

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Criminal Action
v.	)	No. 17-10083
	)	
ELIZABETH GURRIERI,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE MARK L. WOLF  
UNITED STATES DISTRICT JUDGE

RULE 11

June 19, 2017  
12:16 p.m.

John J. Moakley United States Courthouse  
Courtroom No. 10  
One Courthouse Way  
Boston, Massachusetts 02210

Kelly Mortellite, RMR, CRR  
Official Court Reporter  
John J. Moakley United States Courthouse  
One Courthouse Way, Room 5200  
Boston, Massachusetts 02210  
mortellite@gmail.com

1 APPEARANCES:

2 On Behalf of the Government:

3 K. Nathaniel Yeager  
4 Susan M. Poswistilo  
5 United States Attorney's Office  
6 J. Joseph Moakley U.S. Courthouse  
7 1 Courthouse Way  
8 Suite 9200  
9 Boston, MA 02210  
10 617-748-3311  
11 nathaniel.yeager@usdoj.gov  
12 susan.poswistilo@usdoj.gov  
13

14 On Behalf of the Defendant:

15 Emily F. Hodge  
16 Diana K. Lloyd  
17 Choate, Hall & Stewart LLP  
18 Two International Place  
19 100-150 Oliver Street  
20 Boston, MA 02110  
21 617-248-4075  
22 ehodge@choate.com  
23 dlloyd@choate.com  
24  
25

## P R O C E E D I N G S

THE COURT: Would counsel please identify themselves for the court and for the record.

MR. POSWISTILO: Good morning, your Honor. Susan Poswistilo on behalf of the United States.

MR. YEAGER: Good afternoon, your Honor. Nathaniel Yeager for the United States.

THE COURT: I'm sorry. Could you say your name again?

MR. YEAGER: Nathaniel Yeager, Y-e-a-g-e-r.

MS. HODGE: Good afternoon, your Honor. Emily Hodge on behalf of Elizabeth Gurrieri.

MS. LLOYD: Good afternoon, your Honor. Diana Lloyd also on behalf of Ms. Gurrieri.

THE COURT: The defendant is present. I understand she'd like to waive indictment and plead guilty.

Could the government please give me an overview of this case, which I haven't encountered previously.

MR. YEAGER: Yes, your Honor. And I'll save the lengthy facts for the colloquy, your Honor. But essentially, INSYS Therapeutics is a pharmaceutical corporation that is based in Arizona. They make a drug called Subsys, which is what's called a rapid onset opioid. The drug is approved by the FDA for the treatment of cancer patients who are already on a long-acting opioid such as OxyContin. And the idea behind it is that they can overprescribe the OxyContin, in which case the

1 patient would be sluggish, or they could give you a smaller  
2 amount of OxyContin and then when there are breakthrough  
3 episodes, you can take this drug to get you through this pain.  
4 There are other drugs in the class that are similar to this  
5 drug.

6 The drug launched in March of 2012. Ms. Gurrieri is  
7 alleged to have participated in a conspiracy designed to  
8 defraud insurers with regard to prior authorizations. So as  
9 your Honor is aware, most insurance companies require prior  
10 authorization before they'll agree to pay for a drug on behalf  
11 of one of their enrollees. And Ms. Gurrieri is alleged to have  
12 run a prior authorization unit out of the company in Arizona  
13 that took information from practitioners all around the  
14 country, including from this area, and misled insurers and  
15 directed others at the agency to mislead insurers into  
16 believing that the drug was appropriate -- that met the  
17 guidelines of the insurer.

18 THE COURT: That doctors had -- sorry. Who has to  
19 give the preauthorization?

20 MR. YEAGER: So insurers and PBMs give the prior  
21 authorization in order for the drug to be paid. Doctors  
22 prescribe the drug. And the way the company set it up, which  
23 Ms. Gurrieri helped create, the way the company set it up was  
24 the doctor would prescribe the drug and then they would fill  
25 out a form at the doctor's office, usually called an opt-in

1 form. The form would have patient information, insurer  
2 information and other information necessary to obtain prior  
3 approval from the patient's insurer. That information would be  
4 faxed or e-mailed to the internal unit at the IRC in Arizona,  
5 whereupon Ms. Gurrieri directed -- among others, directed the  
6 employees of the IRC to call insurers using the information  
7 that had been provided by the doctors' offices to mislead  
8 insurers regarding necessity of the drug.

9 THE COURT: Okay. And what's the alleged amount of  
10 the loss?

11 MR. YEAGER: So the amount of the loss as alleged with  
12 Ms. Gurrieri is approximately \$48 million.

13 THE COURT: How much?

14 MR. YEAGER: \$48 million.

15 THE COURT: Okay. Has the victim been informed of  
16 this proceeding or their right to be heard?

17 MR. YEAGER: We had brought a motion. As your Honor  
18 may know, there are six separate defendants indicted in a  
19 parallel case in another session.

20 THE COURT: Actually, that, I didn't know. That's  
21 what I wanted to know by way of overview.

22 MR. YEAGER: All right. So in December of 2016 six  
23 defendants, including the former CEO, two vice presidents, the  
24 national director of sales and two regional directors of sales,  
25 were indicted in a racketeering indictment that is in another

1 session. Ms. Gurrieri was arrested at her home in October of  
2 2016 on a complaint that issued out of this court and is  
3 pleading guilty to the allegations that were made in that  
4 complaint, which is a smaller portion of the allegations that  
5 are made in the indictment.

6 THE COURT: But has the victim been informed?

7 MR. YEAGER: We've made an effort to reach out and  
8 notify victims of the crime. It's such a broad conspiracy,  
9 your Honor, that we've moved under the CVRA in that session for  
10 authority to use alternative means of notification, and that  
11 matter is pending.

12 THE COURT: Has such a motion been presented to me?

13 MR. YEAGER: No, your Honor, we have not.

14 THE COURT: Well, the victims have a right to know  
15 about this proceeding in case they want to be heard, so I'm  
16 ordering that by Wednesday you file something with me as to how  
17 you propose to deal with victim notification in the future.  
18 And the public portion of this transcript, the government shall  
19 order it and inform the victims it's available if they want to  
20 review it since they didn't get the notice of the proceeding  
21 that I believe they were entitled to.

22 MR. YEAGER: I understand, your Honor.

23 THE COURT: All right. So there's no victim or  
24 victims present who want to be heard today to your knowledge?

25 MR. YEAGER: No, your Honor.

1 THE COURT: All right. May I see counsel at sidebar?

2 **SIDEBAR:**

3 THE COURT: All right. I have a motion to seal the  
4 cooperation part of the plea agreement, which I'm going to  
5 question the defendant about. So if I allow the motion, I'll  
6 have to close the courtroom for that part of the colloquy. But  
7 why does the cooperation agreement need to be sealed? Do the  
8 six people she's cooperating against not know of her  
9 cooperation?

10 MR. YEAGER: We have notified them of her anticipated  
11 plea hearing today, and once the plea goes through, we'll  
12 provide them with additional information.

13 THE COURT: You're going to do better if you answer my  
14 questions directly. Have you told them about the cooperation?

15 MR. POSWISTILO: Your Honor, if I may, we have not  
16 told them that there is a cooperation agreement.

17 THE COURT: When are you going to tell them that?

18 MS. POSWISTILO: We wanted the plea to go through. In  
19 the event the plea didn't go through, we didn't have an  
20 agreement, essentially. So we will likely move to unseal the  
21 cooperation in the future once the plea is accepted.

22 THE COURT: All right. If I accept the plea, is there  
23 any problem with unsealing it, say, on Wednesday?

24 MR. YEAGER: I don't think so, your Honor.

25 THE COURT: Okay. To the maximum extent possible,

1 these things are to be public. So if there's no perceived  
2 threat of harm and if the defendants in the other case already  
3 know, then I wouldn't keep it sealed.

4 Does the defendant want to be heard on that?

5 MS. HODGE: Your Honor, we are in agreement that  
6 sealing at the moment would be prudent, given that the  
7 defendants don't yet know, but it's our understanding they will  
8 be notified shortly.

9 THE COURT: Yeah. In fact, here. Why don't I give  
10 you until Thursday, but my availability after that is limited,  
11 so if it's going to be unsealed, it should be unsealed soon,  
12 okay?

13 MR. YEAGER: Yes, sir.

14 THE COURT: All right. Thank you.

15 MS. LLOYD: If I may, if the court is going to seal  
16 the courtroom now, we would ask that our associate, Sara Frank,  
17 who has an appearance in the case, be allowed to stay.

18 THE COURT: She can stay.

19 MR. YEAGER: There are a number of federal agents  
20 here.

21 THE COURT: What's that?

22 MR. YEAGER: There are federal agents who have worked  
23 on the investigation. I would ask they be able to stay. I  
24 also know there are other members of the media here. I don't  
25 know how the court wants to handle it. Do you want the federal



1 agents to leave?

2 THE COURT: They can stay.

3 (End of sidebar.)

4 THE COURT: All right. For reasons that were  
5 discussed at the sidebar, parts of this colloquy are going to  
6 be closed to the public, so everyone except the federal agents  
7 and attorneys on behalf of the defendant, one attorney who is  
8 not at counsel table, need to leave the courtroom. The  
9 proceeding will be reopened when the confidential part is  
10 completed.

11 For the transcript, everything will be  
12 stenographically recorded, so there's a potential for a  
13 transcript that may be unsealed in the future. Okay. Court  
14 security officer, please empty the courtroom.

15 (Courtroom sealed.)

16 THE COURT: The defendant should approach the witness  
17 stand. Her attorneys should go with her with the copy of the  
18 information. How many federal agents -- you've got six federal  
19 agents there?

20 MR. YEAGER: The Assistant United States Attorney and  
21 six that -- four. I'm sorry. Four.

22 THE COURT: All right.

23 (Defendant duly sworn.)

24 THE COURT: Would you please state your true full  
25 name.

1 THE DEFENDANT: Elizabeth Paige Gurrieri.

2 THE COURT: Ms. Gurrieri, do you understand you've  
3 just taken an oath to answer the questions I'm going to ask you  
4 truthfully, and any failure to do that would be a separate  
5 prosecutable criminal offense?

6 THE DEFENDANT: Yes, I understand that.

7 THE COURT: Do you understand if you're confused by  
8 any of my questions or unsure about what an honest and accurate  
9 answer would be, I'll give you a chance to speak to your  
10 lawyers so we can clear up any confusion and you can give me a  
11 reliable response?

12 THE DEFENDANT: Yes, I understand that.

13 THE COURT: Have you ever been arrested or convicted  
14 under any name different than the name you just gave me?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: How old are you?

17 THE DEFENDANT: 41.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: I have a bachelor's degree.

20 THE COURT: Have you ever been treated for mental  
21 illness or drug addiction?

22 THE DEFENDANT: Mental illness, as far as ADHD, yes,  
23 your Honor, but no drug addiction or anything like that.

24 THE COURT: Are you today under the influence of any  
25 drug, medication or alcohol?

1           THE DEFENDANT: No, your Honor.

2           THE COURT: Have you read the charges in the  
3 information -- the charge in the information against you?

4           THE DEFENDANT: Yes, your Honor.

5           THE COURT: Have you discussed those charges with your  
6 attorneys, including what the government would have to prove  
7 beyond a reasonable doubt to achieve your conviction?

8           THE DEFENDANT: Yes, your Honor.

9           THE COURT: Are you fully satisfied with their work as  
10 your lawyers?

11          THE DEFENDANT: Yes, your Honor.

12          THE COURT: Do you understand that the charge against  
13 you is what's called a federal felony, meaning a crime that can  
14 be punished by more than one year in prison?

15          THE DEFENDANT: Yes, your Honor.

16          THE COURT: Do you understand that when a federal  
17 felony is involved, you have a right to be charged in an  
18 indictment returned by a grand jury rather than in an  
19 information issued by the U.S. Attorney's Office like this one?

20          THE DEFENDANT: Yes, your Honor.

21          THE COURT: Do you understand that a grand jury is  
22 composed of 16 to 23 people, and at least 12 them would have to  
23 find probable cause to believe that you committed the crime  
24 with which you're now being charged to indict you on that  
25 charge?

1 THE DEFENDANT: I understand, your Honor.

2 THE COURT: Do you understand that if this matter was  
3 presented to a grand jury, it might or might not indict you?

4 THE DEFENDANT: I understand.

5 THE COURT: I'll make the March 27, 2017 letter that  
6 starts with Change of Plea Exhibit 1 and the March 27, 2017  
7 letter, which I've authorized to be filed under seal, the  
8 cooperation agreement, Exhibit 2. Do you have signed copies of  
9 them?

10 THE CLERK: Yes.

11 THE COURT: Are those two documents together your plea  
12 agreement with the government?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Did you read each of those -- well, did  
15 you sign each of those letters?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Did you read them before you signed them?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Did you discuss them with your lawyers  
20 before you signed them?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Did you feel you understood the letters  
23 before you signed them?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do those letters both accurately and

1 completely describe your agreement with the government?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Has anybody made any promises to you or  
4 given you any assurances that are not in those letters?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Do you understand that with regard to your  
7 cooperation agreement, in essence, the government has complete  
8 discretion in deciding whether you have substantially assisted  
9 in the investigation or prosecution of someone else or other  
10 people and whether it should file a motion for a downward  
11 departure in connection with your sentence?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: In the plea agreement, Exhibit 1, on page  
14 5, section 5, it's captioned Waiver of Rights to Appeal and  
15 Bring Future Challenges. Do you understand you've agreed not  
16 to appeal or challenge the fact in the future that you're  
17 guilty as charged and you've agreed not to appeal or challenge  
18 any sentence of 18 months or less?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Did you discuss specifically that section  
21 on waiving rights to appeal and bring future challenges with  
22 your lawyers?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And do you want to waive those rights to  
25 appeal and challenge?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Is there any reason to continue to close  
3 the courtroom? I don't think so.

4 MR. YEAGER: No, your Honor.

5 THE COURT: Okay. We can reopen the courtroom now.

6 (Courtroom re-opened.)

7 THE COURT: All right.

8 So you've told me that you understand your right to be  
9 indicted rather than to have this case proceed on the  
10 information issued by the U.S. Attorney's Office. And do you  
11 now wish to waive indictment and have the case proceed based on  
12 the information just as if there was an indictment?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right. Well, I will accept your  
15 waiver of indictment because I find you are competent, you are  
16 effectively represented, and you are acting knowingly and  
17 voluntarily.

18 Does somebody have a waiver of indictment form to be  
19 signed?

20 MS. HODGE: Yes, your Honor. I have a blank waiver of  
21 indictment form as provided by the government that Ms. Gurrieri  
22 can sign.

23 THE COURT: Okay. Would you sign that, please.

24 MS. HODGE: May I approach?

25 THE COURT: Okay. We'll move to the arraignment

1 phase.

2 Do you wish to have the information read to you, or  
3 will you waive the reading of the information?

4 THE DEFENDANT: I'll waive.

5 THE COURT: What's that?

6 THE DEFENDANT: I'll waive the reading.

7 THE COURT: Okay. How do you now wish to plead,  
8 guilty or not guilty?

9 THE DEFENDANT: Guilty, your Honor.

10 THE COURT: Then I'll ask you some additional  
11 questions to determine whether I should accept your guilty  
12 plea.

13 Do you understand that if I accept your guilty plea,  
14 you will become a federal felon and you may lose certain rights  
15 if you have them, including the rights to vote, to hold public  
16 office, to serve on a jury and to possess a firearm?

17 THE DEFENDANT: I understand, your Honor.

18 THE COURT: Do you understand that the maximum  
19 possible penalties are as stated in your plea agreement in  
20 paragraph 2; that is, you could be imprisoned for up to 20  
21 years then placed on supervised release for up to three years,  
22 there's a fine of 250,000 or twice the gross gain or loss,  
23 whichever is greater, there's a mandatory special assessment of  
24 \$100, restitution, and exclusion from Medicare and Medicaid  
25 programs? Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Mr. Yeager, what's the maximum possible  
3 restitution?

4 MR. YEAGER: I believe that the maximum possible  
5 restitution would be approximately \$48 million, your Honor.

6 THE COURT: Do you understand that you could be  
7 ordered to make restitution in the amount of \$48 million?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And do you understand that the sentencing  
10 in this case will be governed by the advisory guideline system  
11 now in effect in Federal Courts?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Have you talked with your lawyers about  
14 how that guideline system might operate in your case?

15 THE DEFENDANT: Yes, I have, your Honor.

16 THE COURT: Do you understand however that as we sit  
17 here today, neither your lawyers nor anybody else can tell you  
18 with certainty what the guideline range is for your sentence or  
19 what sentence I will impose because until I conduct a  
20 sentencing hearing, I cannot make those decisions myself?

21 THE DEFENDANT: Yes, I understand, your Honor.

22 THE COURT: Do you understand that, depending on the  
23 facts, I may have the authority to give a sentence that's  
24 higher or lower than the guideline range, but in many cases I  
25 find it is most appropriate to give a sentence within the



1 guideline range?

2 THE DEFENDANT: I understand.

3 THE COURT: Do you understand there's no parole in the  
4 federal system, so if I sentence you to prison, you will have  
5 to serve substantially all of that time in prison?

6 THE DEFENDANT: Yes, I understand, your Honor.

7 THE COURT: Do you understand if I give you a sentence  
8 that's higher than you hoped for or even higher than the  
9 government recommends, that won't be a reason permitting you to  
10 withdraw your guilty plea?

11 THE DEFENDANT: I understand, your Honor.

12 THE COURT: Do you understand you still have a right,  
13 if you want to use it, to have the charge against you decided  
14 at a trial by a jury?

15 THE DEFENDANT: I understand, your Honor.

16 THE COURT: Do you understand that if we had a trial,  
17 you would have a right to an attorney, and if you couldn't  
18 afford one, an attorney would be appointed to represent you at  
19 public expense?

20 THE DEFENDANT: I understand, your Honor.

21 THE COURT: Do you understand if we had a trial, you  
22 would be presumed innocent. You would not have to prove you  
23 were innocent; rather the government would have to prove you  
24 were guilty beyond a reasonable doubt to achieve your  
25 conviction?

1           THE DEFENDANT: I understand, your Honor.

2           THE COURT: Do you understand if we had a trial, you  
3 would have an opportunity through your lawyers to object to the  
4 government's evidence and challenge its witnesses?

5           THE DEFENDANT: Yes, I understand, your Honor.

6           THE COURT: And do you understand if we had a trial,  
7 you would also have an opportunity but not an obligation to  
8 present a defense?

9           THE DEFENDANT: I understand, your Honor.

10          THE COURT: Do you understand if we had a trial, you  
11 would have an opportunity but not an obligation to testify, and  
12 if you decided not to testify, I would instruct the jury that  
13 it could draw no suggestion that you were guilty from your  
14 decision not to testify?

15          THE DEFENDANT: Yes, I understand, your Honor.

16          THE COURT: And do you understand that if I accept  
17 your guilty plea, you'll be giving up your right to a trial and  
18 there will be no trial?

19          THE DEFENDANT: Yes, I understand, your Honor.

20          THE COURT: Do you understand that in the information  
21 you are charged with conspiracy to commit wire fraud in  
22 violation of section 1349?

23          THE DEFENDANT: Yes, I understand, your Honor.

24          THE COURT: Do you understand that a conspiracy is an  
25 agreement to commit a crime, essentially?

1 THE DEFENDANT: Yes, I understand, your Honor.

2 THE COURT: And do you understand that to prove a  
3 conspiracy, the government would have to prove beyond a  
4 reasonable doubt first that the agreement specified in the  
5 indictment and not some other agreement existed between at  
6 least two people to commit wire fraud; second, that you  
7 knowingly, meaning intentionally, not by accident or mistake,  
8 and willfully, meaning you knew it was illegal joined in that  
9 agreement; and third, that one of the co-conspirators committed  
10 what's called an overt act, took some action to seek to achieve  
11 the goal of the conspiracy?

12 THE DEFENDANT: Yes, I understand, your Honor.

13 THE COURT: And here, as I said, the goal of the  
14 alleged conspiracy was to commit wire fraud. Do you understand  
15 that to prove wire fraud, the government would have to prove  
16 that a scheme as alleged in the indictment or information  
17 existed to defraud, that means to deceive in order to obtain  
18 money or property; second, that the scheme to defraud involved  
19 misrepresentations or concealment of a material fact or matter?

20 THE DEFENDANT: Yes, I understand, your Honor.

21 THE COURT: And do you understand that a matter is  
22 material if it could affect the decisionmaker in deciding what  
23 to do?

24 THE DEFENDANT: Yes, I understand.

25 THE COURT: And do you understand that the government

1 would also have to prove again that you acted knowingly, that  
2 means intentionally, and willfully, understanding it was  
3 illegal, with intent to defraud essentially to cheat somebody  
4 out of money?

5 THE DEFENDANT: Yes, I understand, your Honor.

6 THE COURT: And finally, do you understand that the  
7 government would have to prove that for the purpose of  
8 executing the scheme or in furtherance of the scheme you or one  
9 of the co-conspirators caused a wire transmission to go from  
10 one state to another and therefore travel in interstate  
11 commerce?

12 THE DEFENDANT: Yes, I understand, your Honor.

13 THE COURT: And the particular charge against you is  
14 that from in or about December of 2012 until in or around July  
15 2015 in the District of Massachusetts and elsewhere, you, with  
16 others known and unknown, did knowingly conspire to commit wire  
17 fraud in violation of 18 United States Code, Section 1343; that  
18 is, having devised and intending to devise a scheme to defraud  
19 insurers and pharmacy benefit managers or to obtain money and  
20 property by means of materially false and fraudulent pretenses,  
21 representations or promises for the purposes of executing the  
22 scheme, transmitted or caused to be transmitted by means of  
23 wire communication in interstate commerce writings, signs,  
24 signals, pictures and sounds, particularly telephone  
25 communications and facsimile communications. Did you commit

1     that crime?

2             THE DEFENDANT:   Yes, your Honor.

3             THE COURT:   Now I'd like you to listen while the  
4     government summarizes what its evidence against you would have  
5     been if we went to trial, and then I'm going to ask you if you  
6     agree with the government's summary of what you did.

7             MR. YEAGER:   Thank you, your Honor.

8             If this case were to proceed to trial, the United  
9     States would prove the following beyond a reasonable doubt:

10            At various times between March 2012 and today, a  
11     company called INSYS Therapeutics manufactured, marketed and  
12     sold a drug it called Subsys --

13            THE COURT:   Not too fast.

14            MR. YEAGER:   Sorry.   I apologize.

15            -- Subsys in interstate commerce, including the  
16     District of Massachusetts.   Subsys was in a class of drugs  
17     called rapid onset opioids, also culled TIRF, or transmucosal  
18     immediate release fentanyl products.   When used properly, this  
19     class of drugs can relieve breakthrough cancer pain in patients  
20     while reducing the need to increase the strength of the  
21     patient's long-term opioid.

22            TIRF drugs, including Subsys, contain Fentanyl, which  
23     is among the most potent opioids available for human use.   As  
24     such, Subsys was only approved by the Food and Drug  
25     Administration for the management of breakthrough pain in

1 patients with cancer 18 years of age or older who were already  
2 receiving and who were already tolerant to opioid therapy for  
3 their underlying persistent cancer pain.

4 Subsys, like other rapid onset opioids, was expensive.  
5 For example, in May of 2013, 30 sprays, called units, of 400  
6 micrograms of Subsys cost approximately \$1,170. Many  
7 practitioners wrote prescriptions for Subsys using 60 or even  
8 120 units per month. In or about May 2013, 60 units of ordered  
9 micrograms of Subsys cost approximately \$2,340 per month.

10 Many patients relied upon commercial insurance to  
11 subsidize the cost for taking Subsys. Publicly-funded  
12 insurance also subsidized the cost of Subsys for their  
13 enrollees. Many insurers controlled the costs of health care  
14 by managing the form and substance of care provided to their  
15 enrollees. Insurers often employed the services of  
16 organizations that specialized in managing the cost of  
17 prescription pharmaceuticals called pharmacy benefit managers,  
18 or PBMs. Almost all insurers required patients to obtain prior  
19 authorization before covering the cost of certain prescription  
20 drugs, including Subsys.

21 The plan-specific requirements of this form of managed  
22 care restriction varied depending upon the insurer and the PBM.  
23 Many patients were required to have a specific medical  
24 diagnosis of cancer before authorization was granted. Most  
25 insurers and PBMs did not pay for an expensive drug like Subsys

1     until the patient had tried and failed certain other preferred  
2     medications. If prior authorization was granted, most but not  
3     all of the cost of Subsys was paid for by the insurer. Without  
4     prior authorization, the prescription was not filled unless the  
5     patient or a third party paid for the entire cost of the drug.

6             In or about October of 2012, INSYS hired the  
7     defendant, Ms. Gurrieri, as a prior authorization specialist.  
8     In or about November of 2012, Ms. Gurrieri and executives at  
9     INSYS, including Michael Gurry and Michael Babich, began a  
10    scheme to increase the percentage of successful prior  
11    authorizations for Subsys.

12            In or about January of 2013 and continuing through in  
13    or about October of 2016, Insys launched the Insys  
14    Reimbursement Center, or IRC, a unit dedicated to obtaining  
15    prior authorizations directly from insurers and PBMs. Insys  
16    provided forms called opt-ins to practitioners they knew were  
17    likely to prescribe Subsys. Opt-in forms were prepared at  
18    doctors' offices and locations throughout the United States,  
19    including within the District of Massachusetts, then sent via  
20    facsimile or e-mail to the IRC in Arizona.

21            For example, Natalie Levine, a sales representative  
22    employed by Insys, and her assistant took patient files from a  
23    practice in New Hampshire to her home located in South Boston.  
24    From her home in South Boston, the sales representative and her  
25    assistant filled out opt-in forms and faxed them to the IRC in

1 Arizona. The reimbursement unit in turn became the entity at  
2 Insys that sought prior authorization directly from the insurer  
3 and PBM. From a call center located in Arizona, IRC employees  
4 called insurers and PBMs seeking prior authorizations for  
5 patients. The opt-ins, which were used by employees at the IRC  
6 when communicating with insurers and PBMs, contained patient  
7 information, including the medical diagnosis or diagnoses for  
8 which Subsys had been proscribed and the corresponding ICD code  
9 or codes associated with each diagnosis.

10 Beginning in November 2012, Gurrieri helped set up the  
11 process used by the IRC. She worked at the IRC, either  
12 managing or making calls to practitioners, insurers and PBMs  
13 from January 2013 until in or about June 2015. She held the  
14 position of management reimbursement services for Insys from in  
15 or about March of 2013 until in or about March of 2015. During  
16 that time Gurrieri directly supervised a team of employees  
17 responsible for calling insurers and PBMs verbally requesting  
18 prior authorizations.

19 As a manager at the IRC, Gurrieri together with  
20 Michael Gurry and other persons with leadership  
21 responsibilities over that unit held regular team meetings with  
22 IRC employees. One of the purposes of the meetings was to  
23 share best practices for obtaining authorization from insurers  
24 and PBMs. Gurrieri together with Gurry and other Insys leaders  
25 used these meetings to share methods used to mislead and



1 deceive insurers. Gurrieri, Gurry and others approved,  
2 fostered and directed the use of these fraudulent methods. In  
3 this environment, at the direction of Gurrieri, her immediate  
4 supervisor Michael Gurry and others, corruption became endemic  
5 within the IRC. Examples of fraudulent methods directed by  
6 Gurrieri --

7 THE COURT: How much more of this do you have?

8 MR. YEAGER: I have approximately four more pages,  
9 your Honor.

10 THE COURT: That's much too much. I said "a summary  
11 of the evidence." In fact, you can submit it for the record if  
12 you want.

13 MR. YEAGER: Can I summarize --

14 THE COURT: You have to give me some evidence  
15 regarding each element of the offense.

16 MR. YEAGER: All right. With regard to the first  
17 element, that there was an agreement, Ms. Gurrieri met with  
18 Michael Gurry as well as with other members of the IRC and  
19 agreed to specific schemes that would be used on the phone  
20 lines with insurers in order to defraud them.

21 THE COURT: Okay.

22 MR. YEAGER: As far as the second element is  
23 concerned, that Ms. Gurrieri willfully joined the agreement,  
24 Ms. Gurrieri specifically directed employees to lie using a  
25 number of different methods used to mislead insurers.

1           And third, that multiple employees as well as  
2 Ms. Gurrieri actually lied to insurers in the course of the  
3 time covered in the information in order to gain prior  
4 authorization which led to profits for the insurer.

5           THE COURT: And what about the wire communications?

6           MR. YEAGER: The wire communications, as I said  
7 before, an example of it involves Natalie Levine, a sales rep  
8 who lived in South Boston who took IRC opt-in forms from  
9 several different practices, one in New Hampshire, and brought  
10 it to her home here in South Boston and faxed the information  
11 to the IRC, which was used by the IRC.

12          THE COURT: Do you agree with the government's summary  
13 of what you did?

14          THE DEFENDANT: Yes, your Honor.

15          THE COURT: And how do you now wish to plead, guilty  
16 or not guilty?

17          THE DEFENDANT: Guilty, your Honor.

18          THE COURT: Then I'll direct the clerk to enter your  
19 plea of guilty because I find you are competent, you are acting  
20 knowingly and voluntarily, you are effectively represented, and  
21 there's an independent basis in fact to support your plea.

22          You may take your seat at the table.

23          THE DEFENDANT: Thank you, your Honor.

24          THE COURT: I understand that conditions of release  
25 were established earlier today; is that right?

1 MR. YEAGER: They were --

2 THE COURT: Previously?

3 MR. YEAGER: Previously, yes, your Honor.

4 THE COURT: I'm sorry.

5 All right. The defendant's release will continue on  
6 those conditions.

7 Unless somebody has a foreseeable conflict, I'm  
8 scheduling the sentencing for September 13, 2017 at 3:00. If  
9 there are any motions or memos, any information not in the  
10 Presentence Report, it shall be filed by August 30 and any  
11 responses by September 6. If there's going to be a motion to  
12 continue the sentencing, it shall be filed by August 30. And  
13 if there's a perceived need to file anything under seal, it may  
14 be filed under seal. But if that's a sentencing memo, a  
15 redacted copy will have to be filed for the public record.

16 Is there anything further in this matter for today?

17 MR. YEAGER: No, thank you, your Honor.

18 MS. HODGE: No, your Honor. Thank you.

19 THE COURT: Court is in recess.

20 (Recess taken 12:52 p.m.)

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
CERTIFICATE OF OFFICIAL REPORTER

I, Kelly Mortellite, Registered Merit Reporter  
and Certified Realtime Reporter, in and for the United States  
District Court for the District of Massachusetts, do hereby  
certify that pursuant to Section 753, Title 28, United States  
Code that the foregoing is a true and correct transcript of the  
stenographically reported proceedings held in the  
above-entitled matter and that the transcript page format is in  
conformance with the regulations of the Judicial Conference of  
the United States.

Dated this 29th day of June, 2017.

/s/ Kelly Mortellite

\_\_\_\_\_  
Kelly Mortellite, RMR, CRR

Official Court Reporter