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U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

UNITED STATES **v.** **FRANCENE ARETHA GAYLE and SCHARA MONIQUE DAVIS**	**Case 5:22-cr-113-LCB-HNJ**

UNITED STATES' SENTENCING MEMORANDUM

The United States submits this memorandum to support its sentencing recommendations for Francene Gayle and Schara Davis. For years, the defendants committed serious crimes out of their three-clinic pain practice. Gayle issued illegitimate opioid prescriptions pre-signed and handed out to patients in her absence. Gayle and Davis stole seven figures by billing insurers for doctor office visits when Gayle was not there. And after Gayle lost her medical license and the defendants left town, they cheated a pandemic relief program out of another half million dollars on the pretense that their Alabama practice was still a going concern.

For all this, Gayle should receive a sentence of 87 months, the high end of her Guidelines range. Davis, the less culpable co-conspirator, should receive a prison sentence but one less severe: the government recommends 42 months. Each defendant should also be ordered to pay restitution totaling $2,234,237.67.

BACKGROUND

For much of the 2010s, Gayle and Davis operated Complete Medical Health, a medical practice in north Alabama. Gayle was the only doctor. Davis was the sole owner, the office manager, and Gayle's wife. At first, the practice was just one clinic in Huntsville. But it expanded as the defendants took over two other clinics, one in Athens, another in Killen.



Huntsville clinic



Athens clinic


Killen clinic

The defendants operated those three clinics for the next five years. The clinics were some distance apart: Huntsville is 35 miles from Athens and 60 miles from Killen. The defendants manned all three clinics without any other doctor on staff.

The clinics were a wellspring of opioid prescribing. Between 2013 and 2018, according to Alabama Department of Public Health data, Gayle—a family medicine doctor, not an oncologist or pain specialist—ranked ninth in the state for quantity of controlled substances prescribed. In interviews with the government, former patients and employees described waiting rooms crowded with patients seeking opioid prescriptions.

Even with so many patients receiving so many drug prescriptions in Killen, Athens, and Huntsville, Gayle was regularly absent.[1] Patients often got their prescriptions because Gayle pre-signed them and had Davis or other staff deliver them to clinics before the start of the clinic day or week. Gayle also pre-signed blank prescription pads for personnel to use in case of "emergencies" when Gayle was not around—a practice that violated Gayle's obligations to patients and the public. *See, e.g.*, Ala. Admin. Code r. 545-X-4.06(13) (effective Jul. 27, 2005) ("[s]igning a blank, undated or predated prescription form" is "unprofessional conduct" "detrimental or harmful to the patient" or "the health, safety, and welfare of the public"); Ala. Admin. Code r. 540-x-4-.06 (effective Oct. 24, 2002) (noting it "is improper, under any circumstances, for a physician to pre-sign blank prescription pads or forms and make them available to employees or support personnel").

The practice did not just hand out pre-signed opioid prescriptions to patients and delegate visits to staff in Gayle's absence; the practice also fraudulently billed insurers for all office visits as if the doctor had seen the patients, when she often had

[1] In interviews with the government, employees described these habitual absences. For example, former employee D.B. said Gayle "never ever" came to the Killen clinic and was frequently absent from the Huntsville clinic, too. A.M. said that, when a nurse practitioner was at Killen, Gayle would come "maybe once every three months," even though the clinic was open four or five days a week and it was not unusual to see 50 or 60 patients a day. R.W. said that, in a year at the Killen clinic, she saw Gayle present two or three times.

not. Between 2015 and 2020, none of the three clinics billed a single office visit to Medicare or Medicaid under any National Provider Identifier other than Gayle's. Doc. 87 at 6. Between 2015 and mid-2019, the same was true for Blue Cross Blue Shield of Alabama. *Id.* at 6-7. This billing practice continued for years even after employees and Blue Cross officials told Gayle it was fraud.

By 2019, the state medical board was investigating Gayle for unprofessional conduct related to prescribing and insurance billing. With the practice under investigation, the Killen clinic shut down. In March 2020, Gayle's medical license was revoked. The Athens and Huntsville clinics soon shut down, too, and Gayle and Davis moved to Florida. Still, in June 2020, Gayle and Davis applied for COVID-19 disaster relief funds, supposedly to prop up their medical practice (which was no longer operational) in Alabama (where Gayle and Davis no longer lived). Gayle and Davis got about $450,000 in Paycheck Protection Program and Economic Injury Disaster Loan program loans. They quickly spent the funds for unauthorized purposes and have still not repaid them.

ARGUMENT

The defendants should be ordered to pay restitution in the amounts detailed below, which, as the government will be prepared to show at sentencing, are if anything conservative. Gayle should be sentenced at the high end of her Guidelines range. And for Davis, the government recommends 42 months in custody.

I. The Court Should Order Restitution Of $2,234,237.67

The Mandatory Victims Restitution Act (MVRA) requires that defendants pay restitution to their victims. 18 U.S.C. § 3663A. "The government bears the burden of establishing the amount of restitution by a preponderance of the evidence." *United States v. Baldwin*, 774 F.3d 711, 728 (11th Cir. 2014). Because determining the amount is "an inexact science, where difficulties arise, a district court may accept a reasonable estimate of the loss based on the evidence presented." *Id.* (cleaned up).

Under the MVRA, Gayle and Davis must pay restitution to their victims: the Small Business Administration (SBA), which lost hundreds of thousands of dollars in the COVID-19 loan fraud scheme, and Medicare, Medicaid, and Blue Cross, who were defrauded in the office billing scheme. The government has provided proposed restitution figures to Gayle and Davis. Davis is not challenging those figures; Gayle has not confirmed whether she plans to challenge them. But the figures are straightforward. The government will be prepared to prove them at sentencing.

First, the SBA is entitled to restitution for the PPP loan the defendants got, plus related costs (a lender fee and interest)—a total that stands at $318,947.49. The SBA is also entitled to restitution for the EIDL program loan the defendants got—which, with interest, stands at $174,657.53.

Second, Medicare, Medicaid, and Blue Cross are entitled to restitution for their losses. The restitution figures as the government has calculated them are

conservative. For office visit billings under Gayle's name, the practice received $1,413,639.47 from Medicare; $419,663.62 from Medicaid; and $777,645.88 from Blue Cross. The evidence establishes that Gayle was regularly not at the clinics to see patients during their visits—and even if she was at one clinic, she was not at the other two, making claims for doctor visits at those clinics fraudulent. Even giving Gayle every benefit of the doubt, then, the Court may reasonably treat two thirds of the payments for doctor office visit claims as fraudulent. The government has proposed restitution figures representing two thirds of the totals above: $942,426.31 for Medicare, $279,775.75 for Medicaid, and $518,430.59 for Blue Cross. The Court should order restitution in these amounts.

II. The Court Should Sentence Gayle At The High End Of Her Guidelines Range

Gayle should receive a high-end sentence of 87 months. A high-end sentence would appropriately punish this defendant for writing illegitimate opioid prescriptions, bilking health insurers out of millions of dollars, and committing a whole new fraud even after her medical license had been revoked.

First, a high-end sentence would acknowledge the nature of Gayle's crimes, which were serious, wide-ranging, and long-running. Her crimes ran the gamut from drugs to health care fraud to wire fraud. Her crimes spanned several years: from illicit drug prescriptions in 2017 and 2018, *see* Doc. 87 at 5, to office visit billing

fraud between 2015 and 2020, *see id.*, to COVID-19 disaster relief fraud even after her medical practice had closed down, *see id.* at 7-9. And her crimes made real victims, not only of health insurers but also of patients. The people whose prescriptions Gayle admitted to having written illegitimately have told the government they were addicted to drugs; only after Gayle's practice closed down were any of them able to get clean.

Second, a high-end sentence would take account of Gayle's history and characteristics. Gayle was not a doctor who made mistakes because she was overworked, underpaid, and underwater. She was a doctor who knew better. Employees warned her about her prescribing and billing practices. Employees quit over their concerns. Gayle did not change. Her crimes are attributable not to her ignorance but to her indifference. They are also attributable to her greed. Thanks to her busy three-clinic medical practice, Gayle lived well. She and Davis drove luxury cars—a Hummer, a Range Rover, a Porsche. They lived in luxury houses.

Third, a Guidelines-range sentence is appropriate to deter Gayle and others. Specific deterrence is a larger consideration here than in some other cases involving white-collar defendants without prior convictions. During Gayle's crimes, others—clinic employees, insurers, medical board officials—made clear to her their concerns, and those concerns went ignored. Gayle has shown no interest in correcting her behavior voluntarily.

There is also a need for general deterrence. Gayle's sentence should send a strong message that opioid overprescribing and health care fraud and government disaster relief fraud will not be tolerated. Opioid overprescribing enables and extends addiction. Health care and disaster relief frauds do untold damage to our government programs and the taxpayers who fund them. *United States v. Moss*, 34 F. 4th 1176, 1181 (11th Cir. 2022). There may be a "tendency for people to consider crimes against the government as less serious than crimes committed against a person." *United States v. Carreras*, 793 F. App'x 859, 864 (11th Cir. 2019) (citing district court's reasoning). But in several recent decisions, the Eleventh Circuit has argued forcefully for treating these offenses as the dangerous crimes they are and punishing them accordingly. *See, e.g.*, *Moss*, 34 F. 4th at 1181. A high-end sentence for Gayle would send that message.

III. The Court Should Sentence Davis To 42 Months

Like Gayle, Davis deserves a custodial sentence for the fraud crimes to which she pleaded guilty. Davis bears substantial culpability for those crimes. She served as the owner of the practice; she handled bookkeeping and billing functions; she delivered pre-signed narcotic prescriptions to clinics on Gayle's behalf. It was Davis's name that appeared on the fraudulent COVID-19 disaster relief loan applications. And like Gayle, Davis enjoyed the fruits of their crimes—driving a Porsche and living in luxury homes.

Still, Gayle's offenses warrant a much greater sentence. It was Gayle who overprescribed opioids; Gayle who dishonored her medical license; and Gayle who had ultimate decision-making authority in the practice, even if Davis was the owner.

For Davis, a sentence of 42 months, about half the length of Gayle's high end, would accomplish the purposes Congress has set out for sentencing.

CONCLUSION

Gayle and Davis committed serious crimes that demand serious punishment. Gayle, who not only devised multiple, different fraud schemes but issued illicit drug prescriptions too, should be sentenced at the high end of her range. The government asks for 42 months for Davis. And both defendants should be ordered to pay restitution as the government has (conservatively) proposed it.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on December 13, 2024, I filed this document electronically with the United States District Court for the Northern District of Alabama using the CM/ECF system and thereby caused a copy to be served on the defendants' counsel of record.

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