


EFFECTIVE AS A FINAL ORDER

FILED 

DATE: 12/07/2023

NOV 13 2023

BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS

KS State Board of Healing Arts

In the Matter of)
) KSBHA Docket No. 24-HA00018
Steven W. Powell, M.D.)
Kansas License No. 04-42782)

SUMMARY ORDER

NOW ON THIS 13th day of November, 2023, this matter comes before Susan Gile, Executive Director, Kansas State Board of Healing Arts ("Board"), in summary proceedings under K.S.A. 77-537.

Under K.S.A 77-537 and K.S.A. 77-542, this Summary Order shall become effective as a Final Order, without further notice, if no written request for a hearing is made within 15 days of service. Upon review of the agency record and being duly advised in the premises, the following findings of fact, conclusions of law, and order are made for and on behalf of the Board:

Findings of Fact

1. Steven W. Powell, M.D. ("Licensee") is or has been entitled to be engaged in the practice of medicine and surgery in Kansas, having been granted an Active license on December 5, 2019. Licensee's current license designation is Cancelled – Failure to Renew, having let his license lapse on or about July 31, 2023.

2. Licensee's last mailing address known to the Board is: **CONFIDENTIAL**
CONFIDENTIAL . Licensee's last email address known to the Board is
CONFIDENTIAL .

Steven W. Powell, M.D.
License No. 04-42782
Summary Order

3. On April 26, 2023, an Information was filed in the United States District Court – District of New Hampshire charging Licensee with one felony count of Health Care Fraud in violation of 18 U.S.C. § 1347, in connection with a scheme in which Licensee was paid to approve false claims to Medicare for durable medical equipment. Per the Information, Medicare paid more than \$760,000 on these false claims. (Bd. Ex. 1 -- Information).

4. On April 26, 2023, Licensee, via a Plea Agreement, entered a plea of guilty to one count of Health Care Fraud in violation of 18 U.S.C. § 1347, which is a felony. In the plea agreement, Licensee agreed and stipulated that, if the matter had proceeded to trial, the United States government had sufficient evidence to prove its case against him beyond a reasonable doubt. (Bd. Ex. 2 – Plea Agreement).

5. On May 24, 2023, the trial court accepted Licensee’s guilty plea to one count of felony Health Care Fraud. (Bd. Ex. 3 – Docket – Minute Entry, p. 2).

Applicable Law

6. Under K.S.A. 65-2836(c) of the Kansas Healing Arts Act (K.S.A.65-2801, *et seq.*):

“The board shall revoke a licensee's license following conviction of a felony or substantially similar offense in another jurisdiction . . . unless a 2/3 majority of the board members present and voting determine by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.” [emphasis added]

7. Under K.S.A. 65-2836 of the Kansas Healing Arts Act:

“A licensee's license may be revoked, suspended or limited, or the licensee may be publicly censured or placed under probationary conditions . . . upon a finding of the existence of any of the following grounds:

* * *

(aa) The licensee has knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.”

Conclusions of Law

8. The Board has jurisdiction over Licensee as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

9. The Board finds Licensee violated K.S.A. 65-2836(c) of the Kansas Healing Arts Act, in that Licensee has been convicted of a felony in another jurisdiction.

10. The Board further finds under K.S.A. 65-2836(c), no sufficient evidence has been presented to establish both: (a) Licensee will not pose a threat to the public in such person’s capacity as a licensee; and (b) Licensee has been sufficiently rehabilitated to warrant the public trust.

11. The Board finds Licensee violated K.S.A. 65-2836(aa) of the Kansas Healing Arts Act, in that Licensee knowingly submitted any misleading, deceptive, untrue or fraudulent representation on a claim form, bill or statement.

12. Based on the facts and circumstances set forth herein, the use of summary proceedings in this matter is appropriate, in accordance with the provisions set forth in K.S.A. 77-537(a), in that the use of summary proceedings does not violate any provision of law and the protection of the public interest does not require the Board to give notice and opportunity to participate to non-parties.

Steven W. Powell, M.D.
License No. 04-42782
Summary Order

IT IS HEREBY ORDERED that Licensee's license to practice medicine and surgery in Kansas is **REVOKED** from the date this Order becomes effective as a Final Order.

PLEASE TAKE NOTICE that upon becoming effective as a Final Order, this document shall be deemed a public record and be reported to any reporting entities authorized to receive such disclosure.

Dated this 13th day of November, 2023.

**KANSAS STATE BOARD
OF HEALING ARTS**

Susan Gile

Susan Gile
Executive Director

Steven W. Powell, M.D.
License No. 04-42782
Summary Order

FINAL ORDER NOTICE OF RIGHTS

PLEASE TAKE NOTICE that this is a Final Order. A Final Order is effective upon service. A party to an agency proceeding may seek judicial review of a Final Order by filing a petition in the District Court as authorized by K.S.A. 77-601, *et seq.* Reconsideration of a Final Order is not a prerequisite to judicial review. A petition for judicial review is not timely unless filed within 30 days following service of the Final Order. A copy of any petition for judicial review must be served upon Susan Gile, Executive Director, Kansas Board of Healing Arts, 800 SW Jackson, Lower Level-Suite A, Topeka, KS 66612.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the above and foregoing **FINAL ORDER** by depositing the same in the United States Mail, postage prepaid, on this 7th day of December 2023, addressed and emailed to:

Steven W. Powell, M.D.
CONFIDENTIAL


And a copy was hand-delivered to:

Matthew Gaus, Deputy Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Licensing Administrator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Office of the General Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And the original was filed with the office of the Executive Director.


Staff Signature

BOARD EXHIBIT # 1

Information

In the matter of Steven W. Powell, MD
Docket No. TBD

FILED - USDC -NH
2023 APR 26 PM4:02

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

UNITED STATES OF AMERICA)	
)	23-cr-36-PB-01
v.)	
)	
STEVEN POWELL)	
<hr/>)	

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

GENERAL ALLEGATIONS

At all times relevant to this Information:

The Medicare Program

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

2. Medicare was a “health care benefit program,” as defined by Title 18, United States Code, Section 24(b), and a “Federal health care program,” as defined by Title 42, United States Code, Section 1320a-7b(f).

3. Medicare was divided into four parts and covered specific benefits, items, and services: hospital insurance (Part A), medical insurance (Part B), Medicare Advantage (Part C), and prescription drug benefits (Part D).

4. Specifically, Medicare Part B covered medically necessary physician office services and outpatient care, including the ordering of durable medical equipment, prosthetics,

orthotics, and supplies (collectively, “DME”) that were ordered by licensed medical doctors or other qualified health care providers.

5. Physicians, clinics, laboratories, and other health care providers who provided services to Medicare beneficiaries were able to apply for and obtain a “provider number.” A health care provider who received a Medicare provider number was able to file claims with Medicare to obtain reimbursement for services provided to beneficiaries.

6. To receive Medicare reimbursement, providers had to complete an application and execute a written provider agreement, known as CMS Form 855. The application contained certifications that the provider agreed to abide by Medicare laws and regulations, and that the provider “[would] not knowingly present or cause to be presented a false or fraudulent claim for payment by Medicare, and [would] not submit claims with deliberate ignorance or reckless disregard of their truth or falsity.” Medicare providers were given access to Medicare manuals and service bulletins describing procedures, rules, and regulations.

7. CMS contracted with various companies to receive, adjudicate, process, and pay Part B claims, including claims for DME. SafeGuard Services LLC was the Unified Program Integrity Contractor for the state of New Hampshire, and as such, it was the Medicare contractor charged with investigating fraud, waste, and abuse.

Durable Medical Equipment

8. Medicare covered an individual’s access to DME, such as off-the-shelf (“OTS”) ankle braces, knee braces, back braces, elbow braces, wrist braces, and hand braces (collectively, “braces”). OTS braces required minimal self-adjustment for appropriate use and did not require expertise in trimming, bending, molding, assembling, or customizing to fit the individual.

9. A claim for DME submitted to Medicare qualified for reimbursement only if it was medically necessary for the treatment or diagnosis of the beneficiary's illness or injury and prescribed by a licensed physician. In claims submitted to Medicare for the reimbursement of provided DME, providers were required to set forth, among other information, the beneficiary's name and unique Medicare identification number, the equipment provided to the beneficiary, the date the equipment was provided, the cost of the equipment, and the name and provider number of the provider who prescribed or ordered the equipment. To be reimbursed from Medicare for DME, the claim had to be reasonable, medically necessary, documented, and actually provided as represented to Medicare.

10. Medicare claims were required to be properly documented in accordance with Medicare rules and regulations. For certain DME products, Medicare promulgated additional requirements that a DME order was required to meet for an order to be considered "reasonable and necessary." For example, for OTS knee braces billed to Medicare under the Healthcare Common Procedure Coding System ("HCPCS") Code L1851, an order would be deemed "not reasonable and necessary," and reimbursement would be denied unless the ordering/referring physician documented the beneficiary's knee instability using an objective description of joint laxity determined through an examination of the beneficiary.

Telemedicine

11. Telemedicine provided a means of connecting patients to doctors and other health care providers by using telecommunications technology to interact with a patient.

12. Telemedicine companies provided telemedicine services to individuals by hiring doctors and other health care providers. To generate revenue, telemedicine companies typically

either billed insurance or received payment from patients who used the services of the telemedicine company.

13. Medicare Part B covered expenses for specified telemedicine services if certain requirements were met. These requirements included, but were not limited to, that: (a) the beneficiary was located in a rural or health professional shortage area; (b) services were delivered via a two-way, real-time interactive audio and video telecommunications system; and (c) the beneficiary was at a practitioner's office or a specified medical facility – not at a beneficiary's home – during the telemedicine consultation with a remote practitioner.

The Defendant

14. Defendant STEVEN POWELL, a former resident of **CONFIDENTIAL**, and current resident **CONFIDENTIAL**, was a physician licensed to practice in New Hampshire and elsewhere. STEVEN POWELL was a Medicare provider and was required to abide by all Medicare rules and regulations. STEVEN POWELL worked as an independent contractor for purported telemedicine staffing companies such as Company 1, which would connect medical practitioners with patients, as well as purported telemedicine companies such as Company 2, described below.

Related Individuals and Entities

15. Company 1, a company known to the United States of America, was a Massachusetts company that operated as a purported telemedicine staffing company that did business throughout the United States.

16. Company 2, a company known to the United States of America, was a Florida company that operated as a purported telemedicine company that did business throughout the United States.

17. J.K. was a Medicare beneficiary residing in the District of Rhode Island.

COUNT 1
18 U.S.C. §§ 1347 and 2
(Health Care Fraud)

18. Paragraphs 1 through 17 of the General Allegations section of this Information are re-alleged and incorporated by reference as though fully set forth herein.

19. From in or around December 2018, and continuing through in or around February 2019, the exact dates being unknown to the United States of America, in the District of New Hampshire, and elsewhere, the defendant, STEVEN POWELL, in connection with the delivery of, and payment for, health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud Medicare and other health care benefit programs affecting commerce, as defined in Title 18, United States Code, Section 24(b), and to obtain by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit program, in connection with the delivery of, and payment for, health care benefits, items, and services.

Purpose of the Scheme and Artifice

20. It was a purpose of the scheme and artifice for STEVEN POWELL and his accomplices to unlawfully enrich themselves by: (a) submitting and causing the submission of false and fraudulent claims to Medicare that were (i) medically unnecessary, (ii) not eligible for Medicare reimbursement, and (iii) not provided as represented; (b) concealing the submission of false and fraudulent claims and the receipt and transfer of the proceeds from the fraud; and (c) diverting proceeds of the fraud for their personal use and benefit.

The Scheme and Artifice

21. On or about October 22, 2014, STEVEN POWELL certified to Medicare that he would comply with all Medicare rules and regulations. For all times during the charged period, STEVEN POWELL was a Medicare provider and was required to abide by all Medicare rules and regulations and federal laws, including that he would not knowingly present or cause to be presented a false and fraudulent claim for payment by Medicare.

22. Thereafter, STEVEN POWELL devised and engaged in a scheme to submit false and fraudulent claims to Medicare for: (a) DME that was not medically necessary; and (b) DME that was not eligible for reimbursement from Medicare.

23. STEVEN POWELL agreed with others at Company 1 and Company 2 to sign brace orders for Medicare beneficiaries in exchange for approximately \$15 per order reviewed.

24. STEVEN POWELL received pre-filled unsigned prescriptions for DME for Medicare beneficiaries, from accomplices working on behalf of Company 1 and Company 2, for him to electronically sign.

25. STEVEN POWELL ordered braces that were medically unnecessary, for Medicare beneficiaries with whom he lacked a pre-existing medical practitioner-patient relationship, without a physical examination, and/or without communicating substantively with the Medicare beneficiary.

26. STEVEN POWELL and others falsified, fabricated, altered, and caused the falsification, fabrication, and alteration of patient files, brace orders, and other records, all to support claims to Medicare for braces that were medically unnecessary, ineligible for Medicare reimbursement, and not provided as represented.

27. Specifically, STEVEN POWELL: (a) falsely stated that he determined, through his assessment of the Medicare beneficiary, that a particular course of treatment, including the prescription of braces, was appropriate and medically necessary; (b) falsely attested that he was treating the Medicare beneficiary; (c) falsely attested that he had a valid prescriber-patient relationship with the Medicare beneficiary; and (d) concealed the fact that he never saw the beneficiaries face-to-face, and that he did not have any communication with most of the beneficiaries.

28. While in the District of New Hampshire, STEVEN POWELL electronically submitted orders for DME on behalf of Medicare beneficiaries, which caused DME suppliers to ship medically unnecessary DME to beneficiaries and to submit claims to Medicare for reimbursement.

29. From in or around December 2018, through in or around February 2019, STEVEN POWELL and others submitted and caused the submission of more than \$1,900,000 in false and fraudulent claims to Medicare for DME that was ineligible for Medicare reimbursement because the DME was not medically necessary, not eligible for reimbursement, and not provided as represented. Medicare paid more than \$760,000 on these claims.

Acts in Execution of the Scheme and Artifice


30. On or about the date specified below, in the District of New Hampshire, and elsewhere, the defendant, STEVEN POWELL, aided and abetted by, and aiding and abetting, others known and unknown to the United States of America, submitted and caused to be submitted the following false and fraudulent claim to Medicare for DME that was, among other things, not legitimately prescribed, not needed, and not used, and in execution of the scheme as described in paragraphs 21 to 29:

Count	Medicare Beneficiary	Approx. Date of Claim	Claim Number	Description of Devices Billed; HCPCS Code	Approx. Amount Billed
1	J.K.	12/28/18	CONFIDENTIAL	Left knee brace (L1851); Suspension sleeve (L2397)	\$1,173.27

In violation of Title 18, United States Code, Sections 1347 and 2.

JANE E. YOUNG
United States Attorney

Date: 4/24/2023

By: 
Jay McCormack
John Kennedy
Assistant United States Attorneys

BOARD EXHIBIT # 2

Plea Agreement

In the matter of Steven W. Powell, MD
Docket No. TBD

FILED - USDC -NH
2023 APR 26 PM3:59

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

UNITED STATES OF AMERICA)	
)	23-cr-36-PB-01
v.)	
)	
STEVEN POWELL)	
_____)	

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States of America by its attorney, Jane E. Young, United States Attorney for the District of New Hampshire, and the defendant, Steven Powell, and the defendant's attorneys, Michael Khouri, Esq., pro hac counsel, and Donald Kennedy, Esq., local counsel, enter into the following Plea Agreement:

1. The Plea and The Offense.

The defendant agrees to plead guilty to Count One of the Information, charging him with health care fraud, in violation of 18 U.S.C. § 1347.

In exchange for the defendant's guilty plea, the United States agrees to the sentencing stipulation(s) identified in Section 6 of this agreement.

2. The Statute and Elements of the Offense.

Title 18, United States Code, Section 1347 prohibits, in pertinent part:

Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice to defraud any health care benefit program.

The defendant understands that the offense has the following elements, each of which the United States would be required to prove beyond a reasonable doubt at trial:

First, a scheme, substantially as charged in the information, to defraud a health care

benefit program, to wit, Medicare;

Second, the defendant's knowing and willful participation in this scheme with the intent to defraud; and

Third, that the scheme was in connection with the delivery of, or payment for, health care benefits, items, or services.

Pattern Criminal Jury Instructions for the District Courts of the First Circuit, § 4.18.1347

(2015), available at

<https://www.ca1.uscourts.gov/sites/ca1/files/citations/Pattern%20Jury%20Instructions.pdf>.

3. Offense Conduct.

The defendant stipulates and agrees that if this case proceeded to trial, the government would introduce evidence of the following facts, which would prove the elements of the offense beyond a reasonable doubt:

At all times relevant to the charged conduct, Steven Powell was a licensed medical doctor and enrolled Medicare provider and was required to abide by all Medicare rules and regulations and federal laws, including that he would not knowingly present or cause to be presented a false and fraudulent claim for payment by Medicare. Medicare was a federal health care program providing benefits to persons who were 65 years of age or older or disabled. Medicare is a "health care benefit program" of the United States as defined in 18 U.S.C. § 24. Furthermore, Medicare is a health care benefit program affecting interstate commerce.

Medicare programs covering different types of benefits were separated into different program "parts." "Part B" of Medicare covered, among other things, durable medical equipment ("DME"), including certain orthotic devices, such as knee, wrist, back, and shoulder braces

(collectively, "braces") that were medically necessary. Medicare prohibited the submission of claims that were procured through the payment of illegal kickbacks and bribes.

Company 1 was a Massachusetts company that operated as a purported telemedicine staffing company that did business throughout the United States. In or around October 2017, Powell became employed with Company 1.

Company 2 was a Florida company that operated as a purported telemedicine company that did business throughout the United States. In or around December 2018, through an introduction facilitated by employees of Company 1, Powell became employed with Company 2.

Powell accepted kickbacks from Company 1 in exchange for signing doctors' orders that were provided to him electronically via DocuSign, a service allowing individuals to electronically sign documents, from Company 2 for medically unnecessary DME, including knee, wrist, back, and shoulder braces. The doctors' orders consisted of pre-filled, unsigned prescriptions for DME. Ultimately, DME companies used the doctors' orders electronically signed by Powell to submit false claims to Medicare for DME that were (a) not medically necessary; and (b) not eligible for reimbursement from Medicare.

Powell signed the doctors' orders without a physical examination and without speaking to the patients for whom he was prescribing DME, and regardless of medical necessity. Company 1 paid Powell approximately \$15 per "consult" performed for Company 2, with the expectation that a "consult" would result in a signed doctors' order. A "consult" generally consisted of reviewing the patient information provided to him electronically via DocuSign from Company 2. Most of the time, Powell would electronically sign the doctors' orders without even reviewing the patient information.

The doctors' orders that Powell signed contained false statements, including that Powell determined, through his assessment of the Medicare beneficiary, that a particular course of treatment, including the prescription of braces, was appropriate and medically necessary, that he was treating the Medicare beneficiary, had a valid prescriber-physician relationship with the Medicare beneficiaries, when, in fact, Powell did not did not conduct any assessments of these Medicare beneficiaries, the braces lacked medical necessity, and he did not have a valid prescriber-physician relationship with the Medicare beneficiaries.

For example, on December 14, 2018, Powell received pre-filled, unsigned prescriptions via DocuSign from Company 2 for a left knee brace, left suspension sleeve, right shoulder brace and back brace for Medicare beneficiary J.K., a resident of Rhode Island. Without reviewing the orders, Powell electronically signed the orders, and they were transmitted electronically to Company 2. Powell was in the District of New Hampshire when he electronically signed the orders. Medicare data reflects that on December 28, 2018, Powell was the referring provider on Medicare claim number **CONFIDENTIAL** for a left knee brace and suspension sleeve for J.K. Medicare was billed approximately \$1,173.27 in connection with that claim.

The doctors' orders that Powell electronically signed and returned to Company 2 were used to fraudulently bill Medicare at least \$1,908,702.65 for medically unnecessary DME. Medicare paid DME providers approximately \$761,202.75 in connection with those claims.

4. Penalties, Special Assessment and Restitution.

The defendant understands that the penalties for the offense are:

- A. A maximum prison term of 10 years per count [18 U.S.C. § 1347];
- B. A maximum fine of \$250,000 or twice the pecuniary gain [18 U.S.C. § 3571];

- C. A maximum term of supervised release of three years per count [18 U.S.C. § 3583(b)(2)]. The defendant understands that the defendant's failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring the defendant to serve in prison all or part of the term of supervised release, with no credit for time already spent on supervised release; and
- D. A mandatory special assessment of \$100, at or before the time of sentencing [18 U.S.C. § 3013(a)(2)(A)].
- E. In addition to the other penalties provided by law, the Court may order the defendant to pay restitution to the victim(s) of the offense (18 U.S.C. § 3663 or § 3663A).

To facilitate the payment and collection of any restitution that may be ordered, the defendant agrees that, upon request, he will provide the United States with a financial disclosure statement and supporting financial documentation.

The defendant further agrees that, if restitution is ordered, it shall be due and payable immediately after the judgment is entered and is subject to immediate enforcement, in full, by the United States. If the Court imposes a schedule of payments, the defendant agrees that the schedule of payments is a schedule of the minimum payment due, and that the payment schedule does not prohibit or limit the methods by which the United States may immediately enforce the judgment in full, including, but not limited to, the Treasury Offset Program.

5. Sentencing and Application of the Sentencing Guidelines.

The defendant understands that the Sentencing Reform Act of 1984 applies in this case and that the Court is required to consider the United States Sentencing Guidelines as advisory guidelines. The defendant further understands that he has no right to withdraw from this Plea Agreement if the applicable advisory guideline range or his sentence is other than he anticipated.

The defendant also understands that the United States and the United States Probation Office shall:

- A. Advise the Court of any additional, relevant facts that are presently known or may subsequently come to their attention;
- B. Respond to questions from the Court;

- C. Correct any inaccuracies in the pre-sentence report;
- D. Respond to any statements made by him or his counsel to a probation officer or to the Court.

The defendant understands that the United States and the Probation Office may address the Court with respect to an appropriate sentence to be imposed in this case.

The defendant acknowledges that any estimate of the probable sentence or the probable sentencing range under the advisory Sentencing Guidelines that he may have received from any source is only a prediction and not a promise as to the actual sentencing range under the advisory Sentencing Guidelines that the Court will adopt.

6. Sentencing Stipulations and Agreements.

Pursuant to Fed. R. Crim. 11(c)(1)(B), the United States and the defendant stipulate and agree to the following:

- (a) The parties will recommend the following sentencing guideline applications:

Base Offense Level	6	2B1.1(a)(2)
Loss Amount more than \$1.5M less than \$3.5M	+16	2B1.1(b)(1)(I)
More than \$1M loss to Government health care program	+2	2B1.1(b)(7)(B)(i)
Abuse of Trust	+2	3B1.3

- (b) The parties agree that the loss amount under U.S.S.G. § 2B1.1 is \$1,908,702.65.
- (c) The United States will recommend that the defendant be sentenced to a term of 46 months' imprisonment, representing the low-end of the parties'

agreed upon guidelines range;

- (d) The parties have agreed that the defendant shall pay restitution in the amount of \$761,202.75, payable to the United States Department of Health and Human Services.

The defendant understands that the Court is not bound by the foregoing agreements and, with the aid of a pre-sentence report, the court will determine the facts relevant to sentencing. The defendant also understands that if the Court does not accept any or all of those agreements, such rejection by the Court will not be a basis for the defendant to withdraw his guilty plea.

The United States and the defendant are free to make recommendations with respect to the terms of imprisonment, fines, conditions of probation or supervised release, and any other penalties, requirements, and conditions of sentencing as each party may deem lawful and appropriate, unless such recommendations are inconsistent with the terms of this Plea Agreement.

7. Acceptance of Responsibility.

The United States agrees that it will not oppose an appropriate reduction in the defendant's adjusted offense level, under the advisory Sentencing Guidelines, based upon the defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for the offense. The United States, however, may oppose any adjustment for acceptance of responsibility if the defendant:

- A. Fails to admit a complete factual basis for the plea at the time he is sentenced or at any other time;
- B. Challenges the United States' offer of proof at any time after the plea is entered;

- C. Denies involvement in the offense;
- D. Gives conflicting statements about that involvement or is untruthful with the Court, the United States or the Probation Office;
- E. Fails to give complete and accurate information about his financial status to the Probation Office;
- F. Obstructs or attempts to obstruct justice, prior to sentencing;
- G. Has engaged in conduct prior to signing this Plea Agreement which reasonably could be viewed as obstruction or an attempt to obstruct justice, and has failed to fully disclose such conduct to the United States prior to signing this Plea Agreement;
- H. Fails to appear in court as required;
- I. After signing this Plea Agreement, engages in additional criminal conduct;
or
- J. Attempts to withdraw his guilty plea.

The defendant understands and agrees that he may not withdraw his guilty plea if, for any of the reasons listed above, the United States does not recommend that he receive a reduction in his sentence for acceptance of responsibility.

The defendant also understands and agrees that the Court is not required to reduce the offense level if it finds that he has not accepted responsibility.

If the defendant's offense level is sixteen or greater, and he has assisted the United States in the investigation or prosecution of his own misconduct by timely notifying the United States of his intention to enter a plea of guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources efficiently, the United States will move, at or before sentencing, to decrease the defendant's base offense level by an additional one level pursuant to U.S.S.G. § 3E1.1(b).

8. Waiver of Trial Rights and Consequences of Plea.

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him. The defendant also understands that he has the right:

- A. To plead not guilty or to maintain that plea if it has already been made;
- B. To be tried by a jury and, at that trial, to the assistance of counsel;
- C. To confront and cross-examine witnesses;
- D. Not to be compelled to provide testimony that may incriminate him; and
- E. To compulsory process for the attendance of witnesses to testify in his defense.

The defendant understands and agrees that by pleading guilty he waives and gives up the foregoing rights and that upon the Court's acceptance of his guilty plea, he will not be entitled to a trial.

The defendant understands that if he pleads guilty, the Court may ask him questions about the offense, and if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers will be used against him in a prosecution for perjury or making false statements.

9. Acknowledgment of Guilt: Voluntariness of Plea.

The defendant understands and acknowledges that he:

- A. Is entering into this Plea Agreement and is pleading guilty freely and voluntarily because he is guilty;
- B. Is entering into this Plea Agreement without reliance upon any promise or benefit of any kind except as set forth in this Plea Agreement or revealed to the Court;
- C. Is entering into this Plea Agreement without threats, force, intimidation, or coercion;

- D. Understands the nature of the offense to which he is pleading guilty, including the penalties provided by law; and
- E. Is completely satisfied with the representation and advice received from his undersigned attorney.

10. Scope of Agreement

The defendant acknowledges and understands that this Plea Agreement binds only the undersigned parties and cannot bind any other non-party federal, state or local authority. The defendant also acknowledges that no representations have been made to him about any civil or administrative consequences that may result from his guilty plea. The defendant understands such matters are solely within the discretion of the specific non-party government agency involved. The defendant further acknowledges that this Plea Agreement has been reached without regard to any civil tax matters that may be pending or which may arise involving the defendant.

11. Collateral Consequences

The defendant understands that as a consequence of his guilty plea he will be adjudicated guilty and may thereby be deprived of certain federal benefits and certain rights, such as the right to vote, to hold public office, to serve on a jury, or to possess firearms.

The defendant understands that, if he is not a citizen of the United States, his guilty plea to the charged offense will likely result in him being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible. The defendant also understands that if he is a naturalized citizen, his guilty plea may result in ending his naturalization, which would likely subject him to immigration proceedings and possible removal from the United States. The defendant understands that the immigration consequences

of this plea will be imposed in a separate proceeding before the immigration authorities. The defendant wants and agrees to plead guilty to the charged offense regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. The defendant understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

The defendant understands and acknowledges that as a result of this plea, the defendant will be excluded from Medicare, Medicaid, and all Federal health care programs. The defendant agrees to complete and execute all necessary documents provided by any department or agency of the federal government, including but not limited to the United States Department of Health and Human Services, to effectuate this exclusion within 60 days of receiving the documents. This exclusion will not affect the defendant's right to apply for and receive benefits as a beneficiary under any Federal health care program, including Medicare and Medicaid.

12. Satisfaction of Federal Criminal Liability: Breach.

The defendant's guilty plea, if accepted by the Court, will satisfy his federal criminal liability in the District of New Hampshire arising from his participation in the conduct that forms the basis of the indictment in this case.

The defendant understands and agrees that, if after entering this Agreement, he fails specifically to perform or fulfill completely each one of his obligations under this Agreement, fails to appear for sentencing, or engages in any criminal activity prior to sentencing, he will

have breached this Agreement.

If the United States, in its sole discretion, and acting in good faith, determines that the defendant committed or attempted to commit any further crimes, failed to appear for sentencing, or has otherwise violated any provision of this Agreement, the United States will be released from its obligations under this Agreement, including, but not limited to, any agreement it made to dismiss charges, forbear prosecution of other crimes, or recommend a specific sentence or a sentence within a specified range. The defendant also understands that he may not use his breach of this Agreement as a reason to withdraw his guilty plea or as a basis to be released from his guilty plea.

13. Waivers.

A. Appeal.

The defendant understands that he has the right to challenge his guilty plea and/or sentence on direct appeal. By entering into this Plea Agreement the defendant knowingly and voluntarily waives his right to challenge on direct appeal:

1. His guilty plea and any other aspect of his conviction, including, but not limited to, adverse rulings on pretrial suppression motion(s) or any other adverse disposition of pretrial motions or issues, or claims challenging the constitutionality of the statute of conviction; and
2. The sentence imposed by the Court if it is within, or lower than, the guideline range determined by the Court..

The defendant's waiver of his rights does not operate to waive an appeal based upon new legal principles enunciated in Supreme Court or First Circuit case law after the date of this Plea Agreement that have retroactive effect; or on the ground of ineffective assistance of counsel.

B. Collateral Review.

The defendant understands that he may have the right to challenge his guilty plea and/or sentence on collateral review, e.g., a motion pursuant to 28 U.S.C. §§ 2241 or 2255. By entering into this Plea Agreement, the defendant knowingly and voluntarily waives his right to collaterally challenge:

1. His guilty plea, except as provided below, and any other aspect of his conviction, including, but not limited to, adverse rulings on pretrial suppression motion(s) or any other adverse disposition of pretrial motions or issues, or claims challenging the constitutionality of the statute of conviction; and
2. The sentence imposed by the Court if it is within, or lower than, the guideline range determined by the Court..

The defendant's waiver of his right to collateral review does not operate to waive a collateral challenge to his guilty plea on the ground that it was involuntary or unknowing, or on the ground of ineffective assistance of counsel. The defendant's waiver of his right to collateral review also does not operate to waive a collateral challenge based on new legal principles enunciated by in Supreme Court or First Circuit case law decided after the date of this Plea Agreement that have retroactive effect.

C. Freedom of Information and Privacy Acts.

The defendant hereby waives all rights, whether asserted directly or through a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of the case(s) underlying this Plea Agreement, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. §552, or the Privacy Act of 1974, 5 U.S.C. §522a.

D. Appeal by the Government.

Nothing in this Plea Agreement shall operate to waive the rights or obligations of the

Government pursuant 18 U.S.C. § 3742(b) to pursue an appeal as authorized by law.

14. No Other Promises.

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement or revealed to the Court, and none will be entered into unless set forth in writing, signed by all parties, and submitted to the Court.

15. Final Binding Agreement.


None of the terms of this Plea Agreement shall be binding on the United States until this Plea Agreement is signed by the defendant and the defendant's attorney and until it is signed by the United States Attorney for the District of New Hampshire, or an Assistant United States Attorney.

16. Agreement Provisions Not Severable.

The United States and the defendant understand and agree that if any provision of this Plea Agreement is deemed invalid or unenforceable, then the entire Plea Agreement is null and void and no part of it may be enforced.

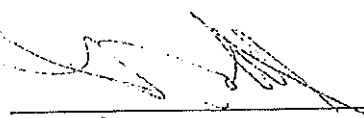
JANE E. YOUNG
United States Attorney

Date: 4/24/2023

By: 
John Kennedy
NH Bar No. 19557
Assistant United States Attorney
53 Pleasant St., 4th Floor
Concord, NH 03301
John.kennedy@usdoj.gov


The defendant, Steven Powell, certifies that he has read this 15-page Plea Agreement and that he fully understands and accepts its terms.

Date: 4/22/2023

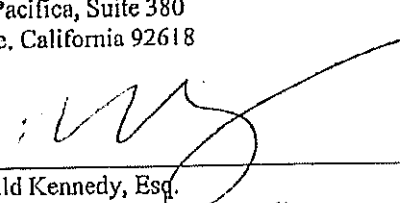

Steven Powell, Defendant

I have read and explained this 15-page Plea Agreement to the defendant, and he has advised me that he understands and accepts its terms.

Date: April 22, 2023


Michael Khouri, Esq.
Pro Hac Counsel for Steven Powell
Khouri Law Firm APC
101 Pacifica, Suite 380
Irvine, California 92618

Date: 4/24/2023


Donald Kennedy, Esq.
Local Counsel for Steven Powell
Law Office of Donald Kennedy
908 Hanover Street #1
Manchester, NH 03104

BOARD EXHIBIT # 3

Docket Minute Entry

In the matter of Steven W. Powell, MD
Docket No. TBD

**U.S. District Court
District of New Hampshire (Concord)
CRIMINAL DOCKET FOR CASE #: 1:23-cr-00036-PB-1**

Case title: USA v. Powell

Date Filed: 04/26/2023

Assigned to: Judge Paul J. Barbadoro

Defendant (1)

Steven Powell

represented by **Donald A. Kennedy**
Kennedy Law Office
908 Hanover St, Unit 1
Manchester, NH 03104
603 668-8787
Email: dkennedy@kennedylawnh.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Retained

Michael J Khouri
Khouri Law Firm, APC
101 Pacifica
Suite 380
Irvine, CA 92618
949-336-2433
Fax: 949-387-0044
Email: mkhouri@khourilaw.com
PRO HAC VICE
ATTORNEY TO BE NOTICED
Designation: Retained

Pending Counts

18 U.S.C. §§ 1347 and 2- Health Care Fraud
(1)

Disposition

Highest Offense Level (Opening)

Felony

Disposition

Terminated Counts

None

Highest Offense Level (Terminated)

None

Complaints

None

Disposition

Plaintiff

USA

represented by **John J Kennedy**
DOJ-USAO
53 Pleasant Street
Ste 4th Floor

Concord, NH 03301
 603-225-1552
 Email: john.kennedy2@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
 Designation: Assistant US Attorney

John J. McCormack , IV
 US Attorney's Office (NH)
 James C Cleveland Federal Bldg
 53 Pleasant St, 4th Flr
 Concord, NH 03301
 603-573-5322
 Email: jay.mccormack@usdoj.gov
ATTORNEY TO BE NOTICED
 Designation: Assistant US Attorney

Date Filed	#	Docket Text
07/17/2023		ENDORSED ORDER granting <u>11</u> Assented to MOTION to Continue sentencing for 120 days as to Steven Powell (1). <i>Text of Order: Granted. So Ordered by Judge Paul J. Barbadoro. Sentencing set for 1/8/2024 02:00 PM before Judge Paul J. Barbadoro. The court has allotted 1 hour for the hearing. Please contact the court immediately if you anticipate the hearing will exceed the allotted time. Any motion seeking a departure or variance, as well as any sentencing memorandum, shall be filed 10 days prior to the sentencing date. Any response shall be filed 4 days prior to sentencing date.</i> (jwb) (Entered: 07/17/2023)
07/13/2023	<u>11</u>	Assented to MOTION to Continue sentencing for 120 days by Steven Powell. (Kennedy, Donald) (Entered: 07/13/2023)
05/24/2023	<u>10</u>	COLLATERAL ITEM RECEIPT no. 650 for Passport issued to Steven Powell.(js) (Entered: 05/24/2023)
05/24/2023		NOTICE OF HEARING as to Steven Powell. Sentencing set for 8/30/2023 10:00 AM before Judge Paul J. Barbadoro. <i>The court has allotted 1 hour for the hearing. Please contact the court immediately if you anticipate the hearing will exceed the allotted time. Any motion seeking a departure or variance, as well as any sentencing memorandum, shall be filed 10 days prior to the sentencing date. Any response shall be filed 4 days prior to sentencing date. Defense counsel should advise the defendant that any monetary portion of the sentence will be payable only by cash, bank check, money order or debit or credit card via pay.gov (after obtaining a transaction ID from the probation officer.) No card payments can be made at the counter.</i> (js) (Entered: 05/24/2023)
05/24/2023	<u>9</u>	ORDER Setting Conditions of Release as to Steven Powell. So Ordered by Judge Paul J. Barbadoro. (js) (Entered: 05/24/2023)
05/24/2023		Minute Entry for proceedings held before Judge Paul J. Barbadoro: WAIVER OF INDICTMENT/PLEA TO INFORMATION HEARING held on 5/24/2023. Court accepts guilty plea. Defendant released on conditions. (Court Reporter: Brenda Hancock) (Govt Atty: John Kennedy; John McCormack) (Defts Atty: Donald Kennedy; Michael Khouri) (USP: Janice Benard)(Total Hearing Time: 20 minutes) (js) (Entered: 05/24/2023)
05/24/2023		Minute Entry for proceedings held before Judge Paul J. Barbadoro: INITIAL APPEARANCE as to Steven Powell held on 5/24/2023. Defendant sworn and advised of rights & charges. (Court Reporter: Brenda Hancock) (Govt Atty: John Kennedy; John McCormack) (Defts Atty: Donald Kennedy; Michael Khouri) (USP: Janice Benard) (Total Hearing Time: 10 minutes) (js) (Entered: 05/24/2023)
05/24/2023	<u>8</u>	WAIVER OF INDICTMENT by Steven Powell. (js) (Entered: 05/24/2023)
05/23/2023		Corrective Entry to <u>7</u> MOTION for Michael J. Khouri to Appear Pro Hac Vice. Entry corrected by adding NOTICE OF ATTORNEY APPEARANCE - Michael J. Khouri appearing for Steven Powell. (js) (Entered: 05/23/2023)
05/23/2023		Terminate Motions PUBLIC 7 MOTION for Michael J. Khouri to Appear Pro Hac Vice filed by Steven Powell. FILER SHOULD HAVE USED THE NOTICE ATTORNEY APPEARANCE-DEFENDANT EVENT. NO ACTION REQUIRED - FOR INFORMATIONAL PURPOSES ONLY AND MERELY INTENDED TO EDUCATE ALL PARTIES IN THE CASE. (js) (Entered: 05/23/2023)
05/23/2023		NOTICE OF DUPLICATE PAYMENT : Counsel for Steven Powell submitted a duplicate payment in the amount of \$100.00, receipt no. ANHDC-2382049, re <u>7</u> MOTION for Michael J. Khouri to Appear Pro Hac Vice (Filing fee \$ 100, receipt number ANHDC-2382049.). To request a refund, the filer shall complete the <u>Request for Refund Form</u> available on the court's website and submit it to the clerk's office either via email or conventionally in paper. (js) (Entered: 05/23/2023)

05/22/2023	<u>7</u>	NOTICE OF ATTORNEY APPEARANCE- Michael J. Khouri appearing for Steven Powell. MOTION for Michael J. Khouri to Appear Pro Hac Vice (Filing fee \$ 100, receipt number ANHDC-2382049.) by Steven Powell. Follow up on Objection on 6/5/2023. The court only follow up date DOES NOT include 3 additional days that may apply per FRCP 6(d) and FRCiP 45(c). Attorney Michael J Khouri added to party Steven Powell(pty:dft). (Khouri, Michael) Modified on 5/23/2023 to add: Notice of Attorney Appearance (js). (Entered: 05/22/2023)
05/04/2023	<u>6</u>	PROTECTIVE ORDER FOR DISCOVERY as to Steven Powell. So Ordered by Judge Paul J. Barbadoro. (js) (Entered: 05/04/2023)
05/04/2023		ENDORSED ORDER granting <u>5</u> Motion for Protective Order as to Steven Powell (1). <i>Text of Order: Granted. So Ordered by Judge Paul J. Barbadoro.</i> (js) (Entered: 05/04/2023)
05/04/2023	<u>5</u>	Assented to MOTION for Protective Order by USA as to Steven Powell. (Attachments: # <u>1</u> Proposed Order Protective Order) (Kennedy, John) (Entered: 05/04/2023)
04/27/2023		ENDORSED ORDER granting <u>3</u> Assented to MOTION for Michael J. Khouri to Appear Pro Hac Vice as to Steven Powell (1). <i>Text of Order: Granted. Local counsel shall comply with all obligations required by L.R. 83.2(b) absent order of the court.</i> So Ordered by Judge Paul J. Barbadoro. The clerk's office will provide the admitted attorney with instructions on how to obtain access to electronic filing by separate email. The admitted attorney must have an individual upgraded PACER account, not a shared firm account, to electronically file in the District of New Hampshire. After obtaining e-filing access, the admitted attorney must file an appearance to begin receiving electronic notices.(js) (Entered: 04/27/2023)
04/27/2023	<u>4</u>	NOTICE OF ATTORNEY APPEARANCE John J. McCormack, IV appearing for USA. Attorney John J. McCormack, IV added to party USA(pty:pla).(McCormack, John) (Entered: 04/27/2023)
04/27/2023		NOTICE OF HEARING as to Steven Powell. Initial Appearance AND Waiver & Plea Hearing set for 5/24/2023 11:00 AM before Judge Paul J. Barbadoro. NOTICE: For cost containment purposes, the court prefers that the USPO conduct the PSR interview immediately following the Waiver & Plea hearing. Thus, prior to the Waiver & Plea hearing, a USPO may contact counsel for the purpose of scheduling the PSR interview after the Waiver & Plea hearing. (js) (Entered: 04/27/2023)
04/27/2023	<u>3</u>	Assented to MOTION for Michael J. Khouri to Appear Pro Hac Vice (Filing fee \$ 100, receipt number ANHDC-2373727.) by Steven Powell. (Attachments: # <u>1</u> Exhibit (Affidavit) Affidavit of Counsel, Michael J. Khouri with Certificate of Good Standing) (Kennedy, Donald) (Entered: 04/27/2023)
04/26/2023	<u>2</u>	PLEA AGREEMENT as to Steven Powell. (js) (Entered: 04/27/2023)
04/26/2023	<u>1</u>	INFORMATION as to Steven Powell (1) count 1. (js) (Entered: 04/27/2023)

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