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**FILED**

**DEC 12 2001**

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
BOARD OF MEDICAL EXAMINERS

6085

IN THE MATTER OF THE SUSPENSION  
OR REVOCATION OF THE LICENSE OF

**GHANSHYAM KALANI, M.D.**

TO PRACTICE MEDICINE & SURGERY  
IN THE STATE OF NEW JERSEY

Administrative Action

**FINAL ORDER OF DISCIPLINE**

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

**FINDINGS OF FACT**

1. Respondent Ghanshyam Kalani, M.D., is a physician in the State of New Jersey and has been a licensee at all times relevant hereto.
2. By a judgment in a criminal case issued by the United States District Court, Southern District of New York, respondent was found guilty of one count of health care fraud, three counts of making false statements, and three counts of making false Medicare claims. (Copy of Judgment in a Criminal Case and attachments attached hereto and made a part hereof)

**CERTIFIED TRUE COPY**

3. Respondent and other physicians had been charged with taking part in a conspiracy to execute a scheme to defraud a health care benefit program (Medicare) and to obtain money and property from said program by submitting claims for reimbursement for services which had not been rendered; services which had been rendered at the homes of beneficiaries but were claimed as being rendered in an office; services which were rendered by individuals not licensed as doctors and without supervision but were claimed to have been performed by licensed doctors and persons under the supervision of a licensed doctor; services which were rendered, if at all, on one day but which had been claimed to have been rendered on separate days; and services which were not medically necessary. The physicians were also charged with soliciting kickbacks, bribes and rebates in cash and kind in return for purchasing, leasing and ordering a good, facility, service or other items to be billed to Medicare. It was alleged that defendant and the other physicians solicited elderly persons on Medicare through a telephone telemarketer to convince them to agree to diagnostic tests in their homes. They recruited unlicensed foreign medical school graduates to go to the homes of the elderly to conduct cursory physical examinations and to administer tests, and the licensed physicians signed as the "ordering physicians" for the tests and other services which were checked off on "encounter forms" used to make Medicare claims. Between 1995 and June 1998, the group billed Medicare for more than ten million dollars. (Copy of Indictment attached hereto and made a part hereof)

4. Respondent was sentenced to prison and ordered to pay restitution of \$161,785.88.

#### CONCLUSIONS OF LAW

Respondent's conviction on seven counts of federal criminal activity establishes grounds for the suspension or revocation of his license pursuant to N.J.S.A. 45:1-21(b), (e) and (f).

Based on the foregoing findings and conclusions, a Provisional Order of Discipline suspending respondent's license to practice medicine and surgery in the State of New Jersey was entered on March 29, 2001 and a copy served on respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and reasons therefor.

Respondent responded through September 21 and 28, 2001 submissions by counsel conceding that respondent was found guilty of health care fraud, false statements and false Medicare claims but requesting that the Board consider that respondent was "unwillingly drawn into an illegal situation." Respondent also asserted that as he was not born in this country he didn't have an

"innate sense" as to what Medicare covers. Additionally, he sought an opportunity to appear before the Board or a Committee thereof.

Respondent's submissions were reviewed by the Board, and the Board determined that further proceedings including a hearing were not necessary and that no material discrepancies had been raised. The Provisional Order of Discipline is based on the criminal conviction. It is undisputed that respondent was convicted in a criminal proceeding, after a jury trial and sentenced to prison. Further, the underlying conduct was directly related to and adversely affected the practice of medicine. Respondent was convicted of defrauding limited public funds designated for health care needs. In the criminal proceeding he had notice and an opportunity to respond, the Board will not at this juncture go behind the fact of the conviction. Thereby, there is uncontroverted grounds for revocation of his New Jersey medical license.

**ACCORDINGLY**, it is on this 12 day of Dec 2001,

**ORDERED** that:

1. Respondent's license to practice medicine and surgery in the State of New Jersey be and hereby is revoked.

BOARD OF MEDICAL EXAMINERS

By William V. Harrer MD BLD  
William V. Harrer, M.D., B.L.D.  
President

1109

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

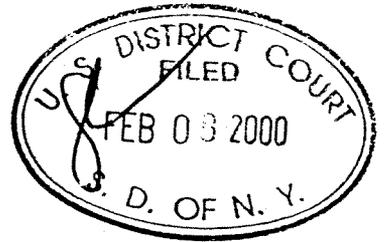
- v. -

ALAN BARTON NACHAMIE,  
a/k/a "Alan Barton,"  
a/k/a "Dr. Lewellyn,"  
EDWIN TUNICK,  
LYDIA MARTINEZ,  
JOSE HERNANDEZ,  
GHANSHYAM KALANI,  
a/k/a "Jim Kalani,"  
DONNA VINING,  
KENNETH SCHRAGER, and  
ALAN SIEGEL,

Defendants.

INDICTMENT

S3 98 Cr. 1238 (SAS)



MICROFILM  
FEB 16 2000  
-900 AM

COUNT ONE

The Grand Jury charges:

The Medicare Program

1. The Medicare Program was established in 1965 pursuant to amendments to the Social Security Act. At all times relevant to this Indictment, the Medicare Program provided basic medical coverage to individuals 65 years or older, as well as to certain disabled persons. The Medicare Program covered specified medical services, including services provided by licensed medical doctors. Eligible persons could elect to participate in the program by completing an application for Medicare benefits. Persons enrolled in the Medicare Program are hereinafter referred to as "beneficiaries". At all times relevant to this Indictment,

the Medicare Program was financed in part by appropriations from the United States Treasury.

2. At all times relevant to this Indictment, in order to bill the Medicare Program, a health care provider, including a licensed doctor, was required to complete an enrollment application and be approved to participate in the Medicare Program. Once approved, the health care provider was assigned a unique Medicare provider number. Each claim for reimbursement submitted on behalf of a health care provider -- whether in hard copy or electronically -- had to identify that provider's Medicare provider number. Upon enrollment and periodically thereafter, each Medicare provider was furnished with information relevant to participating in the Medicare Program and billing for services rendered.

3. At all times relevant to this Indictment, Medicare providers, including licensed doctors, forwarded claims for services covered by the Medicare Program to designated private insurance carriers which had contracted with the Federal Government to administer the Medicare Program ("the Medicare carriers"). At all times relevant to this Indictment, Empire Blue Cross and Blue Shield ("Empire") was responsible for the administration of the Medicare Program in Manhattan, Brooklyn, and the Bronx; GHI Medicare ("GHI") was responsible for the administration of the Medicare Program in Queens; and XACT Medicare ("XACT") was responsible for its administration in New

Jersey. Pursuant to their respective contracts with the Department of Health and Human Services, Empire, GHI and XACT reviewed, approved and paid claims submitted by Medicare providers.

4. At all times relevant to this Indictment, the American Medical Association published an annual Physician's Current Procedural Terminology manual which set forth the various numerical codes ("CPT codes") to be used to identify the particular service provided to a patient. At all times relevant to this Indictment, when seeking reimbursement from Medicare for services rendered to a beneficiary, providers were required to specify, on a paper claim form or in an electronic submission, among other things: (1) the provider number of the provider who rendered the service; (2) the service or procedure performed by using the appropriate CPT code; and (3) the date on which and the location at which the services or procedures were performed. A provider's reimbursement varied depending on the service rendered as reflected in the CPT code indicated on the claim form or the electronic submission. Before the Medicare carriers would accept electronically submitted claims, the providers were required to agree in writing that they would be responsible for the accuracy of all Medicare claims submitted by themselves, their employees or their agents, and that all claims submitted under their provider numbers would be accurate, complete and truthful.

5. At all times relevant to this Indictment, under the Medicare regulations, a provider doctor could only bill for covered services that had been rendered and that he/she had determined were medically necessary. Thus, under the Medicare Program, a provider doctor could not, subject to certain exceptions not applicable hereto, bill for tests unless there was an identifiable medical reason for ordering such tests. At all times relevant to this Indictment, Medicare regulations provided, in most instances, that a provider doctor could only be reimbursed for services of an employee who was not a licensed doctor, such as a technician or a foreign medical school graduate not licensed to practice in the United States, if that individual was under "direct personal supervision by the physician" at the time the services were provided. At all times relevant to this Indictment, under the Medicare Program, "direct personal supervision" meant that if a technician performed tests on a Medicare beneficiary at the beneficiary's home, the provider doctor employing that technician could only bill for those services if the provider doctor had been present in the beneficiary's home at the time the tests were conducted. At all times relevant to this Indictment, under the Medicare Program, a "home visit" could not be billed by a physician unless the physician was actually present in the beneficiary's home. At all times relevant to this Indictment, to bill for an "office visit," under the Medicare Program, a licensed physician was typically

required to spend a certain amount of time "face-to-face" with the patient and/or his family.

6. At all times relevant to this Indictment, rules of the Medicare Program also provided that, when procedures and diagnostic tests were provided to beneficiaries by individuals other than the provider doctor, the results of those tests and procedures had to be transmitted to the provider doctor who ordered them, and the provider doctor was required to examine the results personally.

7. At all times relevant to this Indictment, the Medicare carriers, when paying claims, issued checks to the providers together with remittance statements which detailed the services for which the provider sought reimbursement, the amount sought for the services and the amount actually paid by Medicare, the services for which reimbursement was being made and the dates the services were allegedly provided. Typically the check and remittance statements were sent by mail to the individual or entity under whose provider number the claims had been submitted. Following submission of a claim by a provider, the beneficiary also received a statement known as an Explanation of Benefits form, which detailed essentially the same information provided to the provider on the remittance statement for that beneficiary.

#### THE CONSPIRACY

8. From at least in or about 1995 through on or about June 10, 1998, in the Southern District of New York and

elsewhere, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, the defendants, together with others known and unknown to the Grand Jury (the "co-conspirators"), unlawfully, wilfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to violate Sections 1035, 1341 and 1347 of Title 18, United States Code and Sections 1320a-7b(a) (2), 1320a-7b(a) (5) and 1320a-7b(b) (1) (A) of Title 42, United States Code.

9. It was a part and object of said conspiracy that ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, the defendants, together with co-conspirators not named as defendants herein, unlawfully, wilfully and knowingly, would and did execute and attempt to execute a scheme and artifice to defraud a health care benefit program, namely the Medicare 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, a health care benefit program, namely the Medicare Program, in connection with the delivery of and payment for health care benefits, items, and services, to wit, the defendants, and their co-conspirators, in

order to obtain payments from private insurance carriers that administered the Medicare Program on behalf of the Federal Government, namely Empire, GHI and XACT Medicare, submitted or caused to be submitted, claims seeking reimbursement for: (1) services that were not rendered; (2) services that were rendered at the homes of beneficiaries, but which were claimed to be rendered in an office; (3) services that were rendered by individuals not licensed as doctors and without supervision, but which were claimed to be performed by licensed doctors and individuals under the supervision of those licensed doctors; (4) services that were rendered, if at all, on one day, but which were claimed to be rendered on separate days; and (5) services that were not medically necessary, all in violation of Section 1347 of Title 18, United States Code.

10. It was a further part and an object of said conspiracy that ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, the defendants, together with co-conspirators not named as defendants herein, unlawfully, wilfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, namely a scheme to defraud the Medicare Program through the submission of false claims to the private insurance carriers administering the Medicare Program on behalf of the Federal Government, namely Empire, GHI and XACT, and for

obtaining money and property by means of false and fraudulent pretenses, representations and promises, for the purpose of executing such scheme and artifice and attempting so to do, would and did place in a post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by a private and commercial interstate carrier, and take and receive therefrom matters and things, and cause to be delivered by mail and such carrier according to the direction thereon, and at the place at which it is directed to be delivered by the person to whom it is addressed such matters and things, to wit, documents, including patient files, and checks relating to claims for reimbursement from the Medicare Program, for services provided, and allegedly provided, to Medicare beneficiaries, all in violation of Section 1341 of Title 18, United States Code.

11. It was a further part and an object of said conspiracy that ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, the defendants, together with co-conspirators not named as defendants herein, in matters involving a health care benefit program, to wit, the Medicare Program, unlawfully, wilfully and knowingly, would and did falsify, conceal, and cover up by trick, scheme and device material facts,

and 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, the defendants, and their co-conspirators, in order to obtain payments from private insurance carriers that administered the Medicare Program for the Federal Government, submitted or caused to be submitted, false and misleading claims seeking reimbursement for: (1) services that were not rendered; (2) services that were rendered at the homes of beneficiaries, but which were claimed to be rendered in an office; (3) services that were rendered by individuals not licensed as doctors and without supervision, but which were claimed to be performed by licensed doctors and individuals under the supervision of those licensed doctors; (4) services that were rendered, if at all, on one day, but which were claimed to be rendered on separate days; and (5) services that were not medically necessary, all in violation of Section 1035 of Title 18, United States Code.

12. It was a further part and an object of said conspiracy that ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, the defendants, together with co-conspirators not named as defendants herein, unlawfully, wilfully

and knowingly, would and did make and cause to be made false statements and representations of material fact for use in determining rights to benefits and payments under a Federal health care program, to wit, the defendants, and their co-conspirators, in order to obtain payments from private insurance carriers that administered the Medicare Program for the Federal Government, submitted or caused to be submitted, false and misleading claims seeking reimbursement for: (1) services that were not rendered; (2) services that were rendered at the homes of beneficiaries, but which were claimed to be rendered in an office; (3) services that were rendered by individuals not licensed as doctors and without supervision, but which were claimed to be performed by licensed doctors and individuals under the supervision of those licensed doctors; (4) services that were rendered, if at all, on one day, but which were claimed to be rendered on separate days; and (5) services that were not medically necessary, all in violation of Section 1320a-7b(a)(2) of Title 42, United States Code.

13. It was a further part and an object of said conspiracy that ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, the defendants, together with co-conspirators not named as defendants herein, unlawfully, wilfully

and knowingly, would and did present and cause to be presented claims for physicians' services, for which payments may be made, under a Federal health care program, namely the Medicare Program, knowing that the individuals who furnished the services were not licensed as physicians, to wit, the defendants, and their co-conspirators, in order to obtain payments from private insurance carriers that administered the Medicare Program for the Federal Government, submitted or caused to be submitted, fraudulent claims seeking reimbursement for visits by physicians, when they knew that the beneficiaries were visited, if at all, by individuals who were not licenced as physicians, all in violation of Section 1320a-7b(a) (5) of Title 42, United States Code.

14. It was a part and object of said conspiracy that ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, and JOSE HERNANDEZ, the defendants, together with co-conspirators not named as defendants herein, unlawfully, wilfully and knowingly, would and did solicit and receive remuneration (including kickbacks, bribes and rebates) directly and indirectly, overtly and covertly, in cash and in kind in return for purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing, and ordering a good, facility, service, and item for which payment may be made in whole and in part under a Federal health care program, to wit, the defendants, and their co-conspirators, solicited kickback payments from an individual associated with a medical laboratory

located in Florida in return for ordering and arranging for that medical laboratory to conduct tests that were to be billed to Medicare, in violation of Section 1320a-7b(b) (1) (A) of Title 42, United States Code.

MEANS AND METHODS OF THE CONSPIRACY

15. Among the means and methods by which ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, the defendants, and their co-conspirators, would and did carry out the conspiracy were the following:

a. ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," LYDIA MARTINEZ, and others recruited "telemarketers," whose job it was to telephone elderly persons on Medicare (the "Medicare beneficiaries"), whose names were obtained from lists received from EDWIN TUNICK, the defendant, and others. The "telemarketers'" role was to convince these beneficiaries to agree to be visited by individuals working for the defendants and agree to submit to various diagnostic tests, among other things, in their homes. ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," LYDIA MARTINEZ and others also solicited elderly persons regarding these visits and tests through "informational" meetings conducted at buildings where the elderly persons resided and through church groups. The stated purpose of these visits and tests was to identify people who were

at risk for heart attacks, strokes and Alzheimer's Disease. The telemarketers and others routinely told the Medicare beneficiaries, when they contacted them, that they operated a "health awareness program" and that the "program" was under the auspices of Medicare or was a "Medicare benefit." The telemarketers and others also routinely told the Medicare beneficiaries that if they agreed to be visited at home and submit to tests, there would be no cost to them, as the "program" would accept whatever payment it received from Medicare. MARTINEZ was responsible for the activities of the telemarketers on a day-to-day basis, during much of the period of the conspiracy.

b. ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," LYDIA MARTINEZ, and others also recruited individuals, principally foreign medical school graduates who were not licensed as doctors in the United States (collectively the "non-doctors"), to go to the homes of the elderly beneficiaries to conduct often cursory physical examinations and to administer tests. Among the tests the non-doctors typically administered to these elderly beneficiaries were a cardiac rhythm test and a Doppler blood circulation test. MARTINEZ and a coconspirator not named as a defendant herein were typically responsible for overseeing the activities of the non-doctors on a day-to-day basis during much of the period of the conspiracy.

c. ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, and others also recruited licensed medical doctors, including GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, through advertisements in the New York Times and other newspapers, purportedly to "supervise" the non-doctors and to review patient charts. At the time that they were hired, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and the other doctors, either already had a Medicare provider number or, with the help of a co-conspirator not named as a defendant herein and others, applied to become a Medicare provider and to obtain a provider number. GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and the other doctors who were hired, rarely, if ever, met with any beneficiaries. Instead, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," LYDIA MARTINEZ, and others provided GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and the other doctors with beneficiaries' so-called "medical charts" -- charts that had been completed by the non-doctors and others -- either by sending the "medical charts" to the doctors' residences or offices, typically by Federal Express, or by requesting that the doctors come to an office, which were located in New York and New Jersey. Included within these "medical charts" was a form entitled "Encounter Form," which listed CPT codes for various services and tests.

GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and the other doctors subsequently signed the Encounter Forms as the "ordering physicians" for the various tests and other services that were checked off on the Encounter Forms. GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL and the other doctors, however, had not "ordered" or performed the tests and/or services that were checked off on the Encounter Form. In fact, the tests and/or services often had been or had purportedly been performed in the beneficiaries' homes days or weeks before GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and the other doctors signed the Encounter Forms. Furthermore, because GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and the other doctors, rarely, if ever, examined the beneficiaries and rarely, if ever, met or spoke with the non-doctors who purportedly conducted the tests or performed the services, they had not verified that the beneficiaries had medical conditions that made the tests or services medically necessary or even whether the tests and services had ever been performed.

d. Co-conspirators not named as defendants herein sent copies of the Encounter Forms to JOSE HERNANDEZ and others, sometimes even before the "medical charts," including the Encounter Forms, were signed by GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and the

other doctors. HERNANDEZ and others, after receiving the Encounter Forms, submitted these claims electronically under the names and Medicare provider numbers of GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and the other doctors, as well as the Medicare provider numbers of professional corporations that the defendants had established.

e. ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and their co-conspirators caused Medicare to be billed for services that were not performed and for different, and generally more costly, procedures than those actually performed. For example, the defendants and their co-conspirators routinely billed Medicare for an "event recorder," which permits the monitoring and recording of the heart rhythm 24 hours a day for a period up to 30 days. In reality, beneficiaries received a simple one-to-two minute cardiac rhythm test, the results of which were transmitted over the telephone, while the non-doctors were still in the beneficiary's home. Similarly, the defendants and their co-conspirators routinely billed Medicare for extensive Duplex blood circulation scans, when simpler, less expensive Doppler tests alone had been given, if they were given at all. The defendants also billed Medicare for echocardiograms and stress tests, when they were not given to patients or, if given, were improperly given. In addition, ALAN

BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and their co-conspirators, submitted claims to Medicare's carriers in which they represented, by using certain CPT codes, that the Medicare beneficiaries were examined by a licensed doctor in an office, when in fact, the Medicare beneficiaries were routinely seen, if at all, in the beneficiaries' own residence by an individual not licenced as a physician.

f. The defendants attempted to hide their fraudulent scheme from Medicare officials by billing under the provider numbers of different doctors and professional corporations, including Flatbush Medical Practice, P.C., Prospect Medical Practice P.C. and American Medical Practice, P.C., and by moving offices regularly. ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, and others also used other corporate names, including Community Family Services Inc., Concerned Citizens for Seniors Health and Well Being Inc., American Medical Ventures of Maryland, Inc., Delta Medical Management Consultants, Inc. and Dade Medical Management, Inc. to carry out the scheme. EDWIN TUNICK and others were responsible for the creation of these corporations.

g. After processing the electronic claims, Empire and XACT sent checks and/or remittance statements to GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH

SCHRAGER, ALAN SIEGEL, and the other doctors or professional corporations under whose provider numbers the claims had been submitted.

h. At the direction of ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, and others, GHANSHYAM KALANI, a/k/a "Jim Kalani, DONNA VINING, KENNETH SCHRAGER, ALAN SIEGEL, and the other doctors deposited or cashed the checks, kept their share of approximately 15 to 25 percent of the proceeds of the check, and sent the remaining percentage, typically by personal check, to the corporations used by ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, and other co-conspirators, including Flatbush Medical Practice, P.C., Prospect Medical Practice, P.C., American Medical Ventures of Maryland, Inc., and Delta Management Consultants Inc. EDWIN TUNICK and others were responsible for the receipt and deposit of these payments from the doctors and for the finances of the corporations. EDWIN TUNICK and others used some of the monies received from the licensed doctors to pay those working for the defendants, including the telemarketers and the non-doctors.

i. ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, and others, also solicited kickback payments from an individual associated with a medical laboratory located in Florida in return for ordering and arranging for that medical

laboratory to conduct laboratory tests on the beneficiaries that were to be billed to Medicare.

j. Between in or about 1995 and in or about June 1998, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, together with their co-conspirators, billed Medicare for over ten million dollars in the manner described above.

#### OVERT ACTS

16. In furtherance of said conspiracy and to effect the illegal objects thereof, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ and JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, the defendants, and their co-conspirators, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about 1997, a coconspirator not named as a defendant herein ("Co-conspirator 1") created phony vascular reports of tests allegedly conducted on Medicare beneficiaries and forged the signature of another co-conspirator not named as a defendant herein ("Doctor 1") thereon, while Doctor 1 was in prison.

b. In or about 1997, ALAN BARTON NACHAMIE, in the presence of Co-conspirator 1, admitted to Doctor 1 that he

had ordered that the phony vascular reports be created and that Doctor 1's signature be forged thereon.

c. In or about the spring of 1997, Co-conspirator 1 instructed another individual not named as a defendant herein to vary randomly the CPT diagnostic codes to avoid detection by Medicare.

d. In or about July 1997, ALAN BARTON NACHAMIE and Co-conspirator 1 met with a doctor not named as a defendant herein in Queens, New York, pursuant to an advertisement the doctor had seen in the New York Times.

e. In or about 1997 in Queens, New York, LYDIA MARTINEZ fired a medical assistant for telling other individuals that she suspected that the defendants were engaging in a fraud.

f. In or about October 1997, JOSE HERNANDEZ met with ALAN BARTON NACHAMIE, LYDIA MARTINEZ and others at an office located at 10 Hill Street, Newark, New Jersey.

g. In or about 1997, JOSE HERNANDEZ met with ALAN BARTON NACHAMIE and others at an office located on Jamaica Avenue in Queens, New York.

h. On or about May 22, 1997, JOSE HERNANDEZ sent a memorandum to a coconspirator not named as a defendant herein attaching sample medical reports.

i. In or about December 1997, LYDIA MARTINEZ conducted an interview in New York of a foreign medical school graduate not licensed in the United States to practice medicine

for a job examining and performing medical tests on Medicare beneficiaries in their homes.

j. In or about February 1998, ALAN BARTON NACHAMIE and EDWIN TUNICK met with a person they believed to be a potential investor in Florida, and BARTON informed the person, among other things, that he and his co-conspirators had to change doctors frequently so as to avoid being "red-flagged" by Medicare.

k. On or about December 18, 1997, the defendants caused individuals working with them to visit a Medicare beneficiary ("Beneficiary 1") at her home in New York, New York, at which time those individuals performed medical tests on Beneficiary 1.

l. On or about March 25, 1998, Doctor 1 spoke with an undercover agent of the Federal Bureau of Investigation at an office located at 659 West 179th Street, New York, New York.

m. On or about March 25, 1997, the defendants caused individuals working with them to visit a Medicare beneficiary ("Beneficiary 2") at his home in the Bronx, New York.

n. In or about March or April 1997, GHANSHYAM KALANI, a/k/a "Jim Kalani," signed an Encounter Form for Beneficiary 2, which was used to bill Medicare for services allegedly provided to Beneficiary 2 on or about March 25, 1997 and March 11, 1997.

o. In or about April 1997, GHANSHYAM KALANI, a/k/a "Jim Kalani," received a check, dated April 11, 1997, for \$15,000.31 from Medicare, as well as a remittance statement detailing the services for which he was being paid, at an address in New York, New York; that Medicare check included, and the remittance statement reflected, payment for services allegedly rendered to Beneficiary 2 on or about March 11 and March 25, 1997.

p. On or about April 18, 1997, GHANSHYAM KALANI, a/k/a "Jim Kalani," deposited, or caused to be deposited, the Medicare check described in subparagraph o above into a bank account in his name at Chemical Bank.

q. On or about April 30, 1997, GHANSHYAM KALANI, a/k/a "Jim Kalani," signed a check made payable to Flatbush Medical Practice for \$12,565 and drawn on a bank account in his name at Chemical Bank.

r. On or about May 28, 1997, the defendants caused individuals working with them to visit a Medicare Beneficiary in her home in Brooklyn, New York ("Beneficiary 3").

s. In or about May or June 1997, DONNA VINING signed an Encounter Form for Beneficiary 3, which was used to bill Medicare for services allegedly provided to Beneficiary 3 on or about May 28, 1997.

t. In or about June 1997, DONNA VINING received a check, dated June 18, 1997 for \$10,876.77 from Medicare, as well

as a remittance statement detailing the services for which she was being paid, at an address in Chatham, New Jersey; that Medicare check included, and the remittance statement reflected, payment for services allegedly provided to Beneficiary 3 on or about May 28, 1997.

u. On or about June 23, 1997, DONNA VINING deposited, or caused to be deposited, the Medicare check described in subparagraph t above, into a bank account in her name at Chemical Bank.

v. On or about June 26, 1997, DONNA VINING signed a check made payable to Flatbush Medical Practice, P.C. in the amount of \$8,483.88 and drawn on a bank account in her name at Chemical Bank.

w. On or about June 4, 1997, the defendants caused individuals working with them to visit a Medicare Beneficiary in her home in New York, New York ("Beneficiary 4").

x. In or about June 1997, KENNETH SCHRAGER signed an Encounter Form, which was used to bill Medicare for services allegedly provided to Beneficiary 4 on June 4, 1997.

y. In or about July 1997, KENNETH SCHRAGER received a check from Medicare, dated June 30, 1997, for \$4987.75, as well as a remittance statement detailing the services for which he was being paid, at an address in West Hempstead, New York; that Medicare check included, and the

remittance statement reflected, payment for services allegedly provided to Beneficiary 4 on or about June 4, 1997.

z. On or about July 7, 1997, KENNETH SCHRAGER deposited, or caused to be deposited, the Medicare check described in subparagraph y above into an account in his name at Chase Manhattan Bank.

aa. On or about July 17, 1997, KENNETH SCHRAGER signed a check made payable to American Medical Ventures of Maryland for \$8,255 and drawn on a bank account in his name at Chase Manhattan Bank.

bb. On or about February 16, 1998, the defendants caused individuals working with them to visit a Medicare beneficiary at her residence in Brooklyn, New York ("Beneficiary 5").

cc. In or about March 1998, ALAN SIEGEL received a check, dated March 12, 1998, for \$12,644.85, from Medicare, as well as a remittance statement detailing the services for which he was being paid, at an address in Harrison, New York; the Medicare check included, and the remittance statement reflected, payment for services allegedly provided to Beneficiary 5 on or about February 16, 1998.

dd. On or about March 18, 1998, ALAN SIEGEL deposited, or caused to be deposited, the Medicare check described in subparagraph cc above into an account in his name at Chase Manhattan Bank.

ee. On or about March 26, 1998, ALAN SIEGEL signed a check made payable to Delta Management Corp. for \$29,611 and drawn on a bank account in his name at Chase Manhattan Bank.

ff. On or about October 21, 1997, JOSE HERNANDEZ received a check made payable to "Julie Hernandez," for \$8,150 and drawn on the account of Key Biscayne Clinical Laboratories Inc.

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

COUNT TWO

The Grand Jury further charges:

HEALTH CARE FRAUD SCHEME

17. The allegations contained in paragraphs 1 through 7 and 15 through 16 above are hereby repeated, realleged and incorporated by reference as if fully set forth herein, as setting forth a scheme to defraud.

18. From in or about 1995 through on or about June 10, 1998, in the Southern District of New York and elsewhere, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, GHANSHYAM KALANI, a/k/a "Jim Kalani," DONNA VINING, KENNETH SCHRAGER, and ALAN SIEGEL, the defendants, unlawfully, wilfully and knowingly, executed and attempted to execute a scheme and artifice to defraud a health care benefit program, to wit, the Medicare 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, a health care benefit program, to wit, the Medicare Program, in connection with the delivery of and payment for health care benefits, items and services, to wit, the defendants, in order to obtain payments from private insurance carriers that administer the Medicare Program for the Federal Government, submitted and caused to be submitted, fraudulent claims seeking reimbursement for: (1) services that were not rendered; (2) services that were rendered at the homes of beneficiaries, but which were claimed to be rendered in an office; (3) services that were rendered by individuals not licensed as doctors and without supervision, but which were claimed to be performed by licensed doctors and individuals under the supervision of those licensed doctors; (4) services that were rendered, if at all, on one day, but which were claimed to be rendered on separate days; and (5) services that were not medically necessary.

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

COUNT THREE

The Grand Jury further charges:

FALSE STATEMENTS

19. The factual allegations set forth in paragraphs 1 through 7 and 15 through 16 are hereby repeated, realleged and incorporated by reference as though fully set forth herein.

20. From in or about November 1996 through in or about August 1997, in the Southern District of New York and elsewhere,

ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ and GHANSHYAM KALANI, a/k/a "Jim Kalani," the defendants, in matters involving a health care benefit program, to wit, the Medicare Program, unlawfully, willfully and knowingly falsified, concealed and covered up by tricks, schemes, and devices material facts, and made materially false, fictitious, and fraudulent statements and representations, and 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 and payment for health care benefits, items, and services, to wit, the defendants, in order to obtain payments from private insurance carriers that administer the Medicare Program for the Federal Government, submitted and caused to be submitted, under KALANI's Medicare provider number, fraudulent claims seeking reimbursement for: (1) services that were not rendered; (2) services that were rendered at the homes of beneficiaries, but which were claimed to be rendered in an office; (3) services that were rendered by individuals not licensed as doctors and without supervision, but which were claimed to be performed by licensed doctors and individuals under the supervision of those licensed doctors; (4) services that were rendered, if at all, on one day, but which were claimed to be

rendered on separate days; and (5) services that were not medically necessary.

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

COUNT FOUR

The Grand Jury further charges:

FALSE STATEMENTS

21. The factual allegations set forth in paragraphs 1 through 7 and 15 through 16 are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

22. From in or about May 1997 through in or about April 1998, in the Southern District of New York and elsewhere, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ and DONNA VINING, the defendants, in matters involving a health care benefit program, to wit, the Medicare Program, unlawfully, willfully and knowingly falsified, concealed and covered up by tricks, schemes, and devices material facts, and made materially false, fictitious, and fraudulent statements and representations, and 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 and payment for health care benefits, items, and services, to wit, the defendants, in order to obtain payments from private insurance carriers that administer the Medicare Program for the Federal Government, submitted and caused to be submitted, under

VINING's Medicare provider number, fraudulent claims seeking reimbursement for: (1) services that were not rendered; (2) services that were rendered at the homes of beneficiaries, but which were claimed to be rendered in an office; (3) services that were rendered by individuals not licensed as doctors and without supervision, but which were claimed to be performed by licensed doctors and individuals under the supervision of those licensed doctors; (4) services that were rendered, if at all, on one day, but which were claimed to be rendered on separate days; and (5) services that were not medically necessary.

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

COUNT FIVE

The Grand Jury further charges:

FALSE STATEMENTS

23. The factual allegations set forth in paragraphs 1 through 7 and 15 through 16 are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

24. From in or about July 1996 through in or about October 1997, in the Southern District of New York and elsewhere, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ and KENNETH SCHRAGER, the defendants, in matters involving a health care benefit program, to wit, the Medicare Program, unlawfully, willfully and knowingly falsified, concealed and covered up by tricks, schemes, and devices material facts, and made materially

false, fictitious, and fraudulent statements and representations, and 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 and payment for health care benefits, items, and services, to wit, the defendants, in order to obtain payments from private insurance carriers that administer the Medicare Program for the Federal Government, submitted and caused to be submitted, under SCHRAGER's Medicare Provider number, fraudulent claims seeking reimbursement for: (1) services that were not rendered; (2) services that were rendered at the homes of beneficiaries, but which were claimed to be rendered in an office; (3) services that were rendered by individuals not licensed as doctors and without supervision, but which were claimed to be performed by licensed doctors and individuals under the supervision of those licensed doctors; (4) services that were rendered, if at all, on one day, but which were claimed to be rendered on separate days; and (5) services that were not medically necessary.

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

COUNT SIX

The Grand Jury further charges:

FALSE STATEMENTS

25. The factual allegations set forth in paragraphs 1 through 7 and 15 through 16 are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

26. From in or about August 1997 through in or about June 1998, in the Southern District of New York and elsewhere, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ and ALAN SIEGEL, the defendants, in matters involving a health care benefit program, to wit, the Medicare Program, unlawfully, willfully and knowingly, falsified, concealed and covered up by tricks, schemes, and devices material facts, and made materially false, fictitious, and fraudulent statements and representations, and 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 and payment for health care benefits, items, and services, to wit, the defendants, in order to obtain payments from private insurance carriers that administer the Medicare Program for the Federal Government, submitted and caused to be submitted, under SIEGEL's Medicare provider number, fraudulent claims seeking reimbursement for: (1) services that were not rendered; (2) services that were rendered at the homes of beneficiaries, but which were claimed to be rendered in an office; (3) services that were rendered by individuals not licensed as doctors and without supervision, but which were claimed to be performed by licensed doctors and individuals under the supervision of those licensed doctors; (4) services that were rendered, if at all, on one day,

but which were claimed to be rendered on separate days; and (5) services that were not medically necessary.

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

COUNTS SEVEN THROUGH EIGHT

The Grand Jury further charges:

FALSE STATEMENTS

27. The factual allegations set forth in paragraphs 1 through 7 and 15 through 16 are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

28. On or about the dates set forth below, in the Southern District of New York and elsewhere, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, and GHANSHYAM KALANI, a/k/a "Jim Kalani," the defendants, unlawfully, willfully, and knowingly, presented and caused to be presented claims for a physician's service for which payment may be made under a Federal health care program knowing that the individuals who furnished the services were not licensed physicians, to wit, the defendants submitted the following claims falsely indicating that GHANSHYAM KALANI, a/k/a "Jim Kalani," examined beneficiaries in an office, when they knew that GHANSHYAM KALANI never met with the beneficiaries, and in fact the beneficiaries were seen by individuals not licensed as physicians in their homes:

<u>Count</u>	<u>Approximate Date Of Submission</u>	<u>Beneficiary First Name</u>	<u>Beneficiary Number</u>
Seven	12/96	Miriam D.	134149886
Eight	2/97	Doreen M.	096485848

(Title 42, United States Code, Section 1320a-7b(a)(5) and Title 18, United States Code, Section 2.)

COUNTS NINE THROUGH ELEVEN

The Grand Jury further charges:

FALSE STATEMENTS

29. The factual allegations set forth in paragraphs 1 through 7 and 15 through 16 are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

30. On or about the dates set forth below, in the Southern District of New York and elsewhere, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ, and GHANSHYAM KALANI, a/k/a "Jim Kalani," the defendants, unlawfully, willfully, and knowingly, presented and caused to be presented claims for a physician's service for which payment may be made under a Federal health care program knowing that the individuals who furnished the services were not licensed physicians, to wit, the defendants submitted the following claims falsely indicating that GHANSHYAM KALANI, a/k/a "Jim Kalani," examined beneficiaries in an office, when they knew that GHANSHYAM KALANI never met with the

beneficiaries, and in fact the beneficiaries were seen by individuals not licensed as physicians in their homes:

<u>Count</u>	<u>Approximate Date Of Submission</u>	<u>Beneficiary First Name</u>	<u>Beneficiary Number</u>
Nine	6/97	Vera. D.	109482655
Ten	5/97	Larry H.	066365980
Eleven	7/97	Barbara M.	145228130

(Title 42, United States Code, Section 1320a-7b(a) (5) and Title 18, United States Code, Section 2.)

COUNTS TWELVE THROUGH SIXTEEN

The Grand Jury further charges:

FALSE STATEMENTS

31. The factual allegations set forth in paragraphs 1 through 7 and 15 through 16 are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

32. On or about the dates set forth below, in the Southern District of New York and elsewhere, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ and DONNA VINING, the defendants, unlawfully, willfully, and knowingly, presented and caused to be presented claims for a physician's services for which payment may be made under a Federal health care program knowing that the individuals who furnished the services were not licensed physicians, to wit, the defendants submitted claims falsely indicating that DONNA VINING examined beneficiaries, when

they knew that DONNA VINING never met with the beneficiaries, and in fact the beneficiaries were seen by individuals not licensed as physicians in their homes:

<u>Count</u>	<u>Approximate Date Of Submission</u>	<u>Beneficiary First Name</u>	<u>Beneficiary Number</u>
Twelve	6/97	Rhea F.	051287169
Thirteen	8/97	Glorias H.	130183424
Fourteen	5/97	Maggie H.	102099146
Fifteen	6/97	Ernest H.	123102212
Sixteen	7/97	Thelma D.	061241231

(Title 42, United States Code, Section 1320a-7b(a) (5) and Title 18, United States Code, Section 2.)

COUNTS SEVENTEEN THROUGH TWENTY-ONE

The Grand Jury further charges:

FALSE STATEMENTS

33. The factual allegations set forth in paragraphs 1 through 7 and 15 through 16 are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

34. On or about the dates set forth below, in the Southern District of New York and elsewhere, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ and KENNETH SCHRAGER, the defendants, unlawfully, willfully, and knowingly, presented and caused to be presented claims for a physician's services for

which payment may be made under a Federal health care program knowing that the individuals who furnished the services were not licensed physicians, to wit, the defendants submitted claims falsely indicating that KENNETH SCHRAGER examined beneficiaries, when they knew that KENNETH SCHRAGER never met with the beneficiaries, and in fact the beneficiaries were seen by individuals not licensed as physicians in their homes:

<u>Count</u>	<u>Approximate Date Of Submission</u>	<u>Beneficiary First Name</u>	<u>Beneficiary Number</u>
Seventeen	5/97	Helen G.	132144151
Eighteen	7/97	James B.	265340419
Nineteen	6/97	Christine B.	067079820
Twenty	4/97	Margarita C.	101506091
Twenty-One	6/97	Patricia M.	056141814

(Title 42, United States Code, Section 1320a-7b(a)(5) and Title 18, United States Code, Section 2.)

COUNTS TWENTY-TWO THROUGH TWENTY-SIX

The Grand Jury further charges:

FALSE STATEMENTS

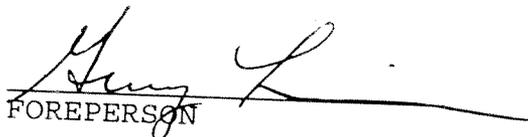
35. The factual allegations set forth in paragraphs 1 through 7 and 15 through 16 are hereby repeated, realleged and incorporated by reference as if fully set forth herein.

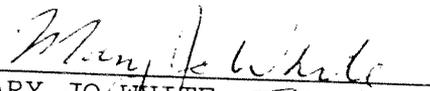
36. On or about the dates set forth below, in the Southern District of New York and elsewhere, ALAN BARTON NACHAMIE, a/k/a "Alan Barton," a/k/a "Dr. Lewellyn," EDWIN

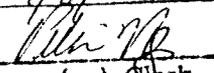
TUNICK, LYDIA MARTINEZ, JOSE HERNANDEZ and ALAN SIEGEL, the defendants, unlawfully, knowingly, and willfully, presented and caused to be presented claims for a physician's services for which payment may be made under a Federal health care program knowing that the individuals who furnished the services were not licensed physicians, to wit, the defendants submitted claims falsely indicating that ALAN SIEGEL examined beneficiaries, when they knew that ALAN SIEGEL never met with the beneficiaries, and in fact the beneficiaries were seen by individuals not licensed as physicians in their homes:

<u>Count</u>	<u>Approximate Date Of Submission</u>	<u>Beneficiary First Name</u>	<u>Beneficiary Number</u>
Twenty-Two	2/98	Carroll W.	413050032
Twenty-Three	2/98	Francis S.	076039213
Twenty-Four	9/97	Leticia F.	105264785
Twenty-Five	2/98	Ellen R.	217166807
Twenty-Six	10/97	Izrial T.	092768838

(Title 42, United States Code, Section 1320a-7b(a) (5) and Title 18, United States Code, Section 2.)

  
FOREPERSON

  
MARY JO WHITE  
United States Attorney

Certified as a true copy on  
this date 4/4/2001  
By   
( ) Clerk  
() Deputy

UNITED STATES DISTRICT COURT  
Southern District of New York

UNITED STATES OF AMERICA  
V.

GHANSHYAM KALANI

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: S3 1:98CR01238-006(SAS)

James E. Neuman

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) \_\_\_\_\_
- pleaded nolo contendere to count(s) \_\_\_\_\_ which was accepted by the court.
- was found guilty on count(s) 2, 3, 7, 8, 9, 10 & 11 after a plea of not guilty.

DOCKETED AS  
A JUDGMENT # 00,2234  
ON 10/6/00

Title & Section	Nature of Offense	Date Concluded	Count Number(s)
18 U.S.C. § 1347	Health care fraud.	6/10/98	2
18 U.S.C. § 1035	False statements.	8/97	3
18 U.S.C. § 1035	False statements.	12/96	7
18 U.S.C. § 1035	False statements.	2/97	8
42 U.S.C. § 1320a-7b	False medicare claims.	6/97	9
42 U.S.C. § 1320a-7b	False medicare claims.	5/97	10
42 U.S.C. § 1320a-7b	False medicare claims.	7/97	11

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) 1
- Count(s) S2 Indictment  is  are dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. 115-74-6359

Defendant's Date of 1/5/58

Defendant's USM No.: 49774-054

Defendant's Residence Address:  
501 East 87th Street  
Apt. # 11H  
New York, New York 10028

September 25, 2000  
Date of Imposition of Judgment

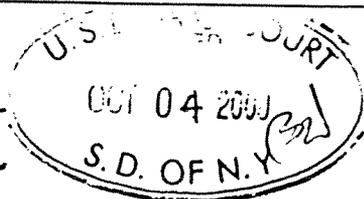
*[Signature]*  
Signature of Judicial Officer

Shira A. Scheindlin, U.S.D.J.  
Name and Title of Judicial Officer

10/4/00  
Date

Defendant's Mailing Address  
same 0CT - 5 2000 -3:00 PM

Certified as a true copy on  
this date 11/1/2001  
By [Signature]  
( ) Clerk  
(X) Deputy



DEFENDANT: Ghanshyam Kalani  
CASE NUMBER: S3 1:98CR01238-006(SAS)

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total of 12 months and 1 day.

The court makes the following recommendations to the Bureau of Prisons:

That defendant be designated to a facility as close to the New York City area as possible.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_  
as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on November 6, 2000

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Defendant delivered \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
Deputy U.S. Marshal

DEFENDANT: Ghanshyam Kalani  
CASE NUMBER: S3 1:98CR01238-006SAS)

## SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

Defendant shall participate in a substance abuse treatment program approved by the Probation Department which may include testing to determine whether defendant has reverted to the use of drugs and/or alcohol. Defendant shall make restitution in the amount of \$161,785.88 in accordance with the terms set forth herein.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

X The above drug testing condition is suspended based on the court's imposition of the special drug condition, see above. (Check, if applicable.)

X The defendant shall not possess a firearm as defined in 18 U.S.C. § 921. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

<u>Totals:</u>	\$	<u>Assessment</u> 700	\$	<u>Fine</u>	\$	<u>Restitution</u> 161,785.88
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If applicable, restitution amount ordered pursuant to plea agreement ..... \$ \_\_\_\_\_

**FINE**

The above fine includes costs of incarceration and/or supervision in the amount of \$ \_\_\_\_\_

The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived.

The interest requirement is modified as follows:

**RESTITUTION**

The determination of restitution is deferred until \_\_\_\_\_ . An Amended Judgment in a Criminal Case will be entered after such determination.

The defendant shall make restitution to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column below.

<u>Name of Payee</u>	<u>*Total Amount of loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
Empire Medicare Health Care Financing Admin. - Debt Collection P.O. Box 7520 Baltimore, Maryland 21207-0520	161,785.88	161,785.88	100%
<u>Totals:</u>	\$ <u>161,785.88</u>	\$ <u>161,785.88</u>	

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994 but before April 23, 1996.

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### SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) restitution; (3) fine principal; (4) cost of prosecution; (5) interest; (6) penalties.

Payment of the total fine and other criminal monetary penalties shall be due as follows:

- A  In full immediately; or
- B  \$ 700 immediately, balance due (in accordance with C, D, or E); or
- C  not later than Nov. 7, 2004; or
- D  in installments to commence \_\_\_\_\_ days after the date of this judgment. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due, and shall request the court to establish a payment schedule if appropriate; or
- E  in \_\_\_\_\_ (e.g., equal, weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ year(s) to commence \_\_\_\_\_ days after the date of this judgment.

The defendant will be credited for all payments previously made toward any criminal monetary penalties imposed.

Special instructions regarding the payment of criminal monetary penalties:

Payment of restitution is to be made as follows: \$60,000 immediately, plus 10% of defendant's gross monthly earnings over the three-year period of supervised release. Payment of restitution will terminate when the supervision period expires. No interest or penalty shall accrue on the amount of restitution. Defendant shall get a credit of 5% of every \$1 paid by his co-defendants toward the amount for which he is liable.

- The defendant shall pay the cost of prosecution.
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made as directed by the court, the probation officer, or the United States attorney.

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### STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

**OR**

The court adopts the factual finding and guideline application in the presentence report except (see attachment, if necessary):  
The first sentence of ¶ 73 should be deleted.

#### Guideline Range Determined by the Court:

Total Offense Level: 20

Criminal History Category: I

Imprisonment Range: 33 to 41 months

Supervised Release Range: 2 to 3 years

Fine Range: \$ 7,500 to \$ 75,000

Fine waived or below the guideline range because of inability to pay.

Total Amount of Restitution: \$ 161,785.88

Restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweighs the need to provide restitution to any victims, pursuant to 18 U.S.C. § 3663(d).

For offenses committed on or after September 13, 1994 but before April 23, 1996 that require the total amount of loss to be stated, pursuant to Chapters 109A, 110, 110A, and 113A of Title 18, restitution is not ordered because the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of a restitution order in the foreseeable future under any reasonable schedule of payments.

Partial restitution is ordered for the following reason(s):

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by the application of the guidelines.

**OR**

The sentence is within the guideline range, that range exceeds 24 months, and the sentence is imposed for the following reasons:

**OR**

The sentence departs from the guideline range:

upon motion of the government, as a result of defendant's substantial assistance.

for the following specific reason(s):

Because defendant's case fell outside the heartland of fraud cases due to his initial lack of criminal intent, see U.S.S.G. 5K2.0, and because of defendant's extraordinary family circumstances. See sentencing transcript for a fuller discussion of these departures.