

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v. -

SPYROS PANOS,

Defendant.

13 Cr. 800 (NSR)

**GOVERNMENT'S SENTENCING MEMORANDUM**

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**GOVERNMENT’S SENTENCING MEMORANDUM**

The Government respectfully submits this memorandum in advance of defendant Spyros Panos’s sentencing, which is scheduled for March 7, 2014, and in response to the defendant’s February 21, 2014 sentencing submission (“Def. Mem.”). The Government submits that a sentence within the advisory United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) range of 87 to 108 months’ imprisonment, as set forth in the February 28, 2014 Presentence Investigation Report (“PSR”), is warranted here, and that the Court should reject Panos’s request for a below-Guidelines sentence. The Government’s position is in line with the Probation Office’s recommendation. *See* PSR p. 21 (recommending a sentence of 87 months).

**Panos’s Criminal Conduct**

**A. Background**

Panos is a board certified orthopedic surgeon. Beginning in 1999, he practiced orthopedic medicine at Mid-Hudson Medical Group, P.C. (“MHMG”), a large medical group with offices in Dutchess County, New York. PSR ¶ 7. Panos performed orthopedic surgical procedures (“Surgical Procedures”) at hospitals in Poughkeepsie, New York. PSR ¶ 7. Payments for Surgical Procedures were obtained from the Medicare Program (“Medicare”), the

New York State Insurance Fund (“NYSIF”),<sup>1</sup> and numerous private health insurance providers (collectively, the “Health Insurance Providers”). PSR ¶ 9. To receive payments for Surgical Procedures from the Health Insurance Providers, Panos was required, among other things, to submit, and cause MHMG to submit, information to the Health Insurance Providers regarding the nature and details of the Surgical Procedures. PSR ¶ 10.

During the period charged in the Information, Panos performed thousands of Surgical Procedures, and often as many as twenty or more in a single day, for which he and MHMG submitted claims in excess of \$35,000,000 to Health Care Providers. PSR ¶¶ 10-11. Health Care Providers, in turn, paid MHMG in excess of \$13,000,000 on claims submitted in connection with the Surgical Procedures. PSR ¶ 11. In addition, Panos routinely saw at least sixty patients in a single office day at MHMG, and at times saw more than ninety patients in a single office day. PSR ¶ 12. Health Care Providers paid over \$3.5 million on claims submitted in connection with Panos’s office visits. PSR ¶ 12.

Panos profited handsomely from his busy practice. Indeed, during the years 2007 through 2011, Panos received over \$7,500,000 in compensation from MHMG. PSR ¶ 11.

## **B. Panos’s Fraud**

Beginning in at least 2006, Panos furnished, and caused to be furnished, egregiously false information to Health Insurance Providers regarding at least hundreds of Surgical Procedures that Panos performed each year (the “Fraudulent Claims”). PSR ¶ 13. As a

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<sup>1</sup> NYSIF is a New York State agency functioning as an insurance carrier that competes with private insurers in the workers’ compensation and disability benefits markets and is among the largest providers of workers’ compensation insurance in New York State. PSR ¶ 8.

result, the Health Insurance Providers paid MHMG a far greater amount than Panos and MHMG were entitled to receive based on the true nature and details of the Surgical Procedures. PSR ¶

13. In addition, the hospitals where Panos performed the Surgical Procedures and, in some cases, a surgical assistant who assisted Panos in connection with certain of the Surgical Procedures, used information provided by Panos, including fraudulent information, to obtain payments for the Surgical Procedures. PSR ¶ 13.

Among the false representations that Panos routinely included in the Fraudulent Claims regarding Surgical Procedures he performed – as well as the false representations that Panos made to his patients – were the following:

- Panos claimed that he performed open surgeries, when in fact he performed the surgeries arthroscopically. PSR ¶ 15.
- Panos claimed that he performed certain techniques and procedures during the course of the Surgical Procedures, when in fact Panos did not perform them, either because they were not medically necessary or because Panos performed other techniques and procedures that would have resulted in lower, if any, payments from the Health Insurance Providers. For example, for shoulder surgeries, Panos routinely claimed, among other things, that he was performing rotator cuff repairs or SLAP repairs (superior labral tear from anterior to posterior) when in fact he was simply removing bone spurs or using a surgical heat wand to perform debridements, and that he was performing distal clavical resections/excisions when in fact he was not. Panos routinely made false claims regarding other surgeries as well. PSR ¶ 16.
- Panos routinely claimed that during Surgical Procedures he removed loose bodies in excess of certain size criteria, when in fact no loose bodies were removed or the loose bodies that were removed were smaller than the thresholds set by the Health Insurance Providers for payment. PSR ¶ 17.

In this manner, Panos defrauded Health Insurance Providers and patients (in connection with the portions of bills that they were personally responsible for) out of over \$2,500,000 paid to MHMG as a result of the Fraudulent Claims. PSR ¶ 18.

The harm that Panos caused through his fraud cannot be measured solely in dollars. As a result of his scheme, Panos placed his surgical patients – and their current and future health care providers –in the position of not knowing what procedures Panos actually performed on them. That is because they cannot rely on the false medical records that Panos created or on the information that Panos told them about the nature of the Surgical Procedures. PSR ¶ 19.

### **C. Panos's Efforts To Cover Up His Fraud**

In or about November 2010, MHMG received a request from the New York Office of Professional Medical Conduct (“OPMC”) requesting the records of four of Panos's patients. PSR ¶ 20.<sup>2</sup> This prompted MHMG to begin an internal investigation, which placed Panos in serious jeopardy.

Faced with the very real prospect of getting caught, Panos attempted to conceal his scheme by falsely representing to MHMG that the Fraudulent Claims were the result of clerical errors. Panos reported to MHMG that he had been using other people to draft his operative reports based on recorded dictations that Panos had prepared. Panos claimed that it

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<sup>2</sup> Earlier that year, OPMC had received a letter from an orthopedic surgeon who had treated four of Panos's former patients and noted significant discrepancies between the medical records prepared by Panos and the surgeon's own physical examination findings. In the letter, the surgeon expressed concern that Panos had provided these patients with incorrect information regarding their medical conditions and had falsified billings and medical records.

was his practice to use “templates” in the course of his dictations, and that the individuals transcribing the dictations made recurring mistakes because they interchanged the templates that Panos had referenced in his dictations. PSR ¶ 21. This, of course, was a complete fiction.

To further his deceit, Panos provided MHMG with a list of approximately 80 patients whose operative reports were allegedly affected by these “template errors.” PSR ¶ 22. In late December 2010, MHMG’s board of directors held an emergency meeting, during which Panos falsely implicated his wife and another individual as the people responsible for the “template errors.” PSR ¶ 22. Following the December 2010 board meeting, MHMG placed Panos on temporary suspension. Thereafter, Panos worked with MHMG to review and correct the operative reports for the patients on the list he had prepared. As a result of this exercise, MHMG determined that it had to return approximately \$79,700 to certain Health Insurance Providers, which it did. PSR ¶ 24.

MHMG later learned that in or about the summer of 2010, Panos had received a call from a former patient who realized that Panos’s operative report for him was false. It was following that call that Panos began to compile the List, which included patients who had closed arthroscopic shoulder surgeries but were billed for open surgeries. PSR ¶ 23.

MHMG continued its investigation into 2011. At no time did Panos disclose to MHMG that his false billings extended far beyond the list of approximately 80 patients that he had prepared. Rather, Panos persisted in his efforts to deceive MHMG by claiming that the false billings were the result of “template errors” and acceptable judgments regarding how to characterize certain procedures. PSR ¶¶ 25-26. For example, when an outside orthopedist

retained by MHMG to review Panos's treatment of 16 patients expressed serious concerns about Panos's treatment and records concerning almost every one of those patients, Panos and the attorneys who were representing him at the time submitted a written response that incorporated his false "template error" excuse. PSR ¶ 26.

In June 2011, MHMG terminated Panos. Panos then used the false "template error" excuse in the course of attempting to obtain other employment following his termination by MHMG. PSR ¶¶ 25, 27. For example, in a letter to a hospital credentials committee dated September 18, 2011, Panos lied about the reason he was terminated from MHMG and lied about the existence of a very circumscribed "template error" that had been brought to his attention and which he, on his own initiative, took steps to rectify. *See* Exhibit A. Panos claimed that he "was quite disturbed" by the template error and even feigned dismay that MHMG's "corrections were slow and at an unsteady pace." *Id.* Panos went on to give his (false) assurance that "[t]oday all billings have been corrected[.]" *Id.*

#### **Panos's Guilty Plea And The Agreed-Upon Guidelines Range**

On October 31, 2013, Panos pleaded guilty before this Court to a one-count Criminal Information charging him with health care fraud, in violation of Title 18, United States Code, Section 1347. PSR ¶ 4. Pursuant to a plea agreement dated October 11, 2013 (the "Plea Agreement"), Panos agreed to a Guidelines range of 87 to 108 months' imprisonment (the "Stipulated Guideline Range"). The Stipulated Guidelines Range is calculated as follows:

- Pursuant to U.S.S.G. § 2B1.1(a)(2), Panos's base offense level is 6.
- Panos is responsible for causing an actual loss of more than \$2,500,000, so the offense level is increased by 18 levels. U.S.S.G. § 2B1.1(b)(1)(J).

- Panos's crime involved 50 or more victims (namely, Medicare, NYSIF, private health insurance providers, and individual patients who paid more for Panos's medical services than they should have as a result of the offense), so the offense level is increased by 4 levels. U.S.S.G. § 2B1.1(b)(2)(B).
- Panos used sophisticated means in carrying out his crime, so the offense level is increased by 2 levels. U.S.S.G. § 2B1.1(b)(10)(C).
- Panos both abused a position of public or private trust and used a special skill in a manner that significantly facilitated the commission and concealment of his offense. Accordingly, the base offense level is increased by 2 levels. U.S.S.G. § 3B1.3.
- Panos is entitled to a three-level acceptance of responsibility reduction, pursuant to U.S.S.G. § 3E1.1(a) & (b).<sup>3</sup>
- The applicable Guidelines offense level is 29. Panos is in Criminal History Category I, so the resulting advisory Guidelines range is 87 to 108 months' imprisonment.<sup>4</sup>

The Plea Agreement also includes an agreed-upon forfeiture amount of \$5,000,000, which the Court has already ordered, and an agreed-upon restitution range of \$2,500,000 to \$5,000,000.

The Plea Agreement requires Panos to take any reasonable steps necessary to ensure that his medical licenses in each of the states in which he is licensed are revoked, surrendered, or suspended by the time of sentencing. Furthermore, Panos agrees not to oppose a

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<sup>3</sup> The Government notes that Panos's sentencing submission accurately describes Panos's several meetings with the Government. *See* Def. Mem. 14.

<sup>4</sup> The plea agreement does not include an enhancement for criminal conduct giving rise to a risk of serious bodily injury. *See* U.S.S.G. § 2B1.1(b)(15)(A). The Government is not advancing, as a reason for a Guidelines sentence, an argument that Panos caused physical harm to his patients or that he provided inadequate medical care. The Government takes no position on these issues, which may be resolved in another forum.



request by the Government that the Court prohibit him from engaging in the practice of medicine as a condition of probation or supervised release. *See* U.S.S.G. § 5F1.5; 18 U.S.C. §§ 3563(b) & 3583(d).

### **Discussion**

#### **I. A Guidelines Sentence Would Be Sufficient, But Not Greater Than Necessary, To Address The Statutory Goals Of Sentencing**

The Government maintains that a sentence within the Stipulated Guidelines Range of 87 to 108 months' imprisonment would be sufficient, but not greater than necessary, to comply with the factors set forth in 18 U.S.C. § 3553(a).

Although no longer mandatory, the Guidelines still provide strong guidance to the Court. *See United States v. Booker*, 543 U.S. 220 (2005); *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). Indeed, as the Supreme Court has explained, “a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range” – that “should be the starting point and the initial benchmark.” *Gall v. United States*, 552 U.S. 38, 49 (2007). The Guidelines' relevance throughout the sentencing process stems in part from the fact that, while they are advisory, “the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic ' 3553(a) objectives.” *Rita v. United States*, 551 U.S. 338, 348 (2007); *see also Gall v. United States*, 552 U.S. at 46 (noting that Guidelines are “the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions”). After making the initial Guidelines calculation, a sentencing judge must then consider the factors outlined in Title 18, United States Code, Section 3553(a), and “impose a sentence sufficient, but not greater than necessary, to comply with the

purposes” of sentencing outlined in Section 3553(a)(2). *Gall*, 552 U.S. at 50-51.

Panos’s crime calls for a substantial sentence within the Stipulated Guidelines Range. In particular, a Guidelines sentence is necessary in light of the “nature and circumstances” of Panos’s crime, 18 U.S.C. § 3553(a)(1), and to “reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense[.]” 18 U.S.C. § 3553(a)(2)(A). Panos engaged in an egregious and highly lucrative scheme that involved ongoing and systematic deception. As a matter of course, Panos lied about the Surgical Procedures he performed to Medicare, to private insurance companies, to the fellow doctors and the staff of his own medical practice, and – most shockingly – to his own patients. To carry out his fraud, Panos had to falsify medical and billing records, time after time, including the operative reports that serve as the most important permanent record of a patient’s surgical treatment.

Panos did not lie and cheat sporadically. For years, this was Panos’s regular mode of medical practice, surgery after surgery, day after day. And in late 2010, when it appeared that his scheme was about to be uncovered by OPMC, Panos turned to another form of deception. He concocted the “templates errors” excuse and went to great lengths over a period of many months – including having his attorneys unwittingly press the lies in written correspondence – to convince MHMG that this his false billings were a misfortunate, but innocent and narrowly circumscribed, mistake. During that period, he continued to receive an impressive salary from MHMG. *See* PSR ¶ 78 (Panos earned approximately \$306,000 in wages in 2011). After he was terminated by MHMG and civil malpractice lawsuits began to spring up,

Panos even brazenly used the “templates errors” excuse – along with a guarantee that “all billings have been corrected” – in an effort to whitewash his past and obtain new employment. *See Exhibit A.*

The Stipulated Guidelines Range fairly and appropriately accounts for the nature and circumstances of Panos’s crime, which lasted for years and significantly impacted Medicare, NYSIF, private insurance companies, and individual patients. Through the enhancements for the loss amount (over \$2,500,000) and the number of victims (over 50), the Guidelines range appropriately reflects the length and scope of Panos’s fraud. The Guidelines range accounts for the sophisticated manner in which Panos carried out the scheme by, for example, falsifying critical medical records to support his fraudulent billings. Perhaps most importantly, the range also reflects the fact that Panos both abused his position of trust and used his medical acumen to significantly facilitate both the commission and the concealment of his scheme.

Put simply, Panos blithely violated the trust placed in him, as a surgeon, to accurately document and bill for the treatment he was providing. Moreover, he acted with callous disregard for the long-term well-being of the countless patients whose medical records he manipulated for his own financial gain. Panos’s fraud scheme was methodically carried out over an extended period of time. It was calculated, concealed, and driven by his decision to place his financial wants ahead of all else. And when it looked like he was about to get caught, Panos went to great lengths to deceive MHMG. A sentence within the Guidelines range is an appropriate and reasonable sentence in light of the severity of Panos’s conduct.

In addition, a Guidelines sentence would send an important deterrent message, both to Panos specifically and to the medical profession in general. *See* 18 U.S.C. § 3553(a)(2)(B). The lengths that Panos went, first to perpetrate his fraud and then to conceal it through his protracted insistence that “template errors” were to blame, underscore the need for a substantial punishment to ensure that he appreciates the wrongfulness of his conduct. And a substantial sentence is necessary to send a strong deterrent message to those doctors like Panos who would abuse the trust our society places in them and subvert their medical licenses by engaging in healthcare fraud. *See, e.g., United States v. Hoogenboom*, 209 F.3d 665, 671 (7th Cir. 2000) (recognizing that “[m]edical service providers occupy positions of trust with respect to private or public insurers (such as Medicare)” and “enjoy significant discretion and consequently a lack of supervision in determining the type and quality of services that are necessary and appropriate for their patients,” which forces insurance providers “to depend, to a significant extent, on a presumption of honesty when dealing with statements received from medical professionals”). Criminal conduct of the sort engaged in by Panos is inherently difficult for law enforcement to detect because it thrives on the particular expertise and skill of its perpetrators. Moreover, it contributes to the high cost of health insurance, a problem that has received longtime public attention in this country. A Guidelines sentence is necessary to deter Panos and others from engaging in such conduct.

## II. Panos's Arguments For A Below-Guidelines Sentence Should Be Rejected

Panos offers a host of reasons why, in his view, the Court should “impose a minimum non-guidelines sentence[.]” Def. Mem. 20. In addition, Panos includes a large number of character letters. For the following reasons, the Government submits that none of Panos's arguments, alone or taken together, would justify a below-Guidelines sentence here.

First, Panos's personal circumstances do not support his request for a below-Guidelines sentence. To the contrary, Panos's sentencing submission, and the numerous letters he includes, describe a person who was raised by a stable and loving family, who benefitted richly from a public education, who earned the privilege of a medical license, and who embarked on what looked to be a very promising and financially rewarding surgical career. This was not a crime born of economic necessity or financial distress. Indeed, as an orthopedic surgeon, Panos had legitimate means to live a very comfortable life. Nonetheless, Panos made the conscious and purposeful decision that he had to have more – and so he engaged in a years-long, multimillion-dollar fraud scheme that came to an end only because he got caught, despite his best efforts to conceal his crime.<sup>5</sup>

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<sup>5</sup> By all indications, Panos lived quite lavishly. *See, e.g.*, PSR ¶¶ 81-82 (listing Panos's interests in numerous limited liability companies and listing five trusts, set up for the benefit of Panos's family, with a combined value of over \$1.75 million). By way of example, bank records reflect that from December 2008 to June 2009, Panos spent over \$130,000 to remodel his basement and install a home theater. He also had the financial wherewithal to make loans to and investments with one individual totaling \$1.2 million. PSR ¶ 80. It is noteworthy that public records reflect that in December 2011 and January 2012, Panos transferred ownership in five real properties to his wife. The properties were previously owned by Panos and his wife jointly. Based on open source information, the combined value of the properties is over \$2 million (not including any encumbrances).

Second, Panos repeatedly states that his fraud began at a time when MHMG was experiencing dire financial problems. *See* Def. Mem. 1, 13-14; Feb. 12, 2014 Letter from Spryos Panos 2-3. Even if this were true, it would not serve as an excuse – or even a mitigating factor – for Panos’s conduct, especially considering that Panos, year after year, drew a seven-figure salary from MHMG. But more importantly, this excuse is *not* true. According to MHMG, “[a]t no time was MHMG either ‘financially distressed’ nor in a ‘desperate financial situation’ or has MHMG ever, in its history failed to make payroll. These claims by Dr. Panos are complete fabrications.” Feb. 27, 2014 Letter from Michael A. Battle, Esq. (Exhibit B).

Third, The Government appreciates the very real and unfortunate impact that a substantial prison sentence will have on Panos’s family, including his children. That is, however, a sad but predictable consequence of Panos’s extensive criminal conduct. Moreover, this is not a situation where young children will be deprived of their sole caregiver. Similarly, while the Government does not question that Panos is dealing with psychological issues, Panos’s treating doctor reported that Panos’s depression is now in remission and that the prognosis is good. PSR ¶ 69. In any event, there is no basis to conclude that the Federal Bureau of Prisons cannot provide Panos with appropriate medical care. *Cf. United States v. Martinez*, 207 F.3d 133, 139 (2d Cir. 2000) (a medical condition is not extraordinary under the Guidelines if the Bureau of Prisons can accommodate it).

Fourth, it is true that, as a result of his criminal conduct, Panos has lost his ability to practice medicine, at least in the short run. But the Government submits that this is in no way a mitigating sentencing factor, as Panos would have it be. *See* Def. Mem. 15 (encouraging the

Court to take into account Panos's loss of his medical license, a "devastating punishment"). It would work a perverse result if doctors and other professionals who abuse their licenses in order to commit serious criminal offenses, as Panos did here, were rewarded with leniency at sentencing simply because they are stripped of the licenses that they treated as tools of their criminal trade.

Fifth, Panos relies extensively on the below-Guidelines sentence that the Honorable Jack B. Weinstein imposed on a doctor in *United States v. Sachakov*, 11 Cr. 120 (E.D.N.Y.). *See* Def. Mem. 18-20. But *Sachakov* is distinguishable for a number of reasons. First, Sachakov's loss amount of \$2.6 million was based on *intended* loss, not actual loss; the Court determined that "a reasonable estimate of the actual proceeds directly traceable to defendant's offense is \$1,103,069.62." *United States v. Sachakov*, 2013 WL 10187, at \*2 (E.D.N.Y. Jan. 8, 2013). In other words, measured in actual dollars fraudulently obtained, the scope of Sachakov's fraud was considerably smaller. Second, the Court found that Sachakov's billing fraud was far less systemic than Panos's fraud. *See United States v. Sachakov* Sentencing Transcript at 26 (Court rejected Government's claim that vast majority of billings were fraudulent, and finding instead that "they were attempting to do what they claimed in general") (Exhibit C). Third, Judge Weinstein highlighted several compelling personal details about the defendant, namely (i) the fact that Sachakov spent his childhood years in the former Soviet Union, where he "suffered immense anti-Semitism" and served for two years in the Soviet army "under extremely difficult conditions," *Sachakov*, 2013 WL 101287, at \*3; and (ii) Sachakov's "substantial psychiatric and physical problems that will make it more difficult for him to serve a period of incarceration without the kinds of specialists that are available outside of prison,"

*Sachokov* Sentencing Transcript at 76. Neither of these types of personal circumstances is present here.

Sixth, Panos includes an extensive discussion about the evolution of the fraud Guideline. This is little more than a distraction. Panos's reliance on cases involving high Guidelines ranges that were not based on *actual* losses suffered by specific victims is misplaced. For example, Panos quotes from the Honorable Jed S. Rakoff's decision in *United States v. Adelson*, 441 F. Supp. 2d 506 (S.D.N.Y. 2006), a securities fraud case. *See* Def. Mem. 6. The lengthy Guidelines range at issue in *Adelson* resulted from measuring loss by changes in stock price. *See id.* at 509 ("Since successful public companies typically issue millions of publicly traded shares . . . the precipitous decline in stock price that typically accompanies a revelation of fraud generates a multiplier effect that may lead to guideline offense levels that are, quite literally, off the chart."). The circumstances underlying Judge Rakoff's concerns about Guidelines calculations "that have so run amok that they are patently absurd on their face," 441 F. Supp. 2d at 515, plainly are not present here. Similarly, *United States v. Corsey*, 723 F.3d 366 (2d Cir. 2013), another case cited by Panos, is inapposite. *Corsey* involved "a clumsy, almost comical, conspiracy to defraud a non-existent investor of three billion dollars." *Id.* at 378 (Underhill, D.J., concurring). The Court of Appeals understandably was troubled by the imposition of twenty-year sentences that were driven by intended loss, where the offense "never came close to fruition" and "involved no actual loss, no probable loss, and no victim." *Id.* at 378-79.



This is not a case where Guidelines loss is estimated by a change in the market price of securities or by measuring hypothetical losses that a defendant might have intended to cause. To the contrary, the loss here comprises real money that Panos *actually* caused his victims to lose. And, it should be noted, that method of calculating the loss inures to Panos's benefit. Because the Stipulated Guidelines Range is based on the estimated actual loss caused by Panos's criminal conduct, Panos is relieved of overcoming the presumption that his intended loss – which, if higher than the actual loss, would be used to set the Guidelines offense level, *see* U.S.S.G. § 2B1.1 cmt., n. 3(A) – was the total of the amounts he fraudulently billed, rather than received. *Cf.* U.S.S.G. § 2B1.1, cmt. n.3(F)(viii) (“In a case in which the defendant is convicted of a Federal health care offense involving a Government health care program, the aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss, *i.e.*, is evidence sufficient to establish the amount of the intended loss, if not rebutted.”). Regardless of whether application of the fraud Guideline might result in an excessively high sentencing range in certain circumstances, it squarely does not here.<sup>6</sup>

In any event, the Court obviously is not *bound* by the Guidelines. Rather, the Government submits that the Section 3553(a) factors, taken together, comfortably compel the conclusion that a sentence of 87 to 108 months' imprisonment is appropriate here.

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<sup>6</sup> Panos's loss calculation is conservative in another way – it does not take into account unwarranted payments received by others as a result of Panos's fraud. For example, the hospitals where Panos performed the Surgical Procedures and Panos's surgical assistant based their billings, at least in part, on fraudulent information provided by Panos.

**Conclusion**

The Government respectfully submits that the Court should sentence Panos to a term of imprisonment within the advisory Guidelines range of 87 to 108 months. In addition, the Government respectfully requests that the Court impose a term of supervised release that includes a condition prohibiting Panos from engaging in the practice of medicine. *See* U.S.S.G. § 5F1.5; 18 U.S.C. §§ 3563(b) & 3583(d). Finally, because the Government is still in the process of ascertaining the full scope of victim losses, the Government respectfully requests that the Court delay the imposition of a restitution order for 90 days, pursuant to 18 U.S.C. § 3664(d)(5).

Dated: White Plains, New York  
March 3, 2014

Respectfully submitted,

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