

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID CELIO,

Defendant.

NO. CR06-433 MJP

GOVERNMENT'S  
SENTENCING MEMORANDUM

David Celio, a Ph.D. psychologist, is before the court to be sentenced for committing health care fraud. Dr. Celio committed blatant fraud in connection with his claims to TRICARE, the federal health care program for the spouses and children of active duty members, retirees and reservists on active duty. Dr. Celio repeatedly billed for services he did not provide. Dr. Celio repeatedly billed for services at a higher level of service than he provided. Dr. Celio repeatedly submitted false and fraudulent documents when asked for support for what turned out to be fraudulent bills. For the reasons set forth below, the Government recommends a sentence of 12 (twelve) months of imprisonment, three (3) years of supervised release, and imposition of restitution.

**I. Procedural Background**

**A. The Charge**

Dr. Celio was charged by Information with one count of Health Care Fraud in violation of Title 18, United States Code, Section 1347 on November 17, 2006.

1           **B.     The Plea Agreement**

2           Dr. Celio entered a guilty plea, pursuant to a Plea Agreement, the same day the  
3 Information was filed. Various portions of the Plea Agreement will be discussed in other portions  
4 of this memorandum.

5           **C.     The Civil Settlement Agreement**

6           On March 28, 2007, Dr. Celio signed a civil Settlement Agreement, negotiated with  
7 Assistant United States Attorney Peter Winn, pursuant to which Dr. Celio agreed to pay the  
8 United States Five Hundred Ten Thousand Two Hundred and Sixty-four Dollars (\$510,264.00).  
9 This sum exceeds the actual dollar amount of civil loss as a result of the multiplier of actual  
10 damages that is permitted under the False Claims Act. Under the terms of this civil settlement  
11 agreement, upon Dr. Celio's full payment of that sum, the United States will release him from  
12 liability from any civil claims the United States has or may have under the False Claims Act, 31  
13 U.S.C. §§ 3729-3733l; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3821; the  
14 common law theories of payment by mistake, unjust enrichment, and fraud. *See* Exhibit 1 to  
15 Declaration of Susan Loitz (hereafter "Loitz Declaration") submitted herewith. The United States  
16 understands that Dr. Celio intends to pay the settlement amount before sentence is imposed. The  
17 United States will credit payments made under the Settlement Agreement against restitution  
18 obligations that may be imposed as part of Dr. Celio's sentence.

19           **D.     Department of Health Proceedings**

20           Because the United States understands that Dr. Celio will ask that some or all of his  
21 sentence be satisfied by community service consisting of pro bono counseling, the United States  
22 submits the following information about a pending State of Washington Department of Health  
23 investigation. If the Department of Health determines to take disciplinary action against Dr.  
24 Celio, its options could include suspension of or conditions on his license.

25           Dr. Celio's counsel notified the Department of Health of Dr. Celio's guilty plea by letter  
26 dated December 8, 2006, explaining that "the charge related to TRICARE (a federal health care  
27 benefit program) billing errors that occurred prior to May 2004." *See* Exhibit 2 to Loitz  
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1 Declaration. Subsequently, the Department of Health received a copy of the Information and the  
2 Plea Agreement, and opened an investigation as a result of Dr. Celio's guilty plea. *See* Loitz  
3 Declaration. The undersigned confirmed with the Department of Health investigator on March  
4 29, 2007, that the matter remains open at the Department of Health. *Id.*

5 **II. Dr. Celio's Criminal Conduct**

6 As set forth in the lengthy statement of facts included in the Plea Agreement, Dr. Celio  
7 has admitted that he engaged in extensive fraud, committed in numerous ways. His admitted  
8 criminal behavior includes the following:

9 **A. Dr. Celio Submitted False Claims**

- 10 • He caused claims to be submitted for supposed dates of therapy when in fact, he  
11 had not seen nor spoken to either the patient nor a family member on the dates in  
12 question. This included repeatedly submitting three separate claims for therapy  
13 sessions when three family members failed to appear for one joint family therapy  
14 session.
- 15 • He caused claims to be submitted for dates of supposed therapy after the patient  
16 had ceased to be his patient.
- 17 • He caused claims to be submitted for therapy provided by phone, when he knew  
18 that was not a covered service.
- 19 • He caused claims to be submitted for a higher level of service than he provided,  
20 and thus receive a higher level of payment than he was due.

21 **B. Dr. Celio Submitted False Treatment Notes and Authorization Requests**

- 22 • He created and submitted false and fraudulent notes in response to requests from  
23 TRICARE for reported therapy sessions for which he had previously submitted  
24 claims. Dr. Celio knew that TRICARE did not permit altering or adding to  
25 treatment records after the fact. By making and using false and fraudulent notes,  
26 Dr. Celio covered up material facts, including that:

- 27 ▶ his regular method of keeping notes did not conform to TRICARE's
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standards: his regular method being notes (often cryptic) for all patients in one spiral notebook rather than complete notes segregated in a separate chart or file for each patient.

- ▶ he had previously submitted claims for therapy that he had not in fact provided, including when the notes in his spiral notebooks indicated he had not treated the patient on the date in question.

- He submitted Treatment Authorization Requests seeking authorization for additional services for patients he was no longer treating, and thereafter continued to submit claims for treatment for such patients, when in fact, he was no longer seeing the patients.

### **C. Illustrative Example of Dr. Celio's Criminal Behavior**

An example of Dr. Celio's criminal behavior relates to CR, who is mentioned in the Information and the Plea Agreement as a representative illustration of Dr. Celio's fraudulent practices. Dr. Celio has admitted that he saw CR only one time: in September, 2002, in a family therapy session relating to CR's sister, who was a patient of Dr. Celio's. Though Dr. Celio saw CR only one time, TRICARE's records show that Dr. Celio continued to submit claims for therapy related to CR weekly through March 18, 2003, for a total of twenty-five claims after the one time that he did see CR.<sup>1</sup> See Exhibit 3 to Loitz Declaration. In addition, on November 25, 2002, two months after the single time he had seen CR, Dr. Celio submitted to TRICARE an Outpatient Treatment Authorization Request asking for continuing authorization to treat CR. On this form, Dr. Celio indicated various psychological and behavioral symptoms for CR, and reported that CR's progress in treatment was somewhat improved. See Exhibit 5 to Loitz Declaration.

### **III. Sentencing Guideline and Section 3553(a) Analyses**

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<sup>1</sup>The claims submitted regarding CR are in addition to the claims for therapy relating to CR's sister, KR. See Exhibit 4 to Loitz Declaration. Claims for family therapy associated with KR were submitted for each of the dates of service for which family therapy were submitted with respect to CR. See Exhibits 3 and 4 to Loitz Declaration.



1 Ninth Circuit in *United States v. Rutgard*, 116 F.3d 1270 (9th Cir, 1997), held that a  
2 physician submitting false claims to insurers enjoys a position of trust, and is subject to a  
3 two point increase in his offense level if he abuses this trust by submitting false and  
4 fraudulent information. Here, not only did Dr. Celio repeatedly submit false claims to  
5 TRICARE, he also created and submitted false treatment notes when asked for treatment  
6 note for claims already submitted. The abuse of trust provision is clearly applicable.

7 Dr. Celio has no criminal history, and thus the Offense Level after applying the  
8 above Sentencing Guideline analysis is 12-18 months. As reflected in the Plea Agreement,  
9 the Government has agreed to recommend a sentence of incarceration of no more than  
10 twelve (12) months.

11 **B. The Factors In 18 U.S.C. § 3553(a)**

12 In imposing a sentence sufficient, but not greater than necessary, the court is to  
13 consider “the nature and circumstances of the offense and the history and characteristics of  
14 the defendant”, as well as the factors set forth in 18 U.S.C. §3553(a)(2). The factors  
15 factors that are most relevant here are the need for the sentence imposed:

16 (A) to reflect the seriousness of the offense, to promote respect for the law, and  
17 to provide just punishment for the offense; and

18 (B) to afford adequate deterrence to criminal conduct.

19 In addition, the court should consider the defendant’s ongoing need for medical  
20 care, a factor that is mentioned in 18 U.S.C. § 3553(a)(2)(D).

21 In considering the “nature and circumstances of the offense and the history and  
22 characteristics of the defendant”, the court, of course, should consider the statements of  
23 colleagues, patients and community members who value his contributions to individual  
24 patients and to the community. The court should also consider that Dr. Celio, who has had  
25 the benefit of an extensive academic education, as well as direct instruction from  
26 TRICARE regarding proper billing and documentation, nevertheless chose repeatedly to  
27 submit false and fraudulent claims and false and fraudulent treatment notes to TRICARE.

1 The need for a sentence to reflect the seriousness of the crime, and to provide for  
2 adequate deterrence, is particularly important in the crime of health care fraud, as there  
3 sometimes appears to be an attitude that cheating insurers is not serious. However, the  
4 impact of fraud on an already expensive health care system has real consequences to  
5 health care beneficiaries. Dollars spent paying for services that were not performed, or at  
6 a higher rate than were performed, add to the every increasing financial cost of health care.  
7 Dollars spent on fraudulent claims are dollars not available to provide for increased  
8 benefits or, more realistically, to keep benefits from being cut as dollars for health care  
9 are stretched. The military families that rely on the TRICARE program are families that  
10 sacrifice greatly. They deserve generous health care benefits that remain secure. Fraud  
11 committed against TRICARE puts their benefits in jeopardy.

12 The sentence of Dr. Celio should be sufficient to punish Dr. Celio adequately for  
13 his criminal conduct. The sentence should also be sufficient to serve as a deterrent to  
14 others who might be tempted to knowingly submit false claims, or to falsify medical  
15 records to support fraudulent claims. The sentence should show that it is not simply a  
16 question of repayment, albeit with financial penalties. A sentence for a health care fraud  
17 crime should clearly reflect the *criminal* nature of the conduct.

### 18 **III. The Government's View on the Appropriate Sentence**

#### 19 **A. The Government's Recommendation**

20 The government recommends that Dr. Celio be sentenced to 12 months of  
21 incarceration, and three years of supervised release following his term of imprisonment.  
22 Given the financial terms under the civil Settlement Agreement, the Government does not  
23 believe that imposition of a criminal fine need be a component of his criminal sentence.  
24 The Court should order restitution, although the judgment should also reflect that  
25 payments under the civil Settlement Agreement will be credited towards the restitution  
26 obligation, since the fulfillment of the financial obligations under that Settlement  
27 Agreement will include payments owed to the TRICARE program that would otherwise be  
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1 considered criminal restitution.

2 This recommended sentence is at the low end of the sentencing range as calculated  
3 above, and adequately addresses the factors set forth in 18 U.S.C. § 3553(a)(2). It is a  
4 sentence that would provide a significant punishment for Dr. Celio's criminal behavior,  
5 and one that would serve as a deterrent to other health care providers who might also be  
6 tempted to falsify their billing records and patient records to first obtain and then retain  
7 payments to which they are not entitled.

8 **B. Dr. Celio's Health Concerns Do Not Require a Non-Custodial Sentence**

9 The question of whether a defendant's health should be considered as grounds for a  
10 downward departure is addressed in USSG § 5H1.4:

11 Physical condition or appearance, including physique, is not ordinarily relevant in  
12 determining whether a departure may be warranted. However, an extraordinary  
13 physical impairment may be a reason to depart downward: e.g., in the case of a  
seriously infirm defendant, home detention may be as efficient as, and less costly  
than, imprisonment.

14 Here, the court has been provided with a letter from Dr. Celio's physician indicating that  
15 Dr. Celio's health problems and medications need monitoring on a regular basis, and  
16 expressing his concerns that Dr. Celio "will not be afforded adequate access to healthcare  
17 if he is incarcerated..." Though Dr. Celio's doctor has expressed a concern, he does not  
18 state any facts about the medical treatment available to Dr. Celio were he to be  
19 incarcerated.

20 The undersigned called the Bureau of Prisons' facility in Sheridan, Oregon, a  
21 location in which many white collar male defendants from this district are incarcerated, to  
22 inquire about the health care system at that facility. Debra Zimmerman, the facility's  
23 Medicare Records Supervisor, stated that there are physician assistants on site at all three  
24 Sheridan facilities from 6 a.m. to 10 p.m.; that after hours, they are available by radio  
25 contact; and that in emergencies, an ambulance will be called for transport to an  
26 appropriate medical facility. Ms. Zimmerman stated that medical care at Sheridan  
27 includes administering and monitoring medications, and treating patients who have  
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1 chronic conditions, such as diabetes. She further stated that there is an onsite pharmacy,  
2 and that an appointment with a cardiologist can be made to provide needed care to a  
3 Sheridan inmate. *See* Declaration of Susan Loitz, submitted herewith. If the sentence  
4 includes a term of incarceration, Dr. Celio may wish to make more information available  
5 to the Bureau of Prisons as they consider the appropriate placement for Dr. Celio. Such  
6 information may confirm that the medical care available at Sheridan or some similar  
7 facility will be adequate to address his medical needs. Perhaps, however, such information  
8 might dictate that placement at a Bureau of Prisons facility with more extensive on-site  
9 medical care would be more suitable.

10        Though it is suggested in the Probation report that Dr. Celio is infirm, the United  
11 States does not believe that this has been demonstrated. What has been established is that  
12 Dr. Celio has a history of certain medical problems and is on multiple medications, and  
13 that his medications and overall health require monitoring. However, his medical  
14 condition has not recently prevented him from working nor commuting on a regular basis  
15 to his offices in Everett, Oak Harbor and Mukilteo. There are not sufficient facts nor  
16 circumstances to conclude that Dr. Celio will not receive appropriate health care through  
17 the Bureau of Prisons' health care system, or that he has "an extraordinary physical  
18 impairment" that would justify a downward departure under USSG 5H1.4.

19        **C. The Proposed Community Service is Not Appropriate**

20        Although as of this writing, the United States has not received Dr. Celio's  
21 Sentencing Memorandum, the undersigned understands that his counsel will urge an  
22 imposition of community service consisting of pro bono counseling services in lieu of a  
23 custodial sentence. The United States respectfully urges that such a condition would not  
24 be appropriate under the facts and circumstances here.

25        A good relationship between a psychologist and a patient would seem  
26 fundamentally to require the patient's trust in the psychologist. Though Dr. Celio would  
27 presumably like to characterize his fraudulent behavior as relating only to billing an  
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1 insurer, the mechanisms used in his fraudulent schemes included repeated lies about his  
2 patients, including the creation of false and fraudulent treatment notes for sessions that did  
3 not occur. As demonstrated above in connection with CR, his fraudulent scheme also  
4 included the ascribing of symptoms and treatment progress to someone he was not  
5 treating. Under such circumstances, and given the pending Department of Health  
6 investigation that could have some effect on Dr. Celio's license, any community service  
7 obligation should not include work as a counselor or therapist.

8 **IV. Conclusion**

9 In light of all of the circumstances, an appropriate punishment for Dr. Celio's  
10 fraudulent scheme is a sentence at the low end of the sentencing range, *i.e.*, twelve (12)  
11 months of incarceration, restitution of \$120,000.00 (with credit given for payments under  
12 the civil Settlement Agreement), and three (3) years of supervised release.

13 Dated this 2nd Day of April, 2007.

14 Respectfully submitted,

15 JEFFREY C. SULLIVAN  
16 United States Attorney

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19 SUSAN LOITZ  
20 Assistant United States Attorney