

ALB:CPK
F.# 2016R01391

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----- X

UNITED STATES OF AMERICA

- against -

HAL ABRAHAMSON,

Defendant.

INFORMATION

Cr. No. _____
(T. 18, U.S.C., §§ 982(a)(7), 982(b)(1),
1347, 2 and 3551 et seq.; T. 21, U.S.C.,
§ 853(p))

----- X

THE UNITED STATES ATTORNEY CHARGES:

INTRODUCTION

At all times relevant to this Information, unless otherwise indicated:

I. Background

A. The Medicare Program

1. The Medicare Program (“Medicare”) was a federal health care program providing benefits to persons who were at least 65 years old or disabled. Medicare was administered by the Centers for Medicare and Medicaid Services (“CMS”), a federal agency under the United States Department of Health and Human Services (“HHS”). Individuals who received benefits under Medicare were referred to as Medicare “beneficiaries.”

2. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

3. Medicare was divided into multiple parts. Medicare Part B covered the costs of physicians' services and outpatient care. Generally, Medicare Part B covered these costs only when, among other requirements, the services were medically necessary.

4. In order to bill Medicare for the cost of treating Medicare beneficiaries and providing related benefits, items and services, medical providers and suppliers were required to apply for and receive a provider identification number ("PIN") or provider transaction access number ("PTAN") from the program. The PIN/PTAN allowed medical providers and suppliers to submit bills, known as claims, to Medicare to obtain reimbursement for the cost of treatment and related health care benefits, items and services that they had supplied and provided to beneficiaries.

5. A medical provider was required to be enrolled in Medicare in order to submit claims. In order to enroll in the Medicare program, a medical provider was required to enter into an agreement with CMS in which the provider agreed to comply with all applicable statutory, regulatory and program requirements for reimbursement from Medicare. By signing the Medicare enrollment application, the provider certified that the provider understood that payment of a claim was conditioned on the claim and the underlying transaction complying with Medicare regulations, Medicare program instruction, and the law, and on the provider's compliance with all applicable conditions of participation in Medicare.

6. Medical providers and suppliers were authorized to submit claims to Medicare only for services that were medically necessary.

7. To receive reimbursement from Medicare for covered services and items, medical providers were required to submit claims, either electronically or in writing, through Forms CMS-1500 or Forms UB-92. Each claim form required the medical provider to identify, among other information, the medical provider submitting the claim, the medical provider rendering the service, the referring physician, the patient and the services rendered. Each claim form required the provider to certify, among other things, that the services were medically necessary.

8. Providers submitted claims to Medicare using billing codes, also called current procedural terminology or "CPT" codes, which specifically identified the medical services provided to beneficiaries.

9. Medicare covered the costs related to skin grafts and wound packing services. Specifically, Medicare covered the costs of skin grafts and wound packing services associated with CPT codes listed in the chart below, among other things:

CPT Code	Description of Procedure
Code 15004	Skin grafts – for open wounds
Code 12021	Wound packing

B. The Private Health Care Benefit Programs

10. Anthem, Blue Cross/Blue Shield, Aetna Insurance Company, EmblemHealth, Optum, Healthfirst and Cigna (collectively, the "Private Benefit Programs")

were private health insurance plans, affecting commerce, under which medical benefits, items and services were provided to individuals.

11. Each of the Private Benefit Programs was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b).

12. The Private Benefit Programs compensated medical service providers for medical services that they actually rendered and that were medically necessary, including skin grafts and wound packing.

13. To receive reimbursement from the Private Benefit Programs, medical service providers submitted or caused the submission of claims, either electronically or in writing, to the Private Benefit Programs for payment of services, either directly or through a billing company.

C. The Defendant

14. The defendant HAL ABRAHAMSON was a licensed podiatrist who owned and operated Advanced Footcare Associates, also known as Long Island Podiatry Associates, P.C., and Podiatrist Foot Specialists (together, “Advanced Footcare Associates”), which provided podiatric services to patients from offices located in Plainview, New York and Rego Park, New York.

II. The Fraudulent Scheme

15. Between approximately January 1, 2013 and January 31, 2017, the defendant HAL ABRAHAMSON, together with others, devised and executed a scheme to enrich himself by submitting and causing the submission of false and fraudulent claims to

Medicare and the Private Benefit Programs. Specifically, the defendant, together with others, submitted claims to Medicare and the Private Benefit Programs for skin graft and wound packing services that were never done. The defendant also billed the Private Benefit Programs for work purportedly done by another podiatrist, whose reimbursement rate was higher than the defendant's, when the work was in fact done by the defendant or, in some instances, not done at all.

16. It was a part of the scheme that the defendant HAL ABRAHAMSON, together with others, created and caused to be created, and submitted and caused to be submitted to Medicare and the Private Benefit Programs for payment, false and fraudulent billing invoices. The billing invoices were false and fraudulent in that they contained one or more materially false representations about skin grafts, wound packing and services purportedly done by another podiatrist, including, among other representations, claims for payment for skin grafts that were never done and wound packing services that were never provided, as well as claims to the Private Benefit Programs for payment for work purportedly done by another podiatrist that was in fact done by ABRAHAMSON or, in some instances, was not done at all.

HEALTH CARE FRAUD

17. The allegations contained in paragraphs one through 16 are realleged and incorporated as if fully set forth in this paragraph.

18. On or about and between January 1, 2013 and January 31, 2017, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the

defendant HAL ABRAHAMSON, together with others, did knowingly and willfully execute and attempt to execute a scheme and artifice to defraud one or more health care benefit programs, as defined in Title 18, United States Code, Section 24(b), to wit: Medicare and the Private Benefit Programs, and to obtain, by means of materially false and fraudulent pretenses, representations and promises, money and property owned by, and under the custody and control of, Medicare and the Private Benefit Programs, in connection with the delivery of and payment for health care benefits, items and services.

(Title 18, United States Code, Sections 1347, 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

19. The United States hereby gives notice to the defendant that, upon his conviction of the offense charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Section 982(a)(7), which requires any person convicted of a federal health care offense to forfeit property, real or personal, that constitutes, or is derived directly or indirectly from, gross proceeds traceable to the commission of such offense.

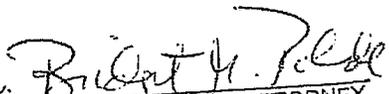
20. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the court;
- (d) has been substantially diminished in value; or

(e) has been commingled with other property, which cannot be divided without difficulty;
it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Sections 982(a)(7) and 982(b)(1); Title 21, United States Code, Section 853(p))

RICHARD P. DONOGHUE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

BY: 
ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. O.136

ORIGINAL

ALB:CPK
F. # 2016R01391

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

PLEA AGREEMENT

- against -

18 CR

HAL ABRAHAMSON,

Defendant.

-----X

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States Attorney's Office for the Eastern District of New York (the "Office") and HAL ABRAHAMSON (the "defendant") agree to the following:

1. The defendant will waive indictment and plead guilty to a one count information to be filed in this district, charging a violation of 18 U.S.C. § 1347. The count carries the following statutory penalties:

- a. Maximum term of imprisonment: 10 years (18 U.S.C. § 1347).
- b. Minimum term of imprisonment: 0 years (18 U.S.C. § 1347).
- c. Maximum supervised release term: 3 years, to follow any term of imprisonment; if a condition of release is violated, the defendant may be sentenced to up to 2 years without credit for pre-release imprisonment or time previously served on post-release supervision (18 U.S.C. § 3583 (b) & (e)).

- d. Maximum fine: Greater of \$250,000, or twice the gross gain or twice the gross loss
(18 U.S.C. § 3571(b)(2), (b)(3) and (d)).
- e. Mandatory in the amount of \$869,651, to be paid in accordance with the restitution order to be filed under seal with the Court in connection with the plea.
(18 U.S.C. §§ 3663A and 3664)
- f. \$100 special assessment
(18 U.S.C. § 3013).
- g. Other penalties: criminal forfeiture as set forth below in paragraphs 6 through 13.
(18 U.S.C. §§ 982(a)(7) and 982(b)(1), 21 U.S.C. § 853(p))

2. The defendant understands that although imposition of a sentence in accordance with the United States Sentencing Guidelines (the “Guidelines” and “U.S.S.G.”) is not mandatory, the Guidelines are advisory and the Court is required to consider any applicable Guidelines provisions as well as other factors enumerated in 18 U.S.C. § 3553(a) to arrive at an appropriate sentence in this case. The Office will advise the Court and the Probation Department of information relevant to sentencing, including criminal activity engaged in by the defendant, and such information may be used by the Court in determining the defendant’s sentence. See 18 U.S.C. § 3661 (“No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.”). The Office estimates the likely adjusted offense level under the Guidelines to be Level 22, which is predicated on the following Guidelines calculation:

Base Offense Level (§2B1.1(a)(1))	6
Plus: Loss exceeds \$550,000 (§2B1.1.(b)(1)(H))	14
Plus: Abuse of Trust (§3B1.3)	<u>2</u>
Total:	<u>22</u>

If the defendant clearly demonstrates acceptance of responsibility, through allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a), resulting in an adjusted offense level of 20 and a range of imprisonment of 33 - 41 months, assuming that the defendant falls within Criminal History Category I. Furthermore, if the defendant has accepted responsibility as described above, to the satisfaction of the Office, and if the defendant pleads guilty on or before 6/26/2018, an additional one-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(b), resulting in an adjusted offense level of 19. This level carries a range of imprisonment of 30 - 37 months, assuming that the defendant falls within Criminal History Category I. The defendant stipulates to the above Guidelines calculation.

3. The Guidelines estimate set forth in paragraph 2 is not binding on the Office, the Probation Department or the Court. If the Guidelines offense level advocated by the Office, or determined by the Probation Department or the Court, is, for any reason, including an error in the estimate, different from the estimate, the defendant will not be entitled to withdraw the plea and the government will not be deemed to have breached this agreement.

4. The defendant agrees not to file an appeal or otherwise challenge, by petition pursuant to 28 U.S.C. § 2255 or any other provision, the conviction or sentence in the event that the Court imposes a term of imprisonment of 41 months or below. This waiver is binding without regard to the sentencing analysis used by the Court. The defendant waives all

defenses based on the statute of limitations and venue with respect to any prosecution that is not time-barred on the date that this agreement is signed in the event that (a) the defendant's conviction is later vacated for any reason, (b) the defendant violates this agreement, or (c) the defendant's plea is later withdrawn. The defendant further waives the right to raise on appeal or on collateral review any argument that (1) the statute(s) to which the defendant is pleading guilty is unconstitutional and (2) the admitted conduct does not fall within the scope of the statute(s). Nothing in the foregoing waiver of appellate and collateral review rights shall preclude the defendant from raising a claim of ineffective assistance of counsel in an appropriate forum. The defendant waives any right to additional disclosure from the government in connection with the guilty plea. The defendant agrees that with respect to all charges referred to in paragraphs 1 and 5(a) he is not a "prevailing party" within the meaning of the "Hyde Amendment," 18 U.S.C. § 3006A note, and will not file any claim under that law. The defendant agrees to pay the special assessment by check payable to the Clerk of the Court at or before sentencing.

5. The Office agrees that:

- a. no further criminal charges will be brought against the defendant for health care fraud from 2013-2017, it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 et seq.;

and, based upon information now known to the Office, it will

- b. take no position concerning where within the Guidelines range determined by the Court the sentence should fall; and
- c. make no motion for an upward departure under the Sentencing Guidelines.

If information relevant to sentencing, as determined by the Office, becomes known to the Office after the date of this agreement, the Office will not be bound by paragraphs 5(b) and 5(c). Should it be judged by the Office that the defendant has violated any provision of this agreement, the defendant will not be released from his plea of guilty but this Office will be released from its obligations under this agreement, including but not limited to: (a) moving for the additional one-level downward adjustment for timely acceptance of responsibility described in paragraph 2 above; and (b) the provisions of paragraphs 5(a)-(c).

6. The defendant acknowledges that he obtained and/or acquired property that is subject to forfeiture as a result of his violation of 18 U.S.C. § 1347, as alleged in the above-captioned information. The defendant consents to the entry of a forfeiture money judgment in the amount of one hundred seventy-seven thousand dollars and no cents (\$177,000.00) (the "Forfeiture Money Judgment"). The defendant agrees that the amount of the Forfeiture Money Judgment represents property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the defendant's violation of 18 U.S.C. § 1347 and/or substitute assets, and thus is forfeitable to the United States pursuant to 18 U.S.C. §§ 982(a)(7) and 982(b)(1), and 21 U.S.C. § 853(p). The defendant consents to the entry of an Order of Forfeiture, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, imposing the Forfeiture Money Judgment.

7. The Forfeiture Money Judgment shall be paid in full within 30 days of sentencing (the "Due Date"). All payments made by the defendant toward the Forfeiture Money Judgment shall be made by money order, certified check and/or official bank check, payable to the "U.S. Marshals Service." The defendant shall cause said payment(s) to be

sent by overnight mail delivery to Assistant United States Attorney Madeline O'Connor, United States Attorney's Office, Eastern District of New York, 610 Federal Plaza, Central Islip, New York 11722, with the criminal docket number noted on the face of the instrument. The defendant consents to the restraint of all payments made toward the Forfeiture Money Judgment. The defendant further consents to the forfeiture of such payments as property, real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the defendant's violation of 18 U.S.C. § 1347 and/or substitute assets, through either an administrative or judicial (civil or criminal) forfeiture proceeding, at the Office's election. The defendant also waives all statutory deadlines, including but not limited to deadlines set forth in 18 U.S.C. § 983.

8. If the defendant fails to pay any portion of the Forfeiture Money Judgment on or before the Due Date, the defendant consents to the forfeiture of any other property of his up to the amount of the unpaid Forfeiture Money Judgment, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b)(1), and further agrees that the conditions of 21 U.S.C. § 853(p)(1)(A)-(E) have been met.

9. The defendant represents that he will disclose all of his assets to the United States on the financial statement entitled "United States Department of Justice Financial Statement" (hereinafter, the "Financial Statement") on or before June 28, 2018 and will provide a copy to Assistant United States Attorney Madeline O'Connor. The defendant agrees that a failure to disclose all assets on the Financial Statement and to inform the government in writing of any material changes up until the time of sentencing constitutes a material breach of this agreement. Upon such a breach, the defendant will not be entitled to

withdraw the plea, but the Office may bring additional criminal charges against the defendant. Should undisclosed assets which the defendant owns or in which the defendant has an interest be discovered, the defendant knowingly and voluntarily waives his right to any required notice concerning the forfeiture of said assets and agrees that said assets shall be forfeited to the United States pursuant to 18 U.S.C. §§ 982(a)(7) and 982(b)(1), and 21 U.S.C. § 853(p), as property real and personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the defendant's violation of 18 U.S.C. § 1347 and/or as a substitute assets.

10. The defendant agrees to fully assist the government in effectuating the payment of the Forfeiture Money Judgment, by among other things, executing any documents necessary to effectuate any transfer of title to the United States. The defendant agrees not to file a claim or petition seeking remission or contesting the forfeiture of any property against which the government seeks to satisfy the Forfeiture Money Judgment in any administrative or judicial (civil or criminal) proceeding. The defendant further agrees not to assist any person or entity in the filing of any claim or petition seeking remission or contesting the forfeiture of any property against which the government seeks to satisfy the Forfeiture Money Judgment in any administrative or judicial (civil or criminal) forfeiture proceeding.

11. The failure of the defendant to forfeit any monies and/or properties as required under this agreement, including the failure of the defendant to execute any document to accomplish the same on timely notice to do so, may constitute a material breach

of this agreement. Upon such a breach, the defendant will not be entitled to withdraw the plea, but the Office may bring additional criminal charges against the defendant.

12. The defendant knowingly and voluntarily waives his right to any required notice concerning the forfeiture of any monies and/or properties forfeited hereunder, including notice set forth in an indictment, information or administrative notice. In addition, the defendant knowingly and voluntarily waives his right, if any, to a jury trial on the entry of a Forfeiture Money Judgment, and waives all constitutional, legal and equitable defenses to the forfeiture of said monies and/or properties, including, but not limited to, any defenses based on principles of double jeopardy, the Ex Post Facto clause of the Constitution, any applicable statute of limitations, venue, or any defense under the Eighth Amendment, including a claim of excessive fines.

13. The defendant agrees that the entry and payment of the Forfeiture Money Judgment are not to be considered a payment of a fine, penalty, restitution loss amount, or any income taxes that may be due, and shall survive bankruptcy.

14. This agreement does not bind any federal, state, or local prosecuting authority other than the Office, and does not prohibit the Office from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving the defendant.

15. Apart from any written proffer agreements, if applicable, no promises, agreements or conditions have been entered into by the parties other than those set forth in this agreement and none will be entered into unless memorialized in writing and signed by all parties. Apart from any written proffer agreements, if applicable, this agreement

supersedes all prior promises, agreements or conditions between the parties. To become effective, this agreement must be signed by all signatories listed below.

Dated: Central Islip, New York
June 26, 2018

RICHARD P. DONOGHUE

United States Attorney
Eastern District of New York

By: 
Charles P. Kelly
Assistant United States Attorney

Approved by: 
Supervising Assistant U.S. Attorney

I have read the entire agreement and discussed it with my attorney. I understand all of its terms and am entering into it knowingly and voluntarily.


HAL ABRAHAMSON
Defendant

Approved by: 
John Martin
Counsel to Defendant