

TSBPME Case No. 13-019

IN THE MATTER OF
BHAVESH SHAH, D.P.M.

AGREED ORDER

LICENSE No. 1503

§
§
§
§
§

BEFORE THE TEXAS STATE
BOARD OF PODIATRIC
MEDICAL EXAMINERS

SITTING IN AUSTIN,

TRAVIS COUNTY, TEXAS

AGREED ORDER

BE IT REMEMBERED that on the date approved and entered below came to be considered the allegations against Bhavesh Shah, DPM. By letter dated February 23, 2013 the staff of the Texas State Board of Podiatric Medical Examiners (the "Board") gave preliminary notice to Dr. Shah of its intent to investigate complaints, concerns or reports filed against him. Dr. Shah was duly notified of the allegations against him. Dr. Shah has cooperated with the staff of the Board and was given the opportunity to present information in rebuttal.

By his signature on this Order, and upon acceptance and entry of this Order by the Board, Dr. Shah does hereby waive his right to an administrative hearing before the State Office of Administrative Hearings, and judicial review of this Order. Dr. Shah understands that he has the option, before signing this Agreed Order, to participate in a contested case hearing under the *Administrative Procedure Act*.

The Board and Dr. Shah, in order to avoid the expense, delay and uncertainty of a hearing, have agreed to the entry of an Order dispensing with the need for further action in this matter. Dr. Shah agrees to this Order for the purpose of resolving this proceeding only. The Board makes the following Findings of Fact and Conclusions of Law and enters this Order:

FINDINGS OF FACT

1. Dr. Shah is licensed as a podiatric physician in the State of Texas (License Number 1503) to practice podiatric medicine and is therefore subject to the jurisdiction of the Board, the Podiatric Medical Practice Act of Texas and the rules of the Board.
2. Dr. Shah was provided with a Notice of Violation and given the opportunity to respond to the Notice and to show compliance with the law.
3. On August 21, 2012, regarding Case No. SA-12-CR-792-FB adjudicated in the United States District Court, for the Western District of Texas (holding Session in San Antonio, TX), Dr. Shah plead guilty to felony Counts One (1) and Two (2) of the Information charging violations of 18 U.S.C. §1347 "Health Care Fraud".
4. On December 21, 2012, Dr. Shah was convicted of felony Count One (1) and felony Count Two (2) of "Health Care Fraud" (18 U.S.C. §1347) and sentenced to Five (5) years probation on Counts One (1) and Two (2) to be served concurrently, and ordered to pay restitution.
5. The felony conviction is directly related to the Medicare and Medicaid programs within Dr. Shah's healthcare provider licensure as a podiatric physician. Restitution attributed to Dr. Shah's criminal conduct was ordered at \$73,344.88 to the U.S.

Center for Medicare and Medicaid Services (CMS), Medicare Insurance Program and at \$10,409.57 to the Texas Health and Human Services Commission, Medicaid Insurance Program for a total of \$83,754.45 (Medicare/Medicaid).

6. On January 9, 2013 Dr. Shah's Judgment In A Criminal Case was final.
7. Dr. Shah has paid the restitution ordered in full and is cooperating with the terms of his federal probation.
8. Dr. Shah is involved in various humanitarian mission work activities in Central America providing podiatric medical care to underserved populations.

CONCLUSIONS OF LAW

1. Dr. Shah is required to follow the provisions of the Podiatric Medical Practice Act, Texas Occupations Code, §202.001, et seq., and the associated rules of the Board, 22 Texas Administrative Code § 371.1, et seq..
2. Texas Occupations Code, §53.021(a)(1) provides that, "a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation."
3. Texas Occupations Code, §202.253(a)(2)(A) provides that, "the Board may refuse to issue a license to practice podiatry to a person, for being convicted of a felony."
4. Texas Occupations Code, §202.253(a)(4) provides that, "the Board may refuse to issue a license to practice podiatry to a person, for engaging in grossly unprofessional or dishonorable conduct of a character that in the Board's opinion is likely to deceive or defraud the public."
5. Texas Occupations Code, §202.253(a)(5) provides that, "the Board may refuse to issue a license to practice podiatry to a person, for directly or indirectly violating or attempting to violate this chapter or a rule adopted under this chapter as a principal, accessory, or accomplice."
6. Texas Occupations Code, §202.501(a) provides that, "the Board shall revoke or suspend a license; place on probation a person whose license has been suspended, or reprimand a license holder for violating the law regulating the practice of podiatry or a rule adopted by the board."
7. Texas Occupations Code, §202.5015 provides that a license holder who engages in conduct described by Section 202.253 violates this chapter.
8. 22 Texas Administrative Code, §375.3(a)(1) provides that, "(a) The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective to the podiatric profession is to render service to humanity. A podiatric physician shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The podiatric physician shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A podiatric physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life. (b) A licensed podiatric physician shall conduct his practice on the highest plane of honesty, integrity, and fair dealing and shall not mislead his patients as to the gravity of such patient's podiatric medical needs."

9. 22 Texas Administrative Code, §376.3(a)(1) provides that, “a podiatric physician who violates a board rule, order, or any provision of the Act shall be subject to the following disciplinary action: suspension, revocation, reprimand or probated suspension of the license to practice podiatric medicine.”
10. The Findings Of Fact numbers 1 through 6 establish that Dr. Shah violated: Texas Occupations Code, §53.021(a)(1), Texas Occupations Code §202.253(a)(2)(A) and Texas Occupations Code §202.253(a)(4) in that he was convicted of felony “Health Care Fraud” (18 U.S.C. §1347) directly related to the Medicare and Medicaid programs within his licensure as a podiatric physician.

ORDER

1. Dr. Shah’s license to practice podiatric medicine, license no. 1503, is hereby Suspended for a term of five (5) years from the date of approval of this Agreed Order by the Board. The entire Suspension is Probated, conditioned upon the successful completion of the provisions set forth below.

During the 5-year Probated Suspension:

2. Dr. Shah shall pay to the Board an administrative penalty of \$10,000.00 (Ten Thousand Dollars and no/100) fully due and payable within 90 (ninety) days after the effective date of this Agreed Order. Pursuant to Texas Occupation Code §202.552, the fine amount is based on \$5,000.00 each for felony Count One (1) and felony Count Two (2) of “Health Care Fraud” (18 U.S.C. §1347).
3. Dr. Shah’s payment of the administrative penalty shall be made by cashier’s check or money order made payable to the order of the Texas State Board of Podiatric Medical Examiners and shall be either delivered to the Board’s offices in Austin, Texas, or mailed to the Board at P. O. Box 12216, Austin, Texas 78711-2216.
4. If Dr. Shah fails to make payment to the Board as set forth in this Agreed Order or fails to comply with any other term of this Agreed Order, the Board may rescind the probation, enforce the suspension and may file additional violations of the Act and/or Board rules.
5. Dr. Shah takes notice that 22 Texas Administrative Code, §375.3(a)(1) provides that, “(a) The health and safety of patients shall be the first consideration of the podiatric physician. The principal objective to the podiatric profession is to render service to humanity. A podiatric physician shall continually strive to improve his medical knowledge and skill for the benefit of his patients and colleagues. The podiatric physician shall administer to patients in a professional manner and to the best of his ability. Secrets and personal information entrusted to him shall be held inviolate unless disclosure is necessary to protect the welfare of the individual or the community. A podiatric physician shall be temperate in all things in recognition that his knowledge and skill are essential to public health, welfare, and human life. (b) A licensed podiatric physician shall conduct his practice on the highest plane of honesty, integrity, and fair dealing and shall not mislead his patients as to the gravity of such patient's podiatric medical needs.”
6. Dr. Shah shall comply with the terms of his five (5) year federal criminal probation as required by the United States District Court for the Western District of Texas. Upon

- compliance, Dr. Shah shall present documentation to the Board indicating the successful completion of his criminal probation terms.
7. Dr. Shah shall attend annually the American College of Foot & Ankle Surgeons "Billing & Coding" course or the equivalent as approved by the Board. This requirement is in addition to the fifty (50) hours already required by law for every biennium. The total number of required hours of CME for each reporting period must be completed and reported to the Board by November 30th of each of the five years of the probation.
 8. Dr. Shah shall attend the first Board meeting of each calendar year to briefly report about his progress during the probation. Board staff shall inform Dr. Shah of the meeting date, time and location prior to each meeting. If he is unable to attend a particular meeting as required, Dr. Shah shall inform Board staff and make alternative arrangements with Board approval.
 9. Dr. Shah shall abide by all federal or state laws and rules regulating Podiatric Medicine in the State of Texas.
 10. Dr. Shah shall permit a Board representative or staff member to periodically enter his place of business and/or the facility at which he previously maintained an office, announced or unannounced, during the hours of 8:00 a.m. to 5:00 p.m. on any weekday that is not a federal holiday to ensure compliance with this Order, and to ensure proper medical records are maintained, including applicable billing records.
 11. Failure to comply with the terms of this Agreed Order shall result in the automatic lifting of the probated nature of the suspension resulting in the immediate non-probated suspension of Dr. Shah's license under the authority of the Board's Investigative Committee to include revocation of license. The Board may seek judicial relief to enforce the terms of this Agreed Order.
 12. The terms of this **Agreed Order**, if accepted by the Board, become effective upon approval of the Board.
 13. If Dr. Shah fully complies with the terms of the **Agreed Order**, the Board agrees not to bring any further disciplinary action regarding the facts that are the subject of this Order.

GENERAL PROVISIONS

1. Effective Date. This **Agreed Order** shall take effect and become binding upon the approval by the Board.
2. No Waiver. No waiver of any of the terms of this **Agreed Order** shall be valid unless in writing. No waiver of default of any terms of the **Agreed Order** shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
3. Governing Law. This Agreed Order is entered into pursuant to and shall be construed in accordance with the laws of the State of Texas including *Tex. Occup. Code Ann., §202.001 et seq., the Podiatric Medical Practice Act*; and *Tex. Gov't Code Ann., §2001.001 et seq., the Administrative Procedure Act*.
4. Acknowledgment of Entire Agreement. Dr. Shah acknowledges that he has carefully read this instrument, including all documents or exhibits, if any, that are referred to, that this instrument expresses the entire agreement between the parties concerning the subjects it purports to cover, and Dr. Shah has executed this instrument freely and of his own accord.

5. Notice. Any notice to be given under the terms of this **Agreed Order** by either party to this order shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, to the following addresses:

Bhavesh Shah, DPM
 P.O. Box 40055
 San Antonio, TX 78229

Texas State Board of Podiatric Medical Examiners
 P.O. Box 12216
 Austin, TX 78711-2216

RECEIVED

MAR 25 2013

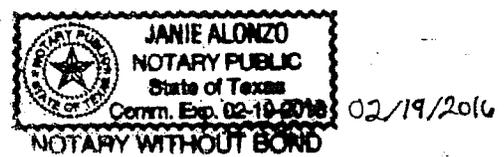
**TEXAS PODIATRIC
 MEDICAL EXAMINERS**

6. Upon approval of this **Agreed Order** by the Board, the Presiding Officer and the Executive Director are authorized to sign the Order on the Board's behalf.

I, BHAVESH SHAH, DPM, HAVE READ AND UNDERSTAND THE FOREGOING ORDER. I UNDERSTAND THAT BY SIGNING, I WAIVE THE RIGHT TO A HEARING BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS AND TO JUDICIAL REVIEW OF THE AGREED ORDER. I SIGN IT VOLUNTARILY. I UNDERSTAND THE AGREED ORDER CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, ORAL, WRITTEN OR OTHERWISE.

[Signature] 3/25/13
 Bhavesh Shah, DPM Date

IN THE STATE OF TEXAS §
 COUNTY OF Travis §
 §



BEFORE ME, on this day personally appeared Bhavesh Shah known to me, who first, being duly sworn, signed the foregoing **Agreed Order** in my presence.

SIGNED on this the 25th day of March, 2013.

Janie Alonzo
 (Printed Name of Notary Public)

[Signature]
 Notary Public, in and for the State of Texas

APPROVED AND ENTERED by the Texas State Board of Podiatric Medical Examiners on this the 12th day of August, 2013, after a Board vote.

[Signature]
 Travis A. Motley, DPM
 Board President

[Signature]
 Mr. Hemant Makan
 Executive Director

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

2012 AUG 21 AM 11:35

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY: 
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

V.

BHAVESH J. SHAH, (I),

Defendant.

§
§
SA 12CR 792 FB
§
§
§
§
§
§
CRIM. NO.

PLEA AGREEMENT

The United States of America, by and through the United States Attorney for the Western District of Texas (hereinafter referred to as "the Government"), and Defendant BHAVESH J. SHAH, (hereinafter referred to as "Defendant"), individually and by and through Defendant's counsel, hereby enter into the following plea agreement in the above-referenced cause pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

I.

Count(s) of Conviction

The Defendant, BHAVESH J. SHAH, agrees to plead guilty to Counts One and Two of the Information in this cause, charging the violations of Title 18 U.S.C. § 1347, Health Care Fraud.

II.

Range of Punishment

The Defendant, BHAVESH J. SHAH, understands that the range of punishment for each count is a term of imprisonment of not more than ten (10) years, a fine of not more than \$250,000.00, a term of supervised release of not more than three (3) years, and a \$100 special

A true copy of the original, I certify
WILLIAM G. PUTNICKI
Clerk, U. S. District Court

BY: 
Deputy Clerk

assessment, as well as an order of restitution. The Defendant acknowledges having discussed this range of punishment and penalties with counsel and wants to persist in entering a plea of guilty. Once the guilty plea is entered, except for exceptional circumstances, the defendant will not be allowed to withdraw the plea of guilty.

III.
Restitution

The Defendant, BHAVESH J. SHAH, agrees to pay restitution at the time of sentencing in the amount of \$83,754.45, jointly and severally with codefendant Andrea Iturrieta.

IV.
Imposition of Sentence

The parties agree that, pursuant to Fed.R.Crim.P. 11(c)(1)(C), a sentence of five years probation would be an appropriate sentence and disposition for this case and hereby request that this Court agree to be bound by the terms of this plea agreement. Should the Court reject the agreement of the parties, the Defendant will not be bound by the plea of guilty or this plea agreement.

V.
Waiver of Rights

The Defendant, BHAVESH J. SHAH, acknowledges that by pleading guilty, the Defendant will be waiving each of the following rights.

- A. The right to plead not guilty and persist in that plea.
- B. The right to a speedy and public jury trial.
- C. The right to assistance of counsel at that trial and in any subsequent appeal.
- D. The right to remain silent at trial.
- E. The right to testify at trial.
- F. The right to confront and cross-examine government witnesses.
- G. The right to present evidence and witnesses on the Defendant's own behalf.
- H. The right to compulsory process of the court.
- I. The right to be presumed innocent.
- J. The right to a unanimous guilty verdict.

K. The right to appeal a guilty verdict.

VI.
Waiver of Appeal and Collateral Attack

The Defendant, BHAVESH J. SHAH, is aware that any sentence imposed can be up to the maximum allowed by statute for the offense(s) to which the Defendant is pleading guilty. The Defendant is also aware that the sentence to be imposed is not subject to parole. By entering into this plea agreement, and as a term of this plea agreement, the Defendant voluntarily and knowingly waives any right to appeal the sentence on any ground, including any appeal right conferred by 18 U.S.C. § 3742, as amended by the *United States v. Booker* case cited above.

The Defendant, BHAVESH J. SHAH, also voluntarily and knowingly waives the right to contest the sentence in any post-conviction proceeding, including but not limited to, a proceeding pursuant to 28 U.S.C. § 2255; provided, however, that consistent with principles of professional responsibility imposed on the Defendant's counsel and counsel for the Government, the Defendant does not waive the right to challenge the sentence to the extent that it is the result of a violation of the Defendant's constitutional rights based on claims of ineffective assistance of counsel or prosecutorial misconduct of constitutional dimension.

The Defendant, BHAVESH J. SHAH, waives all rights to challenge the sentence imposed, knowing that the Court has not yet determined that sentence. The Defendant understands and agrees that any estimate of the probable sentencing range that may be received from defense counsel, the Government, or the United States Probation Office is not a promise, did not induce the guilty plea or this waiver, and does not bind the Government, the United States Probation Office, or the Court. In other words, the Defendant understands that the Defendant may not challenge the sentence imposed by the District Court, even if it differs

substantially from any sentencing range estimated by defense counsel, the attorney for the Government, or the United States Probation Officer. Realizing the uncertainty in estimating what sentence the Defendant will ultimately receive, the Defendant knowingly and voluntarily waives any rights to appeal the sentence or contest it in any post-conviction proceeding in exchange for the concessions made by the Government in this plea agreement.

VII.

Assistance of Counsel

The Defendant acknowledges that the Defendant has reviewed the merits of the charges and all possible defenses with counsel, including, but not limited to, the right to file motions with the Court. The Defendant acknowledges that the Defendant has had sufficient time to consult with defense counsel on such matters and all possible defenses. The Defendant further acknowledges by signing this Agreement that the Defendant believes the Defendant has received effective assistance of counsel and has had sufficient time to consult with defense counsel regarding the plea agreement and the punishment that could be imposed. The Defendant voluntarily and knowingly waives the right to file pretrial motions, to have a hearing on any such pretrial motion, previously filed or otherwise, and to have a trial on the charges brought against the Defendant in this case.

VIII.

Defendant's Waiver of Right to Seek Attorneys' Fees

The Defendant hereby stipulates and agrees that by reason of the dismissal of, or the Government's agreement to forebear filing or pursuing, certain criminal charges as a part of this plea agreement, the Defendant is not a "prevailing party" for the purpose of seeking attorneys' fees under the "Hyde Amendment," Pub.L.No. 105-119, Section 617 (Nov. 26, 1997). The

Defendant further agrees that as a term of this plea agreement, the Defendant hereby waives any and all claims against the United States for attorneys' fees under said law.

IX.
Reservation of Government's Rights

The Government reserves the right to: (1) bring its version of the facts of this case to the attention of the United States Probation Office in connection with that office's preparation of a presentence report; (2) dispute sentencing factors or facts material to sentencing in the presentence report; and (3) seek resolution of such factors or facts in conference with defense counsel and the United States Probation Office. All parties reserve full right of allocution as to the appropriate sentence the Defendant should receive, unless otherwise provided above.

Defendant further understands that the agreement binds only the United States Attorney's Office for the Western District of Texas and the Defendant. The Defendant acknowledges fully understanding that by this plea agreement, no representations or agreements have been made or entered into with any other United States Attorney or any other federal or state prosecutor concerning other pending or possible offenses or charges. The written plea agreement constitutes the entire agreement between the parties and shall not be modified except by agreement in open court or in a supplemental plea agreement signed by all the parties.

X.
Factual Basis for Plea

The Defendant agrees and stipulates as part of this plea agreement to the following facts:

From on or about February 23, 2009, to on or about November 30, 2011, in the Western District of Texas and elsewhere, the Defendants BHAVESH J. SHAH and ANDREA CHRISTINA ITURRIETA, together with other persons known and unknown intentionally and

knowingly executed and attempted to execute a scheme and artifice to defraud a health care benefit program, namely Medicare and the Texas Medicaid program, and to obtain, by means of false and fraudulent, pretenses, representations and promises, money or property owned by, or under the custody and control of a health care program, namely, Medicare and the Texas Medicaid program, in connection with the delivery and payment for health care benefits, items, and services.

It was part of the scheme and artifice to defraud that, while in service as a Texas Medicaid and Medicare provider Defendants BHAVESH J. SHAH and ANDREA CHRISTINA ITURRIETA corruptly filed and caused to be filed false claims with Medicare and the Texas Medicaid program for reimbursement for office visits and physician services. Defendants BHAVESH J. SHAH and ANDREA CHRISTINA ITURRIETA also corruptly billed and caused to be billed the Medicare and Texas Medicaid program for Durable Medical Equipment (DME) which, in truth and in fact, was not provided to Medicare and Medicaid recipients. The corruptly filed claims and fraudulent billing generated by Defendants resulted in payments to Defendant BHAVESH J. SHAH from Medicare and the Texas Medicaid program which the Defendants were not entitled to receive.

The Medicare Program is a federally funded health care insurance program funded by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). Medicare is a health care benefit program. The Medicare Program provides federal health care insurance benefits to people age sixty-five and older and individuals with disabilities. The Medicare program permits health agencies and providers to receive reimbursement for reasonable and necessary medical procedures, medical services, and medical supplies provided to Medicare recipients, also known as beneficiaries.

Medicare is divided into two parts, Part A and Part B. Carriers contract to manage the Part B Medicare program and administer the reimbursements. In Texas, the U.S. Department of Health and Human Services now contracts with Trailblazer Health Enterprises (Trailblazer) to administer and pay Medicare claims filed by physicians.

In order to participate in the Medicare program in Texas, a physician must complete, sign, and submit a Medicare application to Trailblazer. If approved as a provider, Trailblazer assigns a provider number to the physician. The provider number must be used on all claim forms filed with Medicare to identify the supplier of the medical services.

When a physician becomes a Medicare provider, the physician provider (hereinafter "provider") is furnished a Medicare Part B Handbook for Physicians and Suppliers. Under the provider agreement, the provider is required to become familiar with, and comply with, all rules and regulations in the provider handbook as well as any laws governing Medicare. The handbook contains a specific section dealing with the billing process, citing examples of how to properly bill Medicare.

The provider submits claims for payment to Trailblazer either in hard copy or electronically. By submitting claims using the provider's unique personal identifier number, the provider is certifying that all claims made by the provider are true and accurate, and the claimed services were rendered, and were reasonable and medically necessary. The claim form describes, among other things, the services provided to the patient, the symptoms or diseases suffered by the patient, and identifies the medical professional providing the services. A provider is required to ensure that the provider's employees and agents are aware of, and comply with, all Medicare rules, regulations, and laws. A provider employing, contracting, or otherwise utilizing a biller or billing service is required to review the accuracy of all claims submitted on

behalf of the provider, and to correct any errors in billing. Trailblazer pays a provider for submitted claims by automatic deposits and by check issued to the provider.

On all occasions when Trailblazer pays a Medicare claim, a Medicare Summary Notice (MSN) is sent to the Medicare beneficiary (patient) informing the beneficiary (patient) of the service(s) billed by the provider. A Medicare Remittance Notice is also sent to the provider indicating the services paid for by Medicare.

The Texas Medicaid program (Medicaid) is a cooperative federal-state program to furnish medical assistance to the indigent. Although funded predominantly by the United States Government, the state administers the Medicaid program. Medicaid helps pay for reasonable and necessary medical procedures and services provided to individuals who are deemed eligible under state low-income programs. Texas Medicaid is a health care benefit program.

In order to participate in the Texas Medicaid program, a physician completes, signs, and submits a Texas Medicaid Provider Agreement. If approved as a Medicaid provider, the physician provider (provider) is issued a provider number. The provider is subsequently issued a Provider Manual. The Provider Agreement states that each provider has a duty to become familiar with the contents and procedures contained in the Provider Manual as well as all state and federal laws governing and regulating Medicaid. The provider agrees to comply with all of the requirements of the Provider Manual and state and federal laws. The provider is responsible for ensuring that employees or agents acting on behalf of the provider are aware of, and comply with, all the requirements of the Provider Manual and all laws governing and regulating Medicaid. A provider employing, contracting, or otherwise utilizing a biller or billing service is required to review the accuracy of all claims submitted on behalf of the provider, and to correct any errors in billing.

Texas Medicaid contracts with the Texas Medicaid and Healthcare Partnership (TMHP) to process and pay claims. A provider may submit Medicaid claims to TMHP electronically or in hard copy. By submitting or causing claims to be submitted under the provider's unique personal identification number, the physician is certifying that the services were provided and were medically necessary. TMHP pays Medicaid claims submitted by providers by automatic deposits and by checks issued to the provider.

In Texas, both Medicaid and Medicare provide reimbursement for certain medically necessary podiatric services. Reimbursable podiatric services include mycotic nail debridement billed under Current Procedural Terminology (CPT) codes 11721 (six or more toenails) and 11720 (less than six toenails). In order to be reimbursable under Medicare and Medicaid, a physician must perform certain medical steps and follow strict documentation requirements. The number and frequency of debridements is limited by utilization guidelines. CPT codes 11721 and 11720 are frequently used to perpetuate health care fraud. For this reason, Medicare and Medicaid routinely perform audits to identify providers who file high volume claims using these codes.

A podiatrist provider can bill for face-to-face office visits with Medicaid patient recipients using CPT code 99213. To be reimbursable under this code, an office visit must include fifteen minutes of face-to-face time with a patient and meet medical decision making, history, and treatment level requirements. Mycotic debridements alone will not justify reimbursement under CPT code 99213. Reimbursement for CPT code 99213 is higher than reimbursement under CPT codes 11721 or 11720. Providers are able to avoid Medicare and Medicaid audits of CPT codes 11721 and 11720 and fraud identification by inappropriately billing debridements as office visits using CPT code 99213.

Medicare and Medicaid will also pay for medically necessary Durable Medical Equipment (DME) to include therapeutic shoes and inserts for patients with diabetes who qualify under Medicare and Medicaid rules. Providers must create and maintain appropriate documentation supporting the medical necessity of the DME. Providers bill Medicare and Medicaid for diabetic therapeutic shoes and inserts under CPT codes A5500, A5512, and A5513. Custom molded shoes and therapeutic inserts billed under these codes require, among other things, that the inserts be "direct mold inserts." Direct molding means that the insert has been conformed by molding the insert directly to match the plantar surface of the individual patient's foot. Molding is accomplished by heating the inserts and molding them to the patients' feet. "Compression molding" in which inserts are molded over time by the weight and heat of a patient's feet by wearing the inserts over a period of time are not covered by Medicare and Medicaid. Medicare and Medicaid will pay for one pair of custom molded shoes and three custom molded inserts for a Medicaid and Medicare recipient within a calendar year.

At all times pertinent to the Information, Defendant BHAVESH J. SHAH was a licensed podiatrist owning and operating multiple podiatry clinics in San Antonio and throughout Texas dba South Texas Foot Institute.

On or about August 1, 2003, Defendant BHAVESH J. SHAH dba South Texas Foot Institute became an authorized Medicare provider and was assigned Medicare National Provider Identification number 1710176243. On or about November 5, 2003, SHAH, dba South Texas Foot Institute, became an authorized Medicaid provider and was assigned Texas Provider Identification Number 1609950-01. These group provider numbers allowed SHAH, dba South Texas Foot Institute, to submit and receive payment for services provided by SHAH and other

providers employed by or contracted with South Texas Foot Institute to provide podiatry services to South Texas Foot Institute patients.

From approximately March 2009 through November 2011, Defendant ANDREA CHRISTINA ITURRIETA was employed by SHAH at the South Texas Foot Institute as a biller. In this capacity, Defendant ITURRIETA was responsible for submitting claims to insurance providers to include Medicare and Medicaid for services and equipment provided by South Texas Foot Institute medical providers.

While operating his clinics throughout Texas, SHAH created an artifice and scheme to defraud or obtain money from the Texas Medicaid and Medicare programs using false and fraudulent pretenses and representations. He intentionally and knowingly directed Defendant ITURRIETA and others to falsely bill Medicaid and Medicare using codes which were not justified by the procedures performed, and which resulted in greater reimbursement from Medicare and Medicaid. ITURRIETA routinely billed Medicare and Medicaid for office visits using CPT billing 99213 for mycotic debridements services which did not qualify as office visits reimbursable under CPT code 99213. Defendant ITURRIETA also knowingly and intentionally billed a wart removal, then reimbursable at approximately \$82.00, as removal of a foreign body resulting in reimbursement of approximately \$362.00.

In order to conceal the fraudulent activity, Defendant ITURRIETA altered patient medical files and provider billing records and documents of employed and contracted medical providers to reflect that more extensive services were performed than the services actually provided to the patients.

As a result of the fraudulent practice of billing for more extensive services than those provided to patients, Defendants SHAH and ITURRIETA billed Medicare and Medicaid \$189,964.40 and was paid by Medicare and Medicaid \$83,754.45.

Defendants SHAH and ITURRIETA also engaged in a scheme and artifice to defraud Medicaid and Medicare by billing for DME diabetic therapeutic shoes and inserts which were not provided to patients, and for inserts and shoes that were not molded to patients feet and therefore not reimbursable by Medicare or Medicaid. Defendants SHAH directed Defendant ITURRIETA to bill Medicare and Medicaid for three pairs (six individual) customized inserts but only provided patients one pair of inserts. Shoes and inserts that were provided to patients were never direct molded to patients' feet as required by Medicare and Medicaid. As a result of this fraudulent scheme, Defendants SHAH and ITURRIETA billed Medicare \$101,144.40 and Medicaid \$48,813.60 and were paid \$47,046.42 and \$5,636.45 respectively, monies to which the Defendants were not entitled to receive.

On April 23, 2012, Defendant BHAVESH J. SHAH was interviewed by fraud investigators. Defendant SHAH admitted that from 2008 forward, he engaged in a practice of billing Medicare and Medicaid for greater services and more DME than he was actually providing to patients. He admitted that he directed his staff to provide only one set of therapeutic inserts and directed his biller to submit claims to Medicare and Medicaid for three pairs of inserts. Defendant SHAH also admitted that when his contracted and employed medical providers submitted claims for mycotic debridements under CPT code 11721, he directed Defendant ITURRIETA to change claim submissions to CPT code 99213 because CPT code 99213 paid more. Defendant SHAH admitted that he knew the services performed were

debridements and that he knew changing the billing code was wrong. SHAH reviewed claims documents and admitted that the billings were false and not justified by the services rendered.

Defendant ANDREA CHRISTINA ITURRIETA was interviewed by fraud investigators on April 23, 2012. During this interview, Defendant ITURRIETA admitted that she was the biller for the South Texas Foot Institute from March 2009 through November 2011. She admitted that she billed for more diabetic therapeutic inserts than what she ordered. She admitted that she changed codes submitted by doctors from debridement under CPT 11721 to office visits using CPT 99213. She admitted that she did this because reimbursement would be higher, and it would involve less paperwork. Defendant ITURRIETA reviewed claims documents and admitted that the documents reflected the false claims that she filed with Medicare and Medicaid and the documents that she altered to conceal the false billing.

Patients and employees interviewed confirmed that services billed to Medicare and Medicaid were not the services provided. Patients and employees also verified that multiple inserts were not provided to patients and that the inserts provided were not heated or direct molded as required by Medicare and Medicaid. Employees also verified that Defendant SHAH instructed them to bill debridements under CPT code 99213.

Moreover, as alleged in Count One of the Information, and through the Manner and Means of the Information, the Defendants BHAVESH J. SHAH and ANDREA CHRISTINA ITURREITA committed Health Care Fraud by billing for services not rendered.

Between on or about April 25, 2011, and on or about June 27, 2011, the Defendants billed and caused to be billed to Medicaid and Medicare for two office visits in the amount totaling \$290.00 using billing CPT Code 99213 for patient C.G., which services, in truth and in fact, were not rendered as services consisted only of mycolic nail debridements. As a result of

the Defendant's fraudulent act, Medicare issued payment in the amount of \$107.04 and Medicaid issued payment in the amount of \$26.76 for the fraudulent claims.

As alleged in Count Two of the Information, and through the Manner and Means of the Information, the Defendants BHAVESH J. SHAH and ANDREA CHRISTINA ITURRBITA committed Health Care Fraud by billing for services not rendered.

On or about May 12, 2011, the Defendants billed and caused to be billed to Medicaid and Medicare three pairs of direct molded diabetic therapeutic inserts in the amount of \$300.00 using billing CPT Code A5512 for patient D.T., which DME, in truth and in fact, was not provided as only one pair of non-molded inserts not meeting Medicare or Medicaid coverage requirements were provided to D.T. As a result of the Defendant's fraudulent act, Medicare issued payment in the amount of \$130.61 and Medicaid issued payment in the amount of \$32.65 for the fraudulent claim.

XI.
Breach of Plea Agreement

All promises made here by each party are made dependent on full performance of the promises made by the other party. Any promise regarding the Government's sentencing recommendation, if any applies only to the sentencing upon this information and does not apply, for example, to any future proceedings relating to an alleged violation of probation, a violation of parole, or a violation of supervised release. If the Defendant, BHAVESH J. SHAH, commits any crimes, violates any of the conditions of release, or violates any term of this agreement between signing this agreement and the date of sentencing, or fails to appear for sentencing, or if the Defendant provides information to the probation officer, the United States, or the Court which is intentionally misleading or intentionally untruthful, the United States will be free to recommend

at sentencing on the charges to which the defendant has pleaded guilty, a sentence higher than that contemplated by this agreement. If the Government pursues this course, the defendant will not be free to withdraw this guilty plea entered pursuant to this plea agreement. Furthermore, in such instance, the Government will be free to charge, reinstate, or otherwise pursue any and all charges which could have been brought but for this plea agreement.

XII.

Duty of Financial Candor

The Defendant, BHAVESH J. SHAH, agrees that a complete and truthful disclosure shall be made to the U.S. Probation Office regarding every aspect of the Defendant's financial condition. Failure to truthfully and completely disclose all financial information as required by the Probation Officer may result in the Court's rejection of the plea of guilty; refusal of the Government to recommend to the Court a third level for acceptance of responsibility; a recommendation by the government for a two level enhancement in the guideline level for obstruction of justice; and/or prosecution for affirmative false statements or false statements by omission to a member of the judicial branch of the U.S. government, Title 18, United States Code, Section 1001. If the Government pursues prosecution the Defendant will not be free to withdraw this plea of guilty entered pursuant to this plea agreement.

Further, the Defendant acknowledges and agrees that the Defendant may not engage in any financial transactions, including, but not limited to transfers of funds to and from financial accounts; making or accepting advance payments; or buying or selling securities or real or personal property without the consent of the Court. However, the Defendant may engage in routine transactions such as the necessary payment of monthly debt and expenses relating to

employment without the prior consent of the court. Violations of this condition will be considered a breach of the Plea Agreement which may result in the same consequences as those in the preceding paragraph with the exception of prosecution.

Respectfully submitted,

ROBERT PITMAN
UNITED STATES ATTORNEY

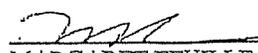
DATE: Aug 21, 2012

By:


KIMBERLY JOHNSON
Special Assistant U.S. Attorney

DATE: _____, 2012

By:

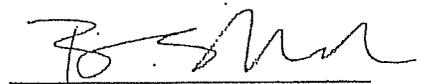

MARGARET FEUILLE LEACHMAN
Assistant U.S. Attorney

DATE: Aug 14, 2012


JOE A. PINA
Attorney for Defendant

I HAVE READ (OR HAD READ TO ME) THE ABOVE PLEA AGREEMENT IN ITS ENTIRETY AND AGREE TO THE TERMS SET FORTH IN IT. ADDITIONALLY, I HAVE READ (OR HAD READ TO ME) THE FACTUAL BASIS CONTAINED HEREIN AND AGREE TO THE FACTS SET FORTH IN THE FACTUAL BASIS.

DATE: Aug 14, 2012


BHAVESH J. SHAH
Defendant

FILED

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

2012 AUG 21 AM 11:32

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

SA 12 CR 792 FB
CRIMINAL NO. DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

VS.

BHAVESH J. SHAH, (1),

AND

ANDREA CHRISTINA ITURRIETA, (2),

Defendants.

§
§
§
§
§
§
§
§
§
§
§

INFORMATION

[Violations: 18 U.S.C. § 1347,
Health Care Fraud, Counts 1 & 2.]

THE UNITED STATES ATTORNEY CHARGES:

A HEALTH CARE FRAUD SCHEME
[18 U.S.C. Section 1347]

A. INTRODUCTION

At all times material to this Information within the Western District of Texas, and elsewhere;

The Medicare Program

The Medicare Program is a federally funded health care insurance program funded by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). Medicare is a health care benefit program. The Medicare Program provides federal health care insurance benefits to people age sixty-five and older and individuals with disabilities. The Medicare program permits health agencies and providers to receive reimbursement for reasonable and necessary medical procedures, medical services, and medical

A true copy of the original, I certify,
Clerk, U. S. District Court

By Beverly J. Alden
Deputy

supplies provided to Medicare recipients, also known as beneficiaries.

Medicare is divided into two parts, Part A and Part B. Carriers contract to manage the Part B Medicare program and administer the reimbursements. In Texas, the U.S. Department of Health and Human Services now contracts with Trailblazer Health Enterprises (Trailblazer) to administer and pay Medicare claims filed by physicians.

In order to participate in the Medicare program in Texas, a physician must complete, sign, and submit a Medicare application to Trailblazer. If approved as a provider, Trailblazer assigns a provider number to the physician. The provider number must be used on all claim forms filed with Medicare to identify the supplier of the medical services.

When a physician becomes a Medicare provider, the physician provider (hereinafter "provider") is furnished a Medicare Part B Handbook for Physicians and Suppliers. Under the provider agreement, the provider is required to become familiar with, and comply with, all rules and regulations in the provider handbook as well as any laws governing Medicare. The handbook contains a specific section dealing with the billing process, citing examples of how to properly bill Medicare.

The provider submits claims for payment to Trailblazer either in hard copy or electronically. By submitting claims using the provider's unique personal identifier number, the provider is certifying that all claims made by the provider are true and accurate, and the claimed services were rendered, and were reasonable and medically necessary. The claim form describes, among other things, the services provided to the patient, the symptoms or diseases suffered by the patient, and identifies the medical professional providing the services. A provider is required to ensure that the provider's employees and agents are aware of, and comply with, all Medicare rules, regulations, and laws. A provider employing, contracting, or otherwise

utilizing a biller or billing service is required to review the accuracy of all claims submitted on behalf of the provider, and to correct any errors in billing. Trailblazer pays a provider for submitted claims by automatic deposits and by check issued to the provider.

On all occasions when Trailblazer pays a Medicare claim, a Medicare Summary Notice (MSN) is sent to the Medicare beneficiary (patient) informing the beneficiary (patient) of the service(s) billed by the provider. A Medicare Remittance Notice is also sent to the provider indicating the services paid for by Medicare.

The Texas Medicaid Program

The Texas Medicaid program (Medicaid) is a cooperative federal-state program to furnish medical assistance to the indigent. Although funded predominantly by the United States Government, the state administers the Medicaid program. Medicaid helps pay for reasonable and necessary medical procedures and services provided to individuals who are deemed eligible under state low-income programs. Texas Medicaid is a health care benefit program.

In order to participate in the Texas Medicaid program, a physician completes, signs, and submits a Texas Medicaid Provider Agreement. If approved as a Medicaid provider, the physician provider (provider) is issued a provider number. The provider is subsequently issued a Provider Manual. The Provider Agreement states that each provider has a duty to become familiar with the contents and procedures contained in the Provider Manual as well as all state and federal laws governing and regulating Medicaid. The provider agrees to comply with all of the requirements of the Provider Manual and state and federal laws. The provider is responsible for ensuring that employees or agents acting on behalf of the provider are aware of, and comply with, all the requirements of the Provider Manual and all laws governing and regulating Medicaid. A provider employing, contracting, or otherwise utilizing a biller or billing service is

required to review the accuracy of all claims submitted on behalf of the provider, and to correct any errors in billing.

Texas Medicaid contracts with the Texas Medicaid and Healthcare Partnership (TMHP) to process and pay claims. A provider may submit Medicaid claims to TMHP electronically or in hard copy. By submitting or causing claims to be submitted under the provider's unique personal identification number, the physician is certifying that the services were provided and were medically necessary. TMHP pays Medicaid claims submitted by providers by automatic deposits and by checks issued to the provider.

Podiatric Services

In Texas, both Medicaid and Medicare provide reimbursement for certain medically necessary podiatric services. Reimbursable podiatric services include mycotic nail debridement billed under Current Procedural Terminology (CPT) codes 11721 (six or more toenails) and 11720 (less than six toenails). In order to be reimbursable under Medicare and Medicaid, a physician must perform certain medical steps and follow strict documentation requirements. The number and frequency of debridements is limited by utilization guidelines. CPT codes 11721 and 11720 are frequently used to perpetuate health care fraud. For this reason, Medicare and Medicaid routinely perform audits to identify providers who file high volume claims using these codes.

A podiatrist provider can bill for face-to-face office visits with Medicaid patient recipients using CPT code 99213. To be reimbursable under this code, an office visit must include fifteen minutes of face-to-face time with a patient and meet medical decision making, history, and treatment level requirements. Mycotic debridements alone will not justify reimbursement under CPT code 99213. Reimbursement for CPT code 99213 is higher than

reimbursement under CPT codes 11721 or 11720. Providers are able to avoid Medicare and Medicaid audits of CPT codes 11721 and 11720 and fraud identification by inappropriately billing debridements as office visits using CPT code 99213.

Medicare and Medicaid will also pay for medically necessary Durable Medical Equipment (DME) to include therapeutic shoes and inserts for patients with diabetes who qualify under Medicare and Medicaid rules. Providers must create and maintain appropriate documentation supporting the medical necessity of the DME. Providers bill Medicare and Medicaid for diabetic therapeutic shoes and inserts under CPT codes A5500, A5512, and A5513. Custom molded shoes and therapeutic inserts billed under these codes require, among other things, that the inserts be "direct mold inserts." Direct molding means that the insert has been conformed by molding the insert directly to match the plantar surface of the individual patient's foot. Molding is accomplished by heating the inserts and molding them to the patients' feet. "Compression molding" in which inserts are molded over time by the weight and heat of a patient's feet by wearing the inserts over a period of time are not covered by Medicare and Medicaid. Medicare and Medicaid will pay for one pair of custom molded shoes and three custom molded inserts for a Medicaid and Medicare recipient within a calendar year.

At all times pertinent to the Information, Defendant BHAVESH J. SHAH was a licensed podiatrist owning and operating multiple podiatry clinics in San Antonio and throughout Texas dba South Texas Foot Institute.

Defendants BHAVESH J. SHAH and ANDREA C. ITURRITA

At all times pertinent to this Information, Defendant BHAVESH J. SHAH was a licensed podiatrist operating South Texas Foot Institute in San Antonio and elsewhere throughout Texas.

On or about August 1, 2003, Defendant BHAVESH J. SHAH dba South Texas Foot

Institute became an authorized Medicare provider and was assigned Medicare National Provider Identification number 1710176243. On or about November 5, 2003, SHAH, dba South Texas Foot Institute became an authorized Medicaid provider and was assigned Texas Provider Identification number 1609950-01. These group provider numbers allowed SHAH, dba South Texas Foot Institute to submit and receive payment for services provided by SHAH and other providers employed by or contracted with South Texas Foot Institute to provide podiatry services to South Texas Foot Institute patients.

From approximately March 2009 through November 2011, Defendant ANDREA CHRISTINA ITURRIETA was employed by SHAH at the South Texas Foot Institute as a biller. In this capacity, Defendant ITURRIETA was responsible for submitting claims to insurance providers to include Medicare and Medicaid for services and equipment provided by South Texas Foot Institute medical providers.

At all times pertinent to this information, Defendants SHAH and ITURRIETA billed Medicaid and Medicare for podiatric services and durable medical equipment that in truth and in fact, were not provided.

B. THE SCHEME AND ARTIFICE TO DEFRAUD

1. From on or about February 23, 2009, to on or about November 30, 2011, in the Western District of Texas and elsewhere, the Defendants,

BHAVESH J. SHAH,

and

ANDREA C. ITURRIETA,

together with other persons, both known and unknown, knowingly and willfully executed and attempted to execute a scheme and artifice to defraud a health care benefit program, namely

Medicare and the Texas Medicaid Program, and to obtain, by means of false and fraudulent, pretenses, representations and promises, money or property owned by, or under the custody and control of a health care program, namely, Medicare and the Texas Medicaid Program, in connection with the delivery and payment for health care benefits, items, and services.

C. MANNER AND MEANS OF THE SCHEME AND ARTIFICE TO DEFRAUD

It was part of the scheme and artifice to defraud that, while in service as a Texas Medicaid and Medicare provider:

1. Defendant BHAVISH J. SHAH would and did fraudulently instruct Defendant ANDREA CHRISTINA ITURRIETA and others to file claims with Medicare and the Texas Medicaid Program for reimbursement for durable medical equipment which were, in truth and in fact, not provided to patients.

2. Defendant ANDREA CHRISTINA ITURRIETA knowingly and intentionally filed claims for reimbursement from Medicare and the Texas Medicaid Program for diabetic therapeutic inserts that were neither ordered for nor provided to patients.

3. Defendant BHAVISH J. SHAH would and did fraudulently instruct Defendant ANDREA CHRISTINA ITURRIETA and others to file claims with Medicare and the Texas Medicaid Program utilizing billing codes (CPT) that falsely and fraudulently represented to Medicare and Medicaid that more expensive procedures were performed for patients than those actually provided to patients.

4. Defendant ITURRIETA did, in truth and in fact, knowingly and intentionally file claims using incorrect CPT codes for the purpose of increasing reimbursement from Medicare and Medicaid.

5. The corruptly filed claims and fraudulent billing generated by Defendant SHAH and Defendant ITURRIETA resulted in payment from Medicare and the Texas Medicaid Program to Defendant SHAH which monies the Defendants were not entitled to receive.

6. From on or about February 23, 2009, to on or about November 2011, the Defendants fraudulently billed Medicare and Medicaid \$189,964.40 and were paid \$83,754.45 for services and durable medical equipment that were not provided.

D. THE EXECUTION OF THE SCHEME AND ARTIFICE TO DEFRAUD

COUNTS ONE
[18 U.S.C. §1347]

1. Sections A, B, and C of this Information are hereby incorporated and re-alleged herein.

2. For the purpose of executing the aforementioned scheme and artifice to defraud and attempting to do so, in the Western District of Texas, between April 25, 2011, and on or about June 27, 2011, the Defendants,

BHAVESH J. SHAH

and

ANDREA C. ITURRIETA

knowingly and intentionally executed the *Scheme and Artifice to Defraud* by submitting and causing to be submitted false and fraudulent claims in the amount of \$290.00 to the Texas Medicare and Medicaid Programs for patient C.G., using CPT code 99213 for services and benefits purported to be provided to C.G. which services and benefits were, in truth and in fact, not provided, resulting in a Medicare payment in the amount of \$107.04 and Medicaid payment in the amount of \$26.76 to Defendant SHAH, and to which the Defendants were not entitled to receive.

All in violation of Title 18, United States Code, Section 1347,

COUNT TWO
[18 U.S.C. §1347]

1. Sections A, B, and C of this Information are hereby incorporated and re-alleged herein.

2. For the purpose of executing the aforementioned scheme and artifice to defraud and attempting to do so, in the Western District of Texas, on or about May 12, 2011, the Defendants,

BHAVESH J. SHAH

and

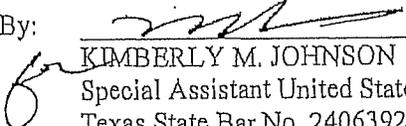
ANDREA C. ITURRIETA

knowingly and willfully executed the *Scheme and Artifice to Defraud* by submitting and causing to be submitted a false and fraudulent claim in the amount of \$300.00 to the Texas Medicare and Medicaid Programs for patient D.T., for diabetic therapeutic shoe inserts using CPT code A5512 which services and benefits purported to be provided to D.T. were, in truth and in fact, not provided, resulting in a Medicare payment in the amount of \$130.61 and Medicaid payment in the amount of \$32.65 to Defendant SHAH, and to which the Defendants were not entitled to receive.

All in violation of Title 18, United States Code, Section 1347.

Respectfully submitted,

ROBERT PITMAN
UNITED STATES ATTORNEY

By: 

KIMBERLY M. JOHNSON
Special Assistant United States Attorney
Texas State Bar No. 24063920
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
Tel: (210) 384-7150
Fax: (210) 384-7118

By: 

MARGARET F. LEACHMAN
Assistant United States Attorney
Texas State Bar No. 12069700
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
Tel: (210) 384-7150
Fax: (210) 384-7118

AO 245 B (Rev. 06/05)(W.D.TX.) - Judgment in a Criminal Case

FILED

UNITED STATES DISTRICT COURT
Western District of Texas
SAN ANTONIO DIVISION

JAN - 9 - 2013

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

UNITED STATES OF AMERICA

v.

Case Number SA-12-CR-792(01) FB
USM Number 03650-380

BHAVESH J. SHAH, TRUE NAME: BHAVESH JAGDISH SHAH,
Alias: Bhavesh J. Shah,

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, BHAVESH J. SHAH, TRUE NAME: BHAVESH JAGDISH SHAH, Alias: Bhavesh J. Shah, was represented by Mr. Joe A. Pina, Esquire.

The defendant pled guilty to Count(s) One (1) and Two (2) of the Information on September 20, 2012. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count (s)</u>
18 USC § 1347	Health Care Fraud	June 27, 2011	One
18 USC § 1347	Health Care Fraud	May 12, 2011	Two

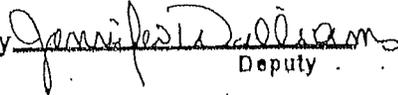
As pronounced on December 21, 2012, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid. If ordered to pay restitution, the defendant shall notify the Court and United States Attorney of any material change in the defendant's economic circumstances.

Signed this the 9th day of January, 2013.


FRED BIERY
CHIEF UNITED STATES DISTRICT JUDGE

A true copy of the original, I certify.
Clerk, U.S. District Court

By 
Deputy

AO 245 B (Rev. 06/05)(W.D.TX.) - Probation

Judgment--Page 2

Defendant: BHAVESH J. SHAH (see page 1)
Case Number: SA-12-CR-792(01) FB

PROBATION

The defendant is hereby placed on probation for a term of FIVE (5) YEARS on Counts One (1) and Two (2) to be served concurrently.

While on probation, the defendant shall comply with the mandatory, standard and if applicable, the special conditions that have been adopted by this Court.

The defendant shall not be required to undergo mandatory drug testing.

AO 245 B (Rev. 05/04)(W.D.TX.) - Supervised Release

Judgment--Page 3

Defendant: BHAVESH J. SHAH (see page 1)

Case Number: SA-12-CR-792(01) FB

CONDITIONS OF PROBATION

Mandatory Conditions:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not unlawfully possess a controlled substance.
- 3) The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- 4) In supervised release cases only, the defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.
- 5) If convicted of a felony, the defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- 6) The defendant shall cooperate in the collection of DNA as directed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- 7) If convicted of a sexual offense and required to register under the Sex Offender and Registration Act, that the defendant comply with the requirements of the Act.
- 8) If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- 9) If the judgment imposes a fine or restitution, it is a condition of supervision that the defendant pay in accordance with the Schedule of Payments sheet of the judgment.

Standard Conditions:

- 1) The defendant shall not leave the judicial district without permission of the court or probation officer.
- 2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family obligations, and shall comply with the terms of any court order or order of an administrative process requiring payments by the defendant for the support and maintenance of a child or of a child and the parent with whom the child is living.
- 5) The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time, at home or elsewhere, and shall permit confiscation of any contraband observed in plain view of the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

AO 245 B (Rev. 05/04)(W.D.TX.) - Supervised Release

Judgment--Page 4

Defendant: BHAVESH J. SHAH (see page 1)

Case Number: SA-12-CR-792(01) FB

- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications; and to confirm the defendant's compliance with such notification requirement.
- 14) If convicted of a sex offense as described in the Sex Offender Registration and Notification Act or has a prior conviction of a State or local offense that would have been an offense as described in the Sex Offender Registration and Notification Act if a circumstance giving rise to federal jurisdiction had existed, the defendant shall participate in a sex offender treatment program approved by the probation officer. The defendant shall abide by all program rules, requirements and conditions of the sex offender treatment program, including submission to polygraph testing, to determine if the defendant is in compliance with the conditions of release. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- 15) The defendant shall submit to an evaluation for substance abuse or dependency treatment as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a program approved by the probation officer for treatment of narcotic addiction or drug or alcohol dependency which may include testing and examination to determine if the defendant has reverted to the use of drugs or alcohol. During treatment, the defendant shall abstain from the use of alcohol and any and all intoxicants. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.
- 16) The defendant shall submit to an evaluation for mental health counseling as directed by the probation officer, and if deemed necessary by the probation officer, the defendant shall participate in a mental health program approved by the probation officer. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.
- 17) The defendant shall participate in a cognitive behavioral treatment program as directed by the probation officer, and if deemed necessary by the probation officer. Such program may include group sessions led by a counselor or participation in a program administered by the probation office. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.
- 18) The defendant shall participate in workforce development programs and services as directed by the probation officer, and if deemed necessary by the probation officer, which include occupational/career development, including but not limited to assessment and testing, education, instruction, training classes, career guidance, job search and retention services until successfully discharged from the program. The defendant may be required to contribute to the cost of the services rendered (copayment) in an amount to be determined by the probation officer, based upon the defendant's ability to pay.
- 19) If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally reenter the United States. If the defendant lawfully reenters the United States during the term of probation or supervised release, the defendant shall immediately report in person to the nearest U.S. Probation Office.
- 20) If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pay such penalties in accordance with the Schedule of Payments sheet of the judgment.
- 21) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- 22) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.

AO 245 B (Rev. 05/04)(W,D,TX.) - Supervised Release

Judgment--Page 5

Defendant: BHAVESH J. SHAH (see page 1)
Case Number: SA-12-CR-792(01) FB

The Court further adopts such of the following special conditions applied to the supervised person by the judge at the time of sentencing:

- 1) Community Confinement: The defendant shall reside in a Community Corrections Center for a period of ____ months to commence on _____. Further, once employed, the defendant shall pay 25% of his/her weekly gross income for his/her subsistence as long as that amount does not exceed the daily contract rate.

Location Monitoring Program:

- 2) Radio Frequency Monitoring: The defendant shall participate in the Location Monitoring Program with Radio Frequency Monitoring for a period of ____ days/months. You shall abide by the rules and regulations of the Participant Agreement Form. During this time, you will remain at your place of residence except for employment and other activities approved in advance by your probation officer. You will maintain a telephone at your place of residence without "caller ID," "call forwarding," "call waiting," "call back/call block," a modem or a portable cordless telephone for the above period as directed by the probation officer. You will wear an electronic monitoring device and follow location monitoring procedures specified by your probation officer. You shall pay all or part of the costs of the program based on the ability to pay as directed by the probation officer.
- 3) Global Positioning Satellite (GPS): The defendant shall participate in the Location Monitoring Program for a term not to exceed ____ days/months, which will include remote location monitoring using ____ Active ____ Passive Global Positioning Satellite (GPS) tracking. You shall abide by the rules and regulations of the Participant Agreement Form. During this time, you will remain at your place of residence except for employment and other activities approved in advance by your probation officer. You will maintain a telephone at your place of residence without "caller ID," "call forwarding," "call waiting," "call back/call block," a modem or a portable cordless telephone for the above period as directed by the probation officer. At the direction of the probation officer, you shall wear a transmitter and be required to carry a tracking device. You shall pay all or part of the costs of the program based on the ability to pay as directed by the probation officer.
- 4) Community Service: The defendant shall perform 200 hours of community service work without pay, at a location approved by the probation officer, at a minimum rate of four hours per week, to be completed during the term of probation.
- 5) Sex Offender Search & Seizure Condition: If required to register under the Sex Offender Registration and Notification Act, the defendant shall submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

Defendant: BHAVESH J. SHAH (see page 1)
 Case Number: SA-12-CR-792(01) FB

CRIMINAL MONETARY PENALTIES/ SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program shall be paid through the Clerk, United States District Court, 655 E. Cesar E. Chavez Blvd, Room G-65, San Antonio, Texas 78206.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTAL:	\$200.00	\$0	\$83,754.45

Special Assessment

It is ordered that the defendant shall pay to the United States a special assessment of \$200.00.

Fine

The fine is waived because of the defendant's inability to pay.

Restitution - Jointly and Severally

The defendant shall pay restitution in the amount of \$83,754.45 through the Clerk, U.S. District Court, for distribution to the payee(s). No further payment shall be required after the sum of the amounts actually paid by the defendants/participants Bhavesh J. Shah (1) and Andrea Christina Iurrieta (2) has fully covered all the compensable injuries.

The Court directs the United States Probation Office to provide personal identifier information of victims by submitting a "reference list" under seal pursuant to E-Government Act of 2002" to the District Clerk within ten(10) days after the criminal judgment has been entered.

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Medicare	\$73,344.88
Medicaid	<u>\$10,409.57</u>
TOTAL	\$83,754.45

Schedule of Payments

Payment of the *Special Assessment* shall be made at the rate of no less than \$20.00 per month, due by the third day of each month beginning immediately. The Court imposed payment schedule shall not prevent statutorily authorized collection efforts by the U.S. Attorney. The defendant shall cooperate fully with the U.S. Attorney and the U.S. Probation Office to make payment in full as soon as possible.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(f), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,600.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.