UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

ALI RASHAN,

Defendant.

[redacted] INDICTMENT

25 Cr. _____ (__)

25 CRIM 283

COUNT ONE
(Conspiracy to Commit Health Care Fraud and Wire Fraud)

The Grand Jury charges:

OVERVIEW

1. ALI RASHAN, the defendant, is an anesthesiologist and the founder of ClearMD LLC ("ClearMD"), an operator of medical clinics that offered testing for coronavirus ("COVID-19"). From at least in or about 2021 through in or about 2023, RASHAN agreed with others to engage in a widespread scheme to defraud healthcare benefit programs, including Medicare, Medicaid, the Health Resources and Services Administration's Uninsured Program, and private insurance providers (collectively, the "Insurance Providers"). At RASHAN's direction, ClearMD billed for COVID-19 testing services and other medical services that were never provided. When Insurance Providers requested proof for these fraudulent claims, RASHAN directed his staff to develop a computer program that automatically generated fabricated medical records—sometimes over a year after the services were purportedly provided—that were then submitted to an Insurance Provider as proof of the claims. Through this scheme, RASHAN made millions of dollars for himself and caused losses to the Insurance Providers of over $24 million.

BACKGROUND

2. In response to COVID-19's emergence in late 2019, tests to detect for COVID-19 were developed. These tests included polymerase chain reaction ("PCR") tests, which test for genetic material of the COVID-19 virus and may take several hours for a lab to process, and more rapid antigen tests, which detect the presence of certain markers of the COVID-19 virus. Individuals sought testing for COVID-19 for a variety of reasons, including for diagnosis after suspected exposure, or to obtain clearance to engage in certain activities, like returning to work or traveling on planes.

3. Insurance coverage for COVID-19 tests was available through both public and private "health care benefit programs," including the Insurance Providers.

4. In general, the Insurance Providers covered costs related to medical treatment—such as costs of COVID-19 testing services—only if, among other requirements, such services were actually performed. In order for a medical provider to be paid by an Insurance Provider for providing a service to a patient, the medical provider had to submit a claim for reimbursement to the relevant patient's Insurance Provider. Such claims included, among other things, the name of the patient, the date of the service, and the service rendered.

5. When submitting claims to the Insurance Providers, medical providers used a set of uniform billing codes that were established by the American Medical Association ("AMA"). These codes, which consisted of numbers and/or letters, each had a specific definition. The definition for each code was established by the AMA and linked each code to a specific service and/or product that was provided to the patient. By submitting claims using these codes, medical providers represented that the services associated with the codes had in fact been performed and that the provider was entitled to reimbursement for the services.

RELEVANT ENTITIES AND INDIVIDUALS

6. ClearMD is a limited liability company incorporated in the state of New York. AR Anesthesia LLC, which bears the initials of ALI RASHAN, the defendant, is a limited liability company with a principal place of business in New York, New York. During all times relevant to this Indictment, ClearMD and AR Anesthesia LLC (through ClearMD) offered medical testing services, including testing for COVID-19, at medical clinics located in the Southern District of New York and elsewhere.

7. At all times relevant to this Indictment, ALI RASHAN, the defendant, was a licensed anesthesiologist and the founder, owner, and/or operator of ClearMD.

THE FRAUD SCHEME

8. In or around early 2021, ALI RASHAN, the defendant, opened ClearMD's first medical clinic, which was located in Manhattan. ClearMD's website advertised two types of testing for COVID-19: PCR tests, with results in 12 to 24 hours, and antigen tests, with results in 15 minutes.

9. Patients interested in obtaining testing for COVID-19 at ClearMD typically booked appointments online or walked into a ClearMD clinic without an appointment. Many patients who booked an appointment received an email confirmation from ClearMD, which stated that the appointment would include not only a "COVID-19 Diagnostic Test" but also a "Focused patient exam" and a "Follow up telehealth visit to discuss your results."

10. Patients who visited ClearMD for COVID-19 testing were rarely seen by a physician or other qualified health care professional during their visits. Instead, patients met briefly with a medical assistant, often for far less than 15 minutes. Rather than provide a "focused patient exam," the medical assistant simply collected basic medical data (*e.g.*, heart rate,

temperature, blood oxygen saturation) and information (*e.g.*, vaccination status), and then administered a single nasal swab of the patient.

11. Patients typically received the results of their COVID-19 testing at ClearMD via an email sent by ClearMD on the testing date or the following date. Patients rarely, if ever, received a "Follow up telehealth visit to discuss" their results.

12. Even though patient visits for COVID-19 testing at ClearMD were brief and involved a single test for COVID-19 administered by a medical assistant, ClearMD staff and others working on behalf of ClearMD, at the direction of ALI RASHAN, the defendant, typically submitted and caused to be submitted claims to Insurance Providers billing for approximately four to six services, most of which had not been performed, for each patient visit.

13. For example, at the direction of ALI RASHAN, the defendant, ClearMD submitted or caused the submission of thousands of claims that billed for evaluation and management ("E/M") services that were never rendered. Such services, to be reimbursable, required the involvement of a physician or other qualified health care professional. However, ALI RASHAN, the defendant, directed ClearMD staff and others working on behalf of ClearMD to bill for E/M services purportedly rendered on the day the patient visited a ClearMD clinic, even though a physician or other qualified health care professional was rarely, if ever, involved in these patients' visits. RASHAN also directed ClearMD staff and others working on behalf of ClearMD to submit numerous claims that billed for an additional E/M service that was purportedly rendered on the day after the patient's visit to ClearMD for COVID-19 testing. However, ClearMD patients rarely, if ever, received any follow-up from ClearMD after the day of testing beyond an email communicating the test result.

14. In addition, for part of the relevant period, when patients requested a PCR test for COVID-19, ClearMD, at the direction of ALI RASHAN, the defendant, administered a more

expensive multiplex test that tested for COVID-19, RSV, and the influenza A and B viruses, without the patients' knowledge. After administering such multiplex tests, in many instances, ClearMD reported the results of the COVID-19 component of the tests to patients but not the results of the RSV or influenza components of the tests. Regardless, at RASHAN's direction, ClearMD submitted or caused to be submitted claims to Insurance Providers billing for a multiplex test.

15. Furthermore, at times during the relevant period, at the direction of ALI RASHAN, the defendant, ClearMD submitted claims to Insurance Providers billing for two to four COVID-19 testing codes, even though ClearMD had administered only a single COVID-19 test to patients. For example, for a single patient visit involving a single swab and multiplex test, ClearMD often billed code 0241U (a code for a multiplex test that tests for COVID-19, RSV, and influenza A and B viruses), code U0004 (a code for a COVID-19 test that makes use of high throughput technology), and code 87635 (a COVID-19 test that detects via nucleic acid).

16. By in or around early 2022, ClearMD began receiving requests from Insurance Providers for documentation supporting its claims for reimbursement, including requests for copies of medical records, such as progress notes and test results, as well as at least one request for a refund of millions of dollars paid to ClearMD as a result of fraudulent claims. In response to such requests, ALI RASHAN, the defendant, instructed ClearMD staff to write a software program to generate medical records to support ClearMD's fraudulent billings. Thereafter, ClearMD staff wrote software that ClearMD used to fabricate progress notes and test results retrospectively for patient visits that occurred as much as a year before. The fabricated notes typically included both information that was collected at the time of patient visits to ClearMD (*e.g.*, heart rate, temperature, blood oxygen saturation) and information that was not collected (*e.g.*, physical examination information for examinations that never occurred). For the former, at certain points during the

relevant period, in instances where ClearMD was unable to locate the typically collected information, RASHAN instructed that the software should create notes stating "within normal limits." For the latter, RASHAN instructed that the software should create notes containing possible or plausible information that was simply fabricated. For example, the software was written so that the physical exam portion of progress notes randomly listed either "normocephalic" or "atraumatic" as the description for a patient's head; "no masses observed" or "trachea midline" as the description of the patient's neck/throat; and "appropriate mood" or "appropriate affect" as the description of the patient's psychological condition. Although RASHAN met with few of ClearMD's patients, the software-generated notes typically stated that the notes were electronically signed by RASHAN.

17. Similar to the fabricated progress notes, the fabricated test results contained information that was made up by ClearMD. For example, where the full results of a patient's multiplex test were not available, the software was written to indicate that the results of the RSV and influenza components of the test were negative.

18. ClearMD, at the direction of ALI RASHAN, the defendant, submitted the fabricated medical records to Insurance Providers to deceive Insurance Providers about the services that had been rendered by ClearMD and to justify ClearMD's retention of amounts paid to ClearMD in response to fraudulent claims. For example, on or about April 2, 2022, RASHAN emailed an Insurance Provider that was seeking a refund from ClearMD a collection of such fabricated medical records, accompanied by a signed certification in which he falsely represented that the records were "true, accurate and complete to the best of my knowledge" and he acknowledged that "any falsification, omission, or concealment of material fact may subject me to administrative, civil, or criminal liability."

STATUTORY ALLEGATIONS

19. From at least in or about 2021 through at least in or about 2023, in the Southern District of New York and elsewhere, ALI RASHAN, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated, and agreed together and with each other to commit health care fraud and wire fraud, to wit, RASHAN agreed to submit and caused to be submitted to Insurance Providers fraudulent claims that billed for unperformed and unrequested services purportedly provided to patients who sought testing for COVID-19 and fraudulent medical records in support of such fraudulent claims, in violation of Title 18, United States Code, Sections 1347 and 1343.

20. It was a part and object of the conspiracy that ALI RASHAN, the defendant, and others known and unknown, knowingly and willfully, would and did execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, health care benefit programs, as that term is defined in Title 18, United States Code, Section 24(b), 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.

21. It was a further part and an object of the conspiracy that ALI RASHAN, the defendant, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

(Title 18, United States Code, Section 1349.)

COUNT TWO
(Health Care Fraud)

The Grand Jury further charges:

22. The allegations set forth in paragraphs 1 through 18 are incorporated by reference as if set forth fully herein.

23. From at least in or about 2021 through at least in or about 2023, in the Southern District of New York and elsewhere, ALI RASHAN, the defendant, knowingly and willfully executed, and attempted to execute, a scheme and artifice to defraud a health care benefit program, as that term is defined in Title 18, United States Code, Section 24(b), and to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, a health care benefit program, in connection with the delivery of and payment for health care benefits, items, and services, to wit, RASHAN submitted and caused to be submitted to Insurance Providers fraudulent claims that billed for unperformed and unrequested services purportedly provided to patients who sought testing for COVID-19 and submitted and caused to be submitted fraudulent medical records in support of such fraudulent claims.

(Title 18, United States Code, Sections 1347 and 2.)

COUNT THREE
(Wire Fraud)

The Grand Jury further charges:

24. The allegations set forth in paragraphs 1 through 18 of this Indictment are repeated, realleged, and incorporated as if set forth fully herein.

25. From at least in or about 2021 through at least in or about 2023, in the Southern District of New York and elsewhere, ALI RASHAN, the defendant, knowingly having devised

and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, RASHAN engaged in a scheme to submit and cause to be submitted to Insurance Providers fraudulent claims that billed for unperformed and unrequested services purportedly provided to patients who sought testing for COVID-19 and to submit and cause to be submitted fraudulent medical records in support of such fraudulent claims, and sent and received, and caused others to send and receive, emails and other electronic communications, to and from the Southern District of New York and elsewhere, in furtherance of that scheme.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT FOUR
(Conspiracy to Make False Statements Relating to Health Care Matters)

The Grand Jury further charges:

26. The allegations contained in paragraphs 1 through 18 of this Indictment are repeated, realleged, and incorporated as if fully set forth herein.

27. From at least in or about 2021 through at least in or about 2023, in the Southern District of New York and elsewhere, ALI RASHAN, the defendant, and others known and unknown, knowingly and willfully combined, conspired, confederated, and agreed together and with each other to commit an offense against the United States, to wit, to make false statements relating to health care matters, in violation of Title 18, United States Code, Section 1035.

28. It was a part and an object of the conspiracy that ALI RASHAN, the defendant, and others known and unknown, knowingly and willfully, in a matter involving a health care benefit

program, would and did falsify, conceal, and cover up by trick, scheme, and device a material fact, and would and did make materially false, fictitious, and fraudulent statements and representations, and make and use materially false writings and documents knowing the same to contain materially false, fictitious, and fraudulent statements and entries, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1035.

OVERT ACTS

29. In furtherance of the conspiracy and to effect the illegal object thereof, ALI RASHAN, the defendant, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On or about December 3, 2021, an employee of RASHAN sent an email, copying RASHAN and others, instructing that claims to Insurance Providers billing for services purportedly rendered to patients of ClearMD between June 1, 2021 and August 31, 2021, should include an E/M code that required involvement of a physician or other qualified health care professional to be reimbursable purportedly rendered on the date of the patients' visits to ClearMD and an additional E/M service purportedly rendered on the date after the date of the patients' visits to ClearMD, regardless of whether a physician or other qualified health care professional was involved or required to be involved in the patients' visits.

b. On or about April 2, 2022, RASHAN emailed an Insurance Provider a collection of fabricated medical records, accompanied by a signed certification in which he falsely represented that the records were "true, accurate and complete to the best of my knowledge" and acknowledged that "any falsification, omission, or concealment of material fact may subject me to administrative, civil, or criminal liability."

(Title 18, United States Code, Section 371.)

COUNT FIVE
(False Statements Relating to Health Care Matters)

The Grand Jury further charges:

30. The allegations contained in paragraphs 1 through 18 of this Indictment are repeated, realleged, and incorporated as if fully set forth herein.

31. From at least in or about 2021 through at least in or about 2023, in the Southern District of New York and elsewhere, ALI RASHAN, the defendant, knowingly and willfully, in a matter involving a health care benefit program, would and did falsify, conceal, and cover up by trick, scheme, and device a material fact, and would and did make materially false, fictitious, and fraudulent statements and representations, and make and use materially false writings and documents knowing the same to contain materially false, fictitious, and fraudulent statements and entries, in connection with the delivery of and payment for health care benefits, items, and services, to wit, RASHAN submitted and caused to be submitted to Insurance Providers fraudulent claims that billed for unperformed and unrequested services purportedly provided to patients who sought testing for COVID-19 and submitted and caused to be submitted fraudulent medical records in support of such fraudulent claims.

(Title 18, United States Code, Sections 1035 and 2.)

FORFEITURE ALLEGATIONS

32. As a result of committing the offenses charged in Counts One, Two, Four, and Five of this Indictment, ALI RASHAN, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(7), any and all property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

33. As a result of committing the offenses alleged in Counts One and Three of this Indictment, ALI RASHAN, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28 United States Code, Section 2461(c), any and all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of said offenses, including but not limited to a sum of money in United States currency representing the amount of proceeds traceable to the commission of said offenses.

Substitute Asset Provision

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

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,

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), and Title 28, United States Code, Section 2461(c) to seek forfeiture of any other property of the defendants up to the value of the above forfeitable property.

(Title 18, United States Code, Sections 981 and 982;
Title 21, United States Code, Section 853; and
Title 28, United States Code, Section 2461.)

[redacted]

Sean S. Buckley

SEAN S. BUCKLEY
Attorney for the United States