

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

3:24-cr-175 (VAB)

LAKSHMI BETHI

December 9, 2024

GOVERNMENT'S MEMORANDUM IN AID OF SENTENCING

The Government respectfully submits this memorandum in aid of the sentencing of the defendant, Lakshmi Bethi, which is presently scheduled for September 18, 2024, and in response to the defendant's Sentencing Memorandum filed on December 2, 2024 (Dkt. No. 17) ("Def. Mem."). Dr. Bethi stands before the Court having waived indictment and pleaded guilty to one count of conspiracy to violate the anti-kickback statute, in violation of 18 U.S.C. § 371 and 42 U.S.C. § 1320a-7b(b)(2)(A). For the reasons set forth below, the Government respectfully submits that the Court should impose a sentence based on the factors set forth in 18 U.S.C. § 3553(a), including a term of imprisonment.

I. BACKGROUND

A. Stipulated Offense Conduct

Neither party has any substantial disagreement with the facts in the Presentence Report, which were initially set forth in the parties' stipulation of offense conduct appended to the Plea Agreement. *See* Def. Mem. at 5. Dr. Bethi has been a licensed dentist in Connecticut since 2013, and, since May 2013, she has been continuously enrolled as a dental provider in Connecticut Medicaid. *See* PSR ¶ 8. Beginning in March 2015, Dr. Bethi established her own dental practice (initially New Haven Family Dental, though the name changed over the years), which she maintained until approximately April 2024, when she sold the practice. *Id.* Pursuant to Medicaid

rules, Dr. Bethi signed Medicaid provider agreements on at least 12 different occasions between 2013 and the present, in which she acknowledged that she was not legally permitted to pay kickbacks or any similar remuneration. *Id.* ¶ 9.

Nonetheless, beginning in 2016 and continuing through April 2023, Dr. Bethi conspired with third-party patient recruiters—including Jeffrey Malave, the owner of ASAPS, LLC, as well as multiple other patient recruiters—to pay kickbacks to the recruiters on a per-patient bases for Connecticut Medicaid patients that the recruiters brought to her practice for dental services reimbursed by Medicaid. *Id.* ¶ 11. The patient recruiters recruited Medicaid beneficiaries by promising cash in exchange for their attendance at dental appointments with Dr. Bethi. *Id.* After the appointments, Dr. Bethi billed Medicaid for their visits and paid the recruiters kickbacks (typically about \$110, though the payment sometimes varied) for the recruited patients. The recruiters, in turn, provided smaller kickbacks (typically about \$20 to \$30, though that also varied) to the patients themselves, with Dr. Bethi's knowledge. *Id.*

As the parties stipulated in the plea agreement, a reasonable estimate of Medicaid payments to Dr. Bethi for all services rendered to patients recruited to her practices by recruiters using kickback payments, between June 2016 and April 2023, was about \$2,207,251.61. *Id.* ¶ 16.; see also Plea Agreement, Dkt. No. 8, at 13. During that period, she paid kickbacks in the amount of approximately \$369,063. *Id.*

B. Additional Information and Relevant Conduct

In response to the Defendant's Memorandum, certain aspects of the Dr. Bethi's version of the offense conduct merit further review or correction.

Loss calculation methodology and conservative estimate. First, given the defendant's arguments that the loss estimate was overstated, it is necessary to briefly describe the

Government's sound methodology in calculating that Dr. Bethi received approximately \$2,207,251.61 in Medicaid payments for patients that had been recruited to her practices via kickbacks. In fact, that estimate significantly underestimates just how profitable the kickbacks conspiracy was for Dr. Bethi, since the Government used a very conservative calculation methodology.

As the parties stipulated, the approximately \$2.2 million figure was an estimate, in light of the difficulty in establishing with precision the details of thousands of individual small-dollar financial transactions between Dr. Bethi, various recruiters (some of whom dealt largely in cash), and thousands of individual Medicaid patients. As set forth in the Defense Memorandum, the Government used a scheduling database maintained by ASAPS (one of the primary recruiting companies that conspired with Dr. Bethi) to establish a general recruited patient population, and then compared that population to Dr. Bethi's Medicaid claims data. *See* Def. Mem. at 19. As is not uncommon for criminal enterprises, ASAPS did not maintain perfect records of its patient information.

Nonetheless, the deficiencies in the ASAPS scheduling database actually almost certainly inured to Dr. Bethi's significant advantage. First, due to missing or incomplete identifiers of Medicaid beneficiaries (in particular, Medicaid identification numbers and telephone numbers), investigators were unable to track fully half of the entries in the ASAPS scheduling database—many of whom likely received kickbacks to attend appointments with Dr. Bethi. Indeed, when investigators attempted to spot-check entries with incomplete patient information, they found many instances where a patient with, say, a missing Medicaid identification number in the ASAPS scheduling database showed up as a patient of Dr. Bethi's in the Medicaid claims data (and to be clear, a patient's presence in the ASAPS scheduling database all but confirms that that patient

received a kickback, since this is how ASAPS conducted its criminal enterprise). Given that about 50% of the entries in the ASAPS scheduling database were not able to be programmatically analyzed, there is a good chance that the loss calculation presented was not just an undercount but a massive undercount.

Second, because the ASAPS scheduling database often grouped (or didn't distinguish between) multiple family members or associates, investigators were not always able to track individual patients who were recruited to Dr. Bethi's practice as a group. For example, where a mother was recruited along with several minor children, the ASAPS scheduling database sometimes reflected only the mother's information—even though Dr. Bethi paid kickbacks for the children as well. (In fact, the email and text message evidence indicates that Dr. Bethi preferred to receive minor-aged patients from the recruiters—perhaps because they were not subject to the same Medicaid spending caps as were adult beneficiaries.) Accordingly, the Government's loss estimate did not include all members of groups of family or friends who received kickbacks from Dr. Bethi.

Third, the Government's loss estimate was definitionally limited to patients recruited via kickback by a single recruiting company—ASAPS. This was because the various other patient recruiters who conspired with Dr. Bethi kept little or no records of recruited patients, making it difficult or impossible for investigators to follow their trail. Further, many of the recruiters dealt partly or primarily in cash, making it very difficult to ascertain how much in kickbacks Dr. Bethi paid to them. Based on the bank and other documentary records that investigators were able to obtain, however, it is clear that Dr. Bethi paid tens of thousands of dollars (at least \$75,000 and likely more) to the other recruiters, suggesting that the patient population affected by her kickback payments may have been much larger than that reflected in the ASAPS scheduling database alone.

It is undisputed that the \$2.2 million figure in the plea agreement is an estimate. The parties agreed, however, that it was a reasonable one. *See Plea Agreement [Dkt. No. 8] at 13.* In the Government's view, it was also extremely conservative.

Payment of Kickbacks on Subsequent Visits. Relatedly, in her memorandum, the defendant mischaracterizes the Government's evidence regarding the payment of kickbacks on subsequent visits by the same person. In pertinent part, Dr. Bethi contends that “[t]he Government took the position that *even though only the initial referral was compensated*, all subsequent visits by the patient (even if they came on their own) should be included in the loss calculation.” Def. Mem. at 19 (emphasis added). In other words, she suggests that patients were only paid kickbacks at their first visit, but not for subsequent appointments. This (perhaps inadvertent) mischaracterization is at odds with the evidence developed in the investigation, including both documentary evidence and testimonial evidence from recruiters, patients, and Dr. Bethi's employees. In fact, as a general matter, patients recruited via kickbacks to Dr. Bethi's practice were paid kickbacks for *both* the initial visit and subsequent visits in later months and years. Indeed, as Dr. Bethi herself acknowledges, once the patients had initially received a cash kickback, “[m]any patients came to expect to be paid” at all their dental appointments. Def. Mem. at 4. It was, therefore, appropriate to include subsequent visits in the overall kickbacks loss calculation. To be sure, there may have been individual instances where a patient's dental procedures stretched over two or more appointments close in time and a second kickback was not paid for the second visit, but even in that circumstance, the subsequent visits were closely linked to the kickback paid at the first appointment. Further, these occasions would have almost certainly been dwarfed by the many kickbacks paid by Dr. Bethi that were *not* captured in the Government's loss calculation, as discussed above.

Fraud. The federal investigation into Dr. Bethi extended into an inquiry into whether she conducted health care fraud by billing Medicaid for services not rendered. Ultimately, because Dr. Bethi chose to enter a guilty plea while the Government was still developing evidence relating to possible fraud, and in light of the general difficulty in establishing systematic dental care fraud, Dr. Bethi was never charged with health care fraud. Nevertheless, given her repeated contentions in her sentencing memorandum that “there is no actual loss” and that “the Defendant intended to and did perform the relevant services,” Def. Mem. at 20-21, it is necessary to briefly review the evidence developed to date of Dr. Bethi’s fraudulent billing for services not rendered.¹

On July 28, 2022, Dr. Bethi left the country on a two-week vacation to India and elsewhere, returning to the United States on August 10, 2022. She improperly billed Connecticut Medicaid for services that she purportedly rendered to dozens of patients between July 29, 2022 and August 9, 2022—dates on which Dr. Bethi was indisputably out of the country and not treating patients in Connecticut. Medicaid ultimately paid Dr. Bethi over \$4,300 for those fraudulent claims. In at least one case, one patient for whom Dr. Bethi billed during her overseas vacation returned later in August 2022 to receive treatment for the same tooth that Dr. Bethi fraudulently advised Medicaid that she had treated while actually on vacation. Medicaid paid Dr. Bethi for both claims for that patient.

C. Procedural History

On September 4, 2024, Dr. Bethi waived indictment and pleaded guilty to a one-count information charging her with conspiracy to violate the anti-kickbacks statute, in violation of 18 U.S.C. § 371.

¹ The Government has produced pre-plea discovery regarding this and the other arguments raised in this Sentencing Memorandum, and Government counsel has discussed these facts and arguments at length with defense counsel during plea negotiations.

In her plea agreement's stipulation of offense conduct, Dr. Bethi admitted conspiring with Jeffrey Malave and other patient recruiters, to whom she paid kickbacks on a per-patient basis and who in turn paid kickbacks to the Medicaid beneficiaries they recruited, as described above. Also in the plea agreement, the parties agreed that restitution would be impractical to calculate, and that the defendant would instead disgorge proceeds of the criminal activity as forfeiture. *See Plea Agreement*, Dkt. No. 8, at 2-3. In particular, Dr. Bethi agreed to pay forfeiture in the amount of \$500,000, a substitute asset derived from the sale of her dental practice, at the time of sentencing.

Id.

The plea agreement also set out a stipulated Guidelines range. *Id.* at 5. The parties agreed that Dr. Bethi's base offense level under U.S.S.G. § 2X1.1 and §2B4.1(a) was 8. That level was then increased by 16 under §§ 2B4.1(b)(1)(B) and 2B1.1(b)(1)(I) because a reasonable estimate of the value of the improper benefit exceeded \$1,500,000 but did not exceed \$3,500,000, and increased by another two under U.S.S.G. §3B1.3 for abuse of position of public or private trust. After deductions of three levels for acceptance of responsibility under U.S.S.G. §3E1.1 and an additional two levels for zero-point offender status under U.S.S.G. §4C1.1, the parties agreed that Dr. Bethi's total offense level was 21. The parties agreed that Dr. Bethi fell within Criminal History Category I, and that the resulting Guidelines range was 37 to 46 months of imprisonment, a fine range of \$15,000 to \$150,000 under U.S.S.G. §5E1.2(c)(3), and a term of supervised release of one to three years. *Id.* The parties reserved their rights to argue for a departure or non-Guidelines sentence, or to object to the same. *Id.*

The plea agreement also contained the defendant's waiver of her right to appeal or collaterally attack any sentence exceeding 46 months of imprisonment, three years of supervised

release, a \$100 special assessment, a \$150,000 fine, and the agreed forfeiture in the amount of \$500,000. *Id.* at 7.

In the PSR, the U.S. Probation Office calculated the same offense level, criminal history category, and overall Guidelines range. *See* PSR ¶ 3. The PSR notes that, “[s]ince the applicable guideline range is in Zone D of the Sentencing Table, the defendant is ineligible for probation.” PSR ¶ 70.

II. LEGAL STANDARD

After the Supreme Court’s ruling in *United States v. Booker*, 543 U.S. 220, 243-245 (2005) rendered the Sentencing Guidelines advisory rather than mandatory, a sentencing judge is required to “(1) calculate[] the relevant Guidelines range, including any applicable departure under the Guidelines system; (2) consider[] the Guidelines range, along with the other § 3553(a) factors; and (3) impose[] a reasonable sentence.” *See United States v. Fernandez*, 443 F.3d 19, 26 (2d Cir. 2006), *abrogated on other grounds by Rita v. United States*, 551 U.S. 338 (2007). Under 18 U.S.C. § 3553(a), the sentencing “court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection.” The statute provides that the Court shall consider the following factors in determining the particular sentence to be imposed:

- (1) “[T]he nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training,

medical care, or other correctional treatment in the most effective manner;

- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established [in the Sentencing Guidelines];
- (5) any pertinent policy statement [issued by the Sentencing Commission];
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.”

18 U.S.C. § 3553(a). The Second Circuit reviews a sentence for reasonableness. *See Booker*, 543 U.S. at 260-62. The reasonableness standard is deferential and focuses “primarily on the sentencing court’s compliance with its statutory obligation to consider the factors detailed in 18 U.S.C. § 3553(a).” *United States v. Canova*, 412 F.3d 331, 350 (2d Cir. 2005).

III. DISCUSSION

The statutory sentencing factors set forth in 18 U.S.C. § 3553(a) present a mixed picture in the instant case, but ultimately, in the Government’s view, they support a sentence including a term of incarceration.

A. Nature and Circumstances of the Offense

At the time of her guilty plea, Dr. Bethi admitted that, over a period of almost seven years, she conspired with multiple patient recruiters to pay kickbacks on a per-patient basis to Medicaid beneficiaries that the recruiters incentivized with cash, knowing full well that the recruiters would then pass a portion of the kickback on to the patients themselves. This is a serious crime, across multiple dimensions.

First, consider the length of time that Dr. Bethi’s crime persisted—nearly seven years, from July 2016 to April 2023. The defendant highlights the fact that she led a law-abiding life for many

years and characterizes her instant offense as an “aberrance” (while properly acknowledging that she does not qualify for a downward departure for aberrant behavior under the Sentencing Guidelines). Def. Mem. at 28. But seven years is a very long period of deviation.

Second, the instant offense was a lucrative one. According to the Government’s estimate, she received over \$2.2 million in Medicaid payments for patients incentivized by kickbacks. As detailed above, there is good reason to believe that the \$2.2 million in proceeds represents a very meaningful undercount. As the defendant acknowledges, this criminal practice supported two profitable dental practices. In fact, Dr. Bethi credits her kickbacks scheme with keeping her practices afloat.

Moreover, Dr. Bethi pursued this scheme with brazen determination. She was aware of the federal investigation at least by July 2021, when federal agents with the FBI and HHS approached and interviewed several of her employees. On July 26, 2021, apparently irritated by these interviews, Dr. Bethi affirmatively placed a phone call to the FBI case agent and demanded to know what information the agent wanted from her employees. She did not, however, cease her criminal activity, as might be expected if her offense conduct really were an aberrance. Instead, she continued to pay criminal kickbacks for *almost two years* after becoming aware of the ongoing investigation, stopping *only* after agents raided her dental practice and served her with a target letter in April 2023. This sequence demonstrates not only the seriousness of the offense, but also speaks to the characteristics of the defendant, and the need for deterrence and promotion of respect for the law.

The kickbacks scheme at issue was also particularly harmful and distortionary to the market. Dr. Bethi did not merely pay kickbacks to the patient recruiters on a per-patient basis—conduct that, standing alone, would have itself violated the anti-kickback statute. Instead, she did

so as part of a conspiracy to pass along a portion of the kickbacks to the patients themselves. And, as she acknowledges in her stipulation of offense conduct and sentencing memorandum, this second level of kickbacks (from recruiter to patient) was done with her full knowledge and endorsement. In fact, she came to believe that “when Medicaid patients were being paid to go to other dentists it was not possible to sustain [her] business.” Def. Mem. at 5. In other words, she implicitly acknowledged that she used criminal kickbacks to attract patients away from other law-abiding dentists. In this, Dr. Bethi differed from some of the other health care providers investigated for health care fraud, including at least one that she references in her memorandum. Dr. Bethi decided to join the criminal conspiracy with full knowledge of just how harmful this conduct could be. Although her memorandum apparently attempts to characterize the offense conduct as something of a victimless crime with “no actual loss,” the reality—as she openly acknowledges—is that kickbacks do create unfair competition, making enforcement imperative. Def. Mem. at 24. As the owner of a former practice that folded, leaving her with \$100,000 in losses, *see* Def. Mem. at 3, the defendant knows all too well that hers was no victimless crime.

Finally, although the charged crime involves violation of the anti-kickbacks statute only, the defendant’s conduct extended beyond that offense only. In her sentencing memorandum, Dr. Bethi omits key information when she contends that there was “no actual loss” and that she “did perform the relevant services.” Def. Mem. at 20-21. In fact, as discussed above, there was evidence that Dr. Bethi fraudulently billed for services not rendered to patients. At minimum, and most readily supported by the evidence developed to date, she did so during her summer 2022

travel abroad.² This conduct cannot be hand waived as a mere “regulatory offense.” *See* Def. Mem. at 30.

B. History and Characteristics of the Defendant

As her sentencing memorandum sets forth in detail, Dr. Bethi undeniably possesses many good personal qualities, has demonstrated initiative and hard work, enjoys deep familial support, and provides care to her young son—all factors that weigh in her favor and which the Court will undoubtedly consider. For a 48-year-old woman with a history of consistent employment, the statistics certainly suggest a much lower recidivism rate than average. As a first-time offender, and one who required no supervision while on pre-plea and pre-sentencing release, Dr. Bethi can rightly argue that she has more respect for the law than most federal defendants. That being said, there is some troubling evidence on this point. In June 2016, she entered into the criminal conspiracy of which she now stands convicted. In or about July 2021, she became aware of the ongoing federal investigation. Rather than curtail her criminal conduct, she continued paying unlawful kickbacks for almost two years. Then, in July and August 2022, she fraudulently billed Medicaid for thousands of dollars in services not rendered. By that time, Dr. Bethi had been aware for over one year of the instant federal investigation. Yet she chose to bill Medicaid for services she couldn’t possibly have rendered. This evidence bespeaks a willingness to flagrantly disregard the law, even while aware of the FBI’s scrutiny. It was not until April 2023 did her conduct cease, and only then after experiencing a search of her practice and receiving a target letter from the U.S. Attorney’s Office.

² Because of the time-consuming and individualized nature of developing evidence regarding dental health care fraud, and in light of the defendant’s decision to plead guilty to the instant charge, the Government does not purport to prove systematic health care fraud by Dr. Bethi across the entire relevant time period.

In her defense, though not by way of excuse, Dr. Bethi argues that the Court should consider “cultural norming.” Def. Mem. at 6-7. In the PSR, the Probation Officer notes that, “[w]hile she admitted to committing the offense, Dr. Bethi offered as explanation for her behavior the cultural norms in India where graft is simply the way things get done.” PSR ¶ 93. Although Indian cultural norms are part of the defendant’s history, so too are her many years of exposure to and elite education in American laws and expectations. The defendant received her Doctor of Dental Medicine from Boston University, and thereafter signed a dozen Medicaid provider agreements attesting to her knowledge of the anti-kickbacks laws. That “graft” is a way of life elsewhere does not explain why an elite professional such as Dr. Bethi would embrace it here.

C. Specific and General Deterrence

For the reasons set forth in her sentencing memorandum, the Government agrees that the need for specific deterrence carries less weight in this case. Dr. Bethi has accepted responsibility for her conduct and presents little risk of reoffending.

But there still remains a need to ensure that general deterrence goals are met. The Government simply does not have enough resources to uncover every instance of kickbacks or fraud committed by a health care provider. Rather, the Government relies on providers to uphold a system of voluntary compliance and accurate billing, particularly when receiving taxpayer dollars. A period of incarceration is appropriate in this case to deter others from committing similar crimes. Hopefully, this prosecution and the sentence imposed will send the unequivocal message to health care professionals that such conduct has serious consequences and will not be tolerated. American citizens have a right to expect that those who steal from the public fisc are appropriately sanctioned in a fashion that reflects the harm they caused and to an extent necessary to deter others.

D. Seriousness of the Offense, Just Punishment, Respect for the Law

The statutory sentencing factors call for a sentence to reflect the seriousness of the offense, provide just punishment, and promote respect for the law. The Government respectfully submits that a sentence involving a term of imprisonment meets those goals.

As a program designed to ensure that Connecticut's neediest citizens receive the medical care they need, Medicaid and its clients are particularly vulnerable to unscrupulous financial predators looking to exploit the program's willingness to ensure its clients have access to services. Imposing significant sentences upon those who steal from, lie to, or misuse Medicaid sends a message that society not only values and protects the program itself, but also that society values the moral and ethical considerations that led to the creation and continued operation of the program – that ensuring that the neediest among us have access to health care is an important societal obligation, highly valued, and worthy of vigilant defense. If cynicism bred from a lack of respect for our common efforts to address our challenges as a community, state, or nation is allowed to grow, it threatens not only our shared sacrifices, but the very bonds that impel those sacrifices.

IV. CONCLUSION

Taking into account all of the § 3553(a) factors, the Government submits that a sentence including a term of imprisonment would be appropriate in this case. Such a sentence would adequately reflect the seriousness of the offense, afford adequate general deterrence to criminal conduct and promote respect for the law, while also taking into account the meaningful mitigating factors in the defendant's history and characteristics and ensuring that the overall sentence is sufficient, but not greater than necessary, to satisfy the objectives of federal sentencing.

Additionally, the Court should order that Dr. Bethi pay the \$500,000 in forfeiture that she agreed to disgorge in her plea agreement.

Respectfully submitted,

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/s/

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C E R T I F I C A T I O N

I hereby certify that on December 9, 2024, the foregoing Memorandum was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing. Parties may access this filing through the Court's system.

/s/

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