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Attorneys for Plaintiff
 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 GARY J. ORDOG, M.D.,

16 Defendant.
 17

No. CR 2:15-00152-FMO

PLEA AGREEMENT FOR DEFENDANT
GARY J. ORDOG, M.D.

18
 19 1. This constitutes the plea agreement between defendant GARY
 20 J. ORDOG, M.D., ("defendant") and the Fraud Section of the Criminal
 21 Division of the United States Department of Justice, and United
 22 States Attorney's Office for the Central District of California
 23 (together, the "government") in the above-captioned case. This
 24 agreement is limited to the government and cannot bind any other
 25 federal, state, local, or foreign prosecuting, enforcement,
 26 administrative, or regulatory authorities.
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 28

1 be excluded from Medicare, Medicaid, and all Federal health care
2 programs. Defendant agrees to complete and execute all necessary
3 documents provided by the United States Department of Health and
4 Human Services, or any other department or agency of the federal
5 government, to effectuate this exclusion within 60 days of receiving
6 the documents. This exclusion will not affect defendant's right to
7 apply for and receive benefits as a beneficiary under any Federal
8 health care program, including Medicare and Medicaid.

9 THE GOVERNMENT'S OBLIGATIONS

10 3. The government agrees to:

11 a. Not contest facts agreed to in this agreement.

12 b. Abide by all agreements regarding sentencing contained
13 in this agreement.

14 c. At the time of sentencing, move to dismiss the
15 remaining counts of the indictment as against defendant. Defendant
16 agrees, however, that at the time of sentencing the Court may
17 consider any dismissed charges in determining the applicable
18 Sentencing Guidelines range, the propriety and extent of any
19 departure from that range, and the sentence to be imposed.

20 d. At the time of sentencing, provided that defendant
21 demonstrates an acceptance of responsibility for the offense up to
22 and including the time of sentencing, recommend a two-level reduction
23 in the applicable Sentencing Guidelines offense level, pursuant to
24 U.S.S.G. § 3E1.1.

25 e. Recommend that defendant be sentenced to a term of
26 imprisonment no higher than the low end of the applicable Sentencing
27 Guidelines range, provided that the offense level used by the Court
28 to determine that range is 24 or higher and provided that the Court

1 does not depart downward in offense level or criminal history
2 category. For purposes of this agreement, the low end of the
3 Sentencing Guidelines range is that defined by the Sentencing Table
4 in U.S.S.G. Chapter 5, Part A.

5 NATURE OF THE OFFENSE

6 4. Defendant understands that for defendant to be guilty of
7 the crime charged in count one, that is, health care fraud, in
8 violation of Title 18, United States Code, Section 1347, the
9 following must be true:

10 a. Defendant knowingly and willfully participated in a
11 scheme or plan to defraud a health care benefit program, namely
12 Medicare, or a scheme or plan for obtaining money or property from
13 Medicare by means of false or fraudulent pretenses, representations,
14 or promises;

15 b. The statements made or facts omitted as part of the
16 scheme were material; that is, they had a natural tendency to
17 influence, or were capable of influencing, the health care benefit
18 program to part with money or property;

19 c. Defendant acted with the intent to defraud; that is,
20 the intent to deceive or cheat; and

21 d. The scheme involved the delivery of or payment for
22 health care benefits, items, or services.

23 PENALTIES AND RESTITUTION

24 5. Defendant understands that the statutory maximum sentence
25 that the Court can impose for a violation of Title 18, United States
26 Code, Section 1347, as charged in Count One is: 10 years of
27 imprisonment; a 3-year period of supervised release; a fine of
28 \$250,000 or twice the gross gain or gross loss resulting from the

1 offense, whichever is greatest; and a mandatory special assessment of
2 \$100.

3 6. Defendant understands that supervised release is a period
4 of time following imprisonment during which defendant will be subject
5 to various restrictions and requirements. Defendant understands that
6 if defendant violates one or more of the conditions of any supervised
7 release imposed, defendant may be returned to prison for all or part
8 of the term of supervised release authorized by statute for the
9 offense that resulted in the term of supervised release, which could
10 result in defendant serving a total term of imprisonment greater than
11 the statutory maximum stated above.

12 7. Defendant understands that, by pleading guilty, defendant
13 may be giving up valuable government benefits and valuable civic
14 rights, such as the right to vote, the right to possess a firearm,
15 the right to hold office, and the right to serve on a jury.
16 Defendant understands that once the court accepts defendant's guilty
17 plea, it will be a federal felony for defendant to possess a firearm
18 or ammunition. Defendant understands that the conviction in this
19 case may also subject defendant to various other collateral
20 consequences, including but not limited to revocation of probation,
21 parole, or supervised release in another case and suspension or
22 revocation of a professional license. Defendant understands that
23 unanticipated collateral consequences will not serve as grounds to
24 withdraw defendant's guilty plea.

25 8. Defendant understands that, if defendant is not a United
26 States citizen, the felony conviction in this case may subject
27 defendant to: removal, also known as deportation, which may, under
28 some circumstances, be mandatory; denial of citizenship; and denial

1 of admission to the United States in the future. The court cannot,
2 and defendant's attorney also may not be able to, advise defendant
3 fully regarding the immigration consequences of the felony conviction
4 in this case. Defendant understands that unexpected immigration
5 consequences will not serve as grounds to withdraw defendant's guilty
6 plea.

7 9. Defendant understands that defendant will be required to
8 pay full restitution to the victim of the offense to which defendant
9 is pleading guilty. Defendant agrees that, in return for the
10 government's compliance with its obligations under this agreement,
11 the Court may order restitution to persons other than the victim of
12 the offenses to which defendant is pleading guilty and in amounts
13 greater than those alleged in the count to which defendant is
14 pleading guilty. In particular, defendant agrees that the Court may
15 order restitution to any victim of any of the following for any
16 losses suffered by that victim as a result: (a) any relevant conduct,
17 as defined in U.S.S.G. § 1B1.3, in connection with the offense to
18 which defendant is pleading guilty; and (b) any counts dismissed
19 pursuant to this agreement as well as all relevant conduct, as
20 defined in U.S.S.G. § 1B1.3, in connection with those counts. The
21 parties currently believe that the applicable amount of restitution
22 is approximately \$1,295,699.57, but recognize and agree that this
23 amount could change based on facts that come to the attention of the
24 parties prior to sentencing.

25 FACTUAL BASIS

26 10. Defendant admits that defendant is, in fact, guilty of the
27 offense to which defendant is agreeing to plead guilty. Defendant
28 and the government agree to the statement of facts provided below and

1 agree that this statement of facts is sufficient to support a plea of
2 guilty to the charge described in this agreement and to establish the
3 Sentencing Guidelines factors set forth in paragraph 12 below but is
4 not meant to be a complete recitation of all facts relevant to the
5 underlying criminal conduct or all facts known to either party that
6 relate to that conduct.

7 At all times relevant to this plea agreement, the Medicare
8 Program ("Medicare") was a federal health care benefit program, as
9 defined by Title 18, United States Code, Section 24(b).

10 Defendant was a physician, licensed in the State of California,
11 specializing in toxicology, and a Medicare provider with the ability
12 to submit claims to Medicare for outpatient physician services.
13 Defendant was responsible for all claims submitted on his behalf to
14 Medicare. As a licensed physician and Medicare provider, defendant
15 held a position of trust as to Medicare.

16 Beginning in or around January 2009, and continuing through in
17 or around February 2015, in Los Angeles County, within the Central
18 District of California, and elsewhere, defendant, together with
19 others, knowingly, willfully, and with intent to defraud, executed,
20 and attempted to execute, a scheme and artifice to defraud a health
21 care benefit program, namely Medicare, as to material matters in
22 connection with the delivery of and payment for health care benefits,
23 items, and services.

24 Specifically, defendant submitted false and fraudulent claims to
25 Medicare for purported office visits and other services that the
26 defendant, in fact, never provided, including: (a) purported services
27 for Medicare beneficiaries who were deceased well before the
28 purported dates of services; (b) services purportedly provided to

1 beneficiaries on dates and times when the defendant was, in fact, out
2 of the area, including on dates and times when the defendant was
3 outside of the United States; (c) for dates and times in which the
4 defendant claimed to have provided more than 24 hours of services for
5 that date. Defendant, at times, fabricated patient records to
6 support false and fraudulent claims to Medicare.

7 During the course of the scheme, from in or around January 2009,
8 and continuing through in or around February 2015, defendant
9 submitted and caused the submission of approximately \$2,435,089.00 in
10 false and fraudulent claims, of which Medicare paid \$1,295,699.57.

11 Defendant committed all of the above acts knowingly and
12 willfully, and with the intent to defraud.

13 SENTENCING FACTORS

14 11. Defendant understands that in determining defendant's
15 sentence the Court is required to calculate the applicable Sentencing
16 Guidelines range and to consider that range, possible departures
17 under the Sentencing Guidelines, and the other sentencing factors set
18 forth in 18 U.S.C. § 3553(a). Defendant understands that the
19 Sentencing Guidelines are advisory only, that defendant cannot have
20 any expectation of receiving a sentence within the calculated
21 Sentencing Guidelines range, and that after considering the
22 Sentencing Guidelines and the other § 3553(a) factors, the Court will
23 be free to exercise its discretion to impose any sentence it finds
24 appropriate up to the maximum set by statute for the crime of
25 conviction.

26 12. Defendant and the government agree to the following
27 applicable Sentencing Guidelines factors:
28

1	Base Offense Level:	6	U.S.S.G. § 2B1.1(a)(2)
2	Loss Amount:		
3	More than \$1.5 million, but Less than \$3.5 million	16	U.S.S.G. § 2B1.1(b)(1)(I)
4	Health Care Fraud:	2	U.S.S.G. § 2B1.1(b)(7)
5	Abuse of Position of Trust	2	U.S.S.G. § 3B1.3
6	Acceptance of Responsibility	-2	U.S.S.G. § 3E1.1(a)
7	Total Offense Level:	24	

8 Subject to paragraph 24 below, defendant and the government agree not
 9 to seek, argue, or suggest in any way, either orally or in writing,
 10 that any other specific offense characteristics, adjustments, or
 11 departures relating to the offense level be imposed. Defendant
 12 agrees, however, that if, after signing this agreement but prior to
 13 sentencing, defendant were to commit an act, or the government were
 14 to discover a previously undiscovered act committed by defendant
 15 prior to signing this agreement, which act, in the judgment of the
 16 government, constituted obstruction of justice within the meaning of
 17 U.S.S.G. § 3C1.1, the government would be free to seek the
 18 enhancement set forth in that section.

19 13. Defendant understands that there is no agreement as to
 20 defendant's criminal history or criminal history category.

21 14. Defendant and the government reserve the right to argue for
 22 a sentence outside the sentencing range established by the Sentencing
 23 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a)(1),
 24 (a)(2), (a)(3), (a)(6), and (a)(7).

25 WAIVER OF CONSTITUTIONAL RIGHTS

26 15. Defendant understands that by pleading guilty, defendant
 27 gives up the following rights:

28 a. The right to persist in a plea of not guilty.

1 b. The right to a speedy and public trial by jury.

2 c. The right to be represented by counsel -- and if
3 necessary have the court appoint counsel -- at trial. Defendant
4 understands, however, that, defendant retains the right to be
5 represented by counsel -- and if necessary have the court appoint
6 counsel -- at every other stage of the proceeding.

7 d. The right to be presumed innocent and to have the
8 burden of proof placed on the government to prove defendant guilty
9 beyond a reasonable doubt.

10 e. The right to confront and cross-examine witnesses
11 against defendant.

12 f. The right to testify and to present evidence in
13 opposition to the charges, including the right to compel the
14 attendance of witnesses to testify.

15 g. The right not to be compelled to testify, and, if
16 defendant chose not to testify or present evidence, to have that
17 choice not be used against defendant.

18 h. Any and all rights to pursue any affirmative defenses,
19 Fourth Amendment or Fifth Amendment claims, and other pretrial
20 motions that have been filed or could be filed.

21 WAIVER OF APPEAL OF CONVICTION

22 16. Defendant understands that, with the exception of an appeal
23 based on a claim that defendant's guilty plea was involuntary, by
24 pleading guilty defendant is waiving and giving up any right to
25 appeal defendant's conviction on the offense to which defendant is
26 pleading guilty.

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1 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

2 17. Defendant agrees that, provided the Court imposes a total
3 term of imprisonment on all counts of conviction of no more than 63
4 months, defendant gives up the right to appeal all of the following:
5 (a) the procedures and calculations used to determine and impose any
6 portion of the sentence; (b) the term of imprisonment imposed by the
7 Court; (c) the fine imposed by the court, provided it is within the
8 statutory maximum; (d) the amount and terms of any restitution order,
9 provided it requires payment of no more than \$1,295,699.57; (e) the
10 term of probation or supervised release imposed by the Court,
11 provided it is within the statutory maximum; and (f) any of the
12 following conditions of probation or supervised release imposed by
13 the Court: the conditions set forth in General Orders 318, 01-05,
14 and/or 05-02 of this Court; the drug testing conditions mandated by
15 18 U.S.C. §§ 3563(a)(5) and 3583(d); the alcohol and drug use
16 conditions authorized by 18 U.S.C. § 3563(b)(7); and any conditions
17 of probation or supervised release agreed to by defendant in
18 paragraph 2 above.

19 18. The government agrees that, provided (a) all portions of
20 the sentence are at or below the statutory maximum specified above
21 and (b) the Court imposes a term of imprisonment of no less than 51
22 months, the government gives up its right to appeal any portion of
23 the sentence, with the exception that the government reserves the
24 right to appeal the following: (a) the amount of restitution ordered
25 if that amount is less than \$1,295,699.57.

26 RESULT OF WITHDRAWAL OF GUILTY PLEA

27 19. Defendant agrees that if, after entering a guilty plea
28 pursuant to this agreement, defendant seeks to withdraw and succeeds

1 in withdrawing defendant's guilty plea on any basis other than a
2 claim and finding that entry into this plea agreement was
3 involuntary, then (a) the government will be relieved of all of its
4 obligations under this agreement; and (b) should the government
5 choose to pursue any charge or any civil, administrative, or
6 regulatory action that was either dismissed or not filed as a result
7 of this agreement, then (i) any applicable statute of limitations
8 will be tolled between the date of defendant's signing of this
9 agreement and the filing commencing any such action; and
10 (ii) defendant waives and gives up all defenses based on the statute
11 of limitations, any claim of pre-indictment delay, or any speedy
12 trial claim with respect to any such action, except to the extent
13 that such defenses existed as of the date of defendant's signing this
14 agreement.

15 EFFECTIVE DATE OF AGREEMENT

16 20. This agreement is effective upon signature and execution of
17 all required certifications by defendant, defendant's counsel, and a
18 Department of Justice Trial Attorney.

19 BREACH OF AGREEMENT

20 21. Defendant agrees that if defendant, at any time after the
21 signature of this agreement and execution of all required
22 certifications by defendant, defendant's counsel, and a Department of
23 Justice Trial Attorney, knowingly violates or fails to perform any of
24 defendant's obligations under this agreement ("a breach"), the
25 government may declare this agreement breached. All of defendant's
26 obligations are material, a single breach of this agreement is
27 sufficient for the government to declare a breach, and defendant
28 shall not be deemed to have cured a breach without the express

1 agreement of the government in writing. If the government declares
2 this agreement breached, and the Court finds such a breach to have
3 occurred, then: (a) if defendant has previously entered a guilty plea
4 pursuant to this agreement, defendant will not be able to withdraw
5 the guilty plea, and (b) the government will be relieved of all its
6 obligations under this agreement.

7 22. Following the Court's finding of a knowing breach of this
8 agreement by defendant, should the government choose to pursue any
9 charge or any civil, administrative, or regulatory action that was
10 either dismissed or not filed as a result of this agreement, then:

11 a. Defendant agrees that any applicable statute of
12 limitations is tolled between the date of defendant's signing of this
13 agreement and the filing commencing any such action.

14 b. Defendant waives and gives up all defenses based on
15 the statute of limitations, any claim of pre-indictment delay, or any
16 speedy trial claim with respect to any such action, except to the
17 extent that such defenses existed as of the date of defendant's
18 signing this agreement.

19 c. Defendant agrees that: (i) any statements made by
20 defendant, under oath, at the guilty plea hearing (if such a hearing
21 occurred prior to the breach); (ii) the agreed to factual basis
22 statement in this agreement; and (iii) any evidence derived from such
23 statements, shall be admissible against defendant in any such action
24 against defendant, and defendant waives and gives up any claim under
25 the United States Constitution, any statute, Rule 410 of the Federal
26 Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal
27 Procedure, or any other federal rule, that the statements or any
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1 evidence derived from the statements should be suppressed or are
2 inadmissible.

3 COURT AND PROBATION OFFICE NOT PARTIES

4 23. Defendant understands that the Court and the United States
5 Probation Office are not parties to this agreement and need not
6 accept any of the government's sentencing recommendations or the
7 parties' agreements to facts or sentencing factors.

8 24. Defendant understands that both defendant and the
9 government are free to: (a) supplement the facts by supplying
10 relevant information to the United States Probation Office and the
11 Court, (b) correct any and all factual misstatements relating to the
12 Court's Sentencing Guidelines calculations and determination of
13 sentence, and (c) argue on appeal and collateral review that the
14 Court's Sentencing Guidelines calculations and the sentence it
15 chooses to impose are not error, although each party agrees to
16 maintain its view that the calculations in paragraph 12 are
17 consistent with the facts of this case. While this paragraph permits
18 both the government and defendant to submit full and complete factual
19 information to the United States Probation Office and the Court, even
20 if that factual information may be viewed as inconsistent with the
21 facts agreed to in this agreement, this paragraph does not affect
22 defendant's and the government's obligations not to contest the facts
23 agreed to in this agreement.

24 25. Defendant understands that even if the Court ignores any
25 sentencing recommendation, finds facts or reaches conclusions
26 different from those agreed to, and/or imposes any sentence up to the
27 maximum established by statute, defendant cannot, for that reason,
28 withdraw defendant's guilty plea, and defendant will remain bound to

1 fulfill all defendant's obligations under this agreement. Defendant
2 understands that no one -- not the prosecutor, defendant's attorney,
3 or the Court -- can make a binding prediction or promise regarding
4 the sentence defendant will receive, except that it will be within
5 the statutory maximum.

6 NO ADDITIONAL AGREEMENTS

7 26. Defendant understands that, except as set forth herein,
8 there are no promises, understandings, or agreements between the
9 government and defendant or defendant's attorney, and that no
10 additional promise, understanding, or agreement may be entered into
11 unless in a writing signed by all parties or on the record in court.

12 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

13 27. The parties agree that this agreement will be considered
14 part of the record of defendant's guilty plea hearing as if the
15 entire agreement had been read into the record of the proceeding.

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1 AGREED AND ACCEPTED

2 UNITED STATES ATTORNEY'S OFFICE
3 FOR THE CENTRAL DISTRICT OF
4 CALIFORNIA

5 EILEEN M. DECKER
6 United States Attorney



4/24/16

7 RITESH SRIVASTAVA
8 NIALL M. O'DONNELL
9 Trial Attorneys
10 United States Department of Justice
11 Criminal Division, Fraud Section

Date

12 GARY J. ORDOG, M.D.
13 Defendant

Date

04/24/2016

14 ELON BERK
15 Attorney for Defendant Gary J.
16 Ordog, M.D.

Date

4/24/16

17 CERTIFICATION OF DEFENDANT


18 I have read this agreement in its entirety. I have had enough
19 time to review and consider this agreement, and I have carefully and
20 thoroughly discussed every part of it with my attorney. I understand
21 the terms of this agreement, and I voluntarily agree to those terms.
22 I have discussed the evidence with my attorney, and my attorney has
23 advised me of my rights, of possible pretrial motions that might be
24 filed, of possible defenses that might be asserted either prior to or
25 at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a),
26 of relevant Sentencing Guidelines provisions, and of the consequences
27 of entering into this agreement. No promises, inducements, or
28 representations of any kind have been made to me other than those

1 contained in this agreement. No one has threatened or forced me in
2 any way to enter into this agreement. I am satisfied with the
3 representation of my attorney in this matter, and I am pleading
4 guilty because I am guilty of the charges and wish to take advantage
5 of the promises set forth in this agreement, and not for any other
6 reason.

7
8  Date 04/24/2016
9 GARY J. ORDOG, M.D.
Defendant

10 CERTIFICATION OF DEFENDANT'S ATTORNEY

11 I am Gary J. Ordog's attorney. I have carefully and thoroughly
12 discussed every part of this agreement with my client. Further, I
13 have fully advised my client of his rights, of possible pretrial
14 motions that might be filed, of possible defenses that might be
15 asserted either prior to or at trial, of the sentencing factors set
16 forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines
17 provisions, and of the consequences of entering into this agreement.
18 To my knowledge: no promises, inducements, or representations of any
19 kind have been made to my client other than those contained in this
20 agreement; no one has threatened or forced my client in any way to
21 enter into this agreement; my client's decision to enter into this
22 agreement is an informed and voluntary one; and the factual basis set
23 forth in this agreement is sufficient to support my client's entry of
24 a guilty plea pursuant to this agreement.

25  Date 4/24/16
26 ELON BERK
27 Attorney for Defendant Gary J.
28 Ordog, M.D.