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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

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11 UNITED STATES OF AMERICA,) CRIMINAL INDICTMENT
12)
PLAINTIFF,)
13 VS.) 2:11-CR- 166
14)
DIPAK DESAI, M.D., and)
TONYA RUSHING,) VIOLATIONS:
15) 18 U.S.C. § 371 - Conspiracy
DEFENDANTS.) 18 U.S.C. § 1347 - Health Care Fraud
16) 18 U.S.C. § 982(a)(7) - Forfeiture

17 **THE GRAND JURY CHARGES THAT:**

18 At all times relevant:

19 **Introduction**

20 1. Defendant **DESAI**, a physician and the owner of the Endoscopy Center of Southern
21 Nevada ("ECOSN"), schemed with defendant **RUSHING**, his Chief Operating Officer, to
22 systematically overcharge the federal Medicare program and other health insurance companies for
23 anesthesia billing. **DESAI** and **RUSHING** caused ECOSN to overstate significantly the amount of
24 time its certified registered nurse anesthetists ("CRNAs") spent with patients on a given procedure.

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Persons and Entities

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2 2. Defendant **DIPAK DESAI** (“**DESAI**”) was a physician licensed by the state of
3 Nevada, which license he voluntarily surrendered in February 2010. He specialized in
4 gastroenterology, the branch of medicine that studies the digestive system and its disorders.

5 3. **DESAI** hired defendant **TONYA RUSHING** (“**RUSHING**”) in January 2000 to help
6 him run the business side of his medical practices. In 2005, **DESAI** promoted her to the position of
7 Chief Operating Officer (“**COO**”). Together, **RUSHING** and **DESAI** jointly ran the practices’ day-to-
8 day operations.

9 4. The Gastroenterology Center of Nevada (“**GCON**”) was a medical practice
10 specializing in gastroenterology owned by **DESAI**. Its original and principal location was on Shadow
11 Lane in Las Vegas.

12 5. **ECOSN** was an ambulatory surgical center, also owned by **DESAI**, at which
13 gastroenterological procedures were performed. Procedures were performed at two locations: (1) the
14 same building at Shadow Lane that housed **GCON** (the “Shadow Lane clinic”); and (2) a clinic located
15 at Burnham Road in Las Vegas (the “Desert Shadow clinic”; collectively the clinics will be referred
16 to as “**ECOSN**”). The fraud alleged to have taken place in this Indictment occurred at both of
17 **ECOSN**’s locations.

18 6. Physicians primarily performed two procedures at the **ECOSN** clinics, an upper
19 endoscopy and a colonoscopy. An upper endoscopy involves the insertion of a flexible video camera
20 tube, about three feet long, through the patient’s mouth, to inspect the esophagus, the stomach and the
21 first section of the small intestine, known as the duodenum. A colonoscopy, the more complicated of
22 the two procedures, is the insertion of a tube, longer and thicker than that used in an upper endoscopy,
23 through the patient’s rectum, to the end of the colon, looking for polyps, tumors or other indications
24 of disease.

25 7. The federal Medicare program (“**Medicare**”), the state Medicaid program
26 (“**Medicaid**”) and Blue Cross / Blue Shield, Aetna, United Healthcare, Anthem, the Hotel and

1 Restaurant Employees International Union Welfare Fund ("Culinary Fund"), the Teamster's Security
2 Fund for Southern Nevada, Regence Blue Cross and Pacificare (collectively "the Private Insurers")
3 received and paid appropriate claims for reimbursement for the provision of care to their insureds.
4 Medicare, Medicaid and the Private Insurers were health care benefit programs as that term is defined
5 in Title 18, United States Code, Section 24, and as that term is used in Title 18, United States Code,
6 Section 1347.

7 **Propofol and the CRNA Model**

8 8. Both an upper endoscopy and a colonoscopy require a dosage of a quick acting
9 anesthetic known as Propofol (brand name - Diprivan).

10 9. At ECOSN, propofol was administered intravenously by a CRNA. A CRNA is an
11 advance practice nurse, licensed by the State of Nevada, who has acquired special education and
12 training in the field of anesthesia.

13 10. In approximately 2002, **DESAI** decided to hire CRNAs to practice at ECOSN. Prior
14 to that time, he relied on anesthesiologists (medical doctors) for anesthesia services. **DESAI** sought
15 two benefits from hiring CRNA's and eschewing the use of anesthesiologists: (1) ECOSN would not
16 be limited to scheduling procedures only when the anesthesiologists were available; and (2) ECOSN
17 could bill for the anesthesia services performed by the CRNAs.

18 11. From 2002 on, **DESAI** and **RUSHING** hired approximately eight CRNA's to work
19 at ECOSN's two locations. They were paid a salary. Thus, to the extent insurance payments for
20 anesthesia services performed by CRNAs exceeded their salaries, ECOSN, **DESAI** and **RUSHING**
21 profited.

22 **Billing Codes for Anesthesiology Services Attendant to Endoscopy Procedures**

23 12. Medicare, Medicaid and the Private Insurers reimburse providers, such as GCON, for
24 the administration of anesthesia attendant to upper endoscopies and colonoscopies.

25 . . .

26 . . .

1 13. Current Procedural Terminology (“CPT”) billing code 00740 relates to charges for
2 anesthesia provided during upper endoscopy procedures. It is defined as “[a]nesthesia for upper
3 gastrointestinal endoscopic procedures, endoscope introduced proximal to duodenum.”

4 14. CPT 00810 relates to charges for anesthesia provided during colonoscopies. It is
5 defined as “[a]nesthesia for lower intestinal endoscopic procedures, endoscope introduced distal to
6 duodenum.”

7 15. For both codes, CPT 00740 and CPT 00810, anesthesia is billed on the basis of how
8 much face-to-face time the provider, such as a CRNA, spends with a patient. Anesthesia time begins
9 when the provider, such as a CRNA begins to prepare the patient for the administration of anesthesia
10 and ends when the provider, such as a CRNA, no longer is in the personal attendance of the patient.

11 16. Anesthesia time is calculated on the basis of fifteen (15) minute increments known
12 as “units.” For most insurers, time less than fifteen minutes is rounded up to the next whole unit. For
13 most insurers, both codes, CPT 00740 and CPT 00810, include a base charge of 5.0 units, which is
14 added to the time units to calculate the billed amount. (Nevada Medicaid includes a base charge of
15 6.0 units).

16 A. For example, for most insurers, if the CRNA spends 13 minutes with a patient,
17 ECOSN is entitled to bill six (6) units - five base units plus one unit for time - for those anesthesia
18 services.

19 B. On average, one unit is approximately \$70, notwithstanding slight variations
20 among Medicare, Medicaid and the Private Insurers.

21 C. Any payments for anesthesia services are made in addition to payments the
22 Medicare, Medicaid and the Private Insurers may have made to the physician for performing the
23 procedure itself.

24 . . .
25 . . .
26 . . .

1 COUNT ONE

2 Conspiracy

(Title 18, United States Code, Sections 371)

3 17. The Grand Jury further charges and incorporates by reference the allegations of
4 paragraphs 1 through 16 above as though fully set forth herein.

5 18. From in or about January 2005 and continuing through on or about February 2008,
6 in the state and federal District of Nevada,

7 **DIPAK DESAI, M.D., and**
8 **TONYA RUSHING,**

9 defendants herein, knowingly and willfully conspired, confederated, and agreed with each other, and
10 others known and unknown to the Grand Jury, to devise and participate in a scheme and artifice to
11 defraud a health care benefit program, that is, Medicare, Medicaid and the Private Insurers, and to
12 obtain by means of materially false and fraudulent pretenses, representations, and promises, money
13 owned by and under the custody and control of Medicare, Medicaid and the Private Insurers, in
14 connection with the delivery of, and payment for, health care benefits, items and services.

15 **The Scheme and Artifice to Defraud**

16 19. It was part of the scheme and artifice to defraud that **DESAI** and **RUSHING** caused
17 fraudulent bills to be submitted to Medicare, Medicaid and the Private Insurers that falsely inflated the
18 amount of anesthesia time spent by the CRNA's on the procedures performed at ECOSN.

19 20. As part of the scheme and artifice to defraud, **DESAI** and **RUSHING** instructed the
20 CRNA's and caused them to be instructed to falsely and fraudulently list at least thirty-one (31)
21 minutes of anesthesia time on the Anesthesia Record they maintained for each procedure, even though
22 the CRNAs did not spend close to that amount face-to-face time with the patient, as **DESAI** and
23 **RUSHING** then and there well knew.

24 A. **DESAI** imposed intense pressure on all ECOSN employees to schedule and
25 treat as many patients as possible in a given day. CRNAs at ECOSN's Shadow Lane clinic regularly
26 performed anesthesia on between sixty (60) and eighty (80) patients per day. As a result, the CRNAs

1 almost never spent thirty-one (31) or more minutes with a patient, and could not have possibly done
2 so, given the number of patients each day they had to treat.

3 B. Due to **DESAI**'s practice of performing colonoscopies and upper endoscopies
4 in an unreasonably short amount of time, and his instruction to other physicians at ECOSN to do the
5 same, he well knew that the CRNA's were spending less than thirty-one (31) minutes of face-to-face
6 time with each patient.

7 21. As part of the scheme and artifice to defraud, **DESAI** and **RUSHING** instructed the
8 individuals responsible for insurance billing to rely upon the CRNAs Anesthesia Record – the medical
9 record **DESAI** and **RUSHING** had instructed the CRNA's to falsify – when preparing claims for
10 reimbursement to be submitted to Medicare, Medicaid and the Private Insurers.

11 22. As part of the scheme and artifice to defraud, the CRNAs created and inserted false
12 vital signs, including blood pressure and oxygen saturation, in their Anesthesia Records to make it
13 appear as if they were spending at least thirty-one (31) minutes with each patient.

14 23. As part of the scheme and artifice to defraud, **DESAI** and **RUSHING** instituted a
15 policy at ECOSN prohibiting the beneficiaries of one of the Private Insurers from being scheduled
16 back to back on the same day. This Private Insurer required that the actual anesthesia time, or the time
17 designated for anesthesia, be submitted along with the claims for reimbursement. **DESAI** and
18 **RUSHING** instructed their employees not to schedule patients of this Private Insurer back-to-back in
19 order to conceal from this Private Insurer the fact that each claim for reimbursement exceeded thirty-
20 one (31) minutes.

21 24. As part of the scheme and artifice, **DESAI** and **RUSHING** created a separate
22 company, owned by **RUSHING**, to handle the billing for anesthesia services rendered by the CRNAs.
23 As a result, **RUSHING** simultaneously helped manage GCON and ECOSN and stood to profit
24 handsomely from CRNA billings.

25 A. **RUSHING**'s company received a percentage of all money collected for
26 anesthesia services rendered by CRNAs, giving her a financial incentive to inflate anesthesia time.

1 ECOSN, consistent with the intense pressure he placed on GCON employees to schedule and perform
2 more procedures.

3 F. In or about March 2006 and January 2007, **DESAI** circulated memoranda to
4 GCON employees instructing them to increase "productivity." In one memorandum, addressed to
5 **RUSHING**, **DESAI** stated, "I want you to understand my priority for the next one year is . . . to have
6 a volume of 70 patients scheduled every day, I cannot afford on and off drops in that volume . . . I am
7 very upset, I need to get something done for this."

8 G. Between 2002 and 2008, **DESAI** and **RUSHING** directly instructed the
9 CRNA's working at ECOSN to list more than thirty (30) minutes of face-to-face anesthesia time on
10 each patient's Anesthesia Record.

11 H. In February and March 2008, **DESAI** and **RUSHING** instructed the CRNAs
12 and HBS's billers to cease their practice of listing and billing for more than thirty (30) minutes for each
13 procedure. Instead, **DESAI** and **RUSHING** instructed the CRNAs and HBS's billers that anesthesia
14 time was to begin when the CRNA first started talking to a patient and end when the patient left the
15 procedure room. After this instruction, anesthesia times billed to Medicare, Medicaid and the Private
16 Insurers by HBS plummeted.

17 I. All of the acts set forth in Counts Two through Twenty-Six below, hereby
18 incorporated herein as overt acts.

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

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21 **COUNTS TWO THROUGH TWENTY-SIX**
22 Health Care Fraud
(Title 18, United States Code, Sections 1347 and 2)

23 26. The Grand Jury further charges and incorporates by reference the allegations of
24 paragraphs 1 through 16 and 18 through 25, above, as though fully set forth herein.

25 27. On or about the date of each count listed below, in the District of Nevada and
26 elsewhere,

**DIPAK DESAI, M.D., and
TONYA RUSHING,**

defendants herein, aided and abetted by each other, for the purposes of executing the scheme and artifice described above, knowingly and willfully submitted and caused to be submitted to Medicare, Medicaid and the Private Insurers, claims for reimbursement for anesthesia services which **DESAI** and **RUSHING** knew were overstated, and thereby obtained monies owned by and under the custody and control of Medicare, Medicaid and the Private Insurers as set forth below, with each submission constituting a separate violation of Title 18, United States Code, Sections 1347 and 2:

Count	Patient	Date of Service	CPT Code Billed	Insurer
2	R.C.	July 28, 2005	CPT 00740	Blue Cross / Blue Shield
3	H.S.	October 3, 2005	CPT 00810	Blue Cross / Blue Shield
4	C.M.	May 11, 2006	CPT 00740	Medicaid
5	L.G.	May 15, 2006	CPT 00810	United Healthcare
6	L.O.	June 7, 2006	CPT 00810	United Healthcare
7	E.G.	October 26, 2006	CPT 00810	Medicaid
8	D.P.	November 1, 2006	CPT 00740	Teamsters Security Fund
9	S.C.	November 22, 2006	CPT 00810	Aetna
10	D.Mu.	April 2, 2007	CPT 00740	Anthem
11	N.D.	April 9, 2007	CPT 00740	Anthem
12	K.W.	May 9, 2007	CPT 00740	Medicare
13	T.P.	May 16, 2007	CPT 00810	Regence Blue Cross
14	R.M.	May 23, 2007	CPT 00810	Medicare
15	D.Ma.	May 24, 2007	CPT 00740	Culinary Fund
16	A.M.	June 5, 2007	CPT 00810	Aetna
17	R.D.	June 27, 2007	CPT 00810	United Healthcare

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18	D.D.	July 9, 2007	CPT 00810	Medicaid
19	B.C.	September 10, 2007	CPT 00740	Medicare
20	M.R.	November 5, 2007	CPT 00810	Culinary Fund
21	D.A.	November 14, 2007	CPT 00740	Aetna
22	V.M.	November 19, 2007	CPT 00740	Blue Cross / Blue Shield
23	B.T	January 10, 2008	CPT 00740	Medicare
24	E.S.	January 29, 2008	CPT 00810	Medicare
25	R.H.	February 1, 2008	CPT 00740	Culinary Fund
26	C.C.	February 8, 2008	CPT 00740	Blue Cross / Blue Shield

FORFEITURE ALLEGATION
Healthcare Fraud

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3 1. The allegations contained in Counts One through Twenty-Six of this Criminal Indictment
4 are hereby realleged and incorporated herein by reference for the purpose of alleging forfeiture
5 pursuant to Title 18, United States Code, Section 982(a)(7).

6 2. Upon conviction of the felony offenses charged in Counts One Through Twenty-Six of
7 this Criminal Indictment,

DIPAK DESAI, M.D., and
TONYA RUSHING,

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10 defendants herein, shall forfeit to the United States of America, any property, real or personal, that
11 constitutes or is derived, directly or indirectly, from gross proceeds traceable to the violations of Title
12 18, United States Code, Sections 1347, or Title 18, United States Code, Section 371, conspiracy to
13 violate such offenses, an *in personam* criminal forfeiture money judgment up to \$8,100,000.00 in
14 United States Currency.

15 3. If any property subject to forfeiture pursuant to Title 18, United States Code, Section
16 982(a)(2)(A), as a result of any act or omission of the defendants-

- 17 a. cannot be located upon the exercise of due diligence;
18 b. has been transferred or sold to, or deposited with, a third party;
19 c. has been placed beyond the jurisdiction of the court;
20 d. has been substantially diminished in value; or
21 e. has been commingled with other property that cannot be divided without difficulty;

22 it is the intent of the United States of America, pursuant to Title 18, United States Code, Section
23 982(b)(1) and Title 21, United States Code, Section 853(p), to seek forfeiture of any properties of the
24 defendants up to \$8,100,000.00 in United States Currency.

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