



ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

CASE NO. 13-CR-20158

v.

HON. NANCY G. EDMUNDS

D-5 JOSE MERCADO-FRANCIS, M.D.,

VIO: 18 U.S.C. § 1349

Defendant.

Maximum Sentence: 10 years
and/or 250,000 fine

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RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, Defendant Jose Mercado-Francis, M.D., and the United States agree as follows:

1. GUILTY PLEA

A. Count of Conviction

Defendant will enter a plea of guilty to Count 1 of the Superseding Information, which charges conspiracy to commit health care fraud, and for which the penalty is a statutory maximum of 10 years' imprisonment, a fine that is the greater of \$250,000 or twice the pecuniary gain or loss pursuant to 18 U.S.C. § 3571(d), and a three-year term of supervised release.

B. Elements of Offense

The elements of Count 1 are:

- First: That two or more persons, in some way or manner, came to a mutual understanding to try and accomplish a common and unlawful plan, as charged in the Superseding Information; and
- Second: That the defendant, knowing the unlawful purpose of the plan, willfully joined in it.

As set forth in the Superseding Information, Defendant is charged with conspiring to violate the health care fraud statute, 18 U.S.C. § 1347, which makes it a Federal offense for anyone, in connection with the delivery of any health care benefits, items, or services, to knowingly and willfully execute, or attempt to execute, a scheme or artifice: (1) to defraud any health care benefit program; or (2) to obtain, by means of materially false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program.

C. Factual Basis for Guilty Plea

The following facts are a sufficient and accurate basis for Defendant's guilty plea:

Beginning in approximately September 2009, and continuing through approximately February 2012, Defendant Mercado-Francis willfully conspired with others to commit health care fraud, in violation of 18 U.S.C. § 1349. Medicare is a "health care benefit program" of the United States, as defined in 18 U.S.C. § 24. Furthermore, Medicare is a health care benefit program affecting commerce.

Beginning in or around September 2009, Mercado-Francis was employed by co-conspirator Dr. Hicham Elhorr (“Elhorr”) at a company known as House Calls Physicians, PLLC (“HCP”). HCP was located at 6842 Park Avenue, Allen Park, Michigan, and purported to provide physician home visits to Medicare beneficiaries. Mercado-Francis’s medical license was revoked and he was not licensed to practice medicine in the State of Michigan at the time Elhorr hired him in September 2009, which Elhorr knew. Elhorr and Mercado-Francis agreed that Mercado-Francis would perform home visits and prepare medical documentation that licensed physicians, such as Elhorr and co-conspirator Dr. Ali Elhorr (“Ali”), would sign as if they had provided the care when, in fact, they had not treated the patients. Mercado-Francis’s visits to patients’ homes were then billed to Medicare as if licensed physicians, such as Elhorr and Ali, had performed physician home visits.

Mercado-Francis knew the medical documents he prepared for Elhorr’s and other co-conspirator physicians’ signatures would be used to support false claims to Medicare.

From in or around May 2008, through in or around October 2012, HCP billed Medicare approximately \$11.5 million for the cost of home physician visits. Of that amount, HCP billed approximately \$1,133,171.76 to Medicare for fraudulent physician services claims for visits actually performed by Mercado-

Francis, an unlicensed individual. Of that amount, Medicare paid HCP approximately \$648,659.64.

The preceding statement is a summary, made for the purpose of providing the Court with a factual basis for Defendant's guilty plea to the charge against him. It does not include all of the facts known to him concerning criminal activity in which he and others engaged. Defendant makes this statement knowingly and voluntarily and because he is in fact guilty of the crime charged.

2. SENTENCING GUIDELINES

A. Standard of Proof

The Court will find sentencing factors by a preponderance of the evidence.

B. Agreed Guideline Range

There are no sentencing guideline disputes. Except as provided below, Defendant's guideline range is 57-71 months' imprisonment, as set forth on the attached worksheets. If the Court finds:

- (a) that Defendant's criminal history category is higher than reflected on the attached worksheets; or
- (b) that the offense level should be higher because, after pleading guilty, Defendant made any false statement to or withheld information from his probation officer; otherwise demonstrated a lack of

acceptance of responsibility for her offense(s); or obstructed justice or committed any crime,

and if any such finding results in a guideline range higher than 57-71 months' imprisonment, the higher guideline range becomes the agreed range. If, however, the Court finds that Defendant is a career offender, an armed career criminal, or a repeat and dangerous sex offender as defined under the sentencing guidelines or other federal law, and that finding is not already reflected in the attached worksheets, this paragraph does *not* authorize a corresponding increase in the agreed range.

Neither party may take a position concerning the applicable guidelines that is different than any position of that party as reflected in the attached worksheets, except as necessary to the Court's determination regarding subsections (a) and (b), above.

3. SENTENCE

The Court will impose a sentence pursuant to 18 U.S.C. § 3553, and in doing so must consider the sentencing guideline range.

A. Imprisonment

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the government makes a non-binding recommendation that the sentence of imprisonment in this

case be no more than the top of the sentencing guideline range as determined by Paragraph 2B.

B. Supervised Release

A term of supervised release, if imposed, follows the term of imprisonment. There is no agreement on supervised release. In other words, the Court may impose any term of supervised release up to the statutory maximum term, which in this case is 3 years. The agreement concerning imprisonment described above in Paragraph 3A does not apply to any term of imprisonment that results from any later revocation of supervised release.

C. Special Assessment

Defendant will pay a special assessment of \$100 and must provide the government with a receipt for the payment before sentence is imposed.

D. Fine

The Court may impose a fine in any amount up to \$250,000, or twice the pecuniary gain or loss, pursuant to 18 U.S.C. § 3571(d).

E. Restitution

The Court shall order restitution to every identifiable victim of Defendant's offense. The victims and the full amounts of restitution in this case are as follows:

U.S. Department of Health and Human Services: \$648,659.64.

as more fully described in #12 *DE*
MCT
NR

4. COOPERATION AGREEMENT

The written cooperation agreement between Defendant and the government entered into on this date is part of this agreement.

5. USE OF WITHDRAWN GUILTY PLEA

If the Court allows Defendant to withdraw his guilty plea for a “fair and just reason,” pursuant to Fed. R. Crim. P. 11(d)(2)(B), Defendant waives his rights under Fed. R. Evid. 410, and the government may use his guilty plea, any statement made under oath at the plea hearing, and the factual basis statement in this Plea Agreement, against him in any proceeding.

6. EACH PARTY’S RIGHT TO WITHDRAW FROM THIS AGREEMENT

The government may withdraw from this agreement if the Court finds the correct guideline range to be different than is determined by Paragraph 2B.

Defendant may withdraw from this agreement, and may withdraw his guilty plea, if the Court decides to impose a sentence higher than the maximum allowed by Part 3. This is the only reason for which Defendant may withdraw from this agreement. The Court shall advise Defendant that, if he does not withdraw his guilty plea under this circumstance, the Court may impose a sentence greater than the maximum allowed by Part 3.

7. WAIVER OF RIGHT TO APPEAL

Defendant waives any right he may have to appeal his conviction. If the sentence imposed does not exceed the maximum allowed by Part 3 of this agreement, Defendant waives any right he has to appeal his sentence. If the sentence imposed is within the guideline range determined by Paragraph 2B, the government agrees not to appeal the sentence, but retains its right to appeal any sentence below that range.

8. CONSEQUENCES OF VACATION OF CONVICTION/WITHDRAWAL OF PLEA

If Defendant is allowed to withdraw his guilty plea or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this agreement. If additional charges are filed against Defendant within six months after the date the order vacating Defendant's conviction or allowing him to withdraw his guilty plea becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea or to any conduct reflected in the attached worksheets, Defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

9. EXCLUSION FROM THE MEDICARE PROGRAM AND OTHER FEDERAL HEALTH CARE PROGRAMS

Defendant understands and acknowledges that, as a result of this plea, Defendant will be excluded from Medicare, Medicaid, and all Federal health care programs. Defendant agrees to complete and execute all necessary documents provided by any department or agency of the federal government, including but not limited to the United States Department of Health and Human Services, to effectuate this exclusion within 60 days of receiving the documents. This exclusion will not affect Defendant's right to apply for and receive benefits as a beneficiary under any Federal health care program, including Medicare and Medicaid.

10. PARTIES TO PLEA AGREEMENT

Unless otherwise indicated, this agreement does not bind any government agency except the United States Department of Justice, Criminal Division, Fraud Section and the United States Attorney's Office for the Eastern District of Michigan.

11. SCOPE OF PLEA AGREEMENT

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. It supersedes all other promises, representations, understandings, and agreements between the parties concerning the subject matter of this plea agreement that are made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government

to Defendant or to the attorney for Defendant at any time before Defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

Notwithstanding the previous paragraph, if Defendant has entered into a proffer agreement in writing or a cooperation agreement in writing with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement unless Defendant fails to plead guilty, in which case Defendant waives the protections afforded by his proffer and cooperation agreements.

12. **FORFEITURE**

Pursuant to 18 U.S.C. § 982(a)(7) and/or 18 U.S.C. § 981(a)(1)(C) with 28 U.S.C. § 2461(c), Defendant agrees to forfeit to the United States his interest in all property, real and personal, which constitutes or is derived, directly or indirectly, from gross proceeds traceable to Defendant's conspiracy to commit health care fraud, in violation of 18 U.S.C. § 1349, as charged in Count One of the Superseding Information.

Forfeiture Money Judgment: Defendant also agrees to the entry of a forfeiture money judgment against him in favor of the United States for the amount of **\$648,659.64**, representing the total value of the property subject to forfeiture for Defendant's violation of Count 1 of the Superseding Information. Defendant shall

be held jointly and severally responsible for the forfeiture money judgment with all other defendants found guilty of violating Count One of the Superseding Indictment in *United States v. Elhorr, et al.*, Case No. 13-cr-20158. Defendant agrees that the forfeiture money judgment may be satisfied, to whatever extent possible, from any property owned or under the control of Defendant. To satisfy the money judgment, Defendant explicitly agrees to the forfeiture of any assets he has now, or may later acquire, as substitute assets under 21 U.S.C. § 853(p)(2) and waives and relinquishes his rights to oppose the forfeiture of substitute assets under 21 U.S.C. § 853(p)(1) or otherwise.

Defendant also agrees that Defendant shall assist the United States in all proceedings, whether administrative or judicial, involving the forfeiture, disgorgement, transfer, or surrender of all rights, title, and interest, regardless of their nature or form, in the assets which Defendant has agreed to forfeit, disgorge, transfer, or surrender, and any other assets, including real and personal property, cash, and other monetary instruments, wherever located, which Defendant or others to her knowledge have accumulated as a result of illegal activities. Such assistance will involve an agreement on Defendant's part to the entry of an order enjoining the transfer or encumbrance of assets which may be identified as being subject to forfeiture, disgorgement, transfer, or surrender.

Defendant further agrees to identify all assets over which he exercises control, directly or indirectly, or has exercised such control, within the past five years. He also agrees to identify all assets in which he has or had during that time any financial interest and to provide all necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds, and any and all other documents necessary to deliver good and marketable title to said property. Defendant agrees to take all steps as requested by the government to obtain from any other parties by any lawful means any records of assets owned at any time by Defendant. He also agrees to undergo any polygraph examination the government may choose to administer concerning such assets and to provide and/or consent to the release of his tax returns for the previous five years.

Defendant further agrees to waive all interest in any such asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. Defendant agrees to consent to the entry of orders of forfeiture for all property to be forfeited and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and

waives any failure by the Court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

Defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. Defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, including taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden, or otherwise made unavailable for forfeiture. Defendant further agrees that he will not assist any third party in asserting a claim to the forfeited assets in any judicial forfeiture proceeding and that he will testify truthfully in any such proceeding.

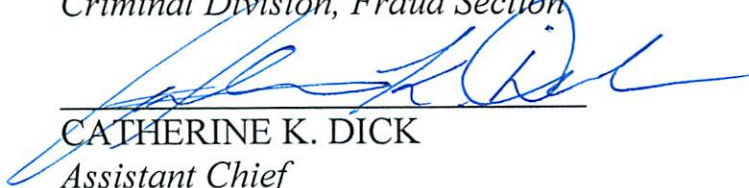
Non-Abatement of Criminal Forfeiture: Defendant agrees that the forfeiture provisions of this Plea Agreement are intended to, and will, survive him, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if Defendant had survived, and that determination shall be binding upon Defendant's heirs, successors, and assigns

until the agreed forfeiture, including any agreed money judgment amount, is collected in full.

BARBARA L. MCQUADE
United States Attorney




MATTHEW C. THUESEN
Trial Attorney
U.S. Department of Justice
Criminal Division, Fraud Section



CATHERINE K. DICK
Assistant Chief
U.S. Department of Justice
Criminal Division, Fraud Section


WAYNE F. PRATT
Chief, Health Care Fraud Unit
United States Attorney's Office
Eastern District of Michigan

By signing below, Defendant acknowledges that he has read (or been read) this entire document, understands it, and agrees to its terms. He also acknowledges that he is satisfied with his attorney's advice and representation. Defendant agrees that he has had a full and complete opportunity to confer with his lawyer and has had all of his questions answered by his lawyer.


JONATHAN M. EPSTEIN, ESQ.
Attorney for Defendant

Date: 3/6/14


JOSE MERCADO-FRANCIS, M.D.
Defendant

Date: 3-6-14