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U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FRANCISCO, CALIFORNIA

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
January 2015 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEFF SALES,
DANNIEL GOYENA, and
DAVID Y. KIM,

Defendants.

CR No.

CR 15 00576

I N D I C T M E N T

[18 U.S.C. § 1347: Health Care Fraud; 42 U.S.C. §§ 1320a-7b(b)(1)(A), (b)(2)(A): Illegal Remunerations for Health Care Referrals; 18 U.S.C. § 1028A(a)(1): Aggravated Identity Theft; 18 U.S.C. § 2(b): Causing an Act to be Done]

The Grand Jury charges:

COUNTS ONE THROUGH TWELVE

[18 U.S.C. §§ 1347, 2(b)]

[All Defendants]

A. INTRODUCTORY ALLEGATIONS

At all times relevant to this Indictment:

The Defendants

1. Defendant JOSEFF SALES ("defendant SALES") was a resident of Buena Park, California, within the Central District of California. Defendant SALES was a physical therapist ("PT") licensed to practice in California and an enrolled Medicare provider.

1 2. Defendant DANNIEL GOYENA ("defendant GOYENA") was a
2 resident of Buena Park, California, within the Central District of
3 California. Defendant GOYENA was a physical therapist assistant
4 ("PTA") licensed to practice in California.

5 3. At various times from in or about March 2008 to in or about
6 January 2014, defendants SALES and GOYENA owned and operated Rehab
7 Dynamics, Inc. ("Rehab Dynamics"), RSG Rehab, Inc. ("RSG"), and
8 Innovation Physical Therapy, Inc. ("Innovation"), California
9 corporations, which were located at various sites in Los Angeles and
10 Orange Counties, within the Central District of California.

11 4. A bank account for Rehab Dynamics was maintained at J.P.
12 Morgan Chase Bank, N.A., with account number ending in 5060 (the
13 "Rehab Dynamics Bank Account"). The bank accounts for RSG were
14 maintained at J.P. Morgan Chase Bank, N.A., with account numbers
15 ending in 5234, 2189, and 2698 (the "RSG Bank Accounts")
16 respectively. A bank account for Innovation was maintained at J.P.
17 Morgan Chase Bank, N.A., with account number ending in 9966 (the
18 "Innovation Bank Account").

19 5. Defendant DAVID Y. KIM ("defendant KIM") was a resident of
20 Los Angeles, California, within the Central District of California.
21 Defendant KIM was a licensed chiropractor, but he was not a
22 physician, PT, or PTA licensed to practice in California, and he was
23 not enrolled as a Medicare provider.

24 6. From in or about November 2011 and continuing through in or
25 about January 2014, defendant KIM owned and operated New Hope Clinic
26 ("New Hope"), a California sole proprietorship, located at various
27 locations in Los Angeles County, within the Central District of
28 California. Defendant KIM, through New Hope, received payments from

1 defendants SALES and GOYENA, through Rehab Dynamics and Innovation,
2 for referrals and for alleged physical therapy services.

3 The Medicare Program

4 7. Medicare was a federal health care benefit program,
5 affecting commerce, that provided benefits to individuals who were
6 over the age of 65 or disabled. Medicare was administered by the
7 Centers for Medicare and Medicaid Services ("CMS"), a federal agency
8 operating under the authority of the United States Department of
9 Health and Human Services ("HHS").

10 8. Individuals who qualified for Medicare benefits were
11 referred to as Medicare "beneficiaries." Each Medicare beneficiary
12 was given a Health Identification Card containing a unique
13 identification number ("HICN").

14 9. Health care providers who provided medical services that
15 were reimbursed by Medicare were referred to as Medicare "providers."

16 10. CMS contracted with private companies to certify providers
17 for participation in the Medicare program and monitor their
18 compliance with Medicare standards, to process and pay claims, and to
19 perform program safeguard functions, such as identifying and
20 reviewing suspect claims.

21 11. To obtain reimbursement from Medicare, a provider had to
22 apply for and obtain a provider number. By signing the provider
23 application, the provider agreed to (a) abide by Medicare rules and
24 regulations and (b) not submit claims to Medicare knowing they were
25 false or fraudulent or with deliberate ignorance or reckless
26 disregard of their truth or falsity.

27 12. If Medicare approved a provider's application, Medicare
28 assigned the provider a Medicare provider number, which enabled the

1 provider to submit claims to Medicare for services rendered to
2 Medicare beneficiaries.

3 13. Medicare reimbursed providers only for services, including
4 physical therapy, that were medically necessary to the treatment of a
5 beneficiary's illness or injury, were prescribed by a beneficiary's
6 physician or a qualified physician's assistant acting under the
7 supervision of a physician, and were provided in accordance with
8 Medicare regulations and guidelines that governed whether a
9 particular service or product would be reimbursed by Medicare.

10 14. Medicare required that physical therapy services be
11 performed by (a) a physician, (b) a PT, or (c) a PTA acting under the
12 direct supervision of a physician or PT. "Direct supervision" meant
13 that the doctor or PT was physically present in the same office suite
14 and immediately available to provide assistance and direction
15 throughout the time the PTA was performing physical therapy services.
16 Physical therapy services provided by aides or physical therapy
17 students were not reimbursable by Medicare, regardless of the level
18 of supervision.

19 15. Medicare did not cover acupuncture or reimburse providers
20 for acupuncture services. Medicare did not cover massages unless
21 they were therapeutic massages provided by a licensed therapist as
22 part of the beneficiary's plan of care.

23 B. THE SCHEME TO DEFRAUD

24 16. Beginning in or about March 2008, and continuing until at
25 least in or about January 2014, in Los Angeles and Orange Counties,
26 within the Central District of California, and elsewhere, defendants
27 SALES and GOYENA, and co-schemer Marlon Songco, together with others
28 known and unknown to the Grand Jury and, independently, with each of:

1 (a) defendant KIM from in or about March 2012 to in or about January
2 2014; (b) co-schemer Leovigildo Sayat from in or about March 2008 to
3 in or about May 2012; (c) co-schemer Ohun Kwon from in or about July
4 2009 to in or about July 2011; and (d) co-schemer Eddieson Legaspi
5 from in or about April 2009 to in or about December 2012, knowingly,
6 willfully, and with the intent to defraud, executed and attempted to
7 execute a scheme and artifice: (1) to defraud a health care benefit
8 program, namely, Medicare, as to material matters in connection with
9 the delivery of and payment for health care benefits, items, and
10 services; and (2) to obtain money from Medicare by means of material
11 false and fraudulent pretenses and representations and the
12 concealment of material facts in connection with the delivery of and
13 payment for health care benefits, items, and services.

14 C. THE FRAUDULENT SCHEME

15 17. The fraudulent scheme operated, in substance, in the
16 following manner:

17 a. Defendants SALES and GOYENA obtained and caused to be
18 obtained Medicare provider numbers for Rehab Dynamics, RSG, and
19 Innovation, thus enabling Rehab Dynamics, RSG, and Innovation to
20 submit claims to Medicare.

21 b. Defendants SALES and GOYENA recruited defendant KIM
22 and others at various clinics, including but not limited to New Hope,
23 Hong's Medical Management, Inc. ("Hong's Medical"), E.K. Medical
24 Management, Inc. ("E.K. Medical"), and Glory Rehab Team, Inc. ("Glory
25 Rehab"), to solicit Medicare beneficiaries to receive physical
26 therapy services.

27 c. Defendant KIM and others recruited Medicare
28 beneficiaries to their respective clinics. The Medicare

1 beneficiaries supplied their Medicare cards, HICNs, and patient
2 information to the clinics, and defendant KIM and others subsequently
3 provided this information to defendants SALES and GOYENA at Rehab
4 Dynamics, RSG, and Innovation.

5 d. Defendants SALES and GOYENA hired licensed physical
6 therapists to perform patient evaluations and re-evaluations for
7 Medicare beneficiaries at these various clinics.

8 e. As defendants SALES and GOYENA knew: (i) the licensed
9 physical therapists evaluated, re-evaluated, and created physical
10 therapy treatment plans for only some, not all, of the beneficiaries;
11 and (ii) even for those beneficiaries for whom physical therapy
12 treatment plans were created, many of the beneficiaries never
13 received any follow-up physical therapy services.

14 f. While at these various clinics, beneficiaries would
15 often receive only massage and acupuncture (services defendant SALES,
16 defendant GOYENA, defendant KIM and other co-schemers knew were not
17 covered by Medicare) from individuals not licensed to perform
18 physical therapy.

19 g. In particular, as defendant KIM knew, defendants SALES
20 and GOYENA hired licensed physical therapists to occasionally
21 supervise defendant KIM's unlicensed staff, who performed services
22 for Medicare beneficiaries at New Hope that were not reimbursable
23 under Medicare guidelines. Nevertheless, as defendant KIM knew,
24 defendants SALES and GOYENA used Accubill Medical Billing Services
25 ("Accubill") to submit claims to Medicare for reimbursement for
26 physical therapy services for these beneficiaries, despite their
27 having received other non-reimbursable services.

1 h. Defendants SALES, GOYENA, and KIM, and others,
2 provided information to Accubill, including the names, HICNs, and
3 other patient information of the Medicare beneficiaries, as well as
4 falsified records that made it appear as though the beneficiaries had
5 received physical therapy treatments from specific PTs hired by Rehab
6 Dynamics, RSG, and Innovation, knowing and intending that Accubill
7 would use this falsified information to submit false and fraudulent
8 claims to Medicare.

9 i. Defendants SALES, GOYENA, and KIM, and others,
10 submitted to Accubill the names and provider numbers of specific PTs
11 who purportedly performed the physical therapy services referenced in
12 the claims to Medicare, even though, as defendants SALES, GOYENA, and
13 KIM well knew, the PTs could not possibly have performed the physical
14 therapy services because the PTs were almost always not present at
15 the clinics where the purported services occurred.

16 j. Rehab Dynamics, RSG, and Innovation received payment
17 from Medicare for those false and fraudulent claims, and the payments
18 were deposited into the Rehab Dynamics Bank Account, the RSG Bank
19 Accounts, and the Innovation Bank Account, to which defendants SALES
20 and GOYENA had joint access and control.

21 k. Defendants SALES and GOYENA wrote checks out of the
22 Rehab Dynamics Bank Account, the RSG Bank Accounts, and the
23 Innovation Bank Account to themselves and others.

24 l. Defendants SALES and GOYENA paid kickbacks to
25 defendant KIM and others at these various clinics from the Medicare
26 payments, in exchange for the referral of these Medicare
27 beneficiaries to Rehab Dynamics, RSG, and Innovation.
28

1 m. Between in or about March 2008 and in or about January
2 2014, Rehab Dynamics, RSG, and Innovation submitted approximately
3 \$15.2 million in fraudulent and improper claims to Medicare,
4 primarily for physical therapy, and obtained payment from Medicare of
5 approximately \$7.8 million for physical therapy services purportedly
6 performed at various clinics.

7 n. Defendant KIM received approximately 55 percent of the
8 Medicare payments for the patients who purportedly received physical
9 therapy services at New Hope. These Medicare payments were deposited
10 into the Rehab Dynamics Bank Account and the Innovation Bank Account
11 by defendants SALES and GOYENA, and others on behalf of beneficiaries
12 at New Hope, as payment for the beneficiaries who defendant KIM
13 recruited to New Hope and for the submission of fraudulent and
14 improper claims to Medicare.

15 o. Specifically, between in or about March 2012 and in or
16 about January 2014, Rehab Dynamics and Innovation received
17 approximately \$690,519.03 in payments from Medicare from fraudulent
18 claims submitted to Medicare, on behalf of beneficiaries at New Hope
19 recruited by defendant KIM, which were deposited into the Rehab
20 Dynamics Bank Account and Innovation Bank Account. Defendant KIM,
21 through New Hope, received approximately \$379,785.47 from Rehab
22 Dynamics and Innovation for defendant KIM's participation in the
23 scheme, including providing the fraudulent and improper claim
24 information to defendants SALES and GOYENA, and others at Rehab
25 Dynamics and Innovation, that was submitted to Medicare.

26 D. EXECUTIONS OF THE FRAUDULENT SCHEME

27 18. On or about the dates set forth below, within the Central
28 District of California, and elsewhere, the following defendants,

1 together with others known and unknown to the Grand Jury, for the
 2 purpose of executing and attempting to execute the fraudulent scheme
 3 described above, knowingly and willfully submitted and caused to be
 4 submitted to Medicare the following false and fraudulent claims:
 5

COUNT	DEFENDANT	APPROX. DATE ALLEGED SERVICES PERFORMED	APPROX. DATE CLAIM SUBMITTED	BENEFICIARY, PHYSICAL THERAPIST, AND SERVICE (CODE)	AMOUNT CLAIMED	CLAIM NUMBER
ONE	SALES, GOYENA	11/23/2010	12/1/2010	B.K., SALES, Therapeutic activities (97530)	\$45.00	551110335635200
TWO	SALES, GOYENA	12/5/2011	12/21/2011	A.K., SALES, Physical Therapy Evaluation (97001)	\$100.00	551111355441260
THREE	SALES, GOYENA	1/3/2012	1/19/2012	K.P., L. Sayat, Therapeutic Exercise (97110)	\$80.00	551912023188920
FOUR	SALES, GOYENA	1/3/2012	1/19/2012	H.P., L. Sayat, Therapeutic Exercise (97110)	\$80.00	551912023188910
FIVE	SALES, GOYENA	3/7/2012	3/14/2012	P.M., Legaspi, Therapeutic Procedure (97112)	\$45.00	551912074182540
SIX	SALES, GOYENA	4/26/2012	5/10/2012	J.K., Legaspi, Manual Physical Therapy (97140)	\$40.00	551812131182180
SEVEN	SALES, GOYENA, KIM	9/12/2012	9/19/2012	S.C., J.W., Therapeutic Procedure (97112)	\$90.00	551812263472200
EIGHT	SALES, GOYENA	11/12/2012	11/29/2012	A.C., M.B., Manual Physical Therapy (97140)	\$80.00	551812334592110

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NINE	SALES, GOYENA, KIM	11/8/2012	12/3/2012	K.L., J.W., Therapeutic Exercise (97110)	\$80.00	551112339006220
TEN	SALES, GOYENA, KIM	3/15/2013	3/28/2013	K.K., J.W., Therapeutic Procedure (97112)	\$45.00	551813087337560
ELEVEN	SALES, GOYENA, KIM	3/20/2013	3/28/2013	K.K., J.W., Manual Physical Therapy (97140)	\$80.00	551813087337560
TWELVE	SALES, GOYENA	7/24/2013	7/30/2013	J.C., M.B., Therapeutic Exercise (97110)	\$80.00	551813211436560

COUNTS THIRTEEN THROUGH TWENTY-FIVE

[42 U.S.C. § 1320a-7b(b) (2) (A)]

19. The Grand Jury hereby repeats and realleges paragraphs 1 through 15 and paragraph 17 of this Indictment as if fully set forth herein.

20. On or about the dates set forth below, in Los Angeles and Orange Counties, within the Central District of California, and elsewhere, the following defendants, together with others known and unknown to the Grand Jury, knowingly and willfully offered and paid remuneration, namely, checks payable in the approximate amounts set forth below, to induce David Y. Kim and others to refer individuals to Rehab Dynamics, RSG, and Innovation for physical therapy-related services, for which payment could be made in whole and in part under a Federal health care program, namely, Medicare:

COUNT	DEFENDANT	APPROX. DATE	TRANSACTION
THIRTEEN	GOYENA	4/13/2011	Check number 1266, drawn on the RSG Bank Accounts, in the amount of \$5,769.11, payable to Glory Rehab
FOURTEEN	GOYENA	5/11/2011	Check number 1318, drawn on the RSG Bank Accounts, in the amount of \$2,184.25, payable to Hong's Medical
FIFTEEN	SALES	10/10/2011	Check number 1786, drawn on the Rehab Dynamics Bank Account, in the amount of \$10,119.84, payable to Hong's Medical
SIXTEEN	SALES	3/16/2012	Check number 2013, drawn on the RSG Bank Accounts, in the amount of \$4,456.46, payable to E.K. Medical
SEVENTEEN	SALES	4/23/2012	Check number 2086, drawn on the RSG Bank Accounts, in the amount of \$3,082.54, payable to E.K. Medical
EIGHTEEN	SALES	4/24/2012	Check number 2082, drawn on the RSG Bank Accounts, in the amount of \$2,975.97, payable to Glory Rehab
NINETEEN	GOYENA	12/13/2012	Check number 1706, drawn on the Innovation Bank Account, in the amount of \$2,596.69, payable to E.K. Medical
TWENTY	GOYENA	4/11/2013	Check number 1838, drawn on the Innovation Bank Account, in the amount of \$7,210.90, payable to New Hope
TWNTY-ONE	GOYENA	4/30/2013	Check number 1864, drawn on the Innovation Bank Account, in the amount of \$5,507.79, payable to E.K. Medical

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TWENTY-TWO	GOYENA	8/13/2013	Check number 1976, drawn on the Innovation Bank Account, in the amount of \$1,822.70, payable to E.K. Medical
TWENTY-THREE	GOYENA	11/1/2013	Check number 2094, drawn on the Innovation Bank Account, in the amount of \$2,547.36, payable to E.K. Medical
TWENTY-FOUR	SALES	11/6/2013	Check number 2622, drawn on the Rehab Dynamics Bank Account, in the amount of \$2,391.60, payable to New Hope
TWENTY-FIVE	SALES	11/12/2013	Check number 2099, drawn on the Innovation Bank Account, in the amount of \$2,791.26, payable to E.K. Medical

COUNTS TWENTY-SIX THROUGH THIRTY

[42 U.S.C. § 1320a-7b(b) (1) (A)]

21. The Grand Jury hereby repeats and realleges paragraphs 1 through 15 and paragraph 17 of this Indictment as if fully set forth herein.

22. On or about the dates set forth below, in Los Angeles County, within the Central District of California, and elsewhere, defendant KIM, together with others known and unknown to the Grand Jury, knowingly and willfully solicited and received remuneration, namely, checks payable in the approximate amounts set forth below, drawn on the Rehab Dynamics Bank Account and the Innovation Bank Account, in return for referring individuals to Rehab Dynamics and Innovation for physical therapy-related services, for which payment could be made in whole and in part under a Federal health care program, namely, Medicare:

COUNT	APPROX. DATE	TRANSACTION
TWENTY-SIX	4/11/2013	Check number 1838, drawn on the Innovation Bank Account, in the amount of \$7,210.90, payable to New Hope
TWENTY-SEVEN	5/8/2013	Check number 1873, drawn on the Innovation Bank Account, in the amount of \$4,223.25, payable to New Hope
TWENTY-EIGHT	6/15/2013	Check number 1919, drawn on the Innovation Bank Account, in the amount of \$2,500.00, payable to New Hope
TWENTY-NINE	11/6/2013	Check number 2622, drawn on the Rehab Dynamics Bank Account, in the amount of \$2,391.60, payable to New Hope
THIRTY	1/2/2014	Check number 2646, drawn on the Rehab Dynamics Bank Account, in the amount of \$2,172.06, payable to New Hope

COUNTS THIRTY-ONE THROUGH THIRTY-FOUR

[42 U.S.C. §§ 1028A(a)(1), 2(b)]

23. The Grand Jury hereby repeats and realleges paragraphs 1 through 15 and paragraph 17 of this Indictment as if fully set forth herein.

24. On or about the dates set forth below, in Los Angeles County, within the Central District of California, the following defendants, together with others known and unknown to the Grand Jury, knowingly transferred, possessed, and used, and willfully caused to be transferred, possessed, and used, without lawful authority, means of identification of other persons, namely, the names and Medicare provider numbers of the physical therapists identified below, during and in relation to felony violations of Title 18, United States Code, Section 1347, as charged in the related counts of the Indictment identified below:

COUNT	DEPENDANT	APPROX. DATE	PHYSICAL THERAPIST (PROVIDER NO.) AND SERVICE (CODE)	RELATED COUNT OF INDICTMENT
THIRTY-ONE	GOYENA	12/1/2010	SALES (xxxxxxx9936) - Therapeutic Activities (97530)	COUNT ONE
THIRTY-TWO	GOYENA	12/21/2011	SALES (xxxxxxx9936) - Physical Therapy Evaluation (97001)	COUNT TWO
THIRTY-THREE	SALES	1/19/2012	L. Sayat (xxxxxxx0573) - Therapeutic Exercise (97110)	COUNT THREE
THIRTY-FOUR	SALES	1/19/2012	L. Sayat (xxxxxxx0573) - Therapeutic Exercise (97110)	COUNT FOUR

COUNTS THIRTY-FIVE THROUGH THIRTY-SIX

[42 U.S.C. §§ 1028A(a)(1), 2(b)]

25. The Grand Jury hereby repeats and realleges paragraphs 1 through 15 and paragraph 17 of this Indictment as if fully set forth herein.

26. On or about the dates set forth below, in Los Angeles County, within the Central District of California, defendant KIM, together with others known and unknown to the Grand Jury, knowingly transferred, possessed, and used, and willfully caused to be transferred, possessed, and used, without lawful authority, means of identification of other persons, namely, the names and HICNs of the beneficiaries identified below, during and in relation to felony violations of Title 18, United States Code, Section 1347, as charged in the related counts of the Indictment identified below.

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COUNT	APPROX. DATE	BENEFICIARY (HICN) AND SERVICE (CODE)	RELATED COUNT OF INDICTMENT
THIRTY-FIVE	12/3/2012	K.L. (xxxxx2506M) - Therapeutic Exercise (97110)	COUNT NINE
THIRTY-SIX	3/28/2013	K.K. (xxxx3212A) - Therapeutic Procedure (97112)	COUNT TEN

A TRUE BILL

151
Foreperson

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Attorneys for Plaintiff
 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,
 13 Plaintiff,
 14 v.
 15 DANNIEL GOYENA,
 16 Defendant.

No. CR 15-576-DDP (2)

PLEA AGREEMENT FOR DEFENDANT
DANNIEL GOYENA

17
 18 1. This constitutes the plea agreement between DANNIEL GOYENA
 19 ("defendant") and the United States Attorney's Office for the Central
 20 District of California ("the USAO") in the above-captioned case.
 21 This agreement is limited to the USAO and cannot bind any other
 22 federal, state, local, or foreign prosecuting, enforcement,
 23 administrative, or regulatory authorities.

24 DEFENDANT'S OBLIGATIONS

25 2. Defendant agrees to:
 26 a. At the earliest opportunity requested by the USAO and
 27 provided by the Court, appear and plead guilty to counts two and
 28 fourteen of the indictment in United States v. Joseff Sales, et. al.,

1 CR No. 15-576-DDP(2), which charges defendant with Health Care Fraud,
2 in violation of 18 U.S.C. § 1347 and Illegal Remunerations for Health
3 Care Referrals (payment of illegal kickbacks), in violation of 42
4 U.S.C. § 1320(a)-7b(b)(2)(A).

5 b. Not contest facts agreed to in this agreement.

6 c. Abide by all agreements regarding sentencing contained
7 in this agreement.

8 d. Appear for all court appearances, surrender as ordered
9 for service of sentence, obey all conditions of any bond, and obey
10 any other ongoing court order in this matter.

11 e. Not commit any crime; however, offenses that would be
12 excluded for sentencing purposes under United States Sentencing
13 Guidelines ("U.S.S.G." or "Sentencing Guidelines") § 4A1.2(c) are not
14 within the scope of this agreement.

15 f. Be truthful at all times with Pretrial Services, the
16 United States Probation Office, and the Court.

17 g. Pay the applicable special assessments at or before
18 the time of sentencing unless defendant lacks the ability to pay and
19 prior to sentencing submits a completed financial statement on a form
20 to be provided by the USAO.

21 h. Not seek the discharge of any restitution obligation,
22 in whole or in part, in any present or future bankruptcy proceeding.

23 i. Defendant understands and acknowledges that as a
24 result of pleading guilty pursuant to this agreement, defendant will
25 be excluded from Medicare, Medicaid, and all Federal health care
26 programs. Defendant agrees to complete and execute all necessary
27 documents provided by the United States Department of Health and
28 Human Services, or any other department or agency of the federal

1 government, to effectuate this exclusion within 60 days of receiving
2 the documents. This exclusion will not affect defendant's right to
3 apply for and receive benefits as a beneficiary under any Federal
4 health care program, including Medicare and Medicaid.

5 3. Defendant further agrees:

6 a. To stipulate to the revocation of defendant's physical
7 therapy assistant license and shall lose all rights and privileges as
8 a licensed physical therapy assistant in California;

9 b. To not apply for licensure or petition for
10 reinstatement of defendant's revoked physical therapy assistant
11 license for at least five years from the effective date of the
12 revocation; and

13 c. That upon the effective date of the license
14 revocation, the defendant shall be prohibited from engaging, either
15 directly or indirectly, in any activity for which a physical therapy
16 assistant license is required.

17 4. Defendant further agrees to cooperate fully with the USAO,
18 the Federal Bureau of Investigation, Department of Health and Human
19 Services - Office of the Inspector General, and, as directed by the
20 USAO, any other federal, state, local, or foreign prosecuting,
21 enforcement, administrative, or regulatory authority. This
22 cooperation requires defendant to:

23 a. Respond truthfully and completely to all questions
24 that may be put to defendant, whether in interviews, before a grand
25 jury, or at any trial or other court proceeding.

26 b. Attend all meetings, grand jury sessions, trials or
27 other proceedings at which defendant's presence is requested by the
28 USAO or compelled by subpoena or court order.

1 c. Produce voluntarily all documents, records, or other
2 tangible evidence relating to matters about which the USAO, or its
3 designee, inquires.

4 5. For purposes of this agreement: (1) "Cooperation
5 Information" shall mean any statements made, or documents, records,
6 tangible evidence, or other information provided, by defendant
7 pursuant to defendant's cooperation under this agreement; and
8 (2) "Plea Information" shall mean any statements made by defendant,
9 under oath, at the guilty plea hearing and the agreed to factual
10 basis statement in this agreement.

11 THE USAO'S OBLIGATIONS

12 6. The USAO agrees to:

13 a. Not contest facts agreed to in this agreement.

14 b. Abide by all agreements regarding sentencing contained
15 in this agreement.

16 c. At the time of sentencing, move to dismiss the
17 remaining counts of the indictment as against defendant. Defendant
18 agrees, however, that at the time of sentencing the Court may
19 consider any dismissed charges in determining the applicable
20 Sentencing Guidelines range, the propriety and extent of any
21 departure from that range, and the sentence to be imposed.

22 d. At the time of sentencing, provided that defendant
23 demonstrates an acceptance of responsibility for the offenses up to
24 and including the time of sentencing, recommend a two-level reduction
25 in the applicable Sentencing Guidelines offense level, pursuant to
26 U.S.S.G. § 3E1.1, and recommend and, if necessary, move for an
27 additional one-level reduction if available under that section.

28

1 e. Recommend that defendant be sentenced to a term of
2 imprisonment no higher than the low end of the applicable Sentencing
3 Guidelines range, provided that the offense level used by the Court
4 to determine that range is 26 or higher and provided that the Court
5 does not depart downward in offense level or criminal history
6 category. For purposes of this agreement, the low end of the
7 Sentencing Guidelines range is that defined by the Sentencing Table
8 in U.S.S.G. Chapter 5, Part A.

9 7. The USAO further agrees:

10 a. Not to offer as evidence in its case-in-chief in the
11 above-captioned case or any other criminal prosecution that may be
12 brought against defendant by the USAO, or in connection with any
13 sentencing proceeding in any criminal case that may be brought
14 against defendant by the USAO, any Cooperation Information.
15 Defendant agrees, however, that the USAO may use both Cooperation
16 Information and Plea Information: (1) to obtain and pursue leads to
17 other evidence, which evidence may be used for any purpose, including
18 any criminal prosecution of defendant; (2) to cross-examine defendant
19 should defendant testify, or to rebut any evidence offered, or
20 argument or representation made, by defendant, defendant's counsel,
21 or a witness called by defendant in any trial, sentencing hearing, or
22 other court proceeding; and (3) in any criminal prosecution of
23 defendant for false statement, obstruction of justice, or perjury.

24 b. Not to use Cooperation Information against defendant
25 at sentencing for the purpose of determining the applicable guideline
26 range, including the appropriateness of an upward departure, or the
27 sentence to be imposed, and to recommend to the Court that
28 Cooperation Information not be used in determining the applicable

1 guideline range or the sentence to be imposed. Defendant
2 understands, however, that Cooperation Information will be disclosed
3 to the probation office and the Court, and that the Court may use
4 Cooperation Information for the purposes set forth in U.S.S.G.
5 § 1B1.8(b) and for determining the sentence to be imposed.

6 c. In connection with defendant's sentencing, to bring to
7 the Court's attention the nature and extent of defendant's
8 cooperation.

9 d. If the USAO determines, in its exclusive judgment,
10 that defendant has both complied with defendant's obligations under
11 paragraphs 2, 3, and 4 above and provided substantial assistance to
12 law enforcement in the prosecution or investigation of another
13 ("substantial assistance"), to move the Court pursuant to U.S.S.G.
14 § 5K1.1 to fix an offense level and corresponding guideline range
15 below that otherwise dictated by the sentencing guidelines, and to
16 recommend a term of imprisonment within this reduced range.

17 DEFENDANT'S UNDERSTANDINGS REGARDING COOPERATION

18 8. Defendant understands the following:

19 a. Any knowingly false or misleading statement by
20 defendant will subject defendant to prosecution for false statement,
21 obstruction of justice, and perjury and will constitute a breach by
22 defendant of this agreement.

23 b. Nothing in this agreement requires the USAO or any
24 other prosecuting, enforcement, administrative, or regulatory
25 authority to accept any cooperation or assistance that defendant may
26 offer, or to use it in any particular way.

27 c. Defendant cannot withdraw defendant's guilty pleas if
28 the USAO does not make a motion pursuant to U.S.S.G. § 5K1.1 for a

1 reduced guideline range or if the USAO makes such a motion and the
2 Court does not grant it or if the Court grants such a USAO motion but
3 elects to sentence above the reduced range.

4 d. At this time the USAO makes no agreement or
5 representation as to whether any cooperation that defendant has
6 provided or intends to provide constitutes or will constitute
7 substantial assistance. The decision whether defendant has provided
8 substantial assistance will rest solely within the exclusive judgment
9 of the USAO.

10 e. The USAO's determination whether defendant has
11 provided substantial assistance will not depend in any way on whether
12 the government prevails at any trial or court hearing in which
13 defendant testifies or in which the government otherwise presents
14 information resulting from defendant's cooperation.

15 NATURE OF THE OFFENSES

16 9. Defendant understands that for defendant to be guilty of
17 the crime charged in count two, that is, Health Care Fraud, in
18 violation of Title 18, United States Code, Section 1347, the
19 following must be true:

20 First, defendant knowingly and willfully participated in or
21 devised a scheme or plan to defraud a health care benefit program, or
22 a scheme or plan for obtaining money or property owned by, or under
23 the custody or control of, any health care benefit program, by means
24 of false or fraudulent pretenses, representations, or promises;

25 Second, statements made or facts omitted as part of the scheme
26 were material; that is, they had a natural tendency to influence, or
27 were capable of influencing, the health care benefit program to part
28 with money or property;

1 Third, defendant acted with the intent to defraud; that is, the
2 intent to deceive or cheat; and

3 Fourth, the scheme involved the delivery of or payment for
4 health care benefits, items, or services.

5 10. Defendant understands that for defendant to be guilty of
6 the crime charged in count fourteen, that is, Illegal Remunerations
7 for Health Care Referrals, in violation of Title 42, United States
8 Code, Section 1320a-7b(b) (2) (A), the following must be true:

9 First, defendant offered or paid remuneration in cash or kind to
10 a person;

11 Second, defendant offered or paid the remuneration to induce the
12 person to refer an individual for the furnishing of a service for
13 which payment may be made under a Federal health care program; and

14 Third, the defendant made the offer or payment knowingly and
15 willingly.

16 PENALTIES AND RESTITUTION

17 11. Defendant understands that the statutory maximum sentence
18 that the Court can impose for a violation of Title 18, United States
19 Code, Section 1347, is: 10 years imprisonment; a 3-year period of
20 supervised release; a fine of \$250,000 or twice the gross gain or
21 gross loss resulting from the offense, whichever is greatest; and a
22 mandatory special assessment of \$100.

23 12. Defendant understands that the statutory maximum sentence
24 that the Court can impose for a violation of Title 42, United States
25 Code, Section 1320a-7b(b) (2) (A) is: 5 years imprisonment; a 3-year
26 period of supervised release; a fine of \$250,000 or twice the gross
27 gain or gross loss resulting from the offense, whichever is greatest;
28 and a mandatory special assessment of \$100.

1 13. Defendant understands, therefore, that the total maximum
2 sentence for all offenses to which defendant is pleading guilty is:
3 15 years imprisonment; a 3-year period of supervised release; a fine
4 of \$500,000 or twice the gross gain or gross loss resulting from the
5 offenses, whichever is greatest; and a mandatory special assessment
6 of \$200.

7 14. Defendant understands that defendant will be required to
8 pay full restitution to the victim of the offenses to which defendant
9 is pleading guilty. Defendant agrees that, in return for the USAO's
10 compliance with its obligations under this agreement, the Court may
11 order restitution to persons other than the victim of the offenses to
12 which defendant is pleading guilty and in amounts greater than those
13 alleged in the counts to which defendant is pleading guilty. In
14 particular, defendant agrees that the Court may order restitution to
15 any victim of any of the following for any losses suffered by that
16 victim as a result of: (a) any relevant conduct, as defined in
17 U.S.S.G. § 1B1.3, in connection with the offenses to which defendant
18 is pleading guilty; and (b) any counts dismissed pursuant to this
19 agreement as well as all relevant conduct, as defined in U.S.S.G.
20 § 1B1.3, in connection with those counts. The parties currently
21 believe that the applicable amount of restitution is approximately
22 \$7,896,007, but recognize and agree that this amount could change
23 based on facts that come to the attention of the parties prior to
24 sentencing.

25 15. Defendant understands that supervised release is a period
26 of time following imprisonment during which defendant will be subject
27 to various restrictions and requirements. Defendant understands that
28 if defendant violates one or more of the conditions of any supervised

1 release imposed, defendant may be returned to prison for all or part
2 of the term of supervised release authorized by statute for the
3 offense that resulted in the term of supervised release, which could
4 result in defendant serving a total term of imprisonment greater than
5 the statutory maximum stated above.

6 16. Defendant understands that, by pleading guilty, defendant
7 may be giving up valuable government benefits and valuable civic
8 rights, such as the right to vote, the right to possess a firearm,
9 the right to hold office, and the right to serve on a jury.

10 Defendant understands that once the court accepts defendant's guilty
11 plea, it will be a federal felony for defendant to possess a firearm
12 or ammunition. Defendant understands that the conviction in this
13 case may also subject defendant to various other collateral
14 consequences, including but not limited to mandatory exclusion from
15 federal health care benefit programs for a minimum of five years,
16 suspension or revocation of a professional license, and revocation of
17 probation, parole, or supervised release in another case. Defendant
18 understands that unanticipated collateral consequences will not serve
19 as grounds to withdraw defendant's guilty plea.

20 17. Defendant understands that, if defendant is not a United
21 States citizen, the felony conviction in this case may subject
22 defendant to: removal, also known as deportation, which may, under
23 some circumstances, be mandatory; denial of citizenship; and denial
24 of admission to the United States in the future. The court cannot,
25 and defendant's attorney also may not be able to, advise defendant
26 fully regarding the immigration consequences of the felony conviction
27 in this case. Defendant understands that unexpected immigration
28

1 consequences will not serve as grounds to withdraw defendant's guilty
2 plea.

3 FACTUAL BASIS

4 18. Defendant admits that defendant is, in fact, guilty of the
5 offenses to which defendant is agreeing to plead guilty. Defendant
6 and the USAO agree to the statement of facts provided below and agree
7 that this statement of facts is sufficient to support pleas of guilty
8 to the charges described in this agreement and to establish the
9 Sentencing Guidelines factors set forth in paragraph 20 below but is
10 not meant to be a complete recitation of all facts relevant to the
11 underlying criminal conduct or all facts known to either party that
12 relate to that conduct.

13 Background

14 At various times from in or about March 2008 to in or about
15 January 2014, defendant and Joseff Sales owned and operated RSG
16 Rehab, Inc. ("RSG"), Rehab Dynamics, Inc. ("Rehab Dynamics"), and
17 Innovation Physical Therapy, Inc. ("Innovation"), California
18 corporations, which were located at various sites in Los Angeles and
19 Orange Counties, within the Central District of California. As of
20 early 2009, defendant was a physical therapist assistant ("PTA")
21 licensed to practice in California. Defendant signed a Medicare
22 provider application, enrolling RSG as a provider with Medicare, a
23 federal health benefit program for individuals aged 65 and older and
24 certain disabled persons. As part of that application, defendant
25 certified that he would submit truthful and accurate claims and would
26 know and abide by all Medicare regulations.

1 Health Care Fraud

2 Beginning in or about March 2008, and continuing until at least
3 in or about January 2014, in Los Angeles and Orange Counties, within
4 the Central District of California, and elsewhere, defendant,
5 together with Joseff Sales, Marlon Songco, and others known and
6 unknown to the Grand Jury, knowingly, willfully, and with the intent
7 to defraud, executed and attempted to execute a scheme and artifice:
8 (1) to defraud a health care benefit program, namely Medicare, as to
9 material matters in connection with the delivery of and payment for
10 health care benefits, items, and services; and (2) to obtain money
11 from Medicare by means of material false and fraudulent pretenses and
12 representations and the concealment of material facts in connection
13 with the delivery of and payment for health care benefits, items, and
14 services, in violation of Title 18, United States Code, Section 1349.

15 Although defendant initially believed that RSG would conduct
16 business in a lawful manner, approximately a year after he opened the
17 company with Joseff Sales in 2008, through his increasing familiarity
18 with RSG's day-to-day operations, he became aware that RSG, and
19 subsequently Innovation and Rehab Dynamics, were being used to commit
20 fraud against Medicare through the submission of fraudulent claims
21 for physical therapy that often never occurred. At that point,
22 defendant joined in and became a full and willing participant in the
23 scheme to commit health care fraud.

24 In order to obtain Medicare beneficiaries for RSG, Rehab
25 Dynamics, and Innovation, defendant, Joseff Sales, and Marlon Songco
26 paid illegal kickbacks out of the RSG, Rehab Dynamics, and Innovation
27 business bank accounts to outside companies, including companies
28 owned by B.M. and J.M. (i.e., Glory Rehab), S.H. (i.e., Hong's

1 Medical Management, CMH Practice Solutions, and HK Practice and
2 Solutions), Ohun Kwon (i.e., E.K. Medical), and David Kim (i.e., New
3 Hope), in exchange for the referral of Medicare beneficiaries to RSG,
4 Rehab Dynamics, and Innovation for physical therapy the patients
5 often never received. Defendant and Joseff Sales hired licensed
6 physical therapists ("PTs") to provide initial evaluations of
7 beneficiaries. However, as defendant well knew, some of these
8 evaluations did not take place and those PTs rarely provided
9 treatment at any follow-up visits. While at RSG, Rehab Dynamics, and
10 Innovation, many of the beneficiaries received only massage and
11 acupuncture, services defendant knew were not covered by Medicare,
12 from individuals not licensed to provide physical therapy. Those
13 unlicensed individuals were provided by the same outside companies
14 that referred the beneficiaries to RSG, Rehab Dynamics, and
15 Innovation.

16 Defendant submitted and knew others submitted to Accubill false
17 information regarding physical therapy claims, intending that
18 Accubill would use that information to submit false and fraudulent
19 claims to Medicare on RSG's, Rehab Dynamics', and Innovation's
20 behalf. In particular, defendant, Joseff Sales, and Marlon Songco
21 prepared fraudulent documentation that was provided to Accubill,
22 falsely claiming (1) that PTs were providing medically necessary
23 physical therapy treatment, when in fact unlicensed individuals were
24 often providing uncovered massage and acupuncture, and (2) that PTs
25 had treated patients they actually had not treated, including
26 treatment purportedly occurring at times at which those PTs were
27 working at other companies or were out of the country.

28

1 As an example, for the purpose of executing and attempting to
2 execute the fraudulent scheme, defendant knowingly and willfully
3 submitted and caused to be submitted to Medicare on or about December
4 21, 2011 a false and fraudulent claim (claim number 551111355441260).
5 This false and fraudulent claim alleged that Joseff Sales performed a
6 physical therapy evaluation for beneficiary A.K. on December 5, 2011
7 in the Los Angeles area. However, despite submitting and causing the
8 claim to be submitted, defendant knew that Joseff Sales did not
9 perform such physical therapy on December 5, 2011 because Joseff
10 Sales was located in Las Vegas, Nevada with defendant and defendant's
11 family on this date.

12 Illegal Remuneration (Payment of Kickbacks)

13 Between in or about March 2008 and in or about January 2014, in
14 Los Angeles and Orange Counties, within the Central District of
15 California, and elsewhere, defendant knowingly and willfully offered
16 and paid kickbacks payable to Glory Rehab, Hong's Medical Management,
17 E.K. Medical, and New Hope in exchange for the referral of Medicare
18 beneficiaries and for the clinics to provide services uncovered by
19 Medicare, including massages and acupuncture. Defendant, Joseff
20 Sales, and Marlon Songco paid approximately 55% of the Medicare
21 payments received to S.H., David Kim, Ohun Kwon, B.M and J.M., and
22 others for referring the beneficiaries who purportedly received
23 physical therapy services. At that time, defendant knew it was
24 illegal to offer or pay such payments in exchange for the referral of
25 patients for services paid by Medicare. As an example, on or about
26 May 11, 2011, defendant knowingly and willfully offered and paid
27 S.H., through Hong's Medical, approximately \$2,184.25 in exchange for
28 the referral of Medicare beneficiaries to RSG so that purported

1 physical therapy services for these beneficiaries could be billed to
2 Medicare.

3 Loss

4 Between in or about March 2008 and in or about January 2014,
5 RSG, Rehab Dynamics, and Innovation submitted approximately
6 \$15,295,460 in false and fraudulent claims to Medicare, for which
7 Medicare paid approximately \$7,896,007. During this same period,
8 RSG, Rehab Dynamics, and Innovation paid more than \$3.0 million to
9 outside companies affiliated with S.H., Ohun Kwon, David Kim, B.M.
10 and J.M., and others for the referral of Medicare beneficiaries.

11 SENTENCING FACTORS

12 19. Defendant understands that in determining defendant's
13 sentence the Court is required to calculate the applicable Sentencing
14 Guidelines range and to consider that range, possible departures
15 under the Sentencing Guidelines, and the other sentencing factors set
16 forth in 18 U.S.C. § 3553(a). Defendant understands that the
17 Sentencing Guidelines are advisory only, that defendant cannot have
18 any expectation of receiving a sentence within the calculated
19 Sentencing Guidelines range, and that after considering the
20 Sentencing Guidelines and the other § 3553(a) factors, the Court will
21 be free to exercise its discretion to impose any sentence it finds
22 appropriate up to the maximum set by statute for the crimes of
23 conviction.

24 20. Defendant and the USAO agree to the following applicable
25 Sentencing Guidelines factors:

1	<u>Count 2 (Health Care Fraud):</u>		
2	Base Offense Level	6	U.S.S.G. § 2B1.1(a) (2)
3	Loss more than \$9.5 million, Less than \$25 million	+20	U.S.S.G. § 2B1.1(b) (1) (K)
4	Federal health care offense involving government health care program and loss more than \$9.5 million	+3	U.S.S.G. § 2B1.1(b) (7)
5			
6			
7	Total Offense Level	29	
8	<u>Count 14 (Kickback):</u>		
9	Base Offense Level	8	U.S.S.G. § 2B4.1(a)
10	Value of Benefit Conferred in Return for Kickbacks	+18	U.S.S.G. §§ 2B4.1(b) (1); 2B1.1(b) (1) (J)
11			
12	Total Offense Level	26	U.S.S.G. § 3E1.1
13	<u>Grouping</u>		
14	1 Unit	+0	U.S.S.G. §§ 3D1.2
15	<u>Enhancement</u>		
16	Abuse of Position of Trust	+2	U.S.S.G. § 3B1.3
17	Total Offense Level	31	
18			

19 Defendant and the USAO reserve the right to argue that additional
20 specific offense characteristics, adjustments, and departures under
21 the Sentencing Guidelines are appropriate.

22 21. Defendant understands that there is no agreement as to
23 defendant's criminal history or criminal history category.

24 22. Defendant and the USAO reserve the right to argue for a
25 sentence outside the sentencing range established by the Sentencing
26 Guidelines based on the factors set forth in 18 U.S.C. § 3553(a) (1),
27 (a) (2), (a) (3), (a) (6), and (a) (7).

28

1 appeal defendant's convictions on the offenses to which defendant is
2 pleading guilty.

3 LIMITED MUTUAL WAIVER OF APPEAL OF SENTENCE

4 25. Defendant agrees that, provided the Court imposes a total
5 term of imprisonment on all counts of conviction within or below the
6 range corresponding to an offense level of 31 and the criminal
7 history category calculated by the Court, defendant gives up the
8 right to appeal all of the following: (a) the procedures and
9 calculations used to determine and impose any portion of the
10 sentence; (b) the term of imprisonment imposed by the Court; (c) the
11 fine imposed by the court, provided it is within the statutory
12 maximum; (d) the amount and terms of any restitution order, provided
13 it requires payment of no more than \$7,896,007; (e) the term of
14 probation or supervised release imposed by the Court, provided it is
15 within the statutory maximum; and (f) any of the following conditions
16 of probation or supervised release imposed by the Court: the
17 conditions set forth in General Orders 318, 01-05, and/or 05-02 of
18 this Court; the drug testing conditions mandated by 18 U.S.C.
19 §§ 3563(a)(5) and 3583(d); and the alcohol and drug use conditions
20 authorized by 18 U.S.C. § 3563(b)(7).

21 26. The USAO agrees that, provided (a) all portions of the
22 sentence are at or below the statutory maximum specified above and
23 (b) the Court imposes a term of imprisonment within or above the
24 range corresponding to an offense level of 28 and the criminal
25 history category calculated by the Court, the USAO gives up its right
26 to appeal any portion of the sentence, with the exception that the
27 USAO reserves the right to appeal the amount of restitution ordered
28 if that amount is less than \$7,896,007.

RESULT OF WITHDRAWAL OF GUILTY PLEA

1
2 27. Defendant agrees that if, after entering guilty pleas
3 pursuant to this agreement, defendant seeks to withdraw and succeeds
4 in withdrawing defendant's guilty pleas on any basis other than a
5 claim and finding that entry into this plea agreement was
6 involuntary, then (a) the USAO will be relieved of all of its
7 obligations under this agreement, including in particular its
8 obligations regarding the use of Cooperation Information; (b) in any
9 investigation, criminal prosecution, or civil, administrative, or
10 regulatory action, defendant agrees that any Cooperation Information
11 and any evidence derived from any Cooperation Information shall be
12 admissible against defendant, and defendant will not assert, and
13 hereby waives and gives up, any claim under the United States
14 Constitution, any statute, or any federal rule, that any Cooperation
15 Information or any evidence derived from any Cooperation Information
16 should be suppressed or is inadmissible; and (c) should the USAO
17 choose to pursue any charge that was either dismissed or not filed as
18 a result of this agreement, then (i) any applicable statute of
19 limitations will be tolled between the date of defendant's signing of
20 this agreement and the filing commencing any such action; and
21 (ii) defendant waives and gives up all defenses based on the statute
22 of limitations, any claim of pre-indictment delay, or any speedy
23 trial claim with respect to any such action, except to the extent
24 that such defenses existed as of the date of defendant's signing this
25 agreement.

1 agreements regarding criminal prosecution, and will be free to
2 criminally prosecute defendant for any crime, including charges that
3 the USAO would otherwise have been obligated to dismiss pursuant to
4 this agreement; and (iii) will no longer be bound by any agreement
5 regarding the use of Cooperation Information and will be free to use
6 any Cooperation Information in any way in any investigation, criminal
7 prosecution, or civil, administrative, or regulatory action.

8 c. The USAO will be free to criminally prosecute
9 defendant for false statement, obstruction of justice, and perjury
10 based on any knowingly false or misleading statement by defendant.

11 d. In any investigation, criminal prosecution, or civil,
12 administrative, or regulatory action: (i) defendant will not assert,
13 and hereby waives and gives up, any claim that any Cooperation
14 Information was obtained in violation of the Fifth Amendment
15 privilege against compelled self-incrimination; and (ii) defendant
16 agrees that any Cooperation Information and any Plea Information, as
17 well as any evidence derived from any Cooperation Information or any
18 Plea Information, shall be admissible against defendant, and
19 defendant will not assert, and hereby waives and gives up, any claim
20 under the United States Constitution, any statute, Rule 410 of the
21 Federal Rules of Evidence, Rule 11(f) of the Federal Rules of
22 Criminal Procedure, or any other federal rule, that any Cooperation
23 Information, any Plea Information, or any evidence derived from any
24 Cooperation Information or any Plea Information should be suppressed
25 or is inadmissible.

26 30. Following the Court's finding of a knowing breach of this
27 agreement by defendant, should the USAO choose to pursue any charge
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1 that was either dismissed or not filed as a result of this agreement,
2 then:

3 a. Defendant agrees that any applicable statute of
4 limitations is tolled between the date of defendant's signing of this
5 agreement and the filing commencing any such action.

6 b. Defendant waives and gives up all defenses based on
7 the statute of limitations, any claim of pre-indictment delay, or any
8 speedy trial claim with respect to any such action, except to the
9 extent that such defenses existed as of the date of defendant's
10 signing this agreement.

11 COURT AND PROBATION OFFICE NOT PARTIES

12 31. Defendant understands that the Court and the United States
13 Probation Office are not parties to this agreement and need not
14 accept any of the USAO's sentencing recommendations or the parties'
15 agreements to facts or sentencing factors.

16 32. Defendant understands that both defendant and the USAO are
17 free to: (a) supplement the facts by supplying relevant information
18 to the United States Probation Office and the Court, (b) correct any
19 and all factual misstatements relating to the Court's Sentencing
20 Guidelines calculations and determination of sentence, and (c) argue
21 on appeal and collateral review that the Court's Sentencing
22 Guidelines calculations and the sentence it chooses to impose are not
23 error, although each party agrees to maintain its view that the
24 calculations in paragraph 20 are consistent with the facts of this
25 case. While this paragraph permits both the USAO and defendant to
26 submit full and complete factual information to the United States
27 Probation Office and the Court, even if that factual information may
28 be viewed as inconsistent with the facts agreed to in this agreement,

1 this paragraph does not affect defendant's and the USAO's obligations
2 not to contest the facts agreed to in this agreement.

3 33. Defendant understands that even if the Court ignores any
4 sentencing recommendation, finds facts or reaches conclusions
5 different from those agreed to, and/or imposes any sentence up to the
6 maximum established by statute, defendant cannot, for that reason,
7 withdraw defendant's guilty pleas, and defendant will remain bound to
8 fulfill all defendant's obligations under this agreement. Defendant
9 understands that no one -- not the prosecutor, defendant's attorney,
10 or the Court -- can make a binding prediction or promise regarding
11 the sentence defendant will receive, except that it will be within
12 the statutory maximum.

13 NO ADDITIONAL AGREEMENTS

14 34. Defendant understands that, except as set forth herein,
15 there are no promises, understandings, or agreements between the USAO
16 and defendant or defendant's attorney, and that no additional
17 promise, understanding, or agreement may be entered into unless in a
18 writing signed by all parties or on the record in court.

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PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

35. The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

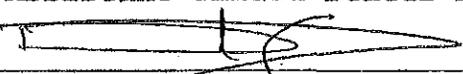
AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE CENTRAL DISTRICT OF
CALIFORNIA

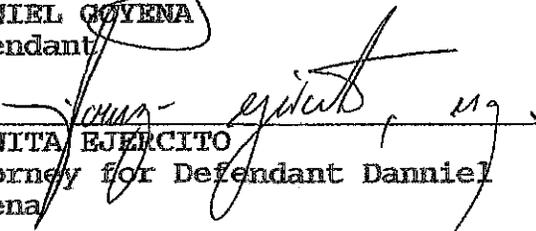
EILEEN M. DECKER
United States Attorney


BYRON J. MCLAIN
Assistant United States Attorney

11/18/2015
Date


DANNIEL GOYENA
Defendant

11/17/15
Date

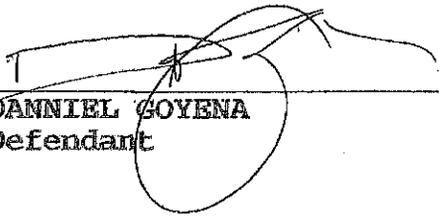

JOHNITA EJERCITO
Attorney for Defendant Danniell
Goyena

11/17/15
Date

CERTIFICATION OF DEFENDANT

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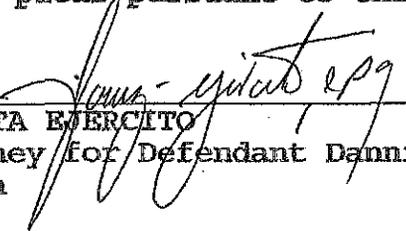
I have read this agreement in its entirety. I have had enough time to review and consider this agreement, and I have carefully and thoroughly discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. I have discussed the evidence with my attorney, and my attorney has advised me of my rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. No promises, inducements, or representations of any kind have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. I am satisfied with the representation of my attorney in this matter, and I am pleading guilty because I am guilty of the charges and wish to take advantage of the promises set forth in this agreement, and not for any other reason.


DANNIEL GOYENA
Defendant

11-17-15
Date

CERTIFICATION OF DEFENDANT'S ATTORNEY

I am DANIEL GOYENA's attorney. I have carefully and thoroughly discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible pretrial motions that might be filed, of possible defenses that might be asserted either prior to or at trial, of the sentencing factors set forth in 18 U.S.C. § 3553(a), of relevant Sentencing Guidelines provisions, and of the consequences of entering into this agreement. To my knowledge: no promises, inducements, or representations of any kind have been made to my client other than those contained in this agreement; no one has threatened or forced my client in any way to enter into this agreement; my client's decision to enter into this agreement is an informed and voluntary one; and the factual basis set forth in this agreement is sufficient to support my client's entry of guilty pleas pursuant to this agreement.



 JOHNITA EJERCITO
 Attorney for Defendant Daniel
 Goyena

11-17-15

 Date

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 NICHOLAS B.C. SCHULTZ
Deputy Attorney General
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California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 897-6564
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 720-2017-000807

12 DANNIEL E. GOYENA, P.T.A.
11662 Carmenita Road, Apt. E
13 Whittier, California 90605

A C C U S A T I O N

14 Physical Therapist Assistant License No. 8938,
15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Jason Kaiser (Complainant) brings this Accusation solely in his official capacity as
20 the Executive Officer of the Physical Therapy Board of California, Department of Consumer
21 Affairs (Board).

22 2. On or about February 19, 2009, the Physical Therapy Board of California issued
23 Physical Therapist Assistant License Number 8938 to Danniell E. Goyena, P.T.A. (Respondent).
24 The Physical Therapist Assistant License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on July 31, 2018, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2602.1 of the Code states:

2 “Protection of the public shall be the highest priority for the Physical Therapy Board of
3 California in exercising its licensing, regulatory, and disciplinary functions. Whenever the
4 protection of the public is inconsistent with other interests sought to be promoted, the protection
5 of the public shall be paramount.”

6 5. Section 2605 of the Code states:

7 “The board shall do all of the following:

8 “(a) Evaluate the qualifications of applicants for licensure.

9 “(b) Provide for the examinations of physical therapists and physical therapist assistants and
10 establish a passing score for each examination.

11 “(c) Issue all licenses for the practice of physical therapy in California. Except as otherwise
12 required by the director pursuant to Section 164, the license issued by the board shall describe the
13 licensee as a ‘physical therapist’ or ‘physical therapist assistant’ licensed by the Physical Therapy
14 Board of California.

15 “(d) Suspend and revoke licenses and otherwise enforce the provisions of this chapter.

16 “...”

17 6. Section 2660 of the Code states:

18 “Unprofessional conduct constitutes grounds for citation, discipline, denial of a license, or
19 issuance of a probationary license. The board may, after the conduct of appropriate proceedings
20 under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1
21 of Division 3 of Title 2 of the Government Code), issue a citation, impose discipline, deny a
22 license, suspend for not more than 12 months, or revoke, or impose probationary conditions upon
23 any license issued under this chapter for unprofessional conduct that includes, in addition to other
24 provisions of this chapter, but is not limited to, the following:

25 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
26 violation of, or conspiring to violate any provision of this chapter, any regulations duly adopted
27 under this chapter, or the Medical Practice Act (Chapter 5 (commencing with Section 2000)).

28 “... ”

1 “(e) Conviction of a crime that substantially relates to the qualifications, functions, or duties
2 of a physical therapist or physical therapist assistant. The record of conviction or a certified copy
3 thereof shall be conclusive evidence of that conviction.

4 “... ”

5 “(j) The commission of any fraudulent, dishonest, or corrupt act that is substantially related
6 to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.

7 “... ”

8 7. Section 2661 of the Code states:

9 “A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to
10 be a conviction within the meaning of this article. The board may order discipline of the licensee
11 in accordance with Section 2660 or the board may take action as authorized in Section 2660.2 on
12 an application when the time for appeal has elapsed, or the judgment of conviction has been
13 affirmed on appeal or when an order granting probation is made suspending the imposition of
14 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that
15 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
16 verdict of guilty, or dismissing the accusation, information, or indictment.

17 8. Section 490 of the Code states:

18 “(a) In addition to any other action that a board is permitted to take against a licensee, a
19 board may suspend or revoke a license on the ground that the licensee has been convicted of a
20 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
21 or profession for which the license was issued.

22 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
23 discipline a licensee for conviction of a crime that is independent of the authority granted under
24 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
25 of the business or profession for which the licensee’s license was issued.

26 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
27 conviction following a plea of nolo contendere. Any action that a board is permitted to take
28 following the establishment of a conviction may be taken when the time for appeal has elapsed, or

1 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
2 made suspending the imposition of sentence, irrespective of a subsequent order under the
3 provisions of Section 1203.4 of the Penal Code.

4 “(d) The Legislature hereby finds and declares that the application of this section has been
5 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
6 554, and that the holding in that case has placed a significant number of statutes and regulations
7 in question, resulting in potential harm to the consumers of California from licensees who have
8 been convicted of crimes. Therefore, the Legislature finds and declares that this section
9 establishes an independent basis for a board to impose discipline upon a licensee, and that the
10 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not
11 constitute a change to, but rather are declaratory of, existing law.”

12 9. Section 493 of the Code states:

13 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
14 the department pursuant to law to deny an application for a license or to suspend or revoke a
15 license or otherwise take disciplinary action against a person who holds a license, upon the
16 ground that the applicant or the licensee has been convicted of a crime substantially related to the
17 qualifications, functions, and duties of the licensee in question, the record of conviction of the
18 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
19 and the board may inquire into the circumstances surrounding the commission of the crime in
20 order to fix the degree of discipline or to determine if the conviction is substantially related to the
21 qualifications, functions, and duties of the licensee in question.

22 “. . .”

23 10. California Code of Regulations, title 16, section 1399.20, states:

24 “For the purposes of denial, suspension or revocation of a license, pursuant to Division 1.5
25 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially
26 related to the qualifications, functions or duties of a person holding a license under the Physical
27 Therapy Practice Act if to a substantial degree it evidences present or potential unfitness of a
28 person to perform the functions authorized by the license or approval in a manner consistent with

1 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
2 following:

3 “(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
4 violation of, or conspiring to violate any provision or term of the Physical Therapy Practice Act.

5 “(b) Conviction of a crime involving fiscal dishonesty arising out of or in connection with
6 the practice of physical therapy.

7 “(c) Violating or attempting to violate any provision or term of the Medical Practice Act.”

8 11. California Code of Regulations, title 16, section 1399.24, states:

9 “In addition to the conduct described in Section 2660 of the Code, ‘unprofessional conduct’
10 also includes but is not limited to the following:

11 “... ”

12 “(d) Failure to report to the board within 30 days any of the following:

13 (1) The bringing of an indictment or information charging a felony against the
14 licensee.

15 (2) The arrest of the licensee.

16 (3) The conviction of the licensee, including any verdict of guilty or no contest, of
17 any felony or misdemeanor.

18 “... ”

19 **UNITED STATES CODE SECTIONS**

20 12. United States Code, title 18, Section 1347 states:

21 “(a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or
22 artifice--

23 “(1) to defraud any health care benefit program; or

24 “(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any
25 of the money or property owned by, or under the custody or control of, any health care benefit
26 program,

27 “in connection with the delivery of or payment for health care benefits, items, or services,
28 shall be fined under this title or imprisoned not more than 10 years or both. If the violation results

1 in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under
2 this title or imprisoned not more than 20 years, or both; and if the violation results in death, such
3 person shall be fined under this title, or imprisoned for any term of years or for life, or both.

4 “(b) With respect to violations of this section, a person need not have actual knowledge of
5 this section or specific intent to commit a violation of this section.”

6 13. United States Code, title 42, Section 1320a-7b, subdivision (b), subsection (2) states:

7 “Whoever knowingly and willfully offers or pays any remuneration (including any
8 kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any
9 person to induce such person--

10 “(A) to refer an individual to a person for the furnishing or arranging for the furnishing of
11 any item or service for which payment may be made in whole or in part under a Federal health
12 care program, or

13 “...

14 “shall be guilty of a felony and upon conviction thereof, shall be fined not more than
15 \$25,000 or imprisoned for not more than five years, or both.”

16 COST RECOVERY

17 14. Section 2661.5 of the Code states:

18 “(a) In any order issued in resolution of a disciplinary proceeding before the board, the
19 board may request the administrative law judge to direct any licensee found guilty of
20 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of
21 the investigation and prosecution of the case.

22 “(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in
23 any event be increased by the board. When the board does not adopt a proposed decision and
24 remands the case to an administrative law judge, the administrative law judge shall not increase
25 the amount of the assessed costs specified in the proposed decision.

26 “(c) When the payment directed in an order for payment of costs is not made by the
27 licensee, the board may enforce the order of payment by bringing an action in any appropriate

28 ///

1 court. This right of enforcement shall be in addition to any other rights the board may have as to
2 any licensee directed to pay costs.

3 “(d) In any judicial action for the recovery of costs, proof of the board’s decision shall be
4 conclusive proof of the validity of the order of payment and the terms for payment.

5 “(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the
6 license or approval of any person who has failed to pay all of the costs ordered under this section.

7 “(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or
8 reinstate for a maximum of one year the license or approval of any person who demonstrates
9 financial hardship and who enters into a formal agreement with the board to reimburse the board
10 within that one year period for those unpaid costs.

11 “(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund
12 as a reimbursement in either the fiscal year in which the costs are actually recovered or the
13 previous fiscal year, as the board may direct.”

14 FACTUAL SUMMARY

15 15. On December 17, 2015, in the case entitled the *United States of America v. Danniell*
16 *Goyena*, case number 2:15-cr-00576-DOC-2, in the United States District Court for the Central
17 District of California, Respondent entered a plea of guilty to Health Care Fraud, a felony, in
18 violation of United States Code, title 18, Section 1347, subdivision (a), subsection (2), and
19 subdivision (b). Respondent also entered a plea of guilty to Illegal Remunerations for Health
20 Care Referrals, a felony, in violation of United States Code, title 42, Section 1320a-7b,
21 subdivision (b), subsection (2).

22 16. Prior to his change of plea and sentencing, Respondent entered into and executed a
23 plea agreement with the United States Attorney’s Office wherein Respondent agreed to the factual
24 basis described in paragraph 18 below. On December 19, 2016, Respondent was sentenced based
25 on his guilty pleas to violating United States Code, title 18, Section 1347, subdivision (a),
26 subsection (2), and United States Code, title 42, Section 1320a-7b, subdivision (b), subsection (2).
27 The remaining charges filed against Respondent were dismissed pursuant to the plea agreement.
28 As part of his plea agreement with the United States Attorney’s Office, Respondent expressly

1 agreed to the revocation of his physical therapist assistant license resulting in his loss of all rights
2 and privileges as a licensed physical therapist assistant in California. Furthermore, Respondent
3 agreed that he would not apply for licensure or petition for reinstatement of his revoked physical
4 therapist assistant license for at least five years from the effective date of the license revocation.

5 17. In accordance with the plea agreement, Respondent was sentenced to fifty-one
6 months in the custody of the federal Bureau of Prisons with an additional order that Respondent
7 surrender himself to the Bureau of Prisons before 12:00 p.m. on January 3, 2017. Respondent
8 was also sentenced to three years of supervised release upon his release from imprisonment with
9 the following terms and conditions:

10 A. Payment of \$7,896,007.00 in restitution for joint and several liability of the
11 health care fraud scheme perpetrated by Respondent and his co-defendants;

12 B. A requirement that Respondent submit his person and property to search and
13 seizure at any time of the day or night by any law enforcement officer with or without a warrant
14 and with or without reasonable or probable cause;

15 C. A requirement that Respondent report to the United States Probation Office
16 within seventy-two hours of his release from custody;

17 D. A requirement that Respondent report in person directly to the Court within 21
18 days of his release from custody, at a date and time to be set by the United States Probation
19 Office, and thereafter report in person to the Court no more than eight times during his first year
20 of supervised release;

21 E. A requirement that Respondent not possess, have under his control, or have
22 access to any firearm, explosive device, or other dangerous weapon;

23 F. A requirement that Respondent comply with the rules and regulations of the
24 United States Probation Office, General Order 05-02, and General Order 01-05, including the
25 three special conditions delineated in General Order 01-05;

26 G. A requirement that Respondent not commit any violation of local, state or
27 federal law or ordinance;

28 ///

1 H. A requirement that Respondent pay the special assessment and restitution
2 amounts during the period of community supervision;

3 I. A requirement that Respondent comply with the immigration rules and
4 regulations of the United States, and if deported from this country, either voluntarily or
5 involuntarily, not reenter the United States illegally;

6 J. A requirement that Respondent cooperate in the collection of a DNA sample;

7 K. A requirement that Respondent not obtain or possess any driver's license,
8 Social Security number, birth certificate, passport or any other form of identification in any name,
9 other than the defendant's true legal name, and not use any name other than his true legal name
10 without prior written approval of the Probation Officer; and

11 L. A requirement that Respondent apply all monies received from income tax
12 refunds, lottery winnings, inheritance, judgments, and any anticipated or unexpected financial
13 gains to the outstanding court-ordered financial obligation.

14 18. The circumstances leading to Respondent's criminal convictions are as follows:

15 A. At various times between March 2008 and January 2014, Respondent owned
16 and operated RSG Rehab, Inc. (RSG), Rehab Dynamics, Inc. (Rehab Dynamics), and Innovation
17 Physical Therapy, Inc. (Innovation) with J.S., a co-defendant working as a licensed physical
18 therapist. RSG, Rehab Dynamics and Innovation were California corporations operating in Los
19 Angeles and Orange counties. Respondent enrolled RSG as a provider with Medicare,¹ a federal
20 health care benefit program that provides reimbursement for medically necessary services to
21 persons aged sixty-five years and older, as well as for certain disabled persons. Respondent's
22 application for enrollment as a Medicare provider enabled RSG, Rehab Dynamics, and Innovation
23 to submit reimbursement claims to Medicare. As part of the Medicare provider application,
24 Respondent certified that he would submit truthful and accurate claims and that he would know
25 and abide by all Medicare regulations.

26 ¹ Medicare is administered by the Centers for Medicare and Medicaid Services, a federal agency
27 under the United States Department of Health and Human Services. Individuals that qualify for Medicare
28 benefits are referred to as "beneficiaries," whereas physicians and other health care providers that are
reimbursed by Medicare are referred to as "providers."

1 B. Although Respondent initially believed that RSG would conduct business in a
2 lawful manner, he became aware that RSG, Rehab Dynamics and Innovation were being used to
3 commit fraud against Medicare through the submission of fraudulent claims for physical therapy
4 that often never occurred by his co-defendants. Respondent learned of this fraudulent activity
5 approximately one year after he opened the company with J.S. At that point, Respondent became
6 a full and willing participant in the scheme to defraud the Medicare health care benefit program as
7 to material matters in connection with the delivery of and payment for health care benefits, items
8 and services. Respondent also acted to obtain money from Medicare by means of material false
9 and fraudulent pretenses, misrepresentations, and concealment of material facts in connection
10 with the delivery of and payment for health care services.

11 C. Respondent, along with his co-defendants, paid illegal kickbacks out of
12 business bank accounts for RSG, Rehab Dynamics, and Innovation to several outside companies
13 in exchange for the referral of Medicare beneficiaries to RSG, Rehab Dynamics, and Innovation
14 for physical therapy that the patients often never received. Respondent and J.S. then hired
15 licensed physical therapists to provide initial evaluations and re-evaluations of the beneficiaries at
16 various clinics. However, Respondent knew that some of these evaluations did not take place and
17 that the physical therapists rarely provided treatment to the beneficiaries at any follow-up visits
18 pursuant to a physical therapy treatment plan. Many of the beneficiaries referred to RSG, Rehab
19 Dynamics, and Innovation received only massage and acupuncture at the various clinics, which
20 are services that Respondent knew are not covered by Medicare. Respondent also knew that the
21 massage and acupuncture performed at RSG, Rehab Dynamics, and Innovation were provided by
22 individuals not licensed to provide physical therapy. The unlicensed individuals were provided
23 by the same outside companies that referred Medicare beneficiaries to RSG, Rehab Dynamics,
24 and Innovation in exchange for kickbacks.

25 D. Respondent submitted and knew that others submitted false information
26 regarding physical therapy claims to Accubill Medical Billing Services. Specifically, Respondent
27 submitted claims for reimbursement of physical therapy services for beneficiaries despite the fact
28 that the beneficiaries received other non-reimbursable services, such as massage and acupuncture.

1 Respondent submitted the beneficiaries' names, identification numbers, and other patient
2 information, as well as the names and provider numbers of physical therapists who purportedly
3 performed physical therapy services for the beneficiaries. Respondent also prepared and
4 submitted falsified records that made it appear the beneficiaries had received physical therapy
5 treatments from physical therapists hired by RSG, Rehab Dynamics, and Innovation, with the
6 intent that Accubill would use the information to submit false and fraudulent claims to Medicare
7 on behalf of RSG, Rehab Dynamics, and Innovation. Specifically, Respondent and his co-
8 defendants prepared fraudulent documentation that was provided to Accubill falsely claiming that
9 physical therapists were providing medically necessary physical therapy treatment when, in fact,
10 unlicensed individuals were often providing acupuncture and massage services that are not
11 covered by Medicare. Respondent also prepared fraudulent documentation that was provided by
12 Accubill falsely claiming that the physical therapists had treated patients they had not actually
13 treated, including treatment purportedly occurring at times when the physical therapists were
14 working at other companies or were out of the country.

15 E. Between March 2008 and January 2014, Respondent offered and paid kickbacks
16 to Glory Rehab, Hong's Medical Management, E.K. Medical, and New Hope in exchange for the
17 referral of Medicare beneficiaries and for the clinics to provide services uncovered by Medicare,
18 including massages and acupuncture. Respondent and his co-defendants paid approximately fifty-
19 five percent of the Medicare payments received to owners or directors of these outside companies
20 for the referral of the beneficiaries who purportedly received physical therapy services.
21 Respondent knew it was illegal to offer or pay such payments in exchange for the referral of
22 patients for services paid by Medicare.

23 F. RSG, Rehab Dynamics, and Innovation submitted approximately
24 \$15,295,460.00 in false and fraudulent claims to Medicare between March 2008 and January
25 2014. As a result, Medicare paid approximately \$7,896,007.00 to satisfy these claims. During
26 this time period, RSG, Rehab Dynamics, and Innovation paid approximately \$3,000,000.00 to
27 outside companies for the referral of Medicare beneficiaries.

28 ///

1 2660, subdivision (j) of the Code, as well as California Code of Regulations, title 16, Section
2 1399.20.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct)**

5 24. By reason of the facts set forth in paragraphs 15 through 19 above, Respondent's
6 license is subject to disciplinary action under Section 2605, subdivision (d), and Section 2660,
7 subdivisions (a), (e) and (j) of the Code, as well as California Code of Regulations, title 16,
8 Section 1399.20 and California Code of Regulations, title 16, Section 1399.24, subdivision (d), in
9 that Respondent has been convicted of crimes that are substantially related to the qualifications,
10 functions or duties of a physical therapist assistant, failed to promptly notify the Board of his
11 criminal convictions within thirty days, and committed fraudulent, dishonest, or corrupt acts that
12 are substantially related to the qualifications, functions, or duties of a physical therapist assistant.

13 25. Respondent's acts and/or omissions as set forth in paragraphs 15 through 19 above,
14 whether proven individually, jointly, or in any combination thereof, constitute conviction of
15 crimes that are substantially related to the qualifications, functions or duties of a physical therapist
16 assistant, failure to promptly notify the Board of criminal convictions within thirty days, and
17 commission of fraudulent, dishonest, or corrupt acts that are substantially related to the
18 qualifications, functions, or duties of a physical therapist assistant pursuant to Section 2605,
19 subdivision (d), and Section 2660, subdivisions (a), (e) and (j) of the Code, as well as California
20 Code of Regulations, title 16, Section 1399.20 and California Code of Regulations, title 16,
21 Section 1399.24, subdivision (d).

22 **DISCIPLINE CONSIDERATIONS**

23 26. To determine the degree of discipline, if any, to be imposed on Respondent,
24 Complainant alleges that on or about January 13, 2015, in a prior action, the Physical Therapy
25 Board of California issued Citation Number 14-15-0066 to Respondent for his failure to notify the
26 Board of a change of address within thirty days in accordance with Section 136 of the Code, as
27 well as California Code of Regulations, title 16, section 1398.6, subdivisions (a) and (b).

28 ///

1 Respondent was ordered to pay a fine of one hundred dollars within thirty days to the Board. That
2 Citation is now final and is incorporated by reference as if fully set forth.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Physical Therapy Board of California issue a decision:

- 6 1. Revoking or suspending Physical Therapist Assistant License Number PTA 8938,
7 issued to Danniell E. Goyena, P.T.A.
- 8 2. Ordering Danniell E. Goyena, P.T.A. to pay the Physical Therapy Board of California
9 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 2661.5;
- 11 3. If placed on probation, ordering him to pay the costs of probation monitoring; and,
12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: May 5, 2017


15 JASON KAISER
16 Executive Officer
17 Physical Therapy Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant

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BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

Case #: 720 2017 000807

DANNIEL E. GOYENA
11662 Carmenita Road, Apt E
Whittier, CA 90605

Physical Therapy Assistant
License No. 8938

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Physical Therapy Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 24, 2017.

It is so ORDERED on June 23, 2017.



ALICIA RABENA-AMEN, VICE-PRESIDENT
FOR THE PHYSICAL THERAPY BOARD OF
CALIFORNIA, DEPARTMENT OF
CONSUMER AFFAIRS

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 NICHOLAS B.C. SCHULTZ
Deputy Attorney General
4 State Bar No. 302151
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 897-6564
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **PHYSICAL THERAPY BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 720-2017-000807

13 DANNIEL E. GOYENA, P.T.A.
11662 Carmenita Road, Apt. E
Whittier, California 90605

14 **STIPULATED SURRENDER OF**
15 **LICENSE AND ORDER**

16 Physical Therapist Assistant License No. 8938,
Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Jason Kaiser (Complainant) is the Executive Officer of the Physical Therapy Board of
21 California, Department of Consumer Affairs (Board). He brought this action solely in his official
22 capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of
23 California, by Nicholas B.C. Schultz, Deputy Attorney General.

24 2. Danniell E. Goyena, P.T.A. (Respondent) is representing himself in this proceeding
25 and has chosen not to exercise his right to be represented by counsel.

26 3. On or about February 19, 2009, the Board issued Physical Therapist Assistant License
27 Number 8938 to Respondent. The Physical Therapist Assistant License was in full force

28 ///

1 and effect at all times relevant to the charges brought herein and will expire on July 31, 2018,
2 unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 720-2017-000807 was filed before the Physical Therapy Board of
5 California and is currently pending against Respondent. The Accusation and all other statutorily
6 required documents were properly served on Respondent. A copy of Accusation No. 720-2017-
7 000807 is attached as Exhibit A and incorporated by reference.

8 **ADVISEMENT AND WAIVERS**

9 5. Respondent has carefully read and understands the charges and allegations in
10 Accusation No. 720-2017-000807. Respondent also has carefully read and understands the
11 effects of this Stipulated Surrender of License and Order.

12 6. Respondent is fully aware of his legal rights in this matter, including the right to a
13 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
14 his own expense; the right to confront and cross-examine the witnesses against him; the right to
15 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
16 the attendance of witnesses and the production of documents; the right to reconsideration and
17 court review of an adverse decision; and all other rights accorded by the California
18 Administrative Procedure Act and other applicable laws.

19 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
20 every right set forth above.

21 **CULPABILITY**

22 8. Respondent admits the truth of each and every charge and allegation in Accusation
23 No. 720-2017-000807, and he agrees that cause exists for discipline of his Physical Therapist
24 Assistant License. Respondent hereby surrenders his Physical Therapist Assistant License
25 Number 8938 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation, he enables the Board to issue
27 an order accepting the surrender of his Physical Therapist Assistant License without further
28 process.

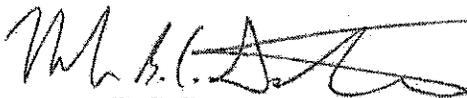
ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Physical Therapy Board of California of the Department of Consumer Affairs.

Dated: May 25, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General



NICHOLAS B.C. SCHULTZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 720-2017-000807

1 XAVIER BECERRA
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 NICHOLAS B.C. SCHULTZ
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5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 897-6564
Facsimile: (213) 897-9395
7 *Attorneys for Complainant*

8 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 720-2017-000807

12 DANNIEL E. GOYENA, P.T.A.
11662 Carmenita Road, Apt. E
13 Whittier, California 90605

A C C U S A T I O N

14 Physical Therapist Assistant License No. 8938,
15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Jason Kaiser (Complainant) brings this Accusation solely in his official capacity as
20 the Executive Officer of the Physical Therapy Board of California, Department of Consumer
21 Affairs (Board).

22 2. On or about February 19, 2009, the Physical Therapy Board of California issued
23 Physical Therapist Assistant License Number 8938 to Danniel E. Goyena, P.T.A. (Respondent).
24 The Physical Therapist Assistant License was in full force and effect at all times relevant to the
25 charges brought herein and will expire on July 31, 2018, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2602.1 of the Code states:

2 “Protection of the public shall be the highest priority for the Physical Therapy Board of
3 California in exercising its licensing, regulatory, and disciplinary functions. Whenever the
4 protection of the public is inconsistent with other interests sought to be promoted, the protection
5 of the public shall be paramount.”

6 5. Section 2605 of the Code states:

7 “The board shall do all of the following:

8 “(a) Evaluate the qualifications of applicants for licensure.

9 “(b) Provide for the examinations of physical therapists and physical therapist assistants and
10 establish a passing score for each examination.

11 “(c) Issue all licenses for the practice of physical therapy in California. Except as otherwise
12 required by the director pursuant to Section 164, the license issued by the board shall describe the
13 licensee as a ‘physical therapist’ or ‘physical therapist assistant’ licensed by the Physical Therapy
14 Board of California.

15 “(d) Suspend and revoke licenses and otherwise enforce the provisions of this chapter.

16 “...”

17 6. Section 2660 of the Code states:

18 “Unprofessional conduct constitutes grounds for citation, discipline, denial of a license, or
19 issuance of a probationary license. The board may, after the conduct of appropriate proceedings
20 under the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) of Part 1
21 of Division 3 of Title 2 of the Government Code), issue a citation, impose discipline, deny a
22 license, suspend for not more than 12 months, or revoke, or impose probationary conditions upon
23 any license issued under this chapter for unprofessional conduct that includes, in addition to other
24 provisions of this chapter, but is not limited to, the following:

25 “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the
26 violation of, or conspiring to violate any provision of this chapter, any regulations duly adopted
27 under this chapter, or the Medical Practice Act (Chapter 5 (commencing with Section 2000)).

28 “... ”

1 “(e) Conviction of a crime that substantially relates to the qualifications, functions, or duties
2 of a physical therapist or physical therapist assistant. The record of conviction or a certified copy
3 thereof shall be conclusive evidence of that conviction.

4 “... ”

5 “(j) The commission of any fraudulent, dishonest, or corrupt act that is substantially related
6 to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.

7 “... ”

8 7. Section 2661 of the Code states:

9 “A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to
10 be a conviction within the meaning of this article. The board may order discipline of the licensee
11 in accordance with Section 2660 or the board may take action as authorized in Section 2660.2 on
12 an application when the time for appeal has elapsed, or the judgment of conviction has been
13 affirmed on appeal or when an order granting probation is made suspending the imposition of
14 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that
15 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the
16 verdict of guilty, or dismissing the accusation, information, or indictment.

17 8. Section 490 of the Code states:

18 “(a) In addition to any other action that a board is permitted to take against a licensee, a
19 board may suspend or revoke a license on the ground that the licensee has been convicted of a
20 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
21 or profession for which the license was issued.

22 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
23 discipline a licensee for conviction of a crime that is independent of the authority granted under
24 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
25 of the business or profession for which the licensee’s license was issued.

26 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
27 conviction following a plea of nolo contendere. Any action that a board is permitted to take
28 following the establishment of a conviction may be taken when the time for appeal has elapsed, or

1 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
2 made suspending the imposition of sentence, irrespective of a subsequent order under the
3 provisions of Section 1203.4 of the Penal Code.

4 “(d) The Legislature hereby finds and declares that the application of this section has been
5 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
6 554, and that the holding in that case has placed a significant number of statutes and regulations
7 in question, resulting in potential harm to the consumers of California from licensees who have
8 been convicted of crimes. Therefore, the Legislature finds and declares that this section
9 establishes an independent basis for a board to impose discipline upon a licensee, and that the
10 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not
11 constitute a change to, but rather are declaratory of, existing law.”

12 9. Section 493 of the Code states:

13 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
14 the department pursuant to law to deny an application for a license or to suspend or revoke a
15 license or otherwise take disciplinary action against a person who holds a license, upon the
16 ground that the applicant or the licensee has been convicted of a crime substantially related to the
17 qualifications, functions, and duties of the licensee in question, the record of conviction of the
18 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
19 and the board may inquire into the circumstances surrounding the commission of the crime in
20 order to fix the degree of discipline or to determine if the conviction is substantially related to the
21 qualifications, functions, and duties of the licensee in question.

22 “. . .”

23 10. California Code of Regulations, title 16, section 1399.20, states:

24 “For the purposes of denial, suspension or revocation of a license, pursuant to Division 1.5
25 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially
26 related to the qualifications, functions or duties of a person holding a license under the Physical
27 Therapy Practice Act if to a substantial degree it evidences present or potential unfitness of a
28 person to perform the functions authorized by the license or approval in a manner consistent with

1 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
2 following:

3 “(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
4 violation of, or conspiring to violate any provision or term of the Physical Therapy Practice Act.

5 “(b) Conviction of a crime involving fiscal dishonesty arising out of or in connection with
6 the practice of physical therapy.

7 “(c) Violating or attempting to violate any provision or term of the Medical Practice Act.”

8 11. California Code of Regulations, title 16, section 1399.24, states:

9 “In addition to the conduct described in Section 2660 of the Code, ‘unprofessional conduct’
10 also includes but is not limited to the following:

11 “... ”

12 “(d) Failure to report to the board within 30 days any of the following:

13 (1) The bringing of an indictment or information charging a felony against the
14 licensee.

15 (2) The arrest of the licensee.

16 (3) The conviction of the licensee, including any verdict of guilty or no contest, of
17 any felony or misdemeanor.

18 “... ”

19 UNITED STATES CODE SECTIONS

20 12. United States Code, title 18, Section 1347 states:

21 “(a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or
22 artifice--

23 “(1) to defraud any health care benefit program; or

24 “(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any
25 of the money or property owned by, or under the custody or control of, any health care benefit
26 program,

27 “in connection with the delivery of or payment for health care benefits, items, or services,
28 shall be fined under this title or imprisoned not more than 10 years or both. If the violation results

1 in serious bodily injury (as defined in section 1365 of this title), such person shall be fined under
2 this title or imprisoned not more than 20 years, or both; and if the violation results in death, such
3 person shall be fined under this title, or imprisoned for any term of years or for life, or both.

4 “(b) With respect to violations of this section, a person need not have actual knowledge of
5 this section or specific intent to commit a violation of this section.”

6 13. United States Code, title 42, Section 1320a-7b, subdivision (b), subsection (2) states:

7 “Whoever knowingly and willfully offers or pays any remuneration (including any
8 kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any
9 person to induce such person--

10 “(A) to refer an individual to a person for the furnishing or arranging for the furnishing of
11 any item or service for which payment may be made in whole or in part under a Federal health
12 care program, or

13 “... ”

14 “shall be guilty of a felony and upon conviction thereof, shall be fined not more than
15 \$25,000 or imprisoned for not more than five years, or both.”

16 COST RECOVERY

17 14. Section 2661.5 of the Code states:

18 “(a) In any order issued in resolution of a disciplinary proceeding before the board, the
19 board may request the administrative law judge to direct any licensee found guilty of
20 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of
21 the investigation and prosecution of the case.

22 “(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in
23 any event be increased by the board. When the board does not adopt a proposed decision and
24 remands the case to an administrative law judge, the administrative law judge shall not increase
25 the amount of the assessed costs specified in the proposed decision.

26 “(c) When the payment directed in an order for payment of costs is not made by the
27 licensee, the board may enforce the order of payment by bringing an action in any appropriate

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1 court. This right of enforcement shall be in addition to any other rights the board may have as to
2 any licensee directed to pay costs.

3 “(d) In any judicial action for the recovery of costs, proof of the board’s decision shall be
4 conclusive proof of the validity of the order of payment and the terms for payment.

5 “(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the
6 license or approval of any person who has failed to pay all of the costs ordered under this section.

7 “(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or
8 reinstate for a maximum of one year the license or approval of any person who demonstrates
9 financial hardship and who enters into a formal agreement with the board to reimburse the board
10 within that one year period for those unpaid costs.

11 “(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund
12 as a reimbursement in either the fiscal year in which the costs are actually recovered or the
13 previous fiscal year, as the board may direct.”

14 FACTUAL SUMMARY

15 15. On December 17, 2015, in the case entitled the *United States of America v. Daniel*
16 *Goyena*, case number 2:15-cr-00576-DOC-2, in the United States District Court for the Central
17 District of California, Respondent entered a plea of guilty to Health Care Fraud, a felony, in
18 violation of United States Code, title 18, Section 1347, subdivision (a), subsection (2), and
19 subdivision (b). Respondent also entered a plea of guilty to Illegal Remunerations for Health
20 Care Referrals, a felony, in violation of United States Code, title 42, Section 1320a-7b,
21 subdivision (b), subsection (2).

22 16. Prior to his change of plea and sentencing, Respondent entered into and executed a
23 plea agreement with the United States Attorney’s Office wherein Respondent agreed to the factual
24 basis described in paragraph 18 below. On December 19, 2016, Respondent was sentenced based
25 on his guilty pleas to violating United States Code, title 18, Section 1347, subdivision (a),
26 subsection (2), and United States Code, title 42, Section 1320a-7b, subdivision (b), subsection (2).

27 The remaining charges filed against Respondent were dismissed pursuant to the plea agreement.
28 As part of his plea agreement with the United States Attorney’s Office, Respondent expressly

1 agreed to the revocation of his physical therapist assistant license resulting in his loss of all rights
2 and privileges as a licensed physical therapist assistant in California. Furthermore, Respondent
3 agreed that he would not apply for licensure or petition for reinstatement of his revoked physical
4 therapist assistant license for at least five years from the effective date of the license revocation.

5 17. In accordance with the plea agreement, Respondent was sentenced to fifty-one
6 months in the custody of the federal Bureau of Prisons with an additional order that Respondent
7 surrender himself to the Bureau of Prisons before 12:00 p.m. on January 3, 2017. Respondent
8 was also sentenced to three years of supervised release upon his release from imprisonment with
9 the following terms and conditions:

10 A. Payment of \$7,896,007.00 in restitution for joint and several liability of the
11 health care fraud scheme perpetrated by Respondent and his co-defendants;

12 B. A requirement that Respondent submit his person and property to search and
13 seizure at any time of the day or night by any law enforcement officer with or without a warrant
14 and with or without reasonable or probable cause;

15 C. A requirement that Respondent report to the United States Probation Office
16 within seventy-two hours of his release from custody;

17 D. A requirement that Respondent report in person directly to the Court within 21
18 days of his release from custody, at a date and time to be set by the United States Probation
19 Office, and thereafter report in person to the Court no more than eight times during his first year
20 of supervised release;

21 E. A requirement that Respondent not possess, have under his control, or have
22 access to any firearm, explosive device, or other dangerous weapon;

23 F. A requirement that Respondent comply with the rules and regulations of the
24 United States Probation Office, General Order 05-02, and General Order 01-05, including the
25 three special conditions delineated in General Order 01-05;

26 G. A requirement that Respondent not commit any violation of local, state or
27 federal law or ordinance;

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1 H. A requirement that Respondent pay the special assessment and restitution
2 amounts during the period of community supervision;

3 I. A requirement that Respondent comply with the immigration rules and
4 regulations of the United States, and if deported from this country, either voluntarily or
5 involuntarily, not reenter the United States illegally;

6 J. A requirement that Respondent cooperate in the collection of a DNA sample;

7 K. A requirement that Respondent not obtain or possess any driver's license,
8 Social Security number, birth certificate, passport or any other form of identification in any name,
9 other than the defendant's true legal name, and not use any name other than his true legal name
10 without prior written approval of the Probation Officer; and

11 L. A requirement that Respondent apply all monies received from income tax
12 refunds, lottery winnings, inheritance, judgments, and any anticipated or unexpected financial
13 gains to the outstanding court-ordered financial obligation.

14 18. The circumstances leading to Respondent's criminal convictions are as follows:

15 A. At various times between March 2008 and January 2014, Respondent owned
16 and operated RSG Rehab, Inc. (RSG), Rehab Dynamics, Inc. (Rehab Dynamics), and Innovation
17 Physical Therapy, Inc. (Innovation) with J.S., a co-defendant working as a licensed physical
18 therapist. RSG, Rehab Dynamics and Innovation were California corporations operating in Los
19 Angeles and Orange counties. Respondent enrolled RSG as a provider with Medicare,¹ a federal
20 health care benefit program that provides reimbursement for medically necessary services to
21 persons aged sixty-five years and older, as well as for certain disabled persons. Respondent's
22 application for enrollment as a Medicare provider enabled RSG, Rehab Dynamics, and Innovation
23 to submit reimbursement claims to Medicare. As part of the Medicare provider application,
24 Respondent certified that he would submit truthful and accurate claims and that he would know
25 and abide by all Medicare regulations.

26 ¹ Medicare is administered by the Centers for Medicare and Medicaid Services, a federal agency
27 under the United States Department of Health and Human Services. Individuals that qualify for Medicare
28 benefits are referred to as "beneficiaries," whereas physicians and other health care providers that are
reimbursed by Medicare are referred to as "providers."

1 B. Although Respondent initially believed that RSG would conduct business in a
2 lawful manner, he became aware that RSG, Rehab Dynamics and Innovation were being used to
3 commit fraud against Medicare through the submission of fraudulent claims for physical therapy
4 that often never occurred by his co-defendants. Respondent learned of this fraudulent activity
5 approximately one year after he opened the company with J.S. At that point, Respondent became
6 a full and willing participant in the scheme to defraud the Medicare health care benefit program as
7 to material matters in connection with the delivery of and payment for health care benefits, items
8 and services. Respondent also acted to obtained money from Medicare by means of material false
9 and fraudulent pretenses, misrepresentations, and concealment of material facts in connection
10 with the delivery of and payment for health care services.

11 C. Respondent, along with his co-defendants, paid illegal kickbacks out of
12 business bank accounts for RSG, Rehab Dynamics, and Innovation to several outside companies
13 in exchange for the referral of Medicare beneficiaries to RSG, Rehab Dynamics, and Innovation
14 for physical therapy that the patients often never received. Respondent and J.S. then hired
15 licensed physical therapists to provide initial evaluations and re-evaluations of the beneficiaries at
16 various clinics. However, Respondent knew that some of these evaluations did not take place and
17 that the physical therapists rarely provided treatment to the beneficiaries at any follow-up visits
18 pursuant to a physical therapy treatment plan. Many of the beneficiaries referred to RSG, Rehab
19 Dynamics, and Innovation received only massage and acupuncture at the various clinics, which
20 are services that Respondent knew are not covered by Medicare. Respondent also knew that the
21 massage and acupuncture performed at RSG, Rehab Dynamics, and Innovation were provided by
22 individuals not licensed to provide physical therapy. The unlicensed individuals were provided
23 by the same outside companies that referred Medicare beneficiaries to RSG, Rehab Dynamics,
24 and Innovation in exchange for kickbacks.

25 D. Respondent submitted and knew that others submitted false information
26 regarding physical therapy claims to Accubill Medical Billing Services. Specifically, Respondent
27 submitted claims for reimbursement of physical therapy services for beneficiaries despite the fact
28 that the beneficiaries received other non-reimbursable services, such as massage and acupuncture.

1 Respondent submitted the beneficiaries' names, identification numbers, and other patient
2 information, as well as the names and provider numbers of physical therapists who purportedly
3 performed physical therapy services for the beneficiaries. Respondent also prepared and
4 submitted falsified records that made it appear the beneficiaries had received physical therapy
5 treatments from physical therapists hired by RSG, Rehab Dynamics, and Innovation, with the
6 intent that Accubill would use the information to submit false and fraudulent claims to Medicare
7 on behalf of RSG, Rehab Dynamics, and Innovation. Specifically, Respondent and his co-
8 defendants prepared fraudulent documentation that was provided to Accubill falsely claiming that
9 physical therapists were providing medically necessary physical therapy treatment when, in fact,
10 unlicensed individuals were often providing acupuncture and massage services that are not
11 covered by Medicare. Respondent also prepared fraudulent documentation that was provided by
12 Accubill falsely claiming that the physical therapists had treated patients they had not actually
13 treated, including treatment purportedly occurring at times when the physical therapists were
14 working at other companies or were out of the country.

15 E. Between March 2008 and January 2014, Respondent offered and paid kickbacks
16 to Glory Rehab, Hong's Medical Management, E.K. Medical, and New Hope in exchange for the
17 referral of Medicare beneficiaries and for the clinics to provide services uncovered by Medicare,
18 including massages and acupuncture. Respondent and his co-defendants paid approximately fifty-
19 five percent of the Medicare payments received to owners or directors of these outside companies
20 for the referral of the beneficiaries who purportedly received physical therapy services.
21 Respondent knew it was illegal to offer or pay such payments in exchange for the referral of
22 patients for services paid by Medicare.

23 F. RSG, Rehab Dynamics, and Innovation submitted approximately
24 \$15,295,460.00 in false and fraudulent claims to Medicare between March 2008 and January
25 2014. As a result, Medicare paid approximately \$7,896,007.00 to satisfy these claims. During
26 this time period, RSG, Rehab Dynamics, and Innovation paid approximately \$3,000,000.00 to
27 outside companies for the referral of Medicare beneficiaries.

28 ///

1 2660, subdivision (j) of the Code, as well as California Code of Regulations, title 16, Section
2 1399.20.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct)**

5 24. By reason of the facts set forth in paragraphs 15 through 19 above, Respondent's
6 license is subject to disciplinary action under Section 2605, subdivision (d), and Section 2660,
7 subdivisions (a), (e) and (j) of the Code, as well as California Code of Regulations, title 16,
8 Section 1399.20 and California Code of Regulations, title 16, Section 1399.24, subdivision (d), in
9 that Respondent has been convicted of crimes that are substantially related to the qualifications,
10 functions or duties of a physical therapist assistant, failed to promptly notify the Board of his
11 criminal convictions within thirty days, and committed fraudulent, dishonest, or corrupt acts that
12 are substantially related to the qualifications, functions, or duties of a physical therapist assistant.

13 25. Respondent's acts and/or omissions as set forth in paragraphs 15 through 19 above,
14 whether proven individually, jointly, or in any combination thereof, constitute conviction of
15 crimes that are substantially related to the qualifications, functions or duties of a physical therapist
16 assistant, failure to promptly notify the Board of criminal convictions within thirty days, and
17 commission of fraudulent, dishonest, or corrupt acts that are substantially related to the
18 qualifications, functions, or duties of a physical therapist assistant pursuant to Section 2605,
19 subdivision (d), and Section 2660, subdivisions (a), (e) and (j) of the Code, as well as California
20 Code of Regulations, title 16, Section 1399.20 and California Code of Regulations, title 16,
21 Section 1399.24, subdivision (d).

22 **DISCIPLINE CONSIDERATIONS**

23 26. To determine the degree of discipline, if any, to be imposed on Respondent,
24 Complainant alleges that on or about January 13, 2015, in a prior action, the Physical Therapy
25 Board of California issued Citation Number 14-15-0066 to Respondent for his failure to notify the
26 Board of a change of address within thirty days in accordance with Section 136 of the Code, as
27 well as California Code of Regulations, title 16, section 1398.6, subdivisions (a) and (b).

28 ///

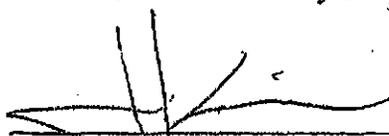
1 Respondent was ordered to pay a fine of one hundred dollars within thirty days to the Board. That
2 Citation is now final and is incorporated by reference as if fully set forth.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Physical Therapy Board of California issue a decision:

- 6 1. Revoking or suspending Physical Therapist Assistant License Number PTA 8938,
7 issued to Danniell E. Goyena, P.T.A.
8 2. Ordering Danniell E. Goyena, P.T.A. to pay the Physical Therapy Board of California
9 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
10 Professions Code section 2661.5;
11 3. If placed on probation, ordering him to pay the costs of probation monitoring; and,
12 4. Taking such other and further action as deemed necessary and proper.

13
14 DATED: May 5, 2017


15 JASON KAISER
16 Executive Officer
17 Physical Therapy Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant

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