

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**FILED**  
AUG 14 2013  
CLERK'S OFFICE  
U.S. DISTRICT COURT  
EASTERN MICHIGAN

UNITED STATES OF AMERICA,

No. 13-20039

Plaintiff,

Hon. Bernard A. Friedman

v.

Offense: 18 U.S.C. § 1349  
(Conspiracy to Commit Health Care  
Fraud)

HEMAL BHAGAT,

Defendant.

Maximum Penalty: 10 years  
Maximum Fine: \$250,000

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**RULE 11 PLEA AGREEMENT**

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant Hemal Bhagat and the government agree as follows:

**1. GUILTY PLEA**

**A. Count of Conviction**

Defendant will enter a plea of guilty to Count 1 of the Indictment, which charges Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. § 1349.

**B. Elements of Offenses**

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 Indictment; and

Second: That the defendant, knowing the unlawful purpose of the plan, willfully joined in it.

As set forth in the Indictment, 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 May 2009, and continuing through approximately October 2011, Defendant Hemal Bhagat 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.

1. *Prestige Home Health Services, Inc.*

In or around June 2009, the defendant began working for Prestige Home Health Services, Inc. (“Prestige”). Prestige initially was located in Southfield, Michigan, and in or around July 2011, its primary business location was relocated to Troy, Michigan. During this time, Prestige was owned by co-conspirators Muhammad Aamir and Usman Butt. Prestige purported to provide home health services, including physical therapy services, to Medicare beneficiaries, which were then billed to Medicare. To deceive the Medicare program, the owners of Prestige and their co-conspirators created fictitious therapy files that appeared to document physical therapy and other services provided to Medicare beneficiaries, when in fact no such services had taken place. The fictitious services reflected in the files were billed to Medicare by Prestige.

Defendant Bhagat’s role at Prestige was to sign documents, including physical therapy evaluations, supervisory patient visits, and patient discharge forms, that facilitated Prestige’s ability to bill Medicare for home health visits. Bhagat was paid approximately \$300 per package of documents that he signed. These documents were necessary for Prestige to be able to bill Medicare for home

health care services, including initial payments and payments for each purported visit to a Medicare beneficiary. At Prestige, co-conspirators would offer and provide kickbacks and bribes to beneficiary recruiters, who would themselves offer and provide kickbacks and bribes to Medicare beneficiaries, in exchange for the beneficiaries' Medicare information and signatures on documents falsely indicating they had received physical therapy and other services from Prestige. While at Prestige, Bhagat signed documents used to justify approximately \$361,247.95 in fraudulent home health payments by Medicare, including for patients Bhagat either never saw or for whom home health services were not medically necessary. Bhagat knew the files that he helped falsify were used to support and justify fraudulent billings to Medicare by Prestige.

2. *Royal Home Health Care, Inc.*

In or around August 2009, Bhagat, along with co-conspirators Usman Butt, Syed Shah, and others purchased ownership interests in Royal Home Health Care, Inc. ("Royal"). Royal had previously exclusively been owned by co-conspirator Tayyab Aziz. Royal was initially located in Clawson, Michigan, and in or around January 2010, its primary business location was relocated to Troy, Michigan.

Bhagat and co-conspirator Tayyab Aziz signed Royal's Medicare provider

application promising to submit only truthful claims. In fact, Royal submitted claims to Medicare for services that were medically unnecessary and/or never performed. While operating Royal, Bhagat and his co-conspirators billed Medicare for home health visits that never occurred and were not medically necessary. To deceive the Medicare program, Bhagat and his co-conspirators created fictitious therapy files that appeared to document physical therapy and other services provided to Medicare beneficiaries by Royal, when in fact no such services had taken place and/or were not medically necessary. Bhagat and his co-conspirators then billed Medicare or caused Medicare to be billed for the fraudulent services reflected in the files. While at Royal, Bhagat signed documents, including physical therapy evaluations, supervisory patient visits, and patient discharge forms, that facilitated Royal's ability to bill Medicare for home health visits. Bhagat knew the files that he and his co-conspirators helped falsify were used to support and justify fraudulent billings to Medicare.

At Royal, Bhagat and his co-conspirators would also offer and provide kickbacks and bribes to beneficiary recruiters, who would themselves offer and provide kickbacks and bribes to Medicare beneficiaries, in exchange for the beneficiaries' Medicare information and signatures on documents falsely

indicating they had received physical therapy and other services from Royal. Bhagat and his co-conspirators also secured physician referrals and certifications for home health services through the payment of kickbacks to physicians or individuals associated with physicians. Bhagat knew that the physicians were referring patients that did not qualify to receive the home care services that Bhagat and his co-conspirators billed to Medicare.

Between approximately August 2009 and approximately October 2011, Medicare paid approximately \$4,406,111.08 to Royal for fraudulent home health claims submitted or caused to be submitted by Bhagat and his co-conspirators.

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**

The parties disagree on the applicability of the following guideline:

**§ 3B1.1 Aggravating Role**

The government recommends that the Court determine that the defendant's guideline range is 70–87 months imprisonment, as set forth on the attached worksheets. The government recommends a four-level enhancement for defendant's role as an organizer or leader of a criminal activity that involved five or more indicted and unindicted participants or was otherwise extensive. Defendant recommends that the Court determine his guideline range to be 63–78 months, which represents the guideline range set forth on the attached worksheets but with a three-level enhancement for defendant's role as a manager or supervisor (but not an organizer or leader) of a criminal activity that involved five or more participants or was otherwise extensive. The Court is not bound by either party's recommendation concerning the guideline range, and defendant understands that he will have no right to withdraw his guilty plea if the Court does not follow his recommendation. 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 his offenses; or obstructed justice or committed any crime,

and if any such finding results in a guideline range higher than 70–87, the higher guideline range becomes the agreed range. However, if 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)(C), the sentence of imprisonment in this case may not exceed 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**

There is no agreement as to fines.

**E. Restitution**

The Court shall order restitution to every identifiable victim of defendant's

offenses and all other relevant conduct. The victims, and the full amounts of restitution in this case, are as follows:

U.S. Department of Health and Human Services: \$4,767,359.03.

**4. COOPERATION AGREEMENT**

The written cooperation agreement between defendant and the government entered into on this day is part of this plea agreement.

**5. CONSENT TO ENTRY OF A JUDICIAL ORDER OF REMOVAL**

Defendant is not a citizen of the United States, and is therefore subject to removal from this country pursuant to the Immigration and Nationality Act. As part of this plea agreement, defendant agrees to the entry of a judicial order of removal. In agreeing to this order, defendant concedes his removability and waives his rights with respect to any removal proceedings. That concession and defendant's waiver of rights are more fully set forth on the "Stipulation to Order of Removal" signed by defendant and defendant's attorney and expressly made part of this agreement. In addition, the Assistant Secretary of the Department of Homeland Security, Immigration and Customs Enforcement, has concurred in the entry of a judicial order of removal in this matter, and that concurrence is also part of this agreement.

**6. PADILLA WAIVER**

Defendant acknowledges that he is not a citizen of the United States, and that his guilty plea in this case may affect or even foreclose his eligibility to remain in this country following the imposition of sentence herein. Defendant has discussed these matters with his attorney in this case, but he expressly agrees that his decision to plead guilty is in no way conditioned upon or affected by the advice he has been given regarding any potential immigration consequences of his convictions. Defendant further agrees that because his decision to plead guilty in this case is wholly independent of the immigration consequences of a conviction, defendant agrees that he will not seek to challenge his guilty plea in any later proceeding via collateral attack on any basis relating to the immigration consequences of his plea.

**7. 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 change-of-plea hearing, and the factual basis statement in this plea agreement, against him in any proceeding.

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

The defendant understands and acknowledges that as a result of this plea, the 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.

**9. 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.

**10. WAIVER OF 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 also waives any right he may have 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.

**11. CONSEQUENCES OF WITHDRAWAL OF GUILTY PLEA OR VACATION OF CONVICTION**

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 his 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.

**12. 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.

**13. SCOPE OF PLEA AGREEMENT**

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. This agreement supersedes all other promises, representations, understandings and agreements between the parties concerning the subject matter of this plea agreement that were 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 the 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 with the government, this plea agreement does not supersede or abrogate the terms of any such prior written agreement.

This agreement also does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

**14. 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 1 of the Indictment.

Defendant also agrees to the entry of a personal forfeiture money judgment against him in favor of the United States in the amount to be determined by the Court. Defendant agrees that the Court will determine what amount of money constitutes, or was derived from, the proceeds defendant obtained, directly or indirectly, from the crime he committed as charged in Count 1, and defendant will be ordered to pay that amount under Fed. R. Crim. P. 32.2.

Defendant hereby agrees to the entry of one or more orders of forfeiture,

including a Preliminary Order of Forfeiture, incorporating the above-referenced forfeiture money judgment upon application by the United States at, or any time before, his sentencing in this case.

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 Indictment in *United States v. Amir, et al.*, Case No. 13-20039 (E.D. Mich.). 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 to 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 his knowledge have



accumulated as a result of illegal activities alleged in Count 1. 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. Defendant 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.

If any property has been seized for forfeiture by a governmental agency in connection with the violation alleged in Count 1, defendant agrees to waive all

interest, if any, in any such property in any administrative or judicial forfeiture proceeding, whether criminal or civil, state, or federal.

Defendant further agrees to consent to the entry of orders of forfeiture for all property to be forfeited in this case 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, but not limited to, any Double Jeopardy challenge and any challenge that the forfeiture constitutes an excessive fine or punishment under the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

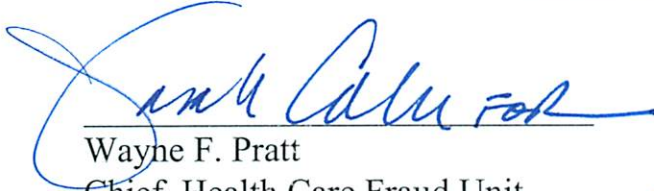
Defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, including taking whatever steps

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 property that is subject to forfeiture based upon any of the conduct alleged in Count 1 in any forfeiture proceeding (judicial or non-judicial) and that he will testify truthfully in any judicial forfeiture proceeding if requested to do so by the government.

Defendant further agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizure and forfeiture of property covered by this Plea Agreement.

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 the money judgment amount, is collected in full.

Barbara L. McQuade  
United States Attorney



Wayne F. Pratt  
Chief, Health Care Fraud Unit  
Assistant United States Attorney



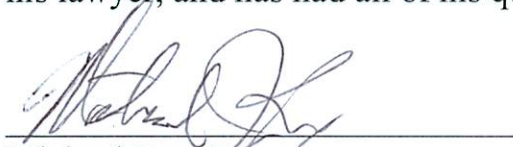
Catherine K. Dick  
Assistant Chief  
Department of Justice  
Fraud Section



Niall M. O'Donnell  
Trial Attorney  
Department of Justice  
Fraud Section

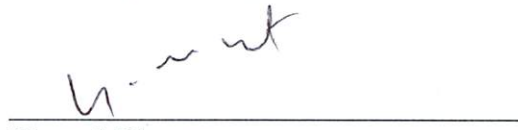
Date: August 13, 2013

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.



Michael Rex, Esq.  
Attorney for Defendant

Date: 8/13/13



Hemal Bhagat  
Defendant

Date: 8/14/13