

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

No. 18-cr-20461

Hon. Denise P. Hood

v.

Joshua Burns,

Offense: 18 U.S.C. § 371

Maximum Sentence:

18 U.S.C. § 371: 5 years / \$250,000
fine or twice the gain/loss

Defendant.

UNITED STATES' MEMORANDUM IN AID OF SENTENCING

The United States submits this Memorandum in Aid of Sentencing pertaining to defendant Joshua Burns. For reasons of, among others, general deterrence of health care fraud, to include the solicitation and receipt of bribes or kickbacks relating to government health care programs, the United States respectfully requests that the Court (1) impose a sentence on the low end of a range of 18-23 months, a 50% reduction off the low end of the Sentencing Guidelines range of 37-46 months; (2) order Burns to pay restitution in the amount of \$144,000, jointly and severally with his co-conspirators in the fraud; (3) order a special assessment of \$100; and (4) order a three-year term of supervised release.

Background

Burns has pleaded guilty to participating for approximately two years in a conspiracy to solicit and receive health care kickbacks. Burns' role in this

conspiracy was to act as a facilitator. He connected his co-conspirator, Dr. Frank Patino, with various laboratories seeking to increase their referrals. These laboratories (primarily Synergy and Ameridrug, both run by Healthcare Connections, LLC) agreed to pay Patino a flat rate for every sample he referred to them. Burns then received these kickback funds into his own bank account and transmitted Patino's share of the payments to Patino, or spent those funds on Patino's behalf. As part of this arrangement, Burns opened bank accounts in the name of his company, JHB Medical Management, for the sole purpose of receiving and distributing kickbacks. Expenditures made by Burns on behalf of Patino included costs associated with the sponsorship or endorsement of mixed martial arts fighters, boxers, and others who in turn agreed to promote Patino's diet brand at their events. As trial testimony in the two related cases showed (*United States v. Pappas, et al.*, No. 17-cr-20465 and *United States v. Patino*, No. 18-cr-20451), the results of these tests were rarely consulted by Patino or any of the other doctors at his practices, and patient treatment was almost never impacted by the results.

As a result of these referrals, Medicare paid approximately \$2,604,000 for urine drug testing claims that were procured through illegal kickbacks and bribes.

Burns was first interviewed by law enforcement about this conspiracy on April 5, 2018. During that initial interview, Burns was truthful and admitted that he had assisted Patino in arranging for a \$80/cup fee with Ameridrug. Following this

voluntary interview, Burns obtained counsel, agreed to cooperate with the government's investigation, and provided several proffers leading up to the indictment and arrest of Patino for this and various other crimes. Burns has cooperated consistently with law enforcement through the present, up to and including providing testimony regarding Patino at trial.

Procedural History

On June 28, 2018, Burns was charged by Information with one count of Conspiracy to Defraud the United States and Pay and Receive Health Care Kickbacks, in violation of 18 U.S.C. § 371. Burns waived indictment, and on October 11, 2018 entered a plea of guilty. In connection with that plea, Burns and the government entered into a plea agreement pursuant to Federal Rule of Criminal Procedure 11. Burns was released on unsecured bond pending sentencing.

Burns' sentencing date was delayed several times, contemporaneous with delays in bringing Patino to trial. That trial ultimately occurred from August 12-September 22, 2021. Burns testified at that trial as a witness for the prosecution.

Concurrent with this Sentencing Memorandum, the government is also filing a motion pursuant to the United States Sentencing Guidelines Section 5K1.1, requesting a 50% reduction in sentence on the basis of the substantial assistance provided by Burns to law enforcement.

Sentencing Factors

Title 18, United States Code, Section 3553(a), provides numerous factors that the Court is to consider in sentencing Burns. Factors pertinent to the instant offense are discussed below.

(1) The nature and circumstances of the offense and the history and characteristics of the defendant.

The nature of this offense directly implicates the integrity of the public health care system. Medicare provides essential medical care to over 63 million Americans, many of whom would otherwise have no health insurance coverage at all. A scheme to sell the opportunity to bill Medicare in exchange for kickbacks or bribes undermines the entire system. It incentivizes doctors such as Patino to refer based on their own financial gains rather than the patients' best interests. This is precisely the situation that unfolded here, where Patino referred over \$2.6 million worth of laboratory services to Ameridrug and Synergy without any regard to whether those tests were medically necessary, and without incorporating the results of those tests into subsequent patient care. Had Medicare known that the tests were performed as a result of kickbacks and bribes, it would not have paid a single dollar for them. To put it bluntly, these tests were a waste of Medicare funds, and by participating in an illegal scheme to refer them, Burns inflicted a great deal of harm to the public health system and the citizens it serves.

Burns was hardly a passive participant in this scheme. He brokered the deal between Patino and the labs, and acted as a conduit for the illegal payments. That being said, Burns is not a medical professional and has had no training in Medicare rules or regulations. Nor has he ever certified to Medicare that he would abide by relevant statutes and regulations (as a medical provider like Patino would be required to do). He is a 43 year-old United States Army veteran with no prior criminal history. He has seven children, and he provides childcare for several of those who reside near to him.

(2) The need for the sentence imposed (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with appropriate education, vocational training, or medical care

Health care fraud is a substantial problem nationwide, and as this Court knows, has been a particularly insidious problem in the Eastern District of Michigan. Kickback schemes such as the one in which Burns participated are serious crimes, incentivizing as they do a disregard for patient care in favor of financial gain. A custodial sentence such as the one proposed by the government would be commensurate with Burns' involvement in this scheme, and would act to deter others from committing similar crimes.

A custodial sentence of between 18-23 months also will provide Burns with an opportunity to participate in education or vocational training that may serve him

well after he has completed his sentence. For much of his adult life, Burns has worked in professions that are physically taxing – for example, bare knuckle boxing, mixed martial arts, bouncing, and landscaping. The kickback scheme to which Burns has pleaded guilty presented an opportunity to earn a living without damaging his body, an opportunity at which Burns appears to have leapt. With the proper education and vocational training, Burns will have greater opportunity to pursue legal employment of a non-taxing nature going forward.

(3) The kinds of sentences available

Under 18 U.S.C. Section 371, the maximum sentence is five years' imprisonment. The maximum fine is \$250,000 or twice the pecuniary gain or loss from the instant offense.

(4) The sentencing range established by the United States Sentencing Guidelines

The parties are in agreement regarding the sentencing guidelines range that is reflected in the Plea Agreement. As stated in the Plea Agreement, the government and the defendant submit that the Guidelines range for Burns should be calculated as follows:

Base Offense Level:	8 (U.S.S.G. § 2B4.1)
Intended Loss (over \$1.5 million):	16 (U.S.S.G. § 2B1.1(b)(1))
<u>Acceptance of Responsibility:</u>	<u>-3 (U.S.S.G. § 3E1.1)</u>
Total Offense Level:	21 (37-46 months)

(5) Any pertinent policy statement issued by the United States Sentencing Commission

The government is unaware of any pertinent policy statements issued by the U.S.S.C. However, the Patient Protection and Affordable Care Act (“PPACA”), enacted in March 2010, provides the most recent evidence of congressional intent in this area of the law. PPACA specifically provides for increased sentences for health care fraud offenses, and further requires the U.S.S.C. to “ensure that the Federal Sentencing Guidelines and policy statements – (i) reflect the serious harms associated with health care fraud and the need for aggressive and appropriate law enforcement action to prevent such fraud; and (ii) provide increased penalties for persons convicted of health care fraud offenses in appropriate circumstances.” Pub. L. No. 111-148, § 10606(a)(3).

(6) The need to avoid unwarranted sentencing disparities among defendants with similar records

This sentencing factor is intended to address national sentencing disparities, and it is widely recognized that a Guidelines sentence is the best way to avoid such disparities. *United States v. Smith*, 564 F. App’x 200, 205 (6th Cir. 2014) (stating that “one of the fundamental purposes of the Guidelines is to help maintain national uniformity in sentences, and considering that most sentences are within the Guidelines, the Guidelines themselves represent the best indication of national sentencing practices”); *Rita v. United States*, 551 U.S. 338 (2007). Burns’

Guidelines range takes into account the specific characteristics of his offense, and using a Guidelines sentence as a point of reference is the best way to avoid unwarranted sentencing disparities with similarly-situated defendants nationwide. By applying the 50% reduction in sentence requested by the government in its accompanying motion, the Court will ensure that Burns' Guidelines sentence is appropriately decremented commensurate with the substantial assistance he has rendered to the government.

The Court also has discretion to consider the potential for disparity between co-defendants. *United States v. Wallace*, 597 F.3d 794, 803 (6th Cir. 2010). Although many others were charged with their involvement in this or related health care fraud schemes, only three have been sentenced to date. The full list of co-defendants is recited below:

Defendant	Case No.	Guilty Plea or Conviction	5K	Guidelines Range	Sentence
<i>Mashiyat Rashid</i>	<i>17-cr-20465</i>	<i>Guilty Plea</i>	<i>40%</i>	<i>216 months</i>	<i>180 months</i>
<i>Hina Qazi</i>	<i>17-cr-20465</i>	<i>Guilty Plea</i>	<i>15%</i>	<i>41-51 Months</i>	<i>18 Months</i>
Steven Adamczyk	17-cr-20465	Guilty Plea	25%	57-71 Months	40 months
Francisco Patino	18-cr-20451	Conviction		TBD	
Spillios Pappas	17-cr-20465	Conviction		TBD	
Joseph Betro	17-cr-20465	Conviction		TBD	
Tariq Omar	17-cr-20465	Conviction		TBD	
Mohammed Zahoor	17-cr-20465	Conviction		TBD	
Glenn Saperstein	17-cr-20468	Guilty Plea		97-120 months	

Abdul Haq	17-cr-20465	Guilty Plea		97-120 months	
Zahid Sheikh	17-cr-20465	Guilty Plea		87-108 Months	
Kashif Rasool	17-cr-20744	Guilty Plea		70-87 Months	
Mieutennun Brown	17-cr-20465	Guilty Plea		30-37 Months	
David Yangouyian	18-cr-20451	Guilty Plea		24-30 Months	
David Weaver	18-cr-20451	Guilty Plea			
Manish Bolina	17-cr-20465	Guilty Plea		18-24 Months	
Hussein Saad	17-cr-20465	Guilty Plea		18-24 Months	
Yasser Mozeb	17-cr-20465	Guilty Plea		188-235 Months	
Tasadaq Ali Ahmad	17-cr-20479	Guilty Plea		168-180 Months	
Tariq Siddiqi	17-cr-20692	Guilty Plea		51-63 Months	
Assad Khan	17-cr-20465	Guilty Plea		37-46 Months	
Stephanie Borgula	17-cr-20465	Guilty Plea		30-37 Months	
Yousef Almatrahi	17-cr-20465	Guilty Plea		51-63 Months	

Conclusion

Based on the considerations set forth above, the United States respectfully requests that this Court grant its accompanying motion under Section 5K1.1 for a sentence reduction and recommends that the Court (1) impose a sentence on the low end of a range of 18-23 months, an approximate 50% reduction off the low point of the Sentencing Guidelines range of 37-46 months; (2) order Burns to pay restitution in the amount of \$144,000, jointly and severally with his co-conspirators in the

CERTIFICATE OF SERVICE

I certify that on October 27, 2021, I caused the foregoing document to be electronically filed with the Clerk of Court using the ECF system, which will send notification of such filing to counsel for the defendant.

s/Kathleen C. Cooperstein
Kathleen C. Cooperstein
Trial Attorney
U.S. Department of Justice
Criminal Division, Fraud Section
1400 New York Avenue, N.W.
Washington, D.C. 20005
(202) 957-2958
Kathleen.Cooperstein@usdoj.gov