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N.D. OF ALABAMA

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GJ # 18

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION

UNITED STATES OF AMERICA	)
	)
v.	)
	)
JAMES EWING RAY	)

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

THE DEFENDANT AND RELATED INDIVIDUALS AND ENTITIES

1. **JAMES EWING RAY** resided in Etowah County, Alabama, and was a marketer. **RAY** owned Integrity Medical, LLC, through which **RAY** marketed health care products and services, including prescription drugs from specialty pharmacies, durable medical equipment (DME), and electro-diagnostic testing. **RAY** was paid fees for prescriptions issued, DME ordered, and electro-diagnostic tests ordered by providers with whom **RAY** was associated.

2. John Hornbuckle resided in Huntsville, Alabama. He served as President and CEO of QBR, LLC (QBR), a company that provided electro-diagnostic testing. John Hornbuckle paid **RAY** to generate patient referrals to QBR

for electro-diagnostic testing.

3. Dr. Eric Beck resided in Huntsville, Alabama. Dr. Beck owned and operated Valley Center for Nerve Studies and Rehabilitation (Valley Center) and billed insurers for electro-diagnostic testing performed by QBR technicians.

4. Doctor 1 was a physician at a pain clinic in Rainbow City, Alabama. John Hornbuckle paid Doctor 1's pain clinic, through QBR, to refer patients to QBR for electro-diagnostic testing.

5. Watson Rx Solutions, Inc. (Watson Rx) was a specialty pharmacy located in Florence, Alabama. The owner of Watson Rx paid **RAY** to generate specialty drug prescriptions from Doctor 1 and others that would be billed to and paid by insurers.

6. Individual A resided in Etowah County, Alabama. During a certain period, Individual A was paid by **RAY**, through Integrity Medical, LLC, to work within Doctor 1's practice, and to generate prescriptions, DME orders, and electro-diagnostic test orders from Doctor 1. Individual A was paid a fee per prescription issued, DME ordered, and electro-diagnostic test ordered by Doctor 1 that was reimbursed by insurance.

QBR AND ELECTRO-DIAGNOSTIC TESTING

7. QBR was an Alabama limited liability company with its principal place of business in Huntsville, Alabama. It did business under the name Diagnostic

Referral Community. QBR was in the business of, among other things, conducting electro-diagnostic testing, including nerve conduction velocity tests (NCV tests) and sensory evoked potential tests (SEP tests).

8. An NCV test, also called a nerve conduction study, measures how fast an electrical impulse moves through a patient's nerve and is used to identify nerve damage. An NCV test is performed by running an electrical impulse through the nerve being tested.

9. An SEP test measures electrical activity in the brain in response to stimulation of sight, sound, or touch.

10. QBR employed technicians to perform NCV and SEP tests on patients referred to QBR by physicians, and QBR provided the testing equipment for those tests. QBR technicians went to the referring physician office to perform testing on patients there. In exchange for referring patients to QBR, QBR paid the referring physician or the referring physician's practice a fee for each patient referred for testing that was ultimately reimbursed by insurance.

11. QBR sent the NCV and SEP test results to Valley Center, which was operated by Dr. Beck. After tests were interpreted, a separate billing company, owned by Dr. Beck, billed each patient's insurance for the testing. Valley Center was then paid by the patient's insurance for the testing. Valley Center then paid money it received from insurance to QBR.

12. QBR paid marketers, including **RAY**, to recruit referring physicians to order QBR's NCV and SEP testing. **RAY** received a fee for each patient referred for testing by providers **RAY** was associated with once the test was reimbursed by insurance.

13. **RAY** paid a fee to Individual A for each such test ordered by Doctor 1.

14. Federal health care programs were ultimately billed more than $2.8 million for medically unnecessary electro-diagnostic testing ordered by Doctor 1.

PRESCRIPTION DRUGS

15. **RAY** marketed prescription drugs for certain specialty pharmacies.

16. Those pharmacies billed insurers for specialty drug prescriptions issued by providers with whom **RAY** was associated.

17. Those specialty drug prescriptions included compounded drugs. In general, "compounding" was a practice in which a licensed pharmacist or physician combined, mixed, or altered ingredients of a drug or multiple drugs to create a medication tailored, at least purportedly, to the needs of an individual patient. Compounded drugs were not approved by the U.S. Food and Drug Administration (FDA). The FDA did not verify the safety, potency, effectiveness, or manufacturing quality of compounded drugs. As an exception to the FDA approval requirement, compounded drugs could be prescribed by a physician when an FDA-approved drug did not meet the health needs of a particular patient. For example, if a patient was

allergic to a specific ingredient in an FDA-approved medication, such as a dye or a preservative, a compounded drug could be prepared excluding the substance that triggered an allergic reaction. Compounded drugs could also be prescribed when a patient could not consume a medication by traditional means, such as an elderly patient or child who could not swallow an FDA-approved pill and needed the drug in liquid form that was not otherwise available.

18. When billing for drugs dispensed, the pharmacies typically billed a health insurance plan through third-party administrators, such as pharmacy benefit managers (PBMs). These PBMs were "health care benefit programs," as defined in 18 U.S.C. § 24(b), and "federal health care programs," as defined in 42 U.S.C. § 1320a-7b(f). By contracting with PBMs, directly or indirectly, providers agreed to comply with all applicable laws, rules, and regulations, including all applicable federal and state anti-kickback laws, and all applicable prohibitions against fraud, waste, and abuse.

19. **RAY** marketed specialty drugs, including compounded drugs, for Watson Rx to providers including Doctor 1. **RAY** was paid a fee for each prescription issued by those providers that was paid for by insurance.

20. **RAY** in turn paid a fee to Individual A for each such prescription issued by Doctor 1.

21. Federal health care programs paid more than $1.4 million for medically unnecessary prescriptions written by Doctor 1.

DURABLE MEDICAL EQUIPMENT

22. **RAY** marketed DME for certain suppliers.

23. Those suppliers billed insurers for DME ordered by providers with whom **RAY** was associated.

24. Health care benefit programs, including Federal health care programs, provided coverage for certain DME, such as ankle braces, knee braces, back braces, elbow braces, wrist braces, and hand braces.

25. A claim for DME submitted to health care benefit programs qualified for reimbursement only if it was medically necessary for the treatment of the beneficiary's illness or injury and ordered by a licensed medical provider.

26. For certain DME products, Medicare promulgated additional requirements that a DME order must meet for an order to be considered "reasonable and necessary." For example, for off-the-shelf knee braces billed to Medicare under the Healthcare Common Procedures Coding System Codes L1833, an order would be deemed "not reasonable and necessary," and reimbursement would be denied, unless the ordering or referring physician documented the beneficiary's knee instability using an objective description of joint laxity determined through a physical examination of the beneficiary.

27. **RAY** marketed DME to providers including Doctor 1. **RAY** was paid a fee for DME ordered by those providers, including Doctor 1, that was paid for by insurance.

28. **RAY** in turn paid a fee to Individual A for each piece of DME ordered by Doctor 1.

29. Federal health care programs were billed more than $300,000 for medically unnecessary DME ordered by Doctor 1.

BILLING FOR MEDICAL SERVICES

30. Various public and private entities offer health insurance plans to cover medical care, pharmaceuticals, DME, diagnostic tests, and other services provided to individuals covered by those plans, who are often referred to as "beneficiaries" or "members."

31. The Medicare program is a federal health care benefit program providing benefits to persons over the age of 65 or disabled. Medicare is administered by the United States Department of Health and Human Services through its agency, the Centers for Medicare and Medicaid Services.

32. TRICARE is a health care benefit program of the United States Department of Defense (DOD) Military Health System that provides certain medical insurance coverage for DOD beneficiaries worldwide, including active-duty service

members, National Guard and Reserve members, retirees, their families, and survivors.

33. The Alabama Medicaid program provides medical insurance to low-income, blind, or disabled persons, or to members of families with dependent children or qualified pregnant women or children. The Medicaid program is jointly financed by the federal and state governments.

34. Blue Cross Blue Shield of Alabama (Blue Cross) is a private health insurance company that provides medical insurance in Alabama and elsewhere.

35. Medicare, TRICARE, Medicaid, and Blue Cross make insurance payments directly to a provider of medical services or goods, rather than to a beneficiary. This payment occurs after the provider submits the claim to the health care benefit program for payment, either directly or through a billing company. By enrolling in Medicare, TRICARE, Medicaid, or Blue Cross, and then submitting a claim for payment, a health care provider is certifying that services or goods being provided to a patient are provided in accordance with the requirements of the insurer.

36. Medicare, TRICARE, Medicaid, and Blue Cross will pay a medical provider only for medical services or goods that are medically necessary for the treatment of the patient being provided the services or goods.

37. In addition, Medicare, TRICARE, Medicaid, and Blue Cross will not pay for medical services or goods that were provided in violation of the federal Anti-Kickback Statute.

38. Medicare, TRICARE, Medicaid, and Blue Cross require providers to collect co-pays, typically a fixed amount, from patients, in part so that the patient is financially motivated to decline medically unnecessary or otherwise fraudulent services or goods.

39. Medicare, TRICARE, and Medicaid are "federal health care programs," as defined in 42 U.S.C. § 1320a-7b(f). Medicare, TRICARE, Medicaid, and Blue Cross are "health care benefit programs," as defined in 18 U.S.C. § 24(b).

COUNT ONE
Conspiracy to Pay and Receive Kickbacks
[18 U.S.C. § 371 (42 U.S.C. § 1320a-7b(b)(1))]

40. The factual allegations in Paragraphs 1 through 39 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

41. From at least in or about 2012 and continuing through in or about 2018 within Etowah County in the Northern District of Alabama and elsewhere, defendant

JAMES EWING RAY

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with others known and unknown to the United States:

a. to defraud the United States by impairing, impeding, obstructing, and defeating through deceitful and dishonest means, the lawful government functions of the United States Department of Health and Human Services in its administration and oversight of the Medicare program, in violation of 18 U.S.C. § 371;

b. to knowingly and willfully offer and pay remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, to: (A) any person to induce such person to refer an individual to a person for the furnishing and arranging for the furnishing of any item and service for which payment may be made in whole and in part under Federal health care programs, including Medicare; and (B) purchase, lease, order, and arrange for and recommend purchasing, leasing and ordering any good, facility, service and item for which payment may be made in whole and in part under Federal health care programs, including Medicare, in violation of 42 U.S.C. § 1320a-7b(b)(2); and

c. to knowingly and willfully solicit and receive remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, in return for: (A) referring an

individual to a person for the furnishing and arranging for the furnishing of an item and service for which payment may be made in whole and in part under Federal health care programs, including Medicare; and (B) purchasing, leasing, ordering, and arranging for and recommending purchasing, leasing and ordering any good, facility, service and item for which payment may be made in whole and in part under Federal health care programs, including Medicare, in violation of 42 U.S.C. § 1320a-7b(b)(1).

Purpose of the Conspiracy

42. It was the purpose of the conspiracy for defendant **RAY** and his co-conspirators to unlawfully enrich and benefit themselves by: (1) offering, paying, soliciting, and receiving kickbacks and bribes to ensure that orders for electro-diagnostic testing, including NCV and SEP testing, for Medicare, TRICARE, and Medicaid beneficiaries would be referred to and performed by QBR; (2) offering, paying, soliciting, and receiving kickbacks and bribes to ensure that specialty drug prescriptions for Medicare, TRICARE, and Medicaid beneficiaries would be issued by providers to be dispensed by Watson Rx and other pharmacies with whom **RAY** was associated; (3) offering, paying, soliciting, and receiving kickbacks and bribes to ensure that DME for Medicare, TRICARE, and Medicaid beneficiaries would be

ordered by providers to be supplied by DME suppliers with whom **RAY** was associated; (4) submitting and causing to be submitted claims to Medicare, TRICARE, and Medicaid for these items and services based on these referrals; (5) concealing and disguising the payment, receipt, and transfer of illegal kickbacks and the proceeds of the fraud; and (6) using proceeds of the scheme for their personal use and benefit and the use and benefit of others.

Manner and Means

The manner and means by which defendant **RAY** and his co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

43. It was a part of the conspiracy that John Hornbuckle offered and paid providers, including Doctor 1's pain clinic, kickbacks in the form of direct and indirect remuneration in exchange for and for the purpose of inducing referrals for medically unnecessary electro-diagnostic testing. For example, Hornbuckle caused QBR to pay providers a flat fee for each patient that provider referred to QBR for testing once that testing was reimbursed by insurers, including by Federal health care programs. These payments were disguised as hourly payments for the provider's time and the time of the provider's staff, but the provider was actually compensated on a per-patient basis.

44. It was a part of the conspiracy that providers solicited and received kickbacks in the form of direct and indirect remuneration in exchange for and for the purpose of inducing referrals for medically unnecessary electro-diagnostic testing.

45. It was a part of the conspiracy that **RAY** marketed this arrangement to providers, including Doctor 1's pain clinic.

46. It was a part of the conspiracy that, in exchange, Hornbuckle paid **RAY** a flat fee for each patient that a provider associated with **RAY** referred to QBR for testing once that testing was reimbursed by insurers, including by Federal health care programs.

47. It was a part of the conspiracy that the owner of Watson Rx offered and paid **RAY** a fee for each prescription issued by a provider to whom **RAY** marketed, once that prescription was reimbursed by insurers, including by Federal health care programs.

48. It was a part of the conspiracy that certain DME suppliers paid **RAY** a fee for DME ordered by providers to whom **RAY** marketed, once the DME were reimbursed by insurers, including by Federal health care programs.

49. It was a part of the conspiracy that **RAY** paid Individual A a flat fee for each electro-diagnostic test and piece of DME ordered, and each specialty prescription issued, by Doctor 1, once those tests, DME, and prescriptions were reimbursed by insurers, including by Federal health care programs.

Overt Acts

In furtherance of the conspiracy and to accomplish its objects and purpose, at least one of the co-conspirators committed and caused to be committed, in the Northern District of Alabama and elsewhere, at least one of the following overt acts, among others:

50. On or about October 11, 2017, QBR paid a $3,241.77 kickback to **RAY** for electro-diagnostic testing performed by QBR on patients referred by providers associated with **RAY**.

51. On or about January 11, 2018, QBR paid a $1,052.49 kickback to **RAY** for electro-diagnostic testing performed by QBR on patients referred by providers associated with **RAY**.

52. On or about January 5, 2018, QBR paid a $7,100 kickback to Doctor 1's pain practice for electro-diagnostic tests ordered by Doctor 1 that had been reimbursed by insurance.

53. On or about December 4, 2017, Watson Rx paid **RAY** a $4,895 kickback for prescriptions issued by providers with whom **RAY** was associated that had been reimbursed by insurance.

54. On or about January 4, 2018, Watson Rx paid **RAY** a $3,544 kickback for prescriptions issued by providers with whom **RAY** was associated that had been reimbursed by insurance.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH FIVE
[42 U.S.C. § 1320a-7b(b)(1) and 18 U.S.C. § 2]

55. The factual allegations in Paragraphs 1 through 54 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

56. On or about the dates set forth below, with respect to each count, in the Northern District of Alabama and elsewhere, the defendant, **JAMES EWING RAY**, did knowingly and willfully solicit and receive remuneration, including kickbacks and bribes, directly and indirectly, overtly and covertly, in cash and in kind, as set forth below, in return for: (A) referring an individual to a person for the furnishing and arranging for the furnishing of an item and service for which payment may be made in whole and in part under Federal health care programs; and (B) arranging for and recommending the order of any good, facility, service and item for which payment may be made in whole and in part under Federal health care programs, in violation of 42 U.S.C. § 1320a-7b(b)(1).

57. The allegations of Paragraphs 55 and 56 of this Indictment are re-alleged for each of Counts 2 through 5 as though fully set forth therein.

COUNT	APPROX. AMOUNT	DESCRIPTION
2	$3,241.77	Deposit from QBR, LLC, to Integrity Medical account at Alabama Teachers Credit Union ending in x407, dated October 11, 2017
3	$1,052.49	Deposit from QBR, LLC, to Integrity Medical account at Alabama Teachers Credit Union ending in x407, dated January 11, 2018
4	$4,895	Check number 5481, drawn on Watson Rx account, payable to **RAY**, dated December 4, 2017
5	$3,544	Check number 5560, drawn on Watson Rx account, payable to **RAY**, dated January 4, 2018

All in violation of 42 U.S.C. § 1320a-7b(b)(1), and 18 U.S.C. § 2.

COUNT SIX
Healthcare Fraud Conspiracy
[18 U.S.C. § 1349 (18 U.S.C. § 1347)]

58. The factual allegations in Paragraphs 1 through 57 of this Indictment are realleged and incorporated as though fully set forth herein.

59. From at least in or about 2012 and continuing through in or about 2018 within Etowah County in the Northern District of Alabama and elsewhere, defendant

JAMES EWING RAY

did knowingly and willfully conspire, combine, confederate and agree with others known and unknown to the Grand Jury to execute a scheme and artifice to defraud health care benefit programs affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, Medicaid, TRICARE, Blue Cross, and others, and to obtain, by means of materially false and fraudulent pretenses,

representations and promises, money and property owned by, and under the custody and control of, said health care benefit programs, in connection with the delivery of and payment for health care benefits, items and services, in violation of 18 U.S.C. § 1347.

Purpose of the Conspiracy

60. It was the purpose of the conspiracy for the defendant and his co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to Medicare, Medicaid, TRICARE, Blue Cross, and others for claims for items and services that were: (i) medically unnecessary, (ii) not eligible for reimbursement, (iii) not provided as represented, and (iv) based on kickbacks and bribes; (b) concealing the submission of false and fraudulent claims to Medicare, Medicaid, TRICARE, Blue Cross, and others and the receipt and transfer of the proceeds from the fraud; and (c) diverting proceeds of the fraud for the personal use and benefit of the defendant and his co-conspirators.

Manner and Means

The manner and means by which the defendant and his co-conspirators sought to accomplish the object and purpose of the conspiracy included, among others, the following:

61. It was a part of the conspiracy that **RAY** received kickbacks in

exchange for and for the purpose of inducing providers to refer medically unnecessary electro-diagnostic testing to QBR.

62. It was a part of the conspiracy that Hornbuckle offered and paid kickbacks to **RAY** and other sales representatives for that purpose.

63. It was a part of the conspiracy that **RAY** marketed this kickback arrangement to Doctor 1 and other providers.

64. It was a part of the conspiracy that Dr. Beck billed health care benefit programs, including Medicare, Medicaid, TRICARE, Blue Cross, and others, for medically unnecessary electro-diagnostic testing.

65. It was a part of the conspiracy that QBR and Dr. Beck failed to collect mandatory patient co-pays due for electro-diagnostic testing to incentivize patients not to decline the medically unnecessary procedures.

66. It was a part of the conspiracy that Dr. Beck improperly hid from insurers who was performing and interpreting the results of the electro-diagnostic testing.

67. It was a part of the conspiracy that, in total, health care benefit programs, including Medicare, Medicaid, TRICARE, Blue Cross, and others, were billed over $20 million for medically unnecessary electro-diagnostic testing performed by QBR on patients referred by providers who had been paid kickbacks by QBR.

68. It was a part of the conspiracy that **RAY** received kickbacks in exchange for and for the purpose of inducing providers to issue medically unnecessary prescriptions for specialty medications, including compounded medications, to be filled by Watson Rx Solutions.

69. It was a part of the conspiracy that the owner of Watson Rx Solutions paid **RAY** kickbacks for this purpose.

70. It was a part of the conspiracy that Doctor 1 issued medically unnecessary prescriptions for specialty medications that were billed to health care benefit programs, including Medicare, Medicaid, TRICARE, and Blue Cross.

71. It was a part of the conspiracy that Watson Rx Solutions failed to collect mandatory patient co-pays due for those prescriptions to incentivize patients not to decline the medically unnecessary prescriptions.

72. It was a part of the conspiracy that, in total, health care benefit programs, including Medicare, Medicaid, TRICARE, Blue Cross, and others, were billed and paid millions of dollars for medically unnecessary prescriptions issued by providers, including Doctor 1, to whom **RAY** marketed, and for which **RAY** was paid kickbacks.

73. It was a part of the conspiracy that **RAY** received kickbacks in exchange for and for the purpose of inducing providers to order medically unnecessary DME.

74. It was a part of the conspiracy that, in total, health care benefit programs, including Medicare, Medicaid, TRICARE, Blue Cross, and others, were billed more than $1 million for medically unnecessary DME ordered by providers, including Doctor 1, to whom **RAY** marketed, and for which **RAY** was paid kickbacks.

All in violation of 18 U.S.C. § 1349.

FIRST NOTICE OF FORFEITURE
18 U.S.C. § 982(a)(7)

1. The allegations in COUNTS ONE through SIX of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeiture pursuant to 18 U.S.C. § 982(a)(7).

2. Upon conviction of the offense set forth in COUNTS ONE through SIX of this Indictment, the defendant, **JAMES EWING RAY**, shall forfeit to the United States of America, pursuant to 18 U.S.C. § 982(a)(7), any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.

3. The property to be forfeited includes, but is not limited to, a forfeiture money judgment in United States currency, representing the amount of proceeds obtained, controlled, and benefited from as a result of the offense alleged.

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

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value; or

e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1) and 28 U.S.C. § 2461(c).

All pursuant to 18 U.S.C. § 982(a)(7) and 28 U.S.C. § 2461(c).

A TRUE BILL

/s/ Electronic Signature

_____

FOREPERSON OF THE GRAND JURY

PRIM F. ESCALONA
United States Attorney

/s/ Electronic Signature

_____

JOHN B. WARD
Assistant United States Attorney

/s/ Electronic Signature

_____

DON B. LONG, III
Assistant United States Attorney