No.

IN THE

Supreme Court of the United States

SAMIRKUMAR SHAH,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit

PETITIONER'S APPENDICES

Samirkumar Shah (*Pro Se* Petitioner)
Federal Register No. 37943-068
FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640

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PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2581

UNITED STATES OF AMERICA

v.

SAMIRKUMAR J. SHAH,
Appellant

On Appeal from the United States District Court
for the Western District of Pennsylvania
(No. 2-16-cr-00110)
U.S. District Judge: Honorable David S. Cercone

Submitted Under Third Circuit L.A.R. 34.1(a)
July 8, 2022

Before: SHWARTZ, KRAUSE, and ROTH, Circuit Judges.

(Filed: July 22, 2022)

APPENDIX 1

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OPINION

SHWARTZ, Circuit Judge.

Samirkumar Shah appeals his conviction and sentence for health care fraud. Because the District Court correctly denied his motions to disqualify the United States Attorney's Office ("USAO"), for a continuance, and for a judgment of acquittal, and because his sentence is procedurally and substantively reasonable, we will affirm.

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I

A

Shah practiced cardiology in multiple offices in Pennsylvania. Among other things, Shah prescribed external counterpulsion (ECP) treatment, which is designed to increase blood flow to the heart using compression cuffs around the patient's legs while they are lying down. Shah purchased ECP beds and billed insurers, including Medicaid and Medicare plans, for ECP treatment.

Medicaid and Medicare have three limitations for reimbursement of ECP treatment. First, the programs cover ECP treatment only for patients who suffer from angina (chest pain). Second, the programs will only reimburse for ECP treatment that was conducted under a physician's direct supervision. Third, the programs restrict billing for reimbursement. Specifically, a system of codes is used to identify the service rendered, and each coded service is assigned a price. ECP treatment is assigned code G0166, which is a "bundled code" because it includes companion treatments.[1] App. 197. As result, physicians who bill code G0166 may not also bill the separate codes for the companion treatments on the same day "unless they are medically necessary and delivered in a clinical setting not involving ECP therapy." S. App. 6. The ECP bed supplier provided Shah with guidelines informing him of these limitations.

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[1] The companion treatments bundled in G0166 include echocardiograms, Doppler tests, pulse oximetries, and plethysmographies.

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Insurers audited Shah's billing and told him that he improperly billed ECP treatments by using both the G0166 code and codes for companion treatments and that the medical necessity of many of his ECP treatments was unsubstantiated. Although Shah's agreements with insurers required that he only seek reimbursement for medically necessary treatments, and he told one insurer that he instructed his billing department to remove the incorrect codes, he in fact directed his third-party billing service to continue billing "[a]ll four codes." App. 836.

In addition to ignoring insurers' directives, Shah (1) prescribed ECP for patients, including an undercover agent, who did not suffer chest pain, telling some patients that ECP treatment would make them "younger and smarter" and could help with conditions including high and low blood pressure, obesity, erectile dysfunction, and restless leg syndrome, App. 385; and (2) was "very often" not present—nor was any doctor—to supervise patients' ECP treatments, App. 457-58. Shah (1) told his staff that all patients had angina; (2) instructed staff to "beef[] up" patient files before insurance reviews, long after treatment was provided, App. 327; and (3) used pre-printed forms that included angina diagnoses. Notably, during an interview with the Pennsylvania Attorney General's Office, Shah stated that he reported angina diagnoses for patients who did not have that condition "[f]or reimbursement purposes." App. 1151.

B

A grand jury indicted Shah for two counts of health care fraud in violation of 18 U.S.C. § 1347.

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On the first day of jury selection, Shah moved to disqualify the entire USAO and sought a continuance to conduct additional discovery.

Shah's disqualification motion arose out of his prior representation by Tina Miller, who represented Shah until June 2017, and then, ten months later, joined the USAO as a supervisory Assistant U.S. Attorney ("AUSA"). Shah argued that because Miller became a supervisor in the office prosecuting him, there was "both a conflict of interest and an appearance of a loss of impartiality." D. Ct. ECF No. 145 at 7. The District Court denied the motion, noting that it did not "see any issue of any facts demonstrating a conflict of [interest]" and emphasizing the need to avoid delaying the trial. App. 67.[2]

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[2] After the Court ruled, it received declarations from Miller and the two AUSAs handling the trial. Miller stated that she did not discuss employment with the USAO when she represented Shah and, once she joined the office, she had no discussions about or involvement in any cases in which she had played a role while in private practice. She also represented that she divulged no confidential information learned during her representation of Shah to any USAO employee or investigative agency. The two AUSAs' affidavits likewise stated that Miller was not involved in Shah's prosecution and did not divulge any client confidences. One AUSA added that her only discussion with Miller regarding Shah's prosecution involved her telling Miller that she was unable to assist on a separate matter because she, unbeknownst to Miller, "would be in . . . the trial of [Shah]." App. 90.

After trial, the District Court revisited Shah's disqualification motion, again held that disqualification of the entire USAO was inappropriate "given the lack of . . . Miller's

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Shah also sought a continuance so he could have an expert review 350 patient files seized from his offices. The Government responded that the records had been available to him for years and thus a continuance was inappropriate. The Court denied the request for a continuance as untimely.

C

The trial commenced, and the Government presented thirty-two witnesses, including Shah's patients and employees, the ECP bed supplier, insurers, his third-party billing service, and law enforcement officers. After the government rested, Shah moved for judgment of acquittal on Count Two, which the District Court denied. The jury found Shah guilty on both counts of health care fraud.

D

The District Court held a sentencing hearing to calculate the loss to insurers from Shah's conduct. FBI Special Agent Brooklynn Riordan testified that, for each insurer, she calculated (1) the average amount Shah billed and (2) the average amount the insurer reimbursed Shah, and identified, by dividing the average amount reimbursed by the average amount billed, a reimbursement rate. She then multiplied that rate by the total billing to that insurer, which, across all insurers, yielded a total loss of $5,919,100.00. The Government recommended reducing the total loss amount by 50%, which had the effect of treating half of Shah's billing for

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involvement in the government's prosecution of defendant," and declined to hold an evidentiary hearing. App. 50.

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ECP treatment and companion codes as legitimate, even though there was no evidence that he ever legitimately used those codes. The District Court accepted the loss calculation over Shah's objection.

The Court sentenced Shah to concurrent terms of 78 months' imprisonment and three years' supervised release and ordered that he pay $1,234,983.60 in restitution.

Shah appeals.

II[3]

A

We will address, in turn, Shah's challenges to the District Court's orders denying his motions to disqualify the entire USAO, for a continuance to conduct additional discovery, and for judgment of acquittal on Count Two.

1[4]

The District Court properly denied Shah's motion to disqualify the entire USAO. First, the District Court's decision

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[3] The District Court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

[4] "Our standard of review on an attorney disqualification issue includes both deferential and de novo elements. To the extent that the district court made factual findings, our review is for clear error . . . . [W]e exercise plenary review to determine whether the district court's disqualification was arbitrary in the sense that the court did not

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was not arbitrary. We have recognized that "[a]s long as the court makes a 'reasoned determination on the basis of a fully prepared record,' its decision will not be deemed arbitrary." United States v. Stewart, 185 F.3d 112, 120 (3d Cir. 1999) (quoting United States v. Voigt, 89 F.3d 1050, 1075 (3d Cir. 1996)). Here, the District Court complied with its obligations, as it heard oral argument and received written submissions from both Shah and the Government on this issue and made its decision based on a complete record, including declarations from Miller and the two AUSAs handling Shah's trial. Thus, we review the Court's ruling for abuse of discretion. See Whittaker, 268 F.3d at 194.

Second, the District Court did not abuse its discretion. Attorneys practicing before the United States District Court for the Western District of Pennsylvania must adhere to the Pennsylvania Supreme Court's Rules of Professional Conduct. See W.D. Pa. L. Civ. R. 83.3(A)(2); Pa. Const. art. V § 10. Under the Pennsylvania rules, a lawyer "currently serving as a public officer or employee . . . shall not . . . participate in any matter in which the lawyer participated personally and substantially while in private practice." 204 Pa. Code R. 1.11(d). While the lawyer who switches sides "is of course disqualified from participating in the case[,] . . . individual rather than vicarious disqualification is the general rule." Commonwealth v. Miller, 422 A.2d 525, 529 (Pa. Super. Ct.

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appropriately balance proper considerations of judicial administration against the United States' right to prosecute the matter through counsel of its choice . . . . If the disqualification was not arbitrary, we use an abuse of discretion standard . . . ." United States v. Whittaker, 268 F.3d 185, 193-94 (3d Cir. 2001).

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1980) (quotation marks and citation omitted); see also 204 Pa. Code R. 1.11(d) cmt. (2) ("Because of the special problems raised by imputation [of a conflict of interest] within a government agency, [Rule 1.11(d)] does not impute the conflicts of a [government] lawyer to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers."). This is so because disqualifying an entire prosecutor's office, rather than just the conflicted attorney, would impose substantial costs on taxpayers because it would trigger the need to appoint special prosecutors each time a member of the defense bar switches sides. See, e.g., Miller, 422 A.2d at 529; Commonwealth v. Harris, 460 A.2d 747, 749 (Pa. 1983) (calling such an approach "simply not viable"). Furthermore, it would not address the true concern: to be sure that "the acts of a public prosecutor have [not] actually tainted the proceedings." Harris, 460 A.2d at 749. Because actual taint must be shown, the mere "appearance of impropriety" is insufficient to support disqualification of an entire office.[5] See id.

To avoid taint, USAOs use methods to wall off the attorney from cases in which he played a role while in practice. Disqualification of an entire USAO is required only when screening devices, aimed at ensuring side-switching counsel is in no way involved in the case giving rise to the conflict, were

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[5] Shah's reliance on People v. Shinkle, 415 N.E.2d 909 (N.Y. Ct. App. 1980), is misplaced. Shinkle disqualified the entire District Attorney's office because of "the unmistakable appearance of impropriety," id. at 920, a rationale that is not a basis for disqualifying government counsel under Pennsylvania's ethics rules, see Harris, 460 A.2d at 749; Miller, 422 A.2d at 529.

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not used or were ineffective. United States v. Goot, 894 F.2d 231, 234-35 (7th Cir. 1990); see United States v. Caggiano, 660 F.2d 184, 191 (6th Cir. 1981) (holding that because an attorney was separated from all participation on matters affecting his former client, "disqualification of an entire government department . . . would not be appropriate").

Here, the affidavits from Miller and the two AUSAs who tried Shah showed Miller was properly screened. Miller stated that she had "been recused and walled off from any involvement or oversight" in cases where she represented a defendant, including Shah's matter. App. 84. To implement the ethical screen, Miller told attorneys and supervisors assigned to cases from which she was recused that she could have no involvement in those cases. As to Shah specifically, Miller stated that she neither "participated . . . in the prosecution or supervision of this case" nor "divulged any confidential information [she] learned" about Shah. App. 84-85. The trial AUSAs confirmed that Miller "has not participated in the [Shah] case in any manner" nor "divulged [to them] client confidences." App. 87, 90. Based on these sworn statements, the District Court did not clearly err in finding that Miller was screened from Shah's prosecution. Cf. Commonwealth v. Ford, 122 A.3d 414, 418 (Pa. Super. Ct. 2015) (remanding where trial court disqualified the entire district attorney's office because the record did not indicate whether confidential information was disclosed or a "sufficient fire wall ha[d] been . . . erected" and thus did not "support an exception to the general rule, i.e., [did not support] disqualification of the entire [District Attorney's] Office").

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Moreover, Shah has not shown that the ethical screen was ineffective.[6] In fact, he concedes that he has no evidence that the denial of the disqualification motion prejudiced him in any way. See Caggiano, 660 F.2d at 191 (reversing order disqualifying entire USAO because, in part, "no prejudice has resulted to anyone in this case"). Instead, Shah simply suggests that Miller was inevitably involved in his prosecution because of her supervisory duties. In support, he cites the decision not to assign one of the trial AUSAs additional cases to allow her to work on Shah's case and the absence, in the AUSAs' affidavits, of information about who supervised them. Shah also relies on State v. Tippecanoe County Court, 432 N.E.2d 1377, 1379 (Ind. 1982), in which the Indiana Supreme Court concluded an entire district attorney's office was properly disqualified because the prosecutor had "administrative control over the entire staff." Here, however, there is no evidence that Miller exercised any control over the attorneys prosecuting Shah. To the contrary, she swore that she did not "participate[] or cooperate[] in the prosecution or supervision of [his] case," App. 84, was never the direct

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[6] Shah asserts that the ethical screen was ineffective because the trial AUSAs "found out" about Miller's recusal from the docket, Appellant's Br. at 16, but the attorneys' subjective understanding does not indicate that Miller did not satisfy her ethical obligations to notify attorneys in the office. In addition, United States v. Schell, 775 F.2d 559 (4th Cir. 1985), does not help Shah. Unlike this case, in Schell, there was some evidence suggesting that the side-switching AUSA disclosed his former client's confidences, and this led the court to question the effectiveness of the ethical screen there. Id. at 566. There is no indication here that Miller had any discussions about Shah with anyone.

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supervisor of the trial AUSAs, and would "not be involved in evaluating their performance in prosecuting the Shah matter," App. 85. Any decision Miller made regarding the AUSA's other cases has no bearing on Shah's prosecution. Furthermore, Shah points to no requirement that the USAO identify those who supervised the Shah prosecution in her stead, and he did not rebut her sworn statement that someone else handled the supervisory duties in Shah's case.

Thus, the District Court did not abuse its discretion in denying Shah's disqualification motion.[7]

2

The District Court also acted within its discretion in denying Shah's motion for a continuance on the first day of jury selection so that he could have an expert examine his patient files. Denial of a continuance "constitutes an abuse of discretion only when it is 'so arbitrary as to violate due process.'" United States v. Kikumura, 947 F.2d 72, 78 (3d Cir. 1991) (quoting Ungar v. Sarafite, 376 U.S. 575, 589 (1964)).

In this case, a continuance was not warranted. First, Shah had access to the files since his 2016 indictment pursuant

[7] The District Court also acted within its discretion in declining to hold an evidentiary hearing. While such a hearing may be useful in some cases, it is not required. Goot, 894 F.2d at 237. Here, the Court had affidavits from Miller and the trial AUSAs demonstrating an effective ethical screen was in place, and Shah presented nothing to show that Miller played any role in his case or disclosed any information she learned while representing him. See id.

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to Federal Rule of Criminal Procedure 16(a)(1)(E), and his prior counsel acknowledged receipt of a notice providing that he could inspect and copy all seized records. Moreover, Shah does not dispute that his counsel received at least four letters in 2018 and 2019 reflecting that "[e]vidence gathered during the course of the searches . . . is available for your inspection, upon request," S. App. 101, and he concedes that he did not ask for access before trial.[8] Second, Shah requested the continuance at the start of trial without providing any explanation for the late request and despite receiving other continuances. Cf. United States v. Irizarry, 341 F.3d 273, 305-06 (3d Cir. 2003) (denying continuance for discovery requested two weeks before trial despite recent superseding indictment). Therefore, the District Court did not abuse its discretion by denying the requested continuance.[9]

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[8] To the extent Shah argues his counsel was ineffective in not requesting his patient files earlier, such a claim is generally not cognizable on direct appeal. United States v. Givan, 320 F.3d 452, 464 (3d Cir. 2003).

[9] Moreover, Shah has not shown that he suffered any prejudice from the lack of further discovery. Although he asserts that his patient files would reveal other symptoms that could support angina diagnoses, trial testimony showed that his files contained false information, he revised patient files before insurance reviews to "make them . . . sound better," App. 327, and he regularly recorded angina diagnoses regardless of whether the patient expressed chest pain—the defining characteristic of angina.

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3[10]

The District Court properly denied Shah's motion for a judgment of acquittal on Count Two. Count Two charged Shah with health care fraud by knowingly billing insurers for ECP treatments using both the G0166 code and companion treatment codes already encompassed by G0166. To convict Shah of health care fraud, the Government was required to prove, among other things, that Shah acted with the intent to defraud the insurers who provided medical benefits. United States ex rel. Doe v. Heart Solution, P.C., 923 F.3d 308, 319 (3d Cir. 2019); 18 U.S.C. § 1347.

Viewing the record in the light most favorable to the Government, a reasonable jury could have found Shah acted with intent to defraud. First, the evidence showed that Shah knew that the G0166 code was not to be billed with codes for component treatments on the same day. Second, the evidence demonstrated that Shah disregarded the billing rules. Over his third-party billing service's objection, Shah directed the service to continue billing "[a]ll four codes." App. 836. Although Shah argues that he eventually stopped billing multiple codes—and told one insurer in 2011 that he instructed his billing department to bill only G0166—a reasonable jury could find that, by instructing the third-party billing service to continue billing using both code G0166 and the codes for the

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[10] We exercise plenary review over an order denying a motion for judgment of acquittal, United States v. Smith, 294 F.3d 473, 477 (3d Cir. 2002), and view the record "in the light most favorable to the prosecution," United States v. Garner, 961 F.3d 264, 274 (3d Cir.), cert. denied, 141 S. Ct. 932 (2020).

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companion treatments despite being told he should not, Shah acted with intent to defraud insurers.

Because a reasonable jury could have found Shah knew the billing requirements for ECP treatment and deliberately ignored them, the District Court properly denied his motion for judgment of acquittal on Count Two.

B[11]

Shah also argues that his sentence is both procedurally and substantively unreasonable.

1[12]

In reviewing the procedural reasonableness of a district court's sentence, we focus on, among other things, whether the district court correctly calculated the applicable Guidelines range. United States v. Merced, 603 F.3d 203, 215 (3d Cir.

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[11] "We review the factual determinations underlying a sentence for clear error." United States v. Douglas, 885 F.3d 145, 150 n.3 (3d Cir. 2018); see also United States v. Brennan, 326 F.3d 176, 194 (3d Cir. 2003) (reviewing loss calculation for clear error).

[12] A district court "need only make a reasonable estimate of the loss," based on available information in the record, United States v. Ali, 508 F.3d 136, 145 (3d Cir. 2007) (quoting U.S.S.G. § 2B1.1 cmt. 3(C)), and it "need not reach a precise figure," United States v. Tupone, 442 F.3d 145, 156 (3d Cir. 2006). "[T]he government bears the burden of establishing, by a preponderance of the evidence, the amount of loss." United States v. Fumo, 655 F.3d 288, 310 (3d Cir. 2011).

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2010). Shah disputes the District Court's loss calculation, which triggered a sixteen-level increase to his base offense level under U.S.S.G. § 2B1.1(b)(1)(I).

At the sentencing hearing, Special Agent Riordan testified that she examined insurers' data for claims involving ECP code G0166 together with the codes for the companion treatments on the same day. Riordan totaled the average amounts reimbursed by each insurer and endorsed a 50% reduction of that amount. Given evidence suggesting that no ECP charges were legitimate,[13] Riordan testified that the 50% reduction yielded a "conservative" estimate. App. 1469-70. The resulting loss calculation was $2,959,550.00, with $1,296,502.00 coming from Medicare and Medicaid plans.

Shah's challenge to the loss calculation method fails. First, the average reimbursements were based on the insurance claims data, and not Shah's patient files as he contends. Relying on the claims data was appropriate here given the evidence that Shah's patient files contained false information. Second, witness testimony about Shah's billing practices support the "reasonable estimate" of loss from Shah's health care fraud scheme. United States v. Kolodesh, 787 F.3d 224, 239-40 (3d Cir. 2015). Shah instructed his third-party biller to

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[13] Indeed, as the District Court observed in its discussion of the 50% reduction, "the vast majority of the submitted claims under consideration were fraudulent" because any of the following factors were present: (1) patient without a qualifying condition; (2) records "fraudulently created . . . after-the-fact;" (3) ECP treatment administered when a physician was not present; or (4) billing of unbundled codes without justification. App. 48-49.

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continue billing "[a]ll four codes" despite insurers' warnings against such billing. App. 836. In addition, insurers notified Shah that he improperly submitted unbundled bills that were not substantiated by medical necessity. Third, treating 50% of Shah's ECP billing as legitimate is generous to Shah given the "extensive and pervasive" nature of his scheme. See United States v. Hebron, 684 F.3d 554, 563 (5th Cir. 2012). Fourth, and relatedly, estimation was the only means to calculate the loss. Shah's records contained fraudulent information. Thus, they did not provide a reliable basis to determine if any of the ECP treatments were medically necessary. See id. (affirming loss calculation because the defendant "should not reap the benefits of a lower sentence because of his ability to defraud the government to such an extent that an accurate loss calculation is not possible"); United States v. Miell, 661 F.3d 995, 1001 (8th Cir. 2011) (affirming loss calculation that subtracted average amount defendant returned—rather than actual amount, due to practicality of reviewing over 2,500 files—because proceeds "were systemically tainted with fraud" such that "it was difficult, if not impossible, to give [the defendant] any credit for parts of his claims that might have been legitimate").[14]

[14] Shah cites United States v. Jones, 641 F.3d 706 (6th Cir. 2011), but that case is distinguishable. Among other things, the Jones court called the extrapolation method used there "into question" because it appeared the district court "[did not] even realize[] that . . . fifty-four [of over 250] files were missing and . . . did not make a finding as to whether they were fraudulent." Jones, 641 F.3d at 712. Here, in contrast, the District Court found that because Shah would "fraudulently create [patient] files after-the-fact and solely for the benefit of

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For these reasons, Shah's procedural challenge fails.

2

Shah's sentence was also substantively reasonable as we cannot say that "no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided." United States v. Tomko, 562 F.3d 558, 568 (3d Cir. 2009) (en banc). First, the sentence is within the applicable Guidelines range of 78 to 97 months, U.S.S.G. § 5A, so we may presume that it is reasonable, Rita v. United States, 551 U.S. 338, 347 (2007).

Second, considering the totality of the circumstances, Tomko, 562 F.3d at 567, Shah's sentence was not greater than necessary given the seriousness of his offense and the need for specific deterrence, 18 U.S.C. § 3553(a)(2)(A), (B). As to seriousness, Shah billed insurers for millions of dollars in ECP treatments where they were either not medically necessary for the patient or delivered without the required physician supervision or both.

As to the need for specific deterrence, Shah twice failed to appear for his court dates, leading the Court to issue arrest warrants. His failure to appear as required by court order was consistent with his flagrant disregard for his obligations to his patients to provide only medically necessary treatment and to follow the rules ensuring he was reimbursed for only such

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receiving payment," records that could establish which treatments were fraudulent likely "did not exist." App. 47-48.

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services. His conduct reflects that he did not believe the rules applied to him.

Because we cannot say that no reasonable sentencing court would have imposed the same sentence, Shah's substantive challenge fails.

III

For the foregoing reasons, we will affirm.

APPENDIX 19

AO 245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

Western District of Pennsylvania

UNITED STATES OF AMERICA
v.
SAMIRKUMAR J. SHAH

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:16-cr-00110

USM Number: 37943068

Thomas D. Kenny, Esq., Joshua Sabert Lowther, Esq.
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☑ was found guilty on count(s) 1 & 2
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Counts
18 U.S.C. §1347	Health Care Fraud	12/31/2014	1 & 2

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/5/2021
Date of Imposition of Judgment

s/ David S. Cercone
Signature of Judge

David S. Cercone/Sr. U.S. District Judge
Name and Title of Judge

8/10/2021
Date

APPENDIX 22

DEFENDANT: SAMIRKUMAR J. SHAH
CASE NUMBER: 2:16-cr-00110

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
78 months at each of counts 1 and 2, to run concurrently.

☑ The court makes the following recommendations to the Bureau of Prisons:
that defendant be placed in a federal correctional facility in close proximity to Pittsburgh, Pennsylvania, for family considerations.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

APPENDIX 23

DEFENDANT: SAMIRKUMAR J. SHAH
CASE NUMBER: 2:16-cr-00110

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

3 years at each of counts 1 and 2, to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☑ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☑ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

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STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

APPENDIX 25

DEFENDANT: SAMIRKUMAR J. SHAH
CASE NUMBER: 2:16-cr-00110

ADDITIONAL SUPERVISED RELEASE TERMS

1. Defendant shall not use or possess controlled substances except as prescribed by a licensed medical practitioner for a legitimate medical purpose;

2. Defendant shall not possess a firearm, ammunition, destructive device or any other dangerous weapon;

3. Defendant shall provide the probation officer with access to any requested financial information;

4. Defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer;

5. Defendant shall make periodic payments of at least ten (10%) percent of his gross monthly income toward any outstanding balance of restitution. Payments shall be made in such amounts and at such times as directed by the Probation Office and approved by the court. The Probation Office shall address the defendant's (1) financial resources and assets, (2) earnings and income and (3) financial obligations as they then exist in submitting any recommended payment schedule for court approval;

6. Defendant shall participate in a mental health assessment and, if appropriate, a mental health treatment program. Defendant shall abide by all program rules, requirements and conditions of any treatment program, including submission to polygraph testing to determine if he is in compliance with the conditions of release. The probation office is authorized to release the defendant's presentence report to the treatment provided if so requested; and,

7. Pursuant to 28 C.F.R. § 28.12, the DNA Fingerprint Act of 2005 and the Adam Walsh Child Protection and Safety Act of 2006, defendant shall cooperate in the collection of DNA as directed by the United States Probation Office.

APPENDIX 26

DEFENDANT: SAMIRKUMAR J. SHAH
CASE NUMBER: 2:16-cr-00110

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$ 200.00	$ 1,234,983.60	$	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
Medicare Part B CMC Division of Accounting Operations P.O. Box 7520 Baltimore, MD 21207-0520		$556,109.97	
Gateway Medicade 444 Liberty Avenue 1700 17th Floor Attn: Payment Integrity Pittsburgh, PA 15222-1222		$24,395.08	
TOTALS	$ 0.00	$ 1,234,983.60	

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☑ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☑ the interest requirement is waived for the ☐ fine ☑ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

APPENDIX 27

DEFENDANT: SAMIRKUMAR J. SHAH
CASE NUMBER: 2:16-cr-00110

ADDITIONAL RESTITUTION PAYEES

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
Highmark Blue Cross and Blue Shield P.O. Box 890138 Camp Hill, PA 17089-0138 Attention: Shawn Robinson		$451,429.28	
UPMC Fraud, Waste, and Abuse Unit P.O. Box 2968 Pittsburgh, PA 15230		$186,098.49	
Gateway Medicaid 444 Liberty Avenue Suite 1700 17th Floor Attention Payment Integrity Pittsburgh, PA 15222-1222		$16,950.78	

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

APPENDIX 28

DEFENDANT: SAMIRKUMAR J. SHAH
CASE NUMBER: 2:16-cr-00110

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 200.00 due immediately, balance due

☐ not later than _____, or
☑ in accordance with ☐ C, ☐ D, ☐ E, or ☑ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:
The defendant shall make restitution payments from any wages he earns in prison in accordance with the Bureau of Prisons' Inmate Financial Responsibility Program. Payment toward the balance of restitution at the time of the defendant's release from imprisonment shall be made as a condition of supervised release.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX 29

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2581

UNITED STATES OF AMERICA

v.

SAMIRKUMAR J. SHAH,
Appellant

(W.D. Pa D.C. No. 2-16-cr-00110-001)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, McKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, and ROTH*, Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

APPENDIX 20

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* Honorable Jane R. Roth's vote is limited to panel rehearing only.

BY THE COURT,

s/Patty Shwartz
Circuit Judge

Dated: August 15, 2022
Tmm/cc: Joshua S. Lowther, Esq.
Laura S. Irwin, Esq.
Eric G. Olshan, Esq.

APPENDIX 21

Additional material from this filing is available in the Clerk's Office.