

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

No. 1:22-cr-16

Plaintiff,

v.

DANIEL CASTRO, M.D.,

Hon. HALA Y. JARBOU
Chief U.S. District Judge

Defendant.

PLEA AGREEMENT

This constitutes the plea agreement between Daniel Castro, M.D., and the United States Attorney's Office for the Western District of Michigan. The terms of the agreement are as follows:

1. Defendant Agrees to Plead Guilty. Defendant agrees to plead guilty to Count 36 of the Indictment. Count 36 charges Defendant with making a false statement related to health care matters in violation of Title 18, United States Code, Section 1035(a)(2).

2. Defendant Understands the Crime. In order for Defendant to be guilty of violating Title 18, United States Code, Section 1035(a)(2), the following must be true: (1) Defendant falsified, concealed, or covered up by any trick, scheme, or device a material fact or made or used any false writing or document, knowing the same to contain a materially false, fictitious, or fraudulent statement or entry; (2) Defendant's actions were in connection with the delivery of or payment for health care benefits, items, or services; (3) the matter involved a health care benefit

program; and, (4) Defendant acted knowingly and willfully. Defendant is pleading guilty because Defendant is guilty of the charge described above.

3. Defendant Understands the Penalty. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1035(a)(2), is the following: 5 years of imprisonment; a 3-year period of supervised release; a fine of \$250,000.00, or twice the gross gain or gross loss resulting from the offense, whichever is greater; and a mandatory special assessment of \$100.

4. Assessments, Restitution, Other Criminal Monetary Penalties, and Financial Cooperation. Defendant agrees to pay the \$100 special assessment on the day of sentencing.

Defendant understands that he will be required to pay full restitution as required by law pursuant to 18 U.S.C. § 3663A and, as part of this plea agreement pursuant to 18 U.S.C. § 3663(a)(3). Defendant further agrees that the restitution order is not restricted to the amounts alleged in the Indictment to which Defendant is pleading guilty. Defendant agrees that the restitution amount is at least \$250,000.00, but that the final restitution amount will be determined by the Court at sentencing.

Within fourteen days of the execution of this plea agreement, Defendant agrees to fully and truthfully complete and return the financial disclosure form the U.S. Attorney's Office provides, including any waivers, consents or releases requested by the U.S. Attorney's Office to access records to verify the financial information.

Defendant authorizes the U.S. Attorney's Office to inspect and copy all financial documents and financial information held by the U.S. Probation Office, and acknowledges that the U.S. Attorney's Office may share any information collected pursuant to this agreement with the U.S. Probation Office or the Court. Defendant acknowledges any restitution or other criminal monetary penalties imposed by the Court shall be due and payable immediately. Defendant acknowledges that any payment plan set by the Court for payment of restitution or other criminal monetary penalties represents a minimum payment obligation and it does not preclude the United States from pursuing any other means under applicable federal or state law by which to satisfy Defendant's full and immediately enforceable financial obligation until the amounts are collected in full.

Defendant agrees to cooperate fully in the investigation of the amount of restitution or other criminal monetary penalties; the identification of funds and assets in which Defendant has any legal or equitable interest to be applied toward restitution or other criminal monetary penalties; and the prompt payment of the restitution or other criminal monetary penalties. Defendant's cooperation obligations are ongoing until Defendant has satisfied the monetary penalties, including restitution, in full. Defendant shall not provide false or incomplete information about his financial assets; or otherwise hide, sell, transfer or devalue assets with the purpose of avoiding payment of restitution or other criminal monetary penalties.

5. Voluntary Repayment. Pursuant to 18 U.S.C. § 3663(a)(3) and the terms of this plea agreement, Defendant agrees to make voluntary repayment to the Medicare and Medicaid programs for all billings associated with the sinus surgery fraud and neck dissection upcoding fraud during the period of time alleged in the indictment. The total amounts for Medicare are: \$129,560.34 (sinus surgeries); \$11,066.66 (neck dissections). The total amounts for Medicaid are: \$69,640.24 (sinus surgeries); \$5,946.29 (neck dissections). These amounts shall not be counted as sentencing loss.

6. Surrender of Professional License. Defendant agrees to notify applicable medical licensing authorities of his conviction in this case after entry of his guilty plea, to voluntarily surrender any licenses to practice medicine to appropriate authorities, and not to seek licensing to practice medicine at any point in the future.

7. Asset Forfeiture and Financial Accountability. Defendant agrees to disclose to law enforcement officials the whereabouts of, the Defendant's ownership interest in, and all other information known to Defendant about, all assets, money or property of any kind, derived from or acquired as a result of, or used to facilitate the commission of Defendant's illegal activities. Defendant further agrees to forfeit all rights, title, and interest in and to such items.

Defendant agrees to fully cooperate with the federal government in the seizure and forfeiture of assets under Title 18, United States Code, Section 982(a)(7), which includes, among other things, any property, real or personal, that constitutes or is

derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses charged in the Indictment.

Defendant agrees to entry of a forfeiture money judgment against himself in the amount of the proceeds he obtained from the scheme to defraud alleged in the indictment, of which his offense of conviction for making false medical records or other documents in count 36 was an integral part. Defendant agrees at this time that the calculation of the proceeds he received from the specific executions of the health care fraud schemes alleged in counts 1 to 34 of the Indictment is \$13,573.59, which represents the floor of any forfeiture money judgment. However, Defendant understands and agrees that the Government will be determining the amount of the proceeds he received from the entire scheme to defraud between February 2015 and May 2017, not just the executions charged in the Indictment. Defendant understands and agrees that this Court may enter a forfeiture money judgment in an amount greater than the existing floor of \$13,573.59, once Defendant receives the Government's calculation and agrees to the additional increase, or if he does not agree, after the Government presents evidence to support an increased forfeiture money judgment amount at the sentencing hearing and the Court makes a final determination.

Defendant consents to the forfeiture of substitute property pursuant to 21 U.S.C. § 853(p). Defendant acknowledges that the proceeds he obtained, directly or indirectly from his health care fraud scheme, were increases in his base salary and

bonus compensation. Defendant agrees that his criminal proceeds have been commingled with other property which cannot be divided without difficulty.

Defendant agrees to assist and cooperate in the recovery of all monies, property, or assets derived from, or acquired as a result of the health care fraud scheme charged in the Indictment.

Defendant and the U.S. Attorney's Office agree that information provided by Defendant with respect to Asset Forfeiture will be used to collect assets to satisfy the Defendant's forfeiture money judgment but it will not be used to otherwise enhance the Defendant's sentence, in accordance with Sentencing Guideline § 1B1.8. However, it is expressly understood that such information may be used by the government at sentencing to seek enhancement of Defendant's sentence if the government learns of information about Defendant's assets that is contradicted by the information provided by the Defendant in accordance with Defendant's obligations under this section.

The parties further agree that Defendant should receive credit against the forfeiture money judgment sought by the United States for all funds Defendant pays as restitution with the Clerk of the Court prior to the time of sentencing. Accordingly, for all funds the Defendant deposits with the Clerk of the Court as restitution prior to sentencing, the Government will move for a commensurate reduction in Defendant's forfeiture money judgment.

The U.S. Attorney's Office agrees to submit a restoration request to the Department of Justice Money Laundering and Asset Recovery Section for the

application of any proceeds from such forfeited property towards Defendant's restitution order. Defendant acknowledges that the Department of Justice Money Laundering and Asset Recovery Section has the sole authority to grant or deny the restoration request and that the submission of such a request by the U.S. Attorney's Office does not guarantee that such request will be granted.

8. Factual Basis of Guilt. Defendant and the U.S. Attorney's Office agree and stipulate to the following statement of facts which need not be proven at the time of the plea or sentencing:

Blue Cross Blue Shield of Michigan ("BCBSM") is a health insurer that provides payments to medical providers for health care services. BCBSM is a "health care benefit" program affecting commerce, as defined in 18 U.S.C. § 24(b). Defendant, an otolaryngologist, was employed at Bronson Battle Creek Hospital between approximately February 2015 and May 2017. As part of his enrollment to become a BCBSM provider in 2012, Defendant agreed to make and use accurate medical records to substantiate the services he provided to BCBSM beneficiaries and to provide those records to BCBSM upon request.

On September 20, 2016, Defendant operated on a BCBSM beneficiary, P.R. In his operative notes, Defendant documented that he performed, among other things, a left posterior modified neck dissection with a direct laryngoscopy. Defendant reported that he "dissected down to the insertion into the trapezius muscle" and that "[d]issection was continued from anteriorly to posteriorly, starting just posterior to the internal jugular vein inferiorly in the neck, in zone 5." After the operation, Defendant selected Current Procedural Terminology Code (CPT code) 38724. That code is applicable when a physician performs a modified radical or selective neck dissection for confirmed cancer of the head and neck. Defendant did not perform a modified radical or selective neck dissection on P.R.; instead, he performed an excisional node biopsy (CPT code 38510) to remove two lymph nodes, a less-complex and lower-paying procedure. Defendant knew that the entries in his operative note, documenting that he performed a modified radical or selective neck dissection, were materially false.

Because of his materially false operative report and selection of CPT code 38724 – a code for a procedure he did not actually perform – Defendant caused the submission of a false insurance claim to BCBSM. On or about October 7, 2016, BCBSM paid this claim. Defendant's materially false operative notes were material to the payment of that claim.

Defendant agrees that he made or used a materially false document, knowing that document to contain a materially false statement, in a matter involving a health care benefit program in connection with the delivery of or payment for health care services.

Defendant further agrees that the health care fraud schemes alleged in Counts 1 to 34 of the Indictment constitute relevant conduct to his offense of conviction under USSG § 1B1.3 for purposes of sentencing and restitution. Defendant understands that the Government will provide factual information to the Probation Officer regarding the conduct underlying counts 1 to 34 that will be included in the Presentence Report and that he cannot object to those facts for purposes of his sentencing, including sentencing loss; however, Defendant may request that the Probation Officer supplement that factual information with additional facts about counts 1 to 34.

9. Exclusion from Participation. The parties agree that, pursuant to Title 42, United States Code, Section 1320a-7, upon conviction, Defendant will be mandatorily excluded from participation in any federal health care program as defined in Title 42, United States Code, Section 1320a-7b(f), for a period of at least five years.

10. Dismissal of Other Counts/Charges. The U.S. Attorney's Office agrees to move to dismiss the remaining counts of the Indictment against Defendant at the time of sentencing. Defendant agrees, however, that in determining the sentence the dismissed counts constitute relevant conduct under USSG §1B1.3 and the Court may consider the dismissed counts in determining the applicable Sentencing Guidelines range, where the sentence should fall within the applicable guidelines range, and the propriety of any departure from the calculated guidelines range. By this agreement, Defendant does not concede that an increased sentence or an upward departure is, in fact, warranted.

11. Acceptance of Responsibility. The U.S. Attorney's Office agrees not to oppose Defendant's request for a two-level reduction of his offense level for acceptance of responsibility under Section 3E1.1(a) of the Sentencing Guidelines. However, the U.S. Attorney's Office reserves the right to object to Defendant's

request if it subsequently learns of conduct by Defendant that is inconsistent with the criteria set forth in the Commentary to Section 3E1.1. The Government will not move the Court to grant an additional one-level reduction for acceptance of responsibility. Defendant's decision to plead guilty after the Final Pretrial Conference did not assist the Government in the investigation or prosecution of his own misconduct, nor did it permit the Government to allocate its resources efficiently, as contemplated by Section 3E1.1(b).

12. Protection for the Proffered/Cooperative Statements. The U.S. Attorney's Office agrees that information provided by Defendant through Defendant's proffers will not be used by the Government to enhance Defendant's sentence, in accordance with Sentencing Guidelines § 1B1.8, and according to the terms of the written agreement entered into between the parties immediately prior to the proffers. It is expressly understood, however, that such information may be used by the Government at sentencing if Defendant takes a position at sentencing that contradicts information provided by Defendant pursuant to this agreement or any proffer agreement.

13. The Sentencing Guidelines. Defendant understands that, although the United States Sentencing Guidelines (the "Guidelines") are not mandatory, the Court must consult the Guidelines and take them into account when sentencing Defendant. Defendant understands that the Court, with the aid of the presentence report, will determine the facts and calculations relevant to sentencing. Defendant understands that Defendant and Defendant's attorney will have the opportunity to

review the presentence report and to make objections, suggestions, and recommendations concerning the calculation of the Guideline range and the sentence to be imposed. Defendant further understands that the Court shall make the final determination of the Guideline range that applies in this case, and may impose a sentence within, above, or below the Guideline range, subject to the statutory maximum penalties described elsewhere in this Agreement. Defendant further understands that disagreement with the Guideline range or sentence shall not constitute a basis for withdrawal of the plea.

14. The Parties Jointly Agree to the Following:

a. Stipulations Regarding Guideline Factors. Defendant and the U.S. Attorney's Office agree and stipulate to the following applicable Sentencing Guidelines factors: Base offense level of 6 (USSG § 2B1.1(a)(2)); Loss exceeded \$250,000.00, for an increase of 12 levels (USSG § 2B1.1(b)(1)(G); sophisticated means, for an increase of 2 levels (USSG § 2B1.1(b)(10)); abuse of trust, for an increase of 2 levels (USSG § 3B1.3). Although the parties agree that, at a minimum, the loss exceeds \$250,000.00, the parties do not agree as to the total amount of loss caused by Defendant's offense of conviction and the health care fraud schemes alleged in the Indictment that Defendant agrees constitute relevant conduct for sentencing purposes. The parties will reach an agreement on the amount of sentencing loss at a later date or will present evidence on the total amount of loss associated with the offense of conviction and related relevant conduct at the time of the sentencing. At that time, the Court can make a final

determination as to the total amount of loss and an associated increase, if any, to Defendant's offense level in excess of the agreed upon 12-level enhancement. Defendant and the U.S. Attorney's Office each reserve the right to argue that additional specific offense characteristics, adjustments and departures are appropriate.

b. Stipulations Regarding Criminal History. There is no agreement as to the Defendant's criminal history or criminal history category.

c. Stipulations Not Binding in Court. The Defendant understands that neither the United States Probation Office nor the Court is bound by any stipulation in this agreement, and that the Court, with the aid of the presentence report, will determine the facts and calculations relevant to sentencing. Both the Defendant and the U.S. Attorney's Office are free to supplement the facts stipulated to in this agreement by supplying relevant information to the United States Probation Office and the Court, and to correct any and all factual misstatements relating to the calculation of the sentence. Defendant understands that if the Court finds facts or reaches conclusions different from those in any stipulation contained in this agreement, Defendant cannot, for that reason alone, withdraw his guilty plea.

15. Waiver of Constitutional Rights. By pleading guilty, Defendant gives up the right to persist in a plea of not guilty and the right to a speedy and public trial by jury or by the Court. As a result of Defendant's guilty plea, there will be no

trial. At any trial, whether by jury or by the Court, Defendant would have had the following rights:

- a. The right to the assistance of counsel, including, if Defendant could not afford an attorney, the right to have the Court appoint an attorney to represent Defendant.
- b. The right to be presumed innocent and to have the burden of proof placed on the Government to prove Defendant guilty beyond a reasonable doubt.
- c. The right to confront and cross-examine witnesses against Defendant.
- d. The right, if Defendant wished, to testify on Defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.
- e. The right not to be compelled to testify, and, if Defendant chose not to testify or present evidence, to have that choice not be used against Defendant.
- f. By pleading guilty, Defendant also gives up any and all rights to pursue in this Court or on appeal any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

16. Waiver of Other Rights.

a. Waiver. In exchange for the promises made by the government in entering this plea agreement, Defendant waives all rights to appeal or collaterally attack Defendant's conviction, sentence, or any other matter relating to this prosecution, except as listed below.

b. Exceptions. Defendant may appeal or seek collateral relief to raise a claim, if otherwise permitted by law in such a proceeding, on the following grounds:

i. Defendant's sentence on any count of conviction exceeded the statutory maximum for that count;

ii. Defendant's sentence was based on an unconstitutional factor, such as race, religion, national origin, or gender;

iii. the district court incorrectly determined the Sentencing Guidelines range, if Defendant objected at sentencing on that basis;

iv. the guilty plea was involuntary or unknowing;

v. an attorney who represented Defendant during the course of this criminal case provided ineffective assistance of counsel.

If Defendant appeals or seeks collateral relief, Defendant may not present any issue in the proceeding other than those described in this subparagraph.

17. FOIA Requests. Defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the

Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

18. Hyde Waiver. Defendant acknowledges, by his voluntary admissions of guilt, that the position of the U.S. Attorney's Office in this case is not vexatious, frivolous, or in bad faith, and Defendant hereby disclaims and waives any right to make any claim for attorney fees.

19. The Court is not a Party to this Agreement. Defendant understands that the Court is not a party to this agreement and is under no obligation to accept any recommendation by the U.S. Attorney's Office or the parties regarding the sentence to be imposed. Defendant further understands that, even if the Court ignores such a recommendation or imposes any sentence up to the maximum established by statute, Defendant cannot, for that reason, withdraw his guilty plea, and he will remain bound to fulfill all of his obligations under this agreement. Defendant understands that no one—not the prosecutor, Defendant's attorney, or the Court—can make a binding prediction or promise regarding the sentence Defendant will receive, except that it will be within the statutory maximum.

20. This Agreement is Limited to the Parties. This agreement is limited to the U.S. Attorney's Office for the Western District of Michigan, and cannot bind any other federal, state or local prosecuting, administrative or regulatory authority. This agreement applies only to crimes committed by Defendant. This agreement does not apply to or preclude any past, present, or future forfeiture or civil actions.

21. Consequences of Breach. If Defendant breaches any provision of this agreement, including any promise of cooperation, whether before or after sentencing, the United States shall have the right to terminate this agreement, or deny any or all benefits to which Defendant would otherwise be entitled under the terms of this agreement. In the event that the United States elects to terminate this agreement, the agreement shall be considered null and void, and the parties shall return to the same position they were in prior to the execution of this agreement, as though no agreement ever existed. In such an event, Defendant shall remain liable for prosecution on all original charges, and the United States shall be free to bring such additional charges as the law and facts warrant. Defendant further agrees to waive and forever give up his right to raise any claim that such a prosecution is time-barred if the prosecution is brought within one (1) year of the breach that gives rise to the termination of this agreement.

22. This is the Complete Agreement. This agreement has been entered into by both sides freely, knowingly, and voluntarily, and it incorporates the complete understanding between the parties. No other promises have been made, nor may any additional agreements, understandings or conditions be entered into unless in a writing signed by all parties or on the record in open court.

23. Deadline for Acceptance of Agreement. If a copy of this agreement, executed by Defendant and defense counsel, is not returned to the U.S. Attorney's Office by 3/20/2023, this agreement will be withdrawn automatically and will

thereafter have no legal effect or force, unless the U.S. Attorney's Office, in its sole discretion, chooses to accept an executed agreement after that date.

3/20/2023
Date

MARK A. TOTTON
United States Attorney
Ronald M. Stella
Adam B. Townshend

RONALD M. STELLA
ADAM B. TOWNSHEND
Assistant United States Attorneys

I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

03/19/2023

Date



DANIEL CASTRO, M.D.,
Defendant

I am Daniel Castro, M.D.,’s attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. To my knowledge, my client’s decision to enter into this agreement is an informed and voluntary one.

3/20/2023

Date



RONALD W. CHAPMAN II
Attorney for Defendant