UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:08CR00038 ERW
	)	
KRISHNARAO REDNAM,	)	
	)	
Defendants.	)	

GOVERNMENT'S SENTENCING MEMORANDUM

The Government respectfully requests that the Court, pursuant to the explicit terms of the parties' plea agreement, sentence defendant within the agreed-upon Sentencing Guidelines recommendations of the parties, and not depart downward or make a variance. On this record, a sentence within the Guidelines range of 10-16 months is fair and reasonable.

I. The Parties' Plea Agreement Prohibits Defendant From Asking For A Variance Outside The Sentencing Guidelines Range.

Defendant pled guilty to obstructing a health care fraud investigation, 18 U.S.C. § 1518. The Government issued a subpoena during a health care fraud investigation of defendant's billings to the Medicare program. Defendant threw away some responsive medical records and altered others with the intent to obstruct the investigation of his conduct. The parties' plea agreement contained joint Sentencing Guidelines calculations that recommended an adjusted offense level of 12, creating a sentencing range of 10-16 months. The Pre-Sentence Report ("PSR") arrived at the same conclusions. Neither side objected to any of the findings of the PSR. Defendant has now filed a sentencing memorandum requesting a variance and a sentence of probation without any imprisonment. However, the plea agreement's provisions at page 3 prevent defendant from requesting a variance, as shown below:

> The parties acknowledge that the Guidelines application recommendations set forth herein are the result of negotiations between the parties as to the Guidelines applications they address; that these negotiated recommendations as well as the agreements the government made in paragraph 2A led to the guilty plea in this case; and that **each party has a right to rely upon and hold the other party to the recommendations at the time of sentencing**. **The parties further agree that neither party shall request a sentence above or below the applicable guideline range pursuant to any chapter of the Guidelines, Title 18, United States Code, Section 3553(a), or any other provision or rule of law, unless that request or facts which support that request are addressed in this document or the request is made with the consent of both parties ...** (emphasis added).

The plea agreement further contains these additional provisions at pages 3-4:

> In the event the Court accepts the plea and, in sentencing the defendant, 1) applies the recommendations agreed to by the parties herein, and 2) after determining a Sentencing Guideline range, **sentences the defendant within that range**, then, as part of this agreement, both the defendant and the government hereby waive all rights to appeal all sentencing issues, including any issues relating to the determination of the Total Offense Level and the Criminal History Category. (emphasis added).

From a legal perspective, plea agreements are contracts, and issues concerning the interpretation and enforcement of a contract can be resolved by the district court at sentencing using general contract construction principles. United States v. Austin, 255 F.3d 593, 596 (8th Cir. 2001). Looking at the plea agreement in this case, which is the typical format for this District, defendant agreed to plead guilty and further agreed to joint guideline calculation recommendations. Defendant obtained a promise from the Government not to argue for an upward departure or variance at sentencing in exchange for defendant agreeing not to argue for a downward departure or variance at sentencing.

In plain language, the plea agreement created a guidelines "ceiling" recommendation for the Government of 16 months and a guidelines "floor" recommendation for the defendant of 10 months. If the Court follows the parties' joint sentencing recommendations and sentences within the guidelines range, then both sides waive any appeal rights regarding the sentence. These are

prudent and common plea agreement provisions that provide both sides in this case with some level of certainty and finality. While the Government recognizes that the Court is not bound by the parties' sentencing recommendations, these joint recommendations were an important part of the plea bargain and should be enforced.

Defendant's sentencing memorandum now ignores these provisions of the plea agreement, and requests a pure probation sentence, which is a variance from the joint guidelines recommendation that the parties previously made. The Government does not consent to this motion, and instead asks the Court to enforce the parties' plea agreement, and only consider defendant's arguments within the context of a sentence within the Guidelines range.

Arguing in the alternative, should the Court find that the plea agreement does not bar defendant from asking for a downward variance, then the Government respectfully requests that the Court also find that the plea agreement allows the Government to seek an upward variance.

II. A Sentence Within The Guidelines Range of 10-16 Months Is Reasonable.

Looking at the chronology and agreed upon facts in the PSR, a guidelines range sentence would be fair and reasonable in this case given the nature and circumstances of the offense. As discussed in further detail below, defendant has not provided the Government with substantial assistance, and his post-offense conduct has not been extraordinary.

The defense memorandum at p. 4 admits that defendant obstructed the investigation of his conduct by knowingly destroying medical files. Obstruction is a serious crime. Defendant's first impulse when learning of the Government's subpoena was to destroy or alter patients' medical records. Initially, defendant did not cooperate with the Government, repay Medicare's losses, or inform patients that they had received different medications than the medications they

consented to receiving and for which they provided co-payments. Defendant's obstruction does not show respect for the law, and is worthy of serious punishment. Given that the Government often uses subpoenas in health care fraud investigations, and medical records often contain critical information during such investigations, defendant's offense creates a need for deterrence. Defendant is a sophisticated and wealthy defendant who had the financial resources to fix the Medicare billing problems from the beginning. Greed, without the mitigating factors of extreme poverty, substance abuse, or gambling addiction, motivated this crime.

The defense memorandum further suggests that defendant substantially assisted the Government's investigation of his conduct because he eventually provided his own billing audit to the Government. The plea agreement at p. 5, ¶ F specifically discusses the issue of substantial assistance, and affirmatively states that the Government will not be filing such a motion in this case. In any event, substantial assistance by definition involves assisting the prosecution of "another person," and defendant has not done so here. Defendant did not object to the PSR's statement that he was solely culpable for the offense.

The chronology of events also shows that defendant never provided substantial assistance to the same investigation he obstructed. In January 2007, defendant's employer conducted an audit of defendant's Medicare billing. Defendant's employer then communicated the audit findings to defendant, and notified defendant that it would be making a voluntary disclosure of the audit findings to the Government. Several months passed, but defendant did not contact the Government or his patients. The employer's disclosure occurred in April 2007, triggering a federal subpoena to the employer for defendant's medical records. Defendant's obstruction conduct then occurred during April 18, 2007 through May 31, 2007. PSR, ¶¶ 10-17.

It is true that defendant eventually hired criminal defense attorneys who conducted their own audit. However, defendant did not provide his own audit to the Government until July 24, 2007, months after he became aware of the billing discrepancies, months after the Government received information from defendant's employer, and months after the Government subpoenaed defendant's records and formally investigated defendant's conduct.

Accordingly, by the time defendant provided his audit in July 2007, the Government had already conducted its own analysis after receiving useful information from defendant's employer. From January 2007 through July 23, 2007, defendant always had the freedom and ability to contact the Government and provide it with any information that he wished to provide. Defendant could have made his own voluntary disclosure to the Government in February 2007 or March 2007 after learning of his employer's concerns. Instead, he chose to travel internationally. On this record, the employer did not "prematurely" contact the Government in April 2007 after warning defendant it was considering making a disclosure in January 2007. Defendant's employer never limited defendant's ability to contact the Government. Although resolution of this factual dispute will not change the ultimate guidelines range in this case, the Government strongly disagrees that defendant's employer engaged in any "subterfuge" or "thwarted" defendant's ability to communicate with the Government in any way. Defendant obstructed the investigation while the employer cooperated with the investigation.

Similarly, the Government agrees that defendant ultimately informed his patients that they had received different medications than their consents to treatment indicated, but again the timing is significant. The patient notification process started after August 29, 2007, approximately seven months after defendant became aware of the billing and medication

problems. Notification occurred only after the Government suggested that if defendant would not promptly notify patients, then the Government would start the notification process using agents from the Federal Bureau of Investigation. Defendant's notification to his patients about patients receiving different medications was not extraordinary post-offense rehabilitation.

Like defendant, most sophisticated business people can point to a record of charity and positive work experiences at sentencing. United States v. Morken, 133 F.3d 628, 630 (8th Cir. 1998) (vacating sentence of bank fraud defendant after departure based on defendant's community service). Defendant's charity and the supportive letters from patients, while admirable, are not extraordinary for someone in his position. Cf. Morken, 133 F.3d at 630 with United States v. Kim, 364 F.3d 1235, 1238 (11th Cir. 2004) (defendant traveled to Korea to borrow money from his family after incurring $200,000 in debt to pay restitution); United States v. Oligmueller, 198 F.3d 669, 671 (8th Cir. 1999) (defendant gave up his home and life insurance to pay restitution). The record supports a sentence within the guidelines range.

Finally, the defense memorandum argues that a probation sentence would enable defendant to work as a doctor providing free medical services or medical services to inmates. The Government disagrees. Looking at Missouri law, as defendant has a Missouri medical license and the practice of medicine is generally a state law function, any felony conviction requires automatic revocation of the defendant's medical license. Mo. Rev. Stat. § 334.103(1). Whether this felony conviction actually causes imprisonment versus probation is irrelevant under Missouri law. Defendant can be useful to society and provide meaningful service with or without a medical license. This Court should not impose a sentence based on defendant's assertion that probation will make it easier for him to continue practicing medicine.

III. Relief Requested.

The government respectfully requests that the Court sentence defendant within the Sentencing Guidelines range of 10-16 months as suggested by the Pre-Sentence Report and the joint recommendations of the plea agreement, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2008, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Patrick M. Flachs

/s/ Andrew J. Lay
ANDREW J. LAY