

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA :
 :
 versus : CRIMINAL NO. 19-114-JWD-EWD
 :
 J. FOSTER CHAPMAN, D.O. :

PLEA AGREEMENT

The United States Attorney’s Office for the Middle District of Louisiana, the United States Department of Justice, Criminal Division, Fraud Section (“the United States”) and J. Foster Chapman, D.O. (“the defendant”) hereby enter into the following plea agreement pursuant to Fed. R. Crim. P. 11(c).

A. THE DEFENDANT’S OBLIGATIONS

1. Guilty Plea

The defendant agrees to enter a plea of guilty to Count 1 of an Indictment charging him with Conspiracy to Commit Health Care Fraud in violation of 18 U.S.C. § 1349.

2. Financial Information

The defendant agrees to fully and truthfully complete the financial statement provided to him by the United States and to return the financial statement to the United States within ten days of this agreement being filed with the Court. Further, the defendant agrees to provide the United States with any information or documentation in his possession regarding his financial affairs and to submit to a debtor’s examination upon request. Any financial information provided by the defendant may be used by the United States to collect any

financial obligations imposed in this prosecution and may be considered by the Court in imposing sentence.

B. UNITED STATES' OBLIGATIONS

1. Non-prosecution/Dismissal of Charges

The United States agrees that, if the Court accepts the defendant's guilty plea, it will move to dismiss Counts 2-5 of the Indictment after sentencing, and it will not prosecute the defendant for any offense related to the offenses charged in the Indictment.

2. Motion for Third Point for Acceptance of Responsibility

The United States acknowledges that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources efficiently. The United States therefore agrees that, if the Court finds that the defendant qualifies for a two-level decrease in offense level for acceptance of responsibility under USSG § 3E1.1(a) and, prior to the operation of USSG § 3E1.1(a), the defendant's offense level is 16 or greater, the United States will move the Court pursuant to USSG § 3E1.1(b) to decrease the defendant's offense level by one additional level. The United States reserves the right to object to a decrease in offense level for acceptance of responsibility based on information received by the United States after the effective date of this agreement, including information that the defendant failed to timely submit the financial statement required by Section A(2) of this agreement.

C. **SENTENCING**

1. **Maximum Statutory Penalties**

The maximum possible penalty on Count 1 is a term of imprisonment of ten years, a fine of up to \$250,000 or twice the gross gain or twice the gross loss, whichever is greater, and a term of supervised release of three years.

In addition to the above, the Court must impose a special assessment of \$100 per count which is due at the time of sentencing. The Court may also order restitution.

2. **Supervised Release**

Supervised release is a period following release from imprisonment during which the defendant's conduct is monitored by the Court and the United States Probation Office and during which the defendant must comply with certain conditions. Supervised release is imposed in addition to a sentence of imprisonment, and a violation of the conditions of supervised release can subject the defendant to imprisonment over and above any period of imprisonment initially ordered by the Court for a term of up to two years, without credit for any time already served on the term of supervised release.

3. **Sentencing Guidelines**

The Court will determine in its sole discretion what the defendant's sentence will be. While the Court must consider the United States Sentencing Guidelines in imposing sentence, the Sentencing Guidelines are not binding on the Court. The Court could impose any sentence up to the maximum possible penalty as set out above despite any lesser or greater sentencing range provided for by the Sentencing Guidelines.

4. No Agreement Regarding Sentencing

Except as set forth in this agreement and the supplement to the plea agreement, the United States makes no promises, representations, or agreements regarding sentencing. In particular, the United States reserves the right to present any evidence and information, and to make any argument, to the Court and the United States Probation Office regarding sentencing.

5. Forfeiture

The defendant agrees to forfeit all property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense charged in Count 1 of the Indictment. The defendant admits that he owns the property identified in the Notice of Forfeiture in the Indictment. He therefore agrees to forfeit his interest in such property and consents to the entry of an order of forfeiture for such property.

The defendant agrees to forfeit to the United States a sum of money equal to the gross proceeds traceable to the commission of the offense charged in Count 1 of the Indictment. He consents to the entry of a personal money judgment against him in the amount that the Court determines represents the gross proceeds of the offense, and he understands that the Court may enter a personal money judgment against him in such amount.

The defendant understands that forfeiture of his property will not be treated as satisfaction of any fine, restitution, cost of imprisonment, or other penalty which may be imposed upon him as part of his sentence. The defendant further understands that, separate and apart from his sentence in this case, the United States may also institute civil or administrative forfeiture proceedings of any property, real or personal, which is subject to

forfeiture. The defendant agrees to waive his interest in the property identified in the Notice of Forfeiture in the Indictment in any such civil or administrative forfeiture proceeding.

The defendant agrees to fully and truthfully disclose the existence, nature, and location of all assets and to fully and completely assist the United States in the recovery and forfeiture of all forfeitable assets, including taking all steps as requested by the United States to pass clear title to forfeitable assets to the United States. The defendant agrees to hold the United States, its agents, and its employees harmless from any claims whatsoever in connection with the seizure or forfeiture of property pursuant to the Court's forfeiture orders.

The defendant hereby waives the following: (1) all statutory and constitutional defenses to the forfeiture, including any claim that the forfeiture constitutes an excessive fine or punishment; (2) any failure by the Court to ensure at sentencing that the defendant is aware of the forfeiture or to incorporate the forfeiture in the judgment as required by Fed. R. Crim. P. 32.2(b)(4)(B); and (3) any failure by the Court to inform the defendant of, and determine that the defendant understands, the applicable forfeiture prior to accepting the defendant's plea.

D. FACTUAL BASIS

The United States and the defendant stipulate to the following facts:

Beginning in or around June 2018, and continuing through in or around August 2019, in the Middle District of Louisiana, and elsewhere, the defendant, J. Foster Chapman, D.O., knowingly and willfully conspired and agreed with others to commit health care fraud, in violation of Title 18, United States Code, Section 1349.

The Medicare program was a federal health insurance program, affecting commerce, that provided benefits to persons who were 65 years of age and older or disabled. Medicare was a "health care benefit program" within the meaning of Title 18, United States Code, Section 24(b). Individuals who qualified for Medicare benefits were referred to as "beneficiaries."

Medicare included coverage under component “parts.” Medicare Part B covered, among other things, durable medical equipment (“DME”). DME included orthotic devices such as knee braces, back braces, shoulder braces, and wrist braces (collectively, “braces”), as well as orthotic sleeves.

Medicare reimbursed DME providers for medically necessary items and services rendered to beneficiaries. For certain types of orthotics, such as knee braces, Medicare required that the provider conduct an in-person examination of the beneficiary. As defendant knew, knee braces ordered without an in-person examination were not considered medically necessary and not reimbursable by Medicare. Additionally, Medicare prohibited the submission of claims that were procured through the payment of kickbacks.

The defendant, J. Foster Chapman, D.O., a resident of Alexandria, Louisiana, was a medical doctor licensed to practice medicine in Louisiana. In 2015, the defendant applied for and obtained a Medicare provider number, and in doing so, agreed to abide by all of the terms, laws, and regulations of Medicare.

The defendant worked as an independent contractor for various purported telemedicine companies, including purported Telemedicine Companies A and B, which were registered in Florida. The defendant was hired to work for the purported telemedicine companies typically through staffing companies, including Staffing Company C, which was registered in Georgia.

As a physician employed by Staffing Company C and providing services for purported Telemedicine Companies A and B, the defendant ordered knee braces for beneficiaries, including those residing in the Middle District of Louisiana, who he had not personally examined. The defendant generally reviewed beneficiary information provided to him through an electronic portal and signed doctors’ orders electronically through the portal. The information contained in the electronic portal was derived from, among other things, telephone conversations between beneficiaries and employees of the call centers, who were not medical professionals. The defendant was paid a fixed fee by the telemedicine and/or staffing companies for each beneficiary file that he reviewed.

In or around June 2018, the defendant was made aware that in order to appropriately prescribe knee braces, an in-person examination and other diagnostic testing needed to have occurred. Nevertheless, beginning around June 2018 and continuing through August 2019, the defendant falsely certified that he had conducted various in-person examinations and diagnostic tests prior to ordering DME, when, in fact, the defendant never saw the beneficiaries face-to-face and did not conduct the identified examinations and tests. The defendant’s false and fraudulent representations, as he knew, were material to Medicare in reimbursing claims for knee braces. These orders, as the defendant knew, were not medically necessary and not the product of the defendant’s doctor-patient relationship or in-person examination conducted by the defendant.

After the defendant submitted his fraudulent orders, the orders were ultimately sold to DME companies, which used the orders to submit false and fraudulent claims to Medicare and other health care benefit programs seeking reimbursement for the cost of the DME allegedly provided. Between June 2018 and August 2019, the defendant caused the submission of approximately \$2,520,374.02 in false and fraudulent claims to Medicare for DME, specifically knee braces, that were ineligible for Medicare reimbursement because the DME were not medically necessary. Of this amount, Medicare, the victim in this matter, reimbursed the DME suppliers approximately \$711,627.83.

For his participation in the scheme, the defendant was paid approximately \$147,894. The defendant agrees that this amount is subject to forfeiture.

The defendant admits that, to the best of his knowledge and belief, the stipulated statement of facts is true and correct in all respects. The United States and the defendant agree that, had this matter gone to trial, the United States could have proved such facts. The United States and the defendant further agree that such facts are sufficient to support conviction of the offense to which the defendant has agreed to plead guilty. The defendant understands that, by the terms of USSG § 6B1.4, the Court is not limited by the stipulated facts for purposes of sentencing. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation and any other relevant information.

The defendant agrees that, effective as of the date the defendant signs this Plea Agreement, and notwithstanding any other subsequent event, including but not limited to the defendant's failure to plead guilty, the court's refusal to accept the defendant's guilty plea, or the defendant's withdrawal (or attempted withdrawal) of his guilty plea, the factual basis set forth in this plea agreement shall be admissible against the defendant in any criminal case involving the United States and the defendant, as: (a) substantive evidence offered by the government in its case-in-chief and rebuttal case; (b) impeachment evidence offered by the

government on cross-examination; and (c) evidence at any sentencing hearing or other hearing. In addition, the defendant also agrees not to assert any claim under the Federal Rules of Evidence (including Fed. R. Evid. 410), the Federal Rules of Criminal Procedure (including Fed. R. Crim. P. 11), or the United States Sentencing Guidelines (including USSG § 1B1.1(a)) that the factual basis set forth in this Plea Agreement should be suppressed or is otherwise inadmissible as evidence (in any form).

E. BREACH AND ITS CONSEQUENCES

1. Conduct Constituting Breach

Any of the following actions by the defendant constitutes a material breach of this agreement:

- a. failing to plead guilty to Count 1 of the Indictment at re-arraignment;
- b. representing, directly or through counsel, to the United States or the Court that he will not plead guilty to Count 1 of the Indictment;
- c. moving to withdraw his guilty plea;
- d. filing an appeal or instituting other post-conviction proceedings not authorized in Section F(2);
- e. disputing or denying guilt of the offense to which the defendant has agreed to plead guilty or denying or disputing any fact contained in the stipulated factual basis;
- f. concealing or disposing of assets with the specific intent of shielding such assets from forfeiture;
- g. providing false, misleading, or incomplete information or testimony, including financial information and testimony provided pursuant to Section A(2), to the United States; or

- h. violating the terms of this agreement or the supplement to the plea agreement in any other manner.

2. Consequences of Breach

In the event of a breach by the defendant, the United States is relieved of its obligations under the agreement and the supplement to the plea agreement. In particular, the United States may prosecute the defendant for any criminal offense. In addition, any statements and information provided by the defendant pursuant to this agreement (or the supplement to the plea agreement) or otherwise, and any information and evidence derived therefrom, may be used against the defendant in this or any other prosecution or proceeding without limitation. Such statements and information include, but are not limited to, the plea agreement itself (including the factual basis contained in Section D), the supplement to the plea agreement, statements made to law enforcement agents or prosecutors, testimony before a grand jury or other tribunal, statements made pursuant to a proffer agreement, statements made in the course of any proceedings under Rule 11, Fed. R. Crim. P. (including the defendant's entry of the guilty plea), and statements made in the course of plea discussions. The defendant expressly and voluntarily waives the protection afforded by Fed. R. Evid. 410 as to any statements made by him personally (but not as to statements made by his counsel). The defendant is not entitled to withdraw his guilty plea.

3. Procedure for Establishing Breach

The United States will provide written notice to the defendant or his attorney if it intends to be relieved of its obligations under the agreement and the supplement to the plea agreement as a result of a breach by the defendant. After providing such notice, the United

States may institute or proceed with any charges against the defendant prior to any judicial determination regarding breach. However, the United States will obtain a judicial determination regarding breach prior to using statements and information provided by the defendant or any act of producing documents or items by the defendant pursuant to this agreement or the supplement to the plea agreement, or any evidence or information derived therefrom, in its case-in-chief in a criminal trial or in sentencing the defendant in this case. The standard of proof in any proceeding to determine whether the plea agreement or the supplement to the plea agreement has been breached is preponderance of the evidence. To prove a breach, the United States may use (1) any and all statements of the defendant, (2) any and all statements of his counsel to the Court (including the United States Probation Office), and (3) any representation by defense counsel to the United States that the defendant will not plead guilty.

F. WAIVERS BY THE DEFENDANT

1. Waiver of Trial Rights

By pleading guilty, the defendant waives the right to plead not guilty or to persist in a not guilty plea and waives the right to a jury trial. At a trial, the defendant would have the trial rights to be represented by counsel (and if necessary have the Court appoint counsel), to confront and examine adverse witnesses, to be protected against compelled self-incrimination, to testify and present evidence, to compel the attendance of witnesses, and to have the jury instructed that the defendant is presumed innocent and the burden is on the United States to prove the defendant's guilt beyond a reasonable doubt. By waiving his right to a trial and pleading guilty, the defendant is waiving these trial rights.

2. Waiver of Appeal and Collateral Remedies

Except as otherwise provided in this section, the defendant hereby expressly waives the right to appeal his conviction and sentence, including any appeal right conferred by 28 U.S.C. § 1291 and 18 U.S.C. § 3742, and to challenge the conviction and sentence in any post-conviction proceeding, including a proceeding under 28 U.S.C. § 2241, 28 U.S.C. § 2255, or 18 U.S.C. § 3582(c)(2). This waiver applies to any challenge on appeal or in any post-conviction proceeding to any aspect of the defendant's sentence, including imprisonment, fine, special assessment, restitution, forfeiture or the length and conditions of supervised release or probation. The defendant, however, reserves the right to appeal the following: (a) any sentence which is in excess of the statutory maximum; (b) any sentence which is an upward departure pursuant to the Sentencing Guidelines; and (c) any non-Guidelines sentence or "variance" which is above the guidelines range calculated by the Court. Notwithstanding this waiver of appeal and collateral remedies, the defendant may bring any claim of ineffectiveness of counsel.

3. Waiver of Statute of Limitations

The defendant hereby waives all defenses based on the applicable statutes of limitation as to the offense charged in the Indictment including those that the United States has agreed to dismiss in Section B(1) and all offenses that the United States has agreed not to prosecute, as long as such offenses are not time-barred on the effective date of this agreement. The defendant likewise waives any common law, equitable, or constitutional claim of pre-indictment delay as to such offenses, as long as such offenses are not time-barred on the effective date of this agreement. The waivers contained in this paragraph will expire one year

after the date of any of the following: (1) a judicial finding that defendant has breached the plea agreement; (2) the withdrawal of any plea entered pursuant to this plea agreement; or (3) the vacating of any conviction resulting from a guilty plea pursuant to this plea agreement.

4. Waiver of Speedy Trial Rights

The defendant hereby waives any common law, equitable, or constitutional claim regarding post-indictment delay as to the offense charged in the Indictment including those that the United States has agreed to dismiss in Section B(1). The waiver contained in this paragraph will expire one year after the date of any of the following: (1) a judicial finding that defendant has breached the plea agreement; (2) the withdrawal of any plea entered pursuant to this plea agreement; or (3) the vacating of any conviction resulting from a guilty plea pursuant to this plea agreement.

G. EFFECT OF AGREEMENT

1. Effective Date

This agreement and the supplement to the plea agreement are not binding on any party until both are signed by the defendant, defendant's counsel, and an attorney for the United States. Once signed by the defendant, his counsel, and an attorney for the United States, the agreement and the supplement are binding on the defendant and the United States.

2. Effect on Other Agreements

This agreement incorporates the supplement to the plea agreement which will be filed under seal with the Court. In this district, the Court requires that a sealed supplement be filed with every plea agreement regardless of whether the defendant is cooperating. The supplement either states that the defendant is not cooperating or provides the terms of the defendant's

agreement to cooperate. This plea agreement, along with the aforementioned supplement to the plea agreement, supersedes any prior agreements, promises, or understandings between the parties, written or oral, including any proffer agreement.

3. Effect on Other Authorities

The agreement does not bind any federal, state, or local prosecuting authority other than the United States Attorney's Office for the Middle District of Louisiana or the United States Department of Justice, Criminal Division, Fraud Section.

4. Effect of Rejection by Court

Pursuant to Fed. R. Crim. P. 11, the Court may accept or reject this plea agreement and the supplement to the plea agreement. If the Court rejects the plea agreement and the supplement, the plea agreement and the supplement are no longer binding on the parties and are not binding on the Court. If the Court rejects the plea agreement and the supplement, the defendant will be given the opportunity to withdraw his plea and such withdrawal will not constitute a breach of the agreement. If the defendant does not withdraw his plea following rejection of the plea agreement and the supplement, the disposition of the case may be less favorable to the defendant than contemplated by the plea agreement.

H. REPRESENTATIONS AND SIGNATURES

1. By The Defendant

I, J. Foster Chapman, D.O., have read this plea agreement and have discussed it with my attorney. I fully understand the agreement and enter into it knowingly, voluntarily, and without reservation. I have not been threatened, intimidated, pressured, or coerced in any

manner. I am not under the influence of any substance or circumstance that could impede my ability to understand the agreement and its consequences.

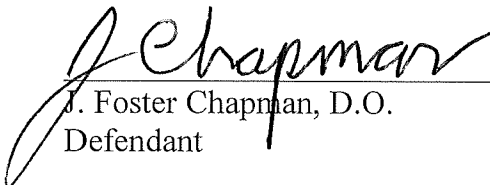
I affirm that absolutely no promises, agreements, understandings, or conditions have been made, agreed to, or imposed by the United States in connection with my decision to plead guilty except those set forth in this agreement and the supplement to the plea agreement.

I acknowledge that no promises or assurances have been made to me by anyone as to what my sentence will be. I understand that representations by my attorney (or anyone else) regarding application of the Sentencing Guidelines and/or my possible sentence are merely estimates and are not binding on the Court.

I have read the Indictment and discussed it with my attorney. I fully understand the nature of the charge, including the elements.

I have accepted this plea agreement and agreed to plead guilty because I am in fact guilty of the offense charged in Count 1 of the Indictment.

I am satisfied with the legal services provided by my attorney and have no objection to the legal representation I have received.



J. Foster Chapman, D.O.
Defendant

DATE: 11 Nov 2020

2. By Defense Counsel

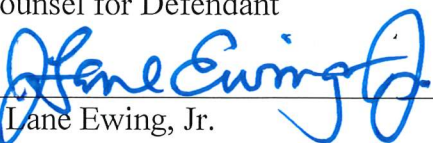
I have read the Indictment and this plea agreement and have discussed both with my client, J. Foster Chapman, D.O., who is the defendant in this matter. I am satisfied that the defendant understands the agreement and the charge against him, including the elements. I am

also satisfied that the defendant is entering into the agreement knowingly and voluntarily. This agreement, together with the supplement to the plea agreement, accurately and completely sets forth the entire agreement between the defendant and the United States.



Dustin Talbot
Counsel for Defendant

DATE: 11/17/20

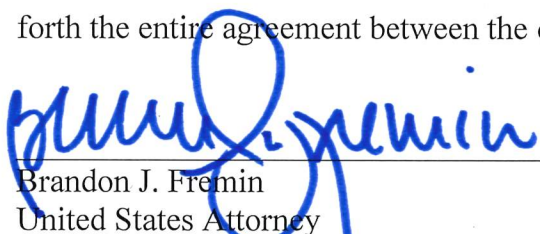


J. Lane Ewing, Jr.
Counsel for Defendant

DATE: 11/3/2020


3. By the United States

We accept and agree to this plea agreement on behalf of the United States. This agreement, together with the supplement to the plea agreement, accurately and completely sets forth the entire agreement between the defendant and the United States.




Brandon J. Fremin
United States Attorney
Middle District of Louisiana

DATE: 10/19/2020



Kristen L. Craig
Assistant United States Attorney
Middle District of Louisiana

DATE: 10/20/2020



Justin M. Woodard
Trial Attorney
Criminal Division, Fraud Section
United States Department of Justice

DATE: 10/22/2020