 recalled BHAMBHANI offered to pay Medical Provider 5 extra "rent" for more referrals, but Medical Provider 5 declined. A review of bank records indicates that BHAMBHANI paid Medical Provider 5 \$2,000 per month from approximately August 2011 until October 2015. Each time, the note line on the check stated "rent."

44. CS-2 stated that BHAMBHANI required that every patient receive an echocardiogram and be scheduled for a nuclear stress test, even if the echocardiogram did not justify a stress test. If CS-2 did not routinely order enough of these tests, BHAMBHANI would threaten to withhold his salary as a punishment.

45. CS-2 also explained that there was a folder at the SUBJECT PREMISES that contained EKG, echocardiogram, stress, and angiogram results for patients. There were documents in this folder that were "cut and paste" reports where one patient's personal identifying information, such as name and date of birth, was placed over another patient's information so that the body and results of the same report could be reused for multiple patients

to send to insurance companies to obtain pre-authorizations for certain tests and procedures. CS-2 also remembered looking at patients' charts and seeing things "whited out." When CS-2 questioned this, he was told by one of BHAMBHANI's office staff that BHAMBHANI was aware of this. CS-2 provided to law enforcement two abnormal EKG results, one from Patient 2 and another from Patient 3, as examples of the types of abnormal test results in the folder. The EKGs appeared to CS-2 to be identical.

46. CS-2 provided a specific example of a patient file with false justifications for medical procedures. CS-2 explained that he was aware of a report for a test performed on Patient 4 that described the result of an exercise stress test. CS-2 explained that the report was positive for ischemia, meaning that there was not enough blood flow to the heart, and CS-2 noted that insurance approved an angiogram for the patient. CS-2 observed a version of Patient 5's report with a piece of paper covering Patient 5's results so that Patient 5's name and date of birth was placed on top of Patient 4's test results, so that it appeared that Patient 4's results were those of Patient 5. Patient 4's test result was then placed back in the file folder located in defendant BHAMBHANI's office at the SUBJECT PREMISES so that it could be used again for a different patient.

47. On another occasion, a patient known as Patient 6 was referred by BHAMBHANI for a nuclear stress test at a diagnostic facility in Queens. CS-2 cancelled the nuclear stress test because Patient 6 was experiencing a cardiac arrhythmia, or irregular heartbeat, called atrial flutter, and CS-2 recommended that Patient 6 first have another type of treatment to remedy this condition before performing a stress test. BHAMBHANI then reordered the nuclear stress test for Patient 6, which CS-2 read as "negative," and therefore not

requiring further treatment. After CS-2 had left the practice, another physician employed by BHAMBHANI told CS-2 that Patient 6 was sent for cardiac catheterization by BHAMBHANI, even though CS-2 believed Patient 6 required no further treatment or procedures.

48. Based upon the above-described practices of BHAMBHANI, in or about August 2014, CS-2 decided to leave BHAMBHANI's practice. In doing so, he fabricated a story to BHAMBHANI that CS-2 had a cousin with a medical practice that CS-2 was going to join. CS-2 was concerned about how BHAMBHANI would react to his decision to leave and decided to covertly record the subsequent conversation he had with BHAMBHANI and BHAMBHANI's office manager. As the recording demonstrates, BHAMBHANI attempted to make a new arrangement with CS-2 for future business, though CS-2 had no intention of entering into such an arrangement. The proposed arrangement was illustrative of BHAMBHANI's kickback scheme.

49. In the recording, BHAMBHANI explained how CS-2 could refer patients to BHAMBHANI in exchange for payments. However, BHAMBHANI emphasized that they had to be careful in the way that they structured the deal. The following dialogue is a draft transcription from the recording:

BHAMBHANI: Why I give you cash and we both go to jail?

CS-2: Right right.

BHAMBHANI: Now if you do one or one and half day and I say I wanna pay this guy three hundred thousand...who can stop me?

CS-2: Right.

BHAMBHANI: That's a salary.

CS-2 explained that after CS-2 left BHAMBHANI's practice, BHAMBHANI expected CS-2 to

refer all nuclear stress tests and catheterizations to BHAMBHANI's practice, and BHAMBHANI would pay CS-2 a "salary" in exchange for the referrals. In actuality, according to CS-2, the "salary" would be a kickback for the patient referrals.

50. The recording also revealed how BHAMBHANI's kickback scheme targeted making money rather than performing medically necessary procedures, and that BHAMBHANI's staff knew that the objective was to increase the number of tests provided. In the recording, with BHAMBHANI's office manager present, BHAMBHANI stated, "But this is how you you fry things, which you cannot do it...we do it and which we can do it and ah ah ah we can ah we can help you in frying all these things." CS-2 understood the phrase "fry" to mean that patients were a business opportunity, just echocardiograms, stress tests, or catheterizations for which he would be paid, without regard to the patients' medical needs. CS-2 explained that BHAMBHANI would do whatever it took to get tests and procedures performed on a patient, including having his office staff alter patient records to make it appear that a patient's condition was more serious in order to justify the tests and procedures he performed. BHAMBHANI made clear that CS-2 could not "fry" everything – that is, order every possible test or procedure – without the help of BHAMBHANI and his office staff.

51. At another point in the recording, BHAMBHANI made clear that the proposed business arrangement hinged on the number of tests CS-2 ordered for patients rather than what tests were medically appropriate or necessary. The following dialogue is a draft transcription from CS-2's recording:

BHAMBHANI: But ah ah ah since and now you're a business person so once we start you on a on on a salary uh, you know, or which is inclusive for all these things, then ah you try to maintain your part of the deal or so.

CS-2: No.

BHAMBHANI: It means your numbers to be and eh eh you know then it is not like this is needed or this is not needed.

CS-2: No ... I understand.

BHAMBHANI: Then ... (laughs) this is needed because ...

CS-2: 'cause ...

BHAMBHANI: ... (laughs) ...

CS-2: No.

BHAMBHANI: Do, do you understand?

CS-2: Yeah.

BHAMBHANI: You have learned enough business with me to know how to fill the quota.

52. Additionally, CS-2's recording captured BHAMBHANI discussing "rental" payments made by BHAMBHANI to medical providers. Regarding BHAMBHANI's arrangement with Medical Provider 3, BHAMBHANI stated, "She wants extra money. I said no. This is the rent. If you want it, then you stick with us. If you don't, then you know, find somebody else." Later in the recording, BHAMBHANI referred to Medical Provider 3's "rent," explaining, "Yeah that's her money ... this is the last rent for [Medical Provider 3]." "because it's not a cost-effective office." BHAMBHANI noted that he was through paying kickbacks to Medical Provider 3, because Medical Provider 3 only has "these garbage kind of patients which half echos done you know." BHAMBHANI explained that rather than paying "rent" to Medical Provider 3, he preferred to deal with Medical Provider 6 and Medical Provider 7. BHAMBHANI stated, "the nearby offices are very good" and that just "between [Medical

Provider 6 and Medical Provider 7] we get fifteen patients out of which ten are super cardiac a month. Fifteen new. Fifteen means . . . in a year . . . a hundred, two hundred . . . out of this, the one fifty, cath, because these are very super . . . they're all sick, they're all coming here." CS-2 explained that, in this exchange, BHAMBHANI believed that Medical Provider 3's patients were not sick enough for BHAMBHANI to order enough tests to justify paying kickbacks to Medical Provider 3, because he could only order echocardiograms for half of those patients. Medical Provider 6 and Medical Provider 7, however, sent very sick patients to him, which allowed him to bill for many more cardiac tests.

53. A review of BHAMBHANI's bank records shows that he wrote the following eight checks to Medical Provider 3: (1) on September 13, 2013, for \$1,000; (2) on September 27, 2013, for \$1,000; (3) on November 17, 2013, for \$1,000; (4) on February 3, 2014, for \$1,000; (5) on March 16, 2014, for \$2,000, with a notation of "Jan/Feb 2014;" (6) on April 25, 2014, for \$1,000; (7) on April 25, 2014, for \$1,150; and (8) on August 3, 2014, for \$1,000, with a notation of "July/Aug." BHAMBHANI stopped paying Medical Provider 3 in or about August 2014, as reflected in BHAMBHANI's recorded conversation with CS-2. BHAMBHANI also paid a total of \$15,750 between March 28, 2013 and July 31, 2015 to Medical Provider 6; each check was for \$750. However, there were only nine checks to Medical Provider 6 in 2014.

54. Based on the information CS-1 and CS-2 provided, there is probable cause to believe that BHAMBHANI paid illegal kickbacks to physicians for patient referrals and, in some instances, altered patient records or submitted false test results in order to justify tests and procedures that otherwise would not be medically necessary.

PROBABLE CAUSE TO SEARCH THE SUBJECT PREMISES

55. The SUBJECT PREMISES is depicted in the photograph attached as Attachment B and is located at 107-06 Liberty Avenue, Ozone Park, NY 11417. According to CS-1 and CS-2, this is BHAMBHANI's main office location. The SUBJECT PREMISES is a two-story building with a basement.

56. According to CS-1, the first floor of the SUBJECT PREMISES is BHAMBHANI's main office, the second floor is rented to a third party tenant as a single-family residence, and the basement contains office supplies and patient files belonging to BHAMBHANI. CS-2 created a diagram of the first floor, indicating the layout and location of the offices on the first floor of the SUBJECT PREMISES, attached hereto as Attachment C. According to CS-2, during the time period he worked for BHAMBHANI, there was a folder identified by CS-2 that contained patients' test results from certain cardiac procedures, such as EKGs, echocardiograms, nuclear stress tests and angiograms, that he believed were reused for other patients, located on the first floor within the main office. During the time period when CS-2 worked for the defendant, this folder was stored toward the back of the office space on the first floor of the SUBJECT PREMISES on a shelf across from BHAMBHANI's office in front of two computers. CS-2 also stated that during the time that he worked for BHAMBHANI, within the office manager's office at the SUBJECT PREMISES, there was also a three-ring binder that contained business cards for medical providers, with some of whom BHAMBHANI had illegal kickback arrangements. In addition, upon information and belief, patient files, financial documents, including checks, ledgers, and other banking and other bookkeeping documents, are stored within the office manager's office and BHAMBHANI's office at the SUBJECT

PREMISES, in paper form as well as on office computers located within the SUBJECT PREMISES.

57. On June 29, 2017, I went to the SUBJECT PREMISES in an undercover capacity and observed that the medical practice at the SUBJECT PREMISES is still ongoing, and that it still belongs to BHAMBHANI. I confirmed the practice's business hours with a receptionist and confirmed that BHAMBHANI still practices at the SUBJECT PREMISES. While at the SUBJECT PREMISES, I observed several shelves of files that appeared to be patient files.

58. Based on my knowledge, training and experience, and the experience of other law enforcement officers, I have knowledge of common business practices. In particular, I am aware that businesses routinely document and maintain records of their operating accounts - both in hard copy and electronically - including the receipt, expenditure and accounting of business funds. Businesses also maintain detailed records of their business activities, including with respect to vendors, customers, lenders and employees. As such, there is probable cause to believe that there will be located at the SUBJECT PREMISES business records documenting interactions and communications regarding the fraudulent scheme.

59. Based on my knowledge, training and experience, businesses billing Medicare, Medicaid and private insurers also routinely maintain records of patient files, bills, invoices and claims for payments/reimbursements for services billed, provided, or alleged to have been provided. Documents include reimbursement claim forms, explanations of medical benefits, detailed written orders or prescriptions, certificates of medical necessity, information from the treating physician concerning the patient's diagnosis, proof of delivery of services

and/or items that were submitted by BHAMBHANI to Medicare, Medicaid and private insurers or any representative acting on his behalf that were based upon claims generated through BHAMBHANI's kickbacks to primary care physicians by Medicare, Medicaid and private insurers.

60. Based on my knowledge, training and experience, health care providers and hospitals are required to retain patient medical records and accompanying documentation. In fact, I am aware that federal law requires physicians to maintain medical records for 5 years; New York State requires retention for 6 years.

61. Based on my knowledge, training and experience, businesses billing Medicare, Medicaid and private insurers also retain contracts, agreements, papers and affiliated records pertaining to the provision of diagnostic services, lists of billing codes, purchase orders, invoices and receipts.

62. Based on my knowledge, training and experience, businesses billing Medicare, Medicaid and private insurers also retain letters relating to efforts to collect co-payments and deductibles from individuals that receive health care coverage from Medicare, Medicaid and private insurers. In addition, businesses retain correspondence and cancelled checks relating to notices of overpayment and requests for refunds from Medicare, Medicaid and private insurers. Businesses billing Medicare, Medicaid and private insurers also have correspondence to and from Medicare, Medicaid and private insurers including, but not limited to, manuals, advisories, newsletters, bulletins and publications. Businesses also retain correspondence to and from patients regarding Medicare, Medicaid and private insurers. There is reason to believe that these records would provide evidence of the submission of claims

generated from illegal payments to primary care physicians and payments or denials of payment for BHAMBHANI's performance of unnecessary procedures.

63. Based on my knowledge, training and experience, the financial books, records and documents constituting bank accounts, money market accounts, checking accounts, investment accounts, stock fund accounts, 401K funds, mutual funds, retirement funds, bonds, or bond funds, including deposits and disbursements, cancelled checks or draft electronic transfers, ledgers, credit card, ATM and debit card accounts are also retained by businesses. There is reason to believe that these records would provide evidence of illegal kickback payments.

64. Based on my knowledge, training and experience, contracts, agreements, logs, lists or papers affiliated with any medical professional services and referrals, including records of payment, are also retained by businesses. There is reason to believe that these records would provide evidence of illegal kickback payments.

65. Based on my knowledge, training and experience, medical clinics often hire outside medical insurance billing companies. Therefore, all contracts, agreements or paper affiliated with these companies are relevant as these records may provide evidence of the submission of claims generated from illegal kickbacks to primary care physicians and payments or denials of payment for BHAMBHANI's performance of unnecessary procedures.

66. Based on my knowledge, training and experience, medical offices often have individuals who perform accounting and administrative functions, thereby generating and retaining common business records including but not limited to patient records, billing records, and financial records – all of which are relevant to the fraudulent scheme. There is reason to believe that these records would provide evidence of illegal kickback payments.

67. Since at least 2005, Medicare, as well as most private insurers, required physicians to submit claims electronically through the use of a computer. Thus, I know that when an individual or business uses a computer as part of a scheme to submit fraudulent billing information to Medicare or private insurers, the individual's or business's computer will generally serve both as an instrumentality for committing the health care fraud crime, specifically, paying kickbacks and falsifying patient records to obtain preauthorizations to perform medically unnecessary tests and procedures, and also as a storage medium for evidence of the crime. The computer is used in the submission of claims to Medicare and Medicaid and private insurers to obtain payment of claims that were generated from an illegal kickback scheme. The computer is also likely to be a storage medium for evidence of this crime. From my training and experience, I believe that a computer used to commit a crime of this type may contain: data that is evidence of how the computer was used; data that was sent or received; notes as to how the criminal conduct was achieved; records of Internet discussions about the crime; and other records that indicate the nature of the offense.

68. As described above, this application seeks permission to search for records that might be found in SUBJECT PREMISES, in whatever form they are found. One form in which the records are likely to be found, based on the information provided above, is in paper form, such as within the folder with reused test results that CS-2 described. Thus, the warrant applied for would authorize the seizure of this folder or, potentially, the copying of the information, all under Rule 41(e)(2)(B). I submit that, if the folder is found on the SUBJECT PREMISES, there is probable cause to believe that reports contained therein will be evidence of

the way in which BHAMBHANI obtained preauthorizations to conduct medically unnecessary tests and procedures.

69. Patient files set forth in Attachment D are likely to be contained in electronic form on computers located in the offices of both BHAMBHANI and his office manager of the SUBJECT PREMISES. This application seeks permission to locate not only the above-described documents in paper form, but also in electronic form. As set forth above, the patient files described in Attachment D lists patient files that CS-1 and CS-2 observed as having alterations or falsifications of the notes or test results and patients who appear to have had medically unnecessary procedures and tests based on these unscrupulous tactics. The patient files set forth in Attachment D may serve as direct evidence of the crimes described in the warrant and may be stored in electronic form, as well as electronic "attribution" evidence that establishes how computers were used, the purpose of their use, who used them, and when. There is probable cause to believe that this forensic electronic evidence will be on any storage medium or computer in the first floor office space of the SUBJECT PREMISES.

70. Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit seizing, imaging, or otherwise copying the patient files set forth in Attachment D, patient sign-in sheets and claims submissions to Medicare, Medicaid and private insurers that reasonably appear to contain some or all of the evidence described in the warrant, and would authorize a later review of the information consistent with the warrant.

71. The warrant that I am applying for would also permit the seizure or copying of the reused test results contained within the folder that CS-2 described. I submit that,

if the folder is found on the SUBJECT PREMISES, there is probable cause to believe that it will contain the reused test results as described by CS-2.

72. The warrant that I am applying for would also permit the seizure or copying of business cards contained in a three-ring binder located on the first floor of the SUBJECT PREMISES, as described by CS-2. The business cards are from multiple medical providers with some of whom BHAMBHANI had illegal kickback schemes. Upon information and belief, the binder is located in BHAMBHANI's office manager's office. I submit that, if the three-ring binder is found on the SUBJECT PREMISES, there is probable cause to believe that it will contain business cards of those medical providers in that binder.

73. The warrant that I am applying for would also permit the seizure or copying of any and all lease or rental agreements between BHAMBHANI or his practice and medical providers and practices. I submit that there is probable cause to believe that these purported rental or lease agreements will be found in the SUBJECT PREMISES and will provide evidence of the illegal kickback scheme perpetrated by BHAMBHANI.

74. The warrant that I am applying for would also permit the seizure or copying of any and all personnel records or employment contracts pertaining to BHAMBHANI, his practice and/or his employees. I submit that there is probable cause to believe that these records will be found in the SUBJECT PREMISES and will provide evidence of the illegal kickback scheme perpetrated by BHAMBHANI.

75. Lastly, the warrant I am applying for would allow for the seizure or copying of financial statements, including but not limited to financial books, records, and documents constituting bank accounts, money market accounts, checking accounts, investment

accounts, stock fund accounts, 401K funds, mutual funds, retirement funds, bonds, or bond funds, including deposits and disbursements, cancelled checks or draft electronic transfers, ledgers, credit card, ATM, and debit card accounts. I submit that, if these financial documents are found on the SUBJECT PREMISES, there is probable cause to believe that they will contain a record of kickback payments masquerading as "rent" payments from defendant BHAMBHANI to medical providers.

76. I recognize that the SUBJECT PREMISES functions as a medical practice with employees and that a seizure of the aforementioned folder, patient files contained in Attachment D, patient sign-in sheets, three-ring binder of business cards, rental or lease agreements with medical practices and providers and financial documents may have the unintended effect of limiting the defendant's ability to conduct legitimate business. As with any search warrant, I expect that officers executing this warrant will take appropriate steps to execute the warrant reasonably and avoid causing unnecessary inconvenience to the defendant's practice, his employees, and his patients. Such steps may include:

a. Identifying a system administrator of the network (or other knowledgeable employee) who would be willing to assist law enforcement by identifying, locating and copying the things described in the warrant; imaging items on-site, as described above; and.

b. If imaging proves impractical, or even impossible for technical reasons, seizing those components of the defendant's computer system may be necessary to conduct an off-site examination. The seized components would be removed from the SUBJECT PREMISES. If employees of the defendants' practice so request, the agents will, to the extent

practicable, attempt to provide the employees with copies of data that may be necessary or important to the continuing function of the defendants' legitimate business. If, after inspecting the computers, it is determined that some or all of this equipment is no longer necessary to retrieve and preserve the evidence, the government will return them within a reasonable time.

77. Based on my training and experience, and the facts as set forth in this affidavit, there is probable cause to believe that there is now contained within the SUBJECT PREMISES evidence of crimes – specifically, evidence of violations of 18 U.S.C. § 1347 and 42 U.S.C. §1320a-7b(b).

CONCLUSION AND APPLICATION

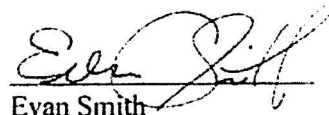
78. Based upon my training and experience, as well as my analysis of interviews with former employees of the defendants, as detailed in part in paragraphs 26 through 54 above, there is probable cause to believe that the defendant GHANSHYAM BHAMBHANI knowingly engaged in a fraudulent scheme that, on information and belief, caused losses to Medicare and Medicaid programs by generating patient referrals through “rent” payments in violation of the Federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)).

79. WHEREFORE, it is respectfully requested that the Court issue a warrant for the arrest of the defendant GHANSHYAM BHAMBHANI so that he may be brought before the Court and dealt with according to law.

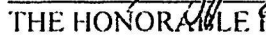
80. Further, there is probable cause to believe that there is now contained within the SUBJECT PREMISES items described in this affidavit and in Attachment A, all of which constitute evidence, fruits, or instrumentalities of violation of 18 U.S.C. § 1347 and 42 U.S.C. §1320a-7b(b).

WHEREFORE, it is further respectfully requested that the Court issue a search warrant for SUBJECT PREMISES, as described in paragraphs 55 and 56, authorizing the search and seizure, in accordance with the details of paragraphs 57 through 76, of the items described in Attachments A and D, all of which constitute evidence, fruits, or instrumentalities of violations of 18 U.S.C. § 1347 and 42 U.S.C. § 1320a-7b(b).

It is further respectfully requested that this Court issue an order sealing, until such time as an arrest of the defendant GHANSHYAM BHAMBHANI is effectuated, all papers submitted in support of this application, including the application, arrest warrant, and search warrant. I believe that sealing these documents is necessary, because the items and information to be seized are relevant to an ongoing investigation. If BHAMBHANI, a foreign-born citizen who owns property in India, were made aware of the contents of this affidavit prior to his arrest, he might flee the jurisdiction, hide or destroy evidence or tamper with witnesses, many of whom are his employees. Thus, premature disclosure of the contents of this affidavit and related documents may have a significant and negative impact on the continuing investigation and may severely jeopardize its effectiveness.


Evan Smith
Special Agent, FBI

Sworn to before me this
6th day of July, 2017


THE HONORABLE PEGGY KUO
UNITED STATES MAGISTRATE JUDGE
EASTERN DISTRICT OF NEW YORK

ATTACHMENT A

Items to be Seized During the Search of 107-06 Liberty Avenue, Ozone Park, NY 11417:

1. Financial statements, including but not limited to the financial books, records and documents constituting bank accounts, money market accounts, checking accounts, investment accounts, stock fund accounts, 401K funds, mutual funds, retirement funds, bonds, or bond funds, including deposits and disbursements, cancelled checks or draft electronic transfers, ledgers, credit card, ATM and debit card accounts, in both paper and electronic form.
2. Folder identified by CS-2 containing patients' reused test results.
3. Patient files, in both electronic and paper form, that CS-1 and CS-2 observed as having alterations or falsifications of the notes or test results and patients who appear to have had medically unnecessary procedures and tests, as set forth in Attachment D.
4. Three-ring binder, which contains business cards from multiple medical providers with some of whom BHAMBHANI had illegal kickback schemes.
5. Any and all lease or rental agreements between BHAMBHANI or his practice and medical providers and practices.
6. Patient sign-in sheets, other documents reflecting patient referrals from other medical providers, and claims submissions to Medicare, Medicaid and private insurers.
7. Personnel records or employment contracts pertaining to BHAMBHANI, his practice and/or his employees.

Google Maps

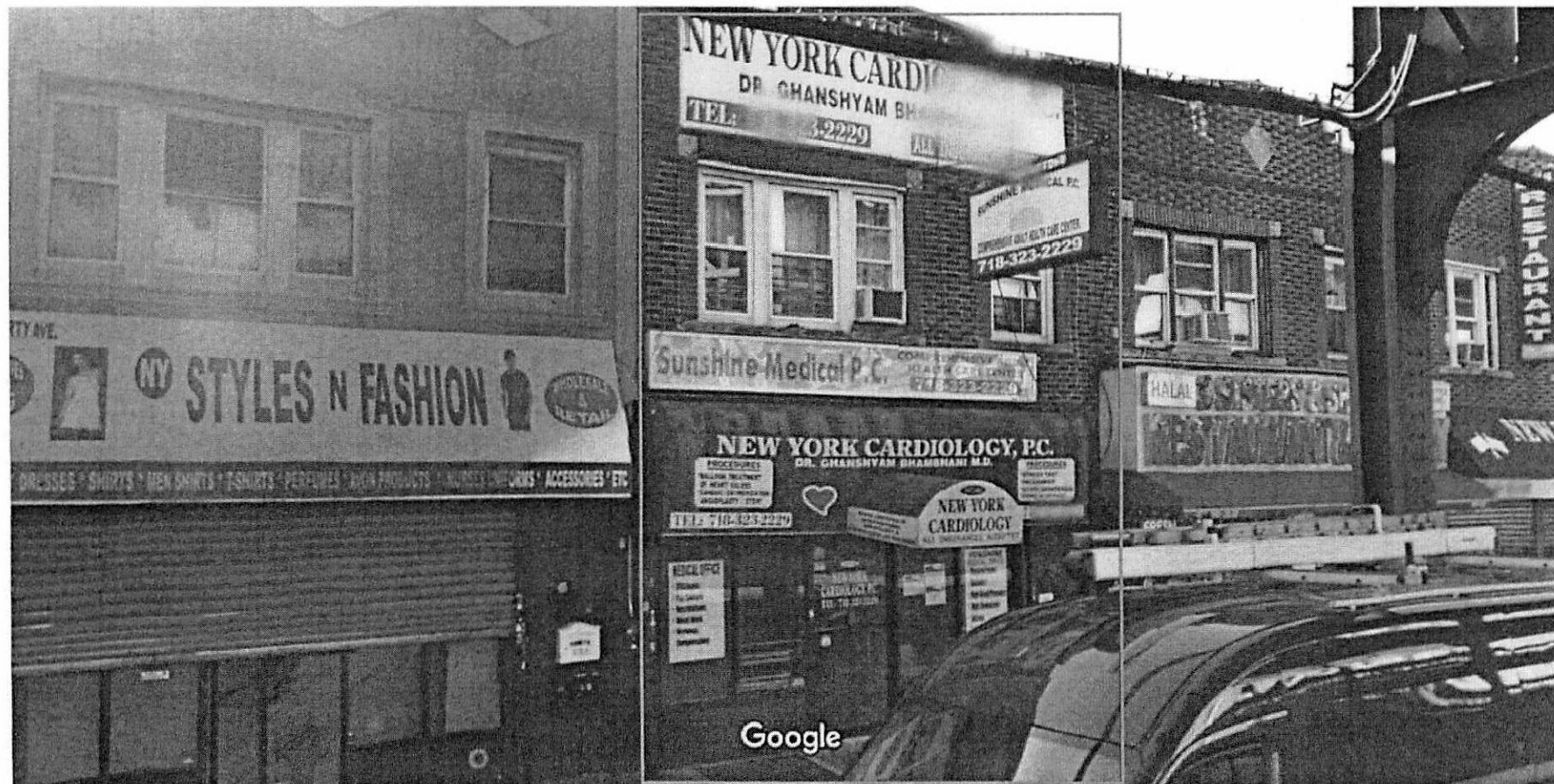
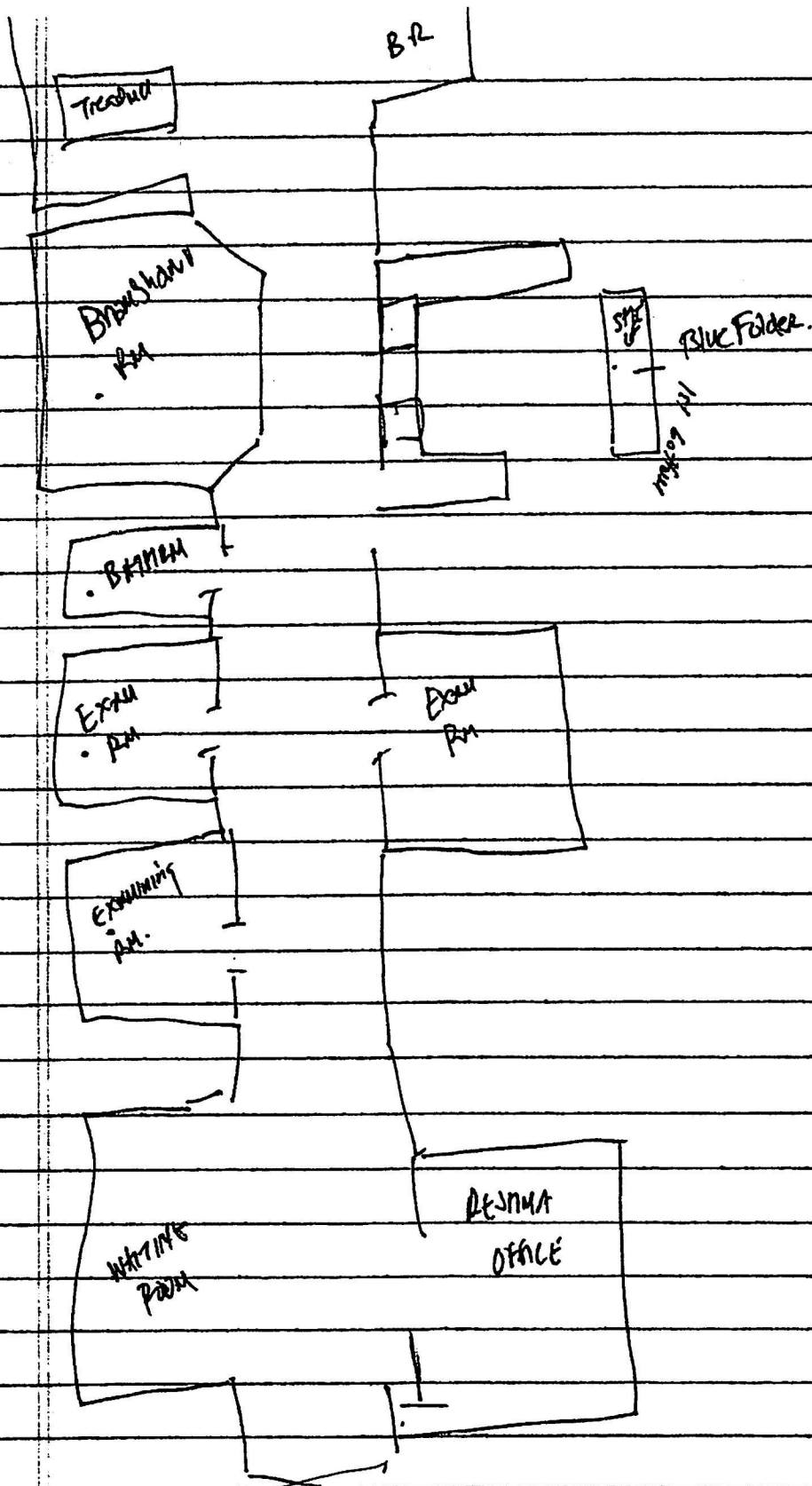


Image capture: Oct 2016 © 2017 Google

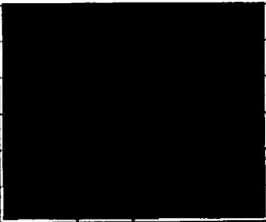
New York

Street View - Oct 2016

Attachment B



ATTACHMENT D

Patient 1		
Patient 2		
Patient 3		
Patient 4		
Patient 5		
Patient 6		