No. 26-____

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL FLETCHER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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APPENDIX

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FOR THE SIXTH CIRCUIT

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Filed: March 25, 2026

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Re: Case No. 25-5468, *United States v. Fletcher*
Originating Case No. 2:21-cr-00063-2

Dear Counsel,

The Court issued the enclosed opinion today in this case.

Enclosed are the court's unpublished opinion and judgment, entered in conformity with Rule 36, Federal Rules of Appellate Procedure.

Sincerely yours,

s/Laurie A Weitendorf
Opinions Deputy

cc: Mr. Robert R. Carr

Enclosures

Mandate to issue

Appendix A

NOT RECOMMENDED FOR PUBLICATION
File Name: 26a0150n.06

No. 25-5468

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 25, 2026
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. MICHAEL FLETCHER, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY OPINION

Before: BOGGS, READLER, and DAVIS, Circuit Judges.

BOGGS, Circuit Judge. Dr. Michael Fletcher appeals his convictions on three counts of distributing controlled substances, in violation of 21 U.S.C. § 841(a)(1), stemming from prescriptions he authorized in 2016 to his patients at a pain clinic in Crestview Hills, Kentucky. Dr. Fletcher challenges the sufficiency of the evidence supporting his convictions and the validity of his waiver of counsel. He also claims that his reliance on a disbarred attorney for legal advice while proceeding pro se deprived him of due process. After careful consideration, we affirm the district court's judgment of conviction and denial of Dr. Fletcher's motion for a new trial.

I

A. Factual Background.

From 2011 through 2016, Dr. Michael Fletcher practiced medicine at Interventional Pain Specialists (IPS) in Crestview Hills, Kentucky, a clinic owned by Dr. Kendall Hansen. Dr. Fletcher's practice included prescribing opioids to help relieve his patients' pain. Around this

time, Dr. Fletcher also served on the hearing and inquiry panels of the Kentucky Board of Medical Licensure (KBML).

Although his educational and professional background familiarized him with the dangers of and standards for prescribing opioids, Dr. Fletcher routinely prescribed high volumes of opioids without personally examining his patients or even obtaining essential information to approve such treatment. IPS "never required medical records" before accepting new patients and obtained medical records for fewer than 10% of its patients. R. 268 at 56–57, PageID 4173–74. Once accepted into IPS, patients typically received cursory examinations lasting under 15 minutes, and "it was very unusual" for them "to see a doctor." R. 268 at 135, PageID 4252. But opioid prescriptions flowed freely. Dr. Fletcher developed a reputation for signing more prescriptions than other doctors at IPS, with staff observing Dr. Fletcher signing "stacks" of prescriptions at a time. R. 268 at 27, PageID 4144. He authorized such an extreme volume of opioid prescriptions that IPS's medical-billing specialist warned him that she would not file his claims with a government agency because his numbers "would have thrown up red flags." R. 268 at 28–29, PageID 4145–46.

Moreover, it was common knowledge among IPS staff that many of the clinic's patients—10% to 25%, according to one witness's estimate—displayed signs of substance abuse. Patients refused alternative treatments, "nodd[ed] out" in the clinic lobby, claimed to have "accidentally lost" pills despite returning bottles with powder residue, and required hospitalization for drug overdoses. R. 268 at 89–90, 94–95, 99, 187–205, PageID 4206–07, 4211–12, 4216, 4304–4322; R. 269 at 50, 224, PageID 4395, 4569. Dr. Fletcher reflected to a colleague that he authorized a "crazy" number of prescriptions, but still the volume of prescriptions did not abate and the practices for evaluating patients did not improve. R. 268 at 96, PageID 4213.

Charles Hickman and Steven Kasselmann sought care from Dr. Fletcher. Both had a history of substance abuse, but Dr. Fletcher never performed the comprehensive review necessary under KBML standards to initiate treatment with opioids. He nevertheless prescribed them opioids. KBML standards further directed doctors to decrease or cease opioid prescriptions if a patient demonstrates signs of substance abuse or if the medication fails to alleviate their pain. But Dr. Fletcher continued to prescribe opioids for both patients even after Hickman tested positive for cocaine in April 2016 and after Kasselmann, who never reported an improvement in his pain, tested negative for his prescribed oxycodone in June 2016, a sign of noncompliance with medical directives and resale of the drugs. Both Hickman and Kasselmann have since passed away from drug overdoses, with Hickman's death occurring shortly after receiving his final prescription from Dr. Fletcher.

B. Procedural History.

On August 4, 2022, a superseding indictment charged Dr. Fletcher with one count of conspiracy to distribute controlled substances, in violation of 21 U.S.C. § 846, and three counts of distribution of a controlled substance, in violation of 21 U.S.C. § 841(a)(1). The indictment alleged that Dr. Fletcher conspired with Dr. Hansen to unlawfully prescribe opioids. The three distribution counts stemmed from prescriptions Dr. Fletcher issued to Hickman and Kasselmann in June and August of 2016. Dr. Hansen also was charged with conspiracy and distribution counts.

Dr. Fletcher initially proceeded through counsel, but his attorneys filed a motion to withdraw in July 2023, citing a breakdown in communications. Shortly afterward, Dr. Fletcher declared his intention to proceed pro se. On August 21, 2023, Magistrate Judge Candace J. Smith conducted a hearing to consider Dr. Fletcher's request and found, after detailed questioning, that Dr. Fletcher had validly waived his right to counsel. The court did not appoint standby counsel.

The parties agree that Dr. Fletcher validly waived his right to counsel at this point under *Faretta v. California*, 422 U.S. 806 (1975), with the magistrate judge conducting a colloquy modeled on the *Bench Book for United States District Judges* to warn Dr. Fletcher of the dangers of self-representation.

Dr. Fletcher represented himself for nine months following his August 2023 waiver of counsel. He presented argument in hearings, filed motions (including a motion for a bench trial, which the district court granted), and reviewed discovery. He even participated in a final pretrial conference and came within just a few days of beginning trial before the district court severed Dr. Hansen's trial in January 2024. (Dr. Hansen proceeded to trial that month, and a jury acquitted him on all counts). But about six weeks before his rescheduled trial date of June 17, 2024, Dr. Fletcher requested that the district court appoint him counsel. Within a week, Dr. Fletcher changed course again, advising the district court that he would retain attorney Alan Statman to represent him. Statman entered his notice of appearance on May 21.

Problems soon arose with Statman's representation. On May 31, the government notified the district court of a potential conflict of interest, explaining that Statman's representation in civil litigation against Dr. Hansen disqualified him from representing Dr. Fletcher. On June 4, Statman filed a response requesting permission to withdraw as counsel, indicating that he would not challenge the conflict, that he had advised Dr. Fletcher of the conflict, and that Dr. Fletcher "ha[d] not waived the conflict." R. 233 at 1, PageID 3176. Judge Bunning scheduled a telephonic conflict-of-interest hearing for June 6.

At the June 6 hearing, Dr. Fletcher, Statman, and the government identified themselves as participants on the call. Statman reiterated his belief that his civil litigation against Dr. Hansen in medical-malpractice cases brought by IPS patients created a conflict of interest. The district judge

then asked Dr. Fletcher to confirm that he would not waive any conflict of interest, to which Dr. Fletcher responded that he was "very surprised and shocked by these developments" and said that "if it's at all possible, [he] would like for Mr. Statman to be able to represent [him]." R. 264 at 6, PageID 3555. After turning to the government for more details regarding Statman's potential conflict, the judge summarized the rules for evaluating whether to disqualify Statman and explained that Dr. Fletcher had "the right to a lawyer who doesn't have a conflict." R. 264 at 7–9, PageID 3556–58. This set the stage for the following exchange:

> The Court: Have you spoken with anybody else, Dr. Fletcher, about this issue other than Mr. Statman? This potential conflict.
>
> Dr. Fletcher: Well, again, I just learned about it recently. It's also amazingly complicated to me about the protocols and the legalities. It's insanity, as far as I'm concerned.
>
> But let me say to you, Judge, I don't want or need a lawyer. Mr. Statman can go on his way. I'm not going to waive my right to this conflict, and I will be there a week from Monday for the trial to go forth, and I'll represent myself pro se –
>
> The Court: Okay. Well, if you want to do that –
>
> Dr. Fletcher: – and I'm happy to do that.
>
> The Court: – that's your call. That's your call. I'm not involved in that, other than to advise you of this potential issue. . . .

R. 264 at 9, PageID 3558.

Without asking any questions to confirm Dr. Fletcher's stated intent to proceed pro se and without issuing any warning about the dangers of self-representation, the district court granted Statman's motion to withdraw and allowed Dr. Fletcher to again represent himself. The judge did not engage in a *Bench Book*-style colloquy because, he said in concluding the call, Dr. Fletcher had already received "a lengthy *Faretta* hearing with [Magistrate] Judge Smith that's part of the record in this matter." R. 264 at 10–11, PageID 3559–60.

Dr. Fletcher's bench trial commenced a week and a half later on June 17. At trial, the district court heard expert testimony from several doctors who compared Dr. Fletcher's practice to the governing standards of care. The court also heard lay testimony from IPS staff, IPS patients and their relatives, a KBML attorney, and investigators. It received dozens of medical records, including IPS patient files, pharmacy prescription records, and toxicology and autopsy reports. Dr. Fletcher objected to just two pieces of evidence: IPS records for patient Vernon Adkins and IPS's evacuation map. He did not specify his objection to the Adkins records, stating "I don't know" when asked to provide his ground for objecting. R. 266 at 35, PageID 3604. The judge admitted the record under Federal Rule of Evidence 803(6).

On July 19, 2024, the district judge convicted Dr. Fletcher on the three distribution counts but acquitted him of conspiring with Dr. Hansen. Later that month, Dr. Fletcher requested appointed counsel, and the district court appointed CJA attorney Eric Eckes to represent him. Dr. Fletcher, through Eckes, then moved for a new trial, asserting two grounds for relief. First, Dr. Fletcher argued that the district court deprived him of his right to counsel by allowing Dr. Fletcher to represent himself following the June 6 hearing, because Dr. Fletcher had made inconsistent statements regarding his representation preference and did not receive a new *Faretta* warning. Second, in a development that surprised the district court and the government, Dr. Fletcher revealed that, while representing himself, he had taken legal advice from disbarred attorney Eric Deters, which Dr. Fletcher claimed deprived him of due process.

Deters has been disciplined repeatedly in multiple jurisdictions and has not been licensed to practice law in Kentucky since 2013, as court records and media reports document. *See Deters v. Ky. Bar Ass'n*, 627 S.W.3d 917, 919 (Ky. 2021). By July of 2023—when Dr. Fletcher's original attorneys moved to withdraw—Deters had become acquainted with Dr. Fletcher and persuaded

him to proceed pro se. The two signed an agreement providing that "Deters will advise, counsel and make suggestions in [Dr. Fletcher's] criminal defense as a friend only," with Dr. Fletcher "acknowledg[ing] [that] Eric Deters is a retired lawyer with no license." R. 273-1, PageID 4783.

Over the next nine months, Deters counseled Dr. Fletcher on a variety of strategic issues, advising him to move for a bench trial and to meet with prosecutors to "tell them everything about his case, his defense, and Dr. Hansen." Appellant Br. 8–9. Dr. Fletcher claims that Deters had a preexisting relationship with Statman and hoped to guide Dr. Fletcher's defense in a manner that would benefit Statman's civil litigation against Dr. Hansen. This motive spurred Deters to intervene when Dr. Fletcher requested appointed counsel in May 2024. Deters "arranged" for Statman to represent Dr. Fletcher, allegedly in return for Dr. Fletcher providing an affidavit for Statman to use in his civil litigation. *Id.* at 10. During the June 6 telephonic hearing, Deters sat with Statman, unannounced to the court, and texted Dr. Fletcher, allegedly instructing him to "[r]emember [his] script" and ultimately drop his request for counsel. *Ibid.* (first alteration in original) (citation omitted).

The district court denied Dr. Fletcher's motion for a new trial, concluding (1) that Dr. Fletcher unequivocally re-waived his right to counsel at the June 6 hearing by making five statements expressing his intent to proceed pro se, (2) that Dr. Fletcher had a mere "interim change of heart" that did not entitle him to a second *Faretta* colloquy, and (3) that Deters's involvement did not deprive Dr. Fletcher of due process because the court lacked "any duty to police a Defendant's, *pro se* or otherwise, personal communications or choices." R. 295 at 6–10, PageID 5305–5309. On May 8, 2025, the district court sentenced Dr. Fletcher to three years of probation and ten months of home confinement; the court terminated home confinement in November. Dr. Fletcher timely appealed.

II

Dr. Fletcher seeks reversal by arguing that insufficient evidence supports his convictions. To buttress his sufficiency claim, he asserts that the district court erred in admitting IPS patient records. Alternatively, he seeks a new trial by claiming that the district court deprived him of his right to counsel and that Deters's involvement in his defense denied him due process. We address each claim in turn, finding that sufficient evidence supports Dr. Fletcher's convictions even without the challenged medical records and concluding that the district court did not deprive him of his rights to counsel or due process.

A. Sufficiency of the Evidence.

Dr. Fletcher challenges the sufficiency of the evidence supporting his conviction by claiming that the government failed to prove that he knowingly or intentionally violated 21 U.S.C. § 841(a)(1). He prefaces his sufficiency challenge by arguing that the district court erred by admitting IPS patient records because the government did not satisfy the foundational requirements under Fed. R. Evid. 803(6)(D). We address these issues first because a successful sufficiency challenge bars a retrial. *See Burks v. United States*, 437 U.S. 1, 17–18 (1978); *United States v. Arnold*, 486 F.3d 177, 180 (6th Cir. 2007) (en banc) (collecting cases). But Dr. Fletcher's sufficiency claim fails. Even without considering the challenged medical records, sufficient evidence supports his convictions.

When reviewing a bench-trial conviction for sufficient evidence, we ask "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Vance*, 956 F.3d 846, 853 (6th Cir. 2020) (citation modified). Consistent with this demanding standard,

"[t]his court neither independently weighs the evidence, nor judges the credibility of witnesses who testified at trial." *Ibid.* (citation modified).

The district court convicted Dr. Fletcher on three counts of distribution of a controlled substance, in violation of 21 U.S.C. § 841(a)(1), stemming from prescriptions issued to IPS patients Charles Hickman and Steven Kasselmann in 2016. Each charge required the government to prove four elements beyond a reasonable doubt: (1) that Dr. Fletcher knowingly or intentionally distributed a controlled substance, (2) that he knew at the time of the distribution that the substance was a controlled substance, (3) that his distribution was unauthorized, and (4) that he knew or intended that his distribution was unauthorized. *See* 21 U.S.C. § 841(a)(1); *United States v. Anderson*, 67 F.4th 755, 769 (6th Cir. 2023) (per curiam); 6th Cir. Crim. PJI 14.02B. Dr. Fletcher attacks only the proof for the fourth element, which requires the government to demonstrate "that the defendant knowingly or intentionally acted in an unauthorized manner." *Ruan v. United States*, 597 U.S. 450, 457 (2022). "[A] prescription is only authorized when a doctor issues it 'for a legitimate medical purpose . . . acting in the usual course of his professional practice.'" *Id.* at 454 (quoting 21 C.F.R. § 1306.04(a) (2021)); *United States v. Campbell*, 135 F.4th 376, 386 (6th Cir. 2025).

Expert testimony established that Dr. Fletcher's prescriptions to Hickman and Kasselmann were unauthorized because they lacked a legitimate medical purpose. Dr. Timothy King, a physician with 40 years of experience in pain management, opined about the discrepancies between Dr. Fletcher's treatment of Hickman and Kasselmann and the appropriate standard of care. The district court found his testimony more credible than that of Dr. Fletcher's expert witness. Dr. King explained that opioids "are not the default choice" for managing pain. R. 266 at 215, PageID 3784. KBML standards provide that any opioid prescription requires "a complete

psychosocial review" accounting for various risk factors, including a patient's history of substance abuse. R. 266 at 216, PageID 3785. Prescriptions must be accompanied by compliance conditions. Violations of those conditions, indicated by "an inconsistent or abnormal urine drug test," "cannot be ignored." R. 266 at 218, PageID 3787. Those warning signs warrant "a mandatory change in treatment" under KBML standards, with options including weaning a patient's dosage, ceasing opioid prescriptions altogether, or referring the patient for substance-abuse treatment. R. 266 at 218–19, PageID 3787–88. Even without signs of substance abuse, a doctor should discontinue opioid prescriptions if the medications fail to relieve a patient's pain.

Dr. King opined that the prescriptions to Hickman and Kasselmann charged in the indictment departed from the usual course of professional practice. He identified many red flags that Dr. Fletcher ignored in initially prescribing opioids to Hickman and Kasselman and in supervising their treatment. Dr. King explained that Dr. Fletcher failed to perform the psychosocial reviews necessary to initiate treatment with opioids because he failed to obtain patients' prior medical records, neglected to consider patients' substance-abuse issues, overlooked serious comorbidities, and prescribed opioids in conjunction with other drugs that heightened the risk of substance abuse. For Hickman and Kasselmann specifically, Dr. King found Dr. Fletcher's management of their treatment deficient because he continued to prescribe them opioids despite manifest signs of drug abuse and minimal pain relief. For example, Dr. Fletcher continued to prescribe opioids for Hickman despite Hickman's admission to overusing his medication and his visible intoxication during an office visit. Likewise, Dr. Fletcher never altered Kasselmann's treatment despite his testing negative for his prescribed hydrocodone—a sign that Kasselmann had sold or otherwise repurposed his drugs. This testimony established that Dr. Fletcher's

prescriptions to Hickman and Kasselmann lacked a legitimate medical purpose, rendering them unauthorized.

Attempting to escape the force of this testimony, Dr. Fletcher notes that Dr. King relied upon the same IPS patient records that Dr. Fletcher seeks to exclude from evidence. But even assuming that the district court should have excluded the IPS records, a testifying expert may rely on inadmissible hearsay to form the basis of his opinion. Fed. R. Evid. 703; *United States v. Jaffal*, 79 F.4th 582, 599 (6th Cir. 2023). And there is no issue with Dr. King expressing opinions on Dr. Fletcher's deviation from accepted medical practices even though such opinions "embrace[] an ultimate issue" concerning a non-mental-state offense element—especially in the context of a bench trial, where there is no risk in the witness conveying "erroneous legal standards to the jury." Fed. R. Evid. 704; *United States v. Mooney*, 135 F.4th 486, 496 (6th Cir. 2025) (citation modified).

Turning to the challenged state-of-mind element, the government needed to prove that Dr. Fletcher at the very least *knew* that these prescriptions were unauthorized. *See Ruan*, 597 U.S. at 457. Knowledge can be established from circumstantial evidence. *See Staples v. United States*, 511 U.S. 600, 615–16 n.11 (1994). Post-*Ruan*, we have understood that knowledge can be inferred where record evidence shows that a doctor prescribed controlled substances to patients despite the high probability that the controlled substances were being dispensed or distributed outside the course of professional practice for an illegitimate purpose or that patients were diverting the controlled substances. *United States v. Stanton*, 103 F.4th 1204, 1213 (6th Cir. 2024). Put another way, direct evidence of deliberate indifference to obvious risks can amount to circumstantial evidence of knowledge. *Ibid.*

Here, the evidence established that Dr. Fletcher was aware of a high probability that the controlled substances were distributed without a legitimate medical purpose and deliberately

"closed his eyes" to obvious warnings. *Anderson*, 67 F.4th at 766; *see also Stanton*, 103 F.4th at 1213. Dr. Fletcher's KBML service and professional background apprised him of the proper standards of care and risks present among the local patient population. IPS employees testified that Dr. Fletcher routinely "sign[ed] prescriptions without reviewing the medical records of the patients or speaking to the patients." R. 251 at 15, PageID 3435. Dr. Fletcher did not even *request* medical records from other providers in most cases. Rather than evaluating patients personally, Dr. Fletcher delegated examinations to medical assistants. Dr. Fletcher would frequently sign prescriptions for his own patients, and even Dr. Hansen's patients, without meeting them. All of this proceeded at a brisk pace and high volume. IPS's medical-billing specialist feared that Dr. Fletcher's prescriptions would attract regulatory scrutiny because he routinely certified that he met with 50 patients daily, even though "there was no way there was enough time in the day to see all those patients." R. 268 at 28, PageID 4145.

These practices provide circumstantial evidence that Dr. Fletcher knew that he was prescribing opioids without an authorized purpose. Dr. Fletcher openly expressed concerns to other IPS employees about the high rate at which the clinic was "sending [pills] out into the community." R. 268 at 95, PageID 4212. He indicated to a nurse that he thought the prescription volume was "crazy" and "a lot," but "didn't really act concerned" about the risks that this volume created. R. 268 at 96, PageID 4213. His concerns were well-founded. Witnesses testified that during Dr. Fletcher's tenure at IPS, multiple patients died, others required hospitalization for overdosing, and still others displayed obvious signs of substance abuse within the clinic, "nodding out" and experiencing "the bends" in the IPS waiting room. R. 268 at 94–95, 187–205, PageID 4211–12, 4304–4322. These issues were common knowledge among the IPS staff. But despite these alarm bells, Dr. Fletcher never changed his procedures for evaluating patients. He continued

to authorize a high volume of prescriptions even relative to other IPS providers and would sign piles of prescriptions at a time. By refusing to implement safeguards despite his awareness of the risks his practice created, he "deliberately closed his eyes to what was obvious," *Anderson*, 67 F.4th at 766, allowing for an inference that satisfied the state-of-mind element, *Stanton*, 103 F.4th at 1213.

Like other cases where doctors prescribed high volumes of opioids despite "infrequent, cursory, or non-existent" examinations that "fell far short of professional practice," the evidence of Dr. Fletcher's deliberate ignorance to the high probability that his prescriptions to Hickman and Kasselmann lacked a legitimate medical purpose supported the final element of the offense. *Anderson*, 67 F.4th at 769. Sufficient evidence supports Dr. Fletcher's convictions even without relying on the IPS medical records, which renders harmless any error in admitting them. *United States v. Johnson*, 581 F.3d 320, 332 (6th Cir. 2009).

B. Waiver of Counsel.

Dr. Fletcher next contends that the district court deprived him of his right to counsel by allowing him to proceed pro se at trial. There is no dispute that Dr. Fletcher validly waived his right to counsel and proceeded pro se for nine months following his *Faretta* hearing with the magistrate judge in August 2023. The question is whether, after reasserting his right to counsel in May 2024, he validly waived his right to counsel *a second time* at the June 6, 2024, hearing. The district court's haste in accepting Dr. Fletcher's second waiver of counsel gives us pause, especially because it did not ask any questions or issue any warnings to confirm Dr. Fletcher's intent to proceed pro se or his understanding of the dangers of self-representation. But the totality of the circumstances in Dr. Fletcher's case, including his fresh experience representing himself for nine

months before reasserting the right to counsel and his confident statements at the June 6 hearing, assure us that he validly waived his right to counsel.

The Sixth Amendment grants criminal defendants the right to counsel and, conversely, the right to represent themselves. *Iowa v. Tovar*, 541 U.S. 77, 87–88 (2004); *United States v. Powell*, 847 F.3d 760, 774 (6th Cir. 2017). To invoke the right to self-representation, a defendant must make a "knowing, voluntary, and intelligent" waiver of the right to counsel. *Tovar*, U.S. 541 at 88; *see also Faretta*, 422 U.S. at 835. Violations of these rights—whether by allowing a defendant to represent himself despite an invalid waiver of counsel or by refusing to allow a defendant to represent himself despite a valid waiver of counsel—constitutes structural error that warrants a new trial. *Jones v. Jamrog*, 414 F.3d 585, 594 (6th Cir. 2005). On direct appeal, we ordinarily review the validity of a defendant's initial waiver of counsel de novo. *United States v. Johnson*, 24 F.4th 590, 600–01 (6th Cir. 2022). Both parties have asked us to apply that standard to Dr. Fletcher's second waiver.

To respect the right to counsel and guard against procedural manipulation, this court has adopted a two-step approach to evaluate a defendant's purported initial waiver of his rights. *United States v. Cromer*, 389 F.3d 662, 683 (6th Cir. 2004); *United States v. Evans*, 559 F. App'x 475, 480 (6th Cir. 2014). First, the defendant must make a "clear and unequivocal assertion of [his] right to self-representation." *Cromer*, 389 F.3d at 683. Second, the district court must ensure that the defendant's waiver is knowing, intelligent, and voluntary by warning him of "the dangers and disadvantages of self-representation." *Hill v. Curtin*, 792 F.3d 670, 677 (6th Cir. 2015) (en banc). While the defendant need not possess "the skill and experience of a lawyer in order competently and intelligently to choose self-representation," the record must establish that the defendant "knows what he is doing and his choice is made with eyes open." *Faretta*, 422 U.S. at 835 (citation

modified). The parties agree and we likewise assume that this same framework governs Dr. Fletcher's reassertion of his *Faretta* rights at the June 6 hearing following his efforts to retain counsel.

We conclude at the first step that Dr. Fletcher unequivocally waived his right to counsel, even though he characterizes his statements at the June 6 hearing as contradictory. Several principles govern our review. No magic words are needed to waive the right to counsel, *Cassano v. Shoop*, 1 F.4th 458, 473 (6th Cir. 2021), although repeated and insistent expressions of an intent to proceed pro se provide strong evidence of an unequivocal waiver, *see Wilson v. Walker*, 204 F.3d 33, 37 (2d Cir. 2000) (per curiam). A waiver of counsel can be unequivocal even if the defendant's desire to proceed pro se was conditioned on the impossibility or unattractiveness of other representation options. *Moore v. Haviland*, 531 F.3d 393, 402 (6th Cir. 2008); *Williams v. Bartlett*, 44 F.3d 95, 100 (2d Cir. 1994). "[E]quivocal statements earlier in the [same] hearing" do not necessarily "taint[]" the defendant's "final, unequivocal waiver of counsel." *United States v. Audette*, 923 F.3d 1227, 1234–35 (9th Cir. 2019). And we can consider the defendant's conduct in the litigation as a whole to assess whether he meant what he said. *See Cromer*, 389 F.3d at 682–83.

At the June 6 hearing, Dr. Fletcher made five clear statements in short order indicating his desire to proceed pro se, as the transcript quoted in Part I-B reveals. True, his insistence that he did not "want or need a lawyer" followed a discussion about the possibility of Statman representing Dr. Fletcher despite a potential conflict of interest. R. 264 at 9, PageID 3558. Dr. Fletcher entered the June 6 hearing hoping that Statman could represent him, an aspiration perhaps contradicted by Statman's filing on June 4 that he had explained the conflict to Dr. Fletcher and Dr. Fletcher had not waived it. But while he expressed exasperation at conflicts-of-interest rules, his waiver

followed the district court's explanation of the framework for evaluating potential conflicts and the court's reminder to Dr. Fletcher of his "right to a lawyer who doesn't have a conflict." R. 264 at 8–9, PageID 3557–58. In this context, Dr. Fletcher's ultimate decision to proceed pro se reflects not equivocation as much as an "informed decision" about whether representation by a lawyer with an apparent conflict of interest would serve his best interests. *Williams*, 44 F.3d at 100–01.

The fact that he conditioned his preference to proceed pro se on the impossibility or undesirability of Statman's representation does not diminish the validity of his waiver. *Moore*, 531 F.3d at 402 (explaining that a "request to proceed pro se was no less voluntary because it was contingent on the denial of other options that [the defendant] might also find palatable"). Neither does the fact that Dr. Fletcher resolved this decision tree—representation by Statman, if Statman lacked a conflict of interest, and if not, self-representation—during the hearing, especially because the judge's explanation appears to have helped Dr. Fletcher reach his final decision. *Cf. Audette*, 923 F.3d at 1232, 1235 (finding the defendant's waiver of counsel unequivocal just a few minutes after the defendant stated that he was "scared to death to represent [him]self" because the defendant briefly conferred with counsel and "grappled with the difficult decision").

Dr. Fletcher's behavior throughout litigation confirms the unequivocal nature of his waiver. His decision to represent himself pro se comports with his preceding nine months of self-representation, lending credibility to his willingness to "assume[] the whole of his representation." *Cromer*, 389 F.3d at 683. Although Statman briefly represented Dr. Fletcher from late May through early June 2024, Statman's sole contribution to the docket was his June 4 response to the government's notice of a potential conflict. So, for the ten months between Dr. Fletcher's initial waiver of counsel on August 21, 2023, and the conclusion of his trial on June 26, 2024, no licensed attorney performed a single legal service on Dr. Fletcher's behalf, at least as far as the docket

shows. As a matter of official record, Dr. Fletcher essentially managed his entire defense, including preparation for the once-imminent joint trial with Dr. Hansen. And he never seriously entertained legal representation by anyone other than Statman, as demonstrated by the quick withdrawal of Dr. Fletcher's request for appointed counsel in favor of retaining Statman in May 2024 and the absence of any further request for counsel until after his conviction.

Deters's surreptitious advice during the June 6 hearing does not compel a contrary conclusion, even if it influenced Dr. Fletcher. If anything, it reinforces the unequivocal nature of Dr. Fletcher's decision, given that he had consistently followed Deters's advice. Any hurry, pressure, or confusion Dr. Fletcher may have experienced on June 6 traced neither to his putative attorney of record, who represented that he had explained the conflict on June 4, nor to the judge, who explained Dr. Fletcher's options and respected his choice. *Cf. Stenson v. Lambert*, 504 F.3d 873, 879, 884 (9th Cir. 2007) (finding a defendant's attempted waiver of counsel *invalid* where he simultaneously said that he "really [did] not want to proceed without counsel" and believed that the trial judge and his attorney were "forcing" him to represent himself) (alteration in original). Dr. Fletcher unequivocally asserted his right to self-representation.

Moving to the second step of the waiver-of-counsel analysis, we hold that Dr. Fletcher waived his right to counsel knowingly, intelligently, and voluntarily because the record as a whole indicates that Dr. Fletcher made his decision with "eyes open" to the dangers of self-representation. *Faretta*, 422 U.S. at 835 (citation modified). Dr. Fletcher contends that his retention of Statman required the district court to perform a *Bench Book*-style colloquy, at least in part, before accepting his subsequent waiver. But the facts that Dr. Fletcher had previously received a thorough *Faretta* colloquy, performed substantive work in representing himself for nine months, reasserted the right

to counsel for just a few weeks, and never expressed reservations about proceeding pro se after the June 6 hearing (until after his conviction) combine to demonstrate a valid waiver of counsel.

Because a pro se defendant "relinquishes . . . many of the traditional benefits associated with the right to counsel," a waiver is ineffective unless he "'knowingly and intelligently' forgo[es] those relinquished benefits." *Faretta*, 422 U.S. at 835 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464–65 (1938)). The defendant "should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open.'" *Ibid.* (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942)). But the Supreme Court has never "prescribed any formula or script to be read to a defendant who states that he elects to proceed without counsel." *Tovar*, 541 U.S. at 88. "The information a defendant must possess in order to make an intelligent election . . . will depend on a range of case-specific factors." *Ibid.*

To perform this inquiry into a defendant's appreciation of the dangers of self-representation, we have long instructed our district courts to "ask the defendant a series of questions drawn from, or substantially similar to, the model inquiry set forth in the *Bench Book for United States District Judges*." *United States v. McBride*, 362 F.3d 360, 366 (6th Cir. 2004). We also have suggested in considering the right to counsel at sentencing that "an explicit revocation by the defendant" of his waiver of counsel should trigger a "renewed inquiry of the defendant" if he subsequently seeks to waive that right again. *Id.* at 367. But because the defendant in *McBride* never "revoke[d] his previous waiver of counsel," we had no occasion to articulate what sort of inquiry is needed to evaluate a defendant's attempt at a second waiver of the right to counsel following an express revocation, whether at sentencing or at an earlier stage in the proceeding, as here. *Id.* at 368.

Dr. Fletcher urges that the inquiry required to permit him to waive his right to counsel again necessitates a second *Bench Book*-style colloquy. We understand *McBride*'s reference to a renewed "inquiry" differently. *See* 362 F.3d at 367. True, a district court—subject to appellate review—must ensure that the defendant seeking to waive the right to counsel does so knowingly, intelligently, and voluntarily. *See Faretta*, 422 U.S. at 835. But a second colloquy is not always needed after a defendant reasserts his waiver of the right to counsel.

The essence of *Faretta* is an appreciation of the hazards of self-representation, not the mechanical recitation of certain questions and answers. *See Faretta*, 422 U.S. at 835; *Tovar*, 541 U.S. at 88. Our insistence on an initial *Bench Book*-style colloquy helps ensure that the defendant's waiver is knowing, intelligent, and voluntary because it forces the defendant to confront specific disadvantages of proceeding pro se. *Powell*, 847 F.3d at 774. But a defendant who has already represented himself—especially one who has filed motions, reviewed discovery, and participated at hearings—is far more acquainted with those risks than a defendant contemplating waiving his right to counsel for the first time. For at least some defendants with pro se experience, a second *Faretta* warning in the same case is not necessary to ensure that a second waiver of the right to counsel is made with "eyes open." *Faretta*, 422 U.S. at 835 (citation modified). Experience impresses the perils of self-representation upon that defendant as much as any dialogue.

Other than noting that Dr. Fletcher had already received a full *Faretta* colloquy (ten months prior), the district court did not explain at the June 6 hearing why it deemed Dr. Fletcher's waiver valid. Although the better practice may very well be for the district court to conduct a fuller inquiry, the record nevertheless equips us to perform *our* inquiry. We find that Dr. Fletcher knowingly and intelligently waived his right to counsel (he does not contest voluntariness).

Following his concededly compliant *Faretta* hearing with the magistrate judge, Dr. Fletcher represented himself for nine months. During this time, he filed a host of motions, reviewed discovery, and participated in hearings. By January 2024, months before he wavered about his self-representation, he had participated in a final pretrial conference and came within just a few days of beginning trial before the district court severed Dr. Hansen's trial. Even when Dr. Fletcher eventually reasserted his right to counsel, Statman represented him for just a couple of weeks and, other than responding to his apparent conflict of interest, never filed any motions or appeared at any hearings on Dr. Fletcher's behalf. Nothing about the charges or evidence against Dr. Fletcher changed during Statman's brief representation, so Dr. Fletcher understood the task ahead of him when he re-waived his right to counsel. *See United States v. Clark*, 774 F.3d 1108, 1113 (7th Cir. 2014) (explaining that renewed *Faretta* warnings are appropriate when the government reveals plans to introduce more complex evidence than previously contemplated). During the June 6 hearing itself, Dr. Fletcher expressed his waiver confidently and never balked when, after announcing his intent to proceed pro se, the district court explained technical procedures for objecting to evidence at trial. And Dr. Fletcher never indicated second thoughts about his decision to represent himself at trial. We are confident that Dr. Fletcher resumed self-representation with full knowledge of the dangers of self-representation.

At oral argument, Dr. Fletcher insisted that a second *Faretta* colloquy was necessary if not to *educate* but rather to *warn*, or at least slow down Dr. Fletcher's decision-making process. But this conception of *Faretta* for experienced pro se defendants risks placing district courts between a rock and a hard place, because a district court must respect a defendant's informed decision to waive counsel. The delicate balance district courts must strike—ensuring defendants understand the consequences of proceeding pro se without burdening that choice—reminds us that

waiver-of-counsel proceedings can burden "the efficient and effective administration of criminal justice." *United States v. Coles*, 695 F.3d 559, 562 (6th Cir. 2012) (citation modified). They create vulnerabilities for crafty defendants to play "game[s]" with courts, *United States v. Krzyske*, 836 F.2d 1013, 1017 (6th Cir. 1988) (citation modified), with the potential for significant reward because a *Faretta* violation requires a new trial, *Jamrog*, 414 F.3d at 594. Few cases could exemplify those risks better than this one, in which a defendant who was ready to represent himself at trial months earlier subsequently attempted to retain a conflicted lawyer (Statman) at the urging of a disbarred attorney (Deters), whose entire involvement the defendant concealed from the court.

Prudence would counsel the district court to ask *some* questions even of a defendant seeking to waive counsel a second time. In some cases, depending in part on the duration and context of the defendant's reassertion of the right to counsel, at least an abbreviated *Bench Book*-style colloquy may be necessary before a district court can accept a second waiver. But this is not that case. Dr. Fletcher's waiver was valid because the totality of the circumstances confirms that he understood the "dangers and disadvantages of self-representation." *Faretta*, 422 U.S. at 835.

C. Due Process.

Dr. Fletcher also asserts that Deters's involvement in his defense deprived him of his due-process rights. We review the district court's determination of a due-process violation de novo. *See United States v. Rafidi*, 829 F.3d 437, 446–47 (6th Cir. 2016). Deters's extensive participation in Dr. Fletcher's self-representation may well constitute unauthorized practice of law. But Dr. Fletcher's secret reliance on an unlicensed attorney to guide his self-representation does not amount to a due-process violation because Deters's involvement cannot be connected to state action.

"The Due Process Clause constrains the federal government, not private citizens." *Al-Saka v. Sessions*, 904 F.3d 427, 433 (6th Cir. 2018) (citation modified). A due-process claim therefore requires a connection between the alleged deprivation and conduct "fairly attributable to the state." *Lindke v. Freed*, 601 U.S. 187, 198 (2024) (citation modified). A criminal trial, "a proceeding initiated and conducted by the State itself," constitutes state action. *Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980). Courts have a due-process obligation to ensure that they respect "fundamental fairness" and prevent their proceedings from turning "into a sham." *Al-Saka*, 904 F.3d at 434; *see also Cuyler*, 446 U.S. at 343–44. But not all private conduct during trial counts as state action. While ineffective assistance of counsel may give rise to a due-process violation, *see Cuyler*, 446 U.S. at 344, defense attorneys—even public defenders paid by the state—are not state actors "when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding." *Polk County v. Dodson*, 454 U.S. 312, 325 (1981); *see also Lindke*, 601 U.S. at 198–99.

Dr. Fletcher cannot trace his reliance on Deters's advice to state action. If a public defender is not a state actor, even less so is a disbarred attorney who secretly advises a pro se defendant. No matter the degree to which Deters influenced Dr. Fletcher, Dr. Fletcher cannot chart the "necessary lineage" between the government and Deters's private, unlicensed, and undisclosed role advising Dr. Fletcher "as a friend only." *Lindke*, 601 U.S. at 198; R. 273-1 at 3, PageID 4783.

Moreover, having validly waived his right to counsel *twice*, Dr. Fletcher cannot complain that Deters rendered ineffective and unethical counsel. A defendant who waives the right to counsel "relinquishes . . . many of the traditional benefits associated with the right to counsel." *Faretta*, 422 U.S. at 835. These benefits include protections against ineffective or unethical assistance of counsel. *See Cuyler*, 446 U.S. at 344–45. But Dr. Fletcher waived those protections, entrusting instead an individual who disclosed that he had no license and had already received

widely-publicized professional discipline. *Faretta* warns a defendant against the perils of self-representation, but it does not immunize a defendant against its consequences. *See Weaver v. Massachusetts*, 582 U.S. 286, 295 (2017) (explaining that the right to self-representation protects individual autonomy, even at the expense of an increased likelihood of an unfavorable outcome at trial).

Neither can Dr. Fletcher trace a due-process violation to the court's conduct. A court has "the power and responsibility to protect the integrity of [its] proceedings and to ensure that the [defendant] receives a fundamentally fair hearing." *Al-Saka*, 904 F.3d at 434. As a state actor, a trial judge has an obligation "to stop a compromised attorney from infecting the proceedings with unfairness." *Ibid.* But a court has no obligation to correct what it can neither observe nor suspect. *See Cuyler*, 446 U.S. at 347 (holding that a trial court has no duty to inquire into defense counsel's conflicts of interest unless "the trial court knows or reasonably should know that a particular conflict exists"); *Al-Saka*, 904 F.3d at 434 (explaining, in an immigration case, that a court would violate a non-English speaker's due-process rights if "the judge *knew* that the interpreter could not accurately translate the alien's testimony and never corrected the problem") (emphasis added).

Dr. Fletcher completely concealed Deters's involvement from the court and the government until after trial. Dr. Fletcher and Deters kept their association secret even when Deters surreptitiously listened to the June 6 hearing despite the court's instruction for attendees to identify themselves. Because Dr. Fletcher never gave the district judge any reason to suspect that an unlicensed attorney was influencing his pro se representation, he cannot demonstrate a due-process violation.

III

For the foregoing reasons, we **AFFIRM** Dr. Fletcher's convictions.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 25-5468

UNITED STATES OF AMERICA,
Plaintiff - Appellee,

v.

MICHAEL FLETCHER, M.D.,
Defendant - Appellant.

FILED
Mar 25, 2026
KELLY L. STEPHENS, Clerk

Before: BOGGS, READLER, and DAVIS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Kentucky at Covington.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

No. 25-5468

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

MICHAEL FLETCHER,

Defendant-Appellant.

ORDER

BEFORE: BOGGS, READLER, and DAVIS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
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Filed: May 01, 2026

Mr. Eric George Eckes
Pinales, Stachler, Young & Burrell
455 Delta Avenue
Suite 105
Cincinnati, OH 45226

Re: Case No. 25-5468
USA v. Michael Fletcher
Originating Case No. 2:21-cr-00063-2

Dear Mr. Eckes,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Kelly Stephens
En Banc Coordinator: Beverly
Direct Dial No. 513-564-7077

cc: Mr. William A. Glaser
Mr. Jeremy Raymond Sanders
Mr. Andrew E. Smith
Mr. Charles P. Wisdom Jr.

Enclosure

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
AT COVINGTON

CRIMINAL CASE NO. 21-63-DLB-CJS-2

UNITED STATES OF AMERICA **PLAINTIFF**

VS. **MEMORANDUM ORDER**

MICHAEL FLETCHER, M.D. **DEFENDANT**

* * * * * * * * * * * * * * * * * * *

This matter is before the Court upon Defendant Michael Fletcher, M.D.'s Motion for a New Trial (Doc. # 273). The United States has filed a response in opposition to the motion (Doc. # 285) and Defendant has filed reply (Doc. # 290).[1] Therefore, the motion is ripe for review. For the reasons set forth herein, the Court **denies** the motion.

I.

The Court need not recount the lengthy factual and procedural history of this case or delve into extraneous matters[2], but will, rather, set forth the facts which are pertinent to the motion. This criminal action stems from prescribing practices at Intervention Pain Specialists, PLC ("IPS") in northern Kentucky. Defendant was indicted in June 2021 for actions relating to his work at IPS. An owner of IPS, Kendall Hansen, was also indicted.

[1] More recently, Defendant filed a brief supplement with attachments relating to communications between him and the non-party referenced in footnote 2. (Doc. # 293). As with the submissions made by the non-party, none of the attachments to the supplement (Doc. # 293-1) were considered in adjudicating the motion. Nor does the argument raised in the supplement alter the Court's rejection of Defendant's due process argument.

[2] A non-party has submitted filings to the Court (Doc. # 288 and 292) which were neither required nor permitted. The Court has not considered those submissions in ruling upon the instant motion.

The operative Second Superseding Indictment alleges four counts against Defendant - conspiracy to distribute controlled Substances to IPS Patients in violation of 21 U.S.C. § 846 with co-defendant Hansen (Count One), and distribution of controlled substances in violation of 21 U.S.C. § 841(a)(1) (Counts Two, Three, and Four). (Doc. # 43).

Defendant initially retained Attorneys Mary Rafizadeh and Joseph Holbrook to represent him in this action. In July of 2023, however, counsel sought to withdraw. (Doc. # 92). Defendant then indicated to the Court that he waived his right to counsel and wanted to proceed *pro se*. The Court did not immediately permit Defendant to proceed *pro* se but convened a *Faretta* hearing to counsel him of his rights and caution him of the pitfalls of representing himself in a criminal action. (Doc. # 103).

The August 21, 2023 hearing was conducted by Magistrate Judge Candace Smith and adhered not only to the *Faretta*-inquiry but also covered every question regarding *pro* se representation in the *Bench Book for United States District Court Judges*. Judge Smith acknowledged that Defendant was "highly educated," *Id*. at 15, and had familiarity with legal proceedings but in the hour-long hearing, painstakingly explained the proceedings, warned him of the dangers of self-representation and advised him to reconsider. Judge Smith discussed the charges in the indictment. (Doc. # 143 at 15). She advised Defendant of his potential sentence if he were to be convicted on those charges. *Id.* at 16-17. She told him the court would not be able to give him advice. *Id.* at 18. She explained that the Federal Rules of Evidence, the Federal Rules of Criminal Procedure and the local rules of criminal procedure would govern the trial and that he would have to adhere to those rules. *Id.* at 19-20. During the hearing Rafizadeh stated that she had

discussed with Defendant the difficulties and dangers of not having counsel. *Id.* at 21-22. But Defendant affirmatively stated that he wanted to represent himself, *Id.* at 23, that he was making a "voluntary" decision in refusing counsel, *Id*. at 24, and that he would decline standby counsel after having "given it some thought." *Id*. at 25. A review of the transcripts establishes that he affirmatively stated that he was waiving his right to counsel at least three times throughout the hearing. *Id.* at 14, 23, 24. Ultimately, Judge Smith permitted Attorney Rafizadeh to withdraw, and Defendant elected to proceed *pro se*. *Id*.

In September 2023, Defendant filed a Motion for a Bench Trial and a request to sever from Defendant Hansen (Doc. # 117), which was opposed by the United States (Doc. # 127). As Rule 23 of the Federal Rules of Criminal Procedure requires consent from the United States to proceed without a jury, the Court initially denied Defendant's request at the Final Pre-Trial Conference on January 3, 2024. (Doc. # 150).

Following the Final Pre-Trial Conference, Defendant Hansen filed a Motion to Sever (Doc. # 166). The Court granted the Motion (Doc. # 173), and Hansen proceeded to trial on January 17, 2024. On February 9, 2024, a jury found Hansen not guilty of five counts, and the United States subsequently dismissed the remaining two counts. (Doc. # 209, 217). Thereafter, Defendant filed another Motion for Bench Trial (Doc. # 189). The United States consented, and the Court granted the motion and scheduled the trial to begin on June 17, 2024. (Doc. # 221).

After proceeding *pro se* for nine months, in May 2024, Defendant notified the Court that he wanted court-appointed counsel. (Doc. # 224). The Court scheduled a hearing in this regard, but, a week later, the United States filed a Notice stating that Defendant asked to convey to the Court that he no longer sought court-appointed counsel but was "making

other arrangements." (Doc. # 227). On May 21, 2024, Alan Statman of Statman Harris, LLC entered an appearance as counsel on behalf of Defendant. (Doc. # 230). Ten days later, the United States filed a Notice of Potential Conflict of Interest as to Statman. (Doc. # 231). Specifically, Statman represented plaintiffs in seven pending medical malpractice cases against Hansen and IPS. *Id.* In his response to the notice, Statman stated that he would not challenge the conflict and sought permission to withdraw as counsel for Defendant. (Doc. # 233). Statman also stated that Defendant was aware of the conflict and had not waived the same. *Id.*

On June 6, 2024, the Court convened a hearing as to the conflict issue. All parties appeared telephonically. A transcript of the hearing is in the record at Docket Entry 264. The Court began the hearing by taking roll. (Doc. # 264, p. 2) Statman identified himself first, and in response to the Court's open-ended question, "[a]nyone else on the call yet?", Defendant identified himself, followed by the United States. *Id.* Statman represented to the Court at the beginning of the call that "[I] don't see that we can cure the conflict due to the Hansen litigation that's pending where [Defendant] wasn't specifically named but was directly involved in the care of at least one of the seven plaintiffs. So, I don't see how [Defendant] can effectively waive [a conflict]." *Id.* at 3. The Court then asked Defendant to confirm that he would not waive any potential conflict related to the Hansen litigation. Defendant responded that he was "surprised and shocked by these developments" and that he "obviously did not anticipate for this to occur." *Id.* at 6. Defendant stated that he "would like" Statman to represent him but acknowledged that this might not be possible. *Id.* The Court then directly asked Defendant, "[h]ave you spoken with anybody else, Dr. Fletcher, about this issue other than Mr. Statman? [About this potential conflict[?]" *Id*. at

9. Rather than respond directly, Defendant commented that the matter was "amazingly complicated." *Id*. Then, without being asked or prompted, Defendant declared "let me say to you, Judge, I don't want or need a lawyer. Mr. Statman can go on his way. I'm not going to waive my right to this conflict, and I will be there a week from Monday for the trial to go forth, and I'll represent myself *pro se*." *Id.* The Court reiterated that Defendant had the right to do so, directly telling him it is "your call." *Id*. Before adjourning, the Court stated that "the Defendant has indicated that he wants to proceed *pro se*. He's already gone through a lengthy *Faretta* hearing . . . that's part of the record in this matter. I don't need to go through again." *Id.* at 11. The Court granted Statman's motion to withdraw. (Doc. # 236).

The bench trial began on June 17, 2024 (Doc. # 239) and concluded on June 26, 2024. During a verdict hearing on July 19, 2024, the Court found the Defendant not guilty of Count One and guilty of Counts Two through Four. (Doc. # 249).

Following the verdict, Defendant filed a motion for an extension of time to seek a new trial and also, asked for court-appointed counsel. (Doc. 253). The Court granted both requests and appointed Eric Eckes to represent Defendant. (Doc. # 254). Following several motions for extensions of time and the filing of pertinent transcripts, Defendant filed the instant motion seeking a new trial. (Doc. # 273). In support of his motion, he broadly alleges that the trial was "undermined by a clandestine scheme to manipulate him" and that a new trial is "the only remedy." (Doc. # 273, p. 1). Specifically, he argues that he never validly waived his right to counsel after Statman withdrew from the case and that his Due Process rights were violated by a non-party's unauthorized practice of law in this case.

II.

Defendant asks the Court to vacate his conviction and convene a new trial. He invokes Fed.R.Crim.Proc. 33 which gives a court discretion to "vacate any judgment and grant a new trial if the interest of justice so requires."

III.

Defendant's first argument in seeking a new trial is that he did not validly waive his right to counsel after Statman withdrew. He does not question the propriety of Judge Smith's Faretta hearing. Rather, Defendant focuses on the Court's June 6, 2024 telephonic hearing convened to address the issue of Statman's conflict and during which the Court granted Statman's motion to withdraw, and Defendant proclaimed his desire, once again, to proceed *pro se.* Defendant maintains that his waiver of his right to counsel was not unequivocal and, even if it were, a second *Faretta* hearing was required before he could once again proceed *pro se*.

It is well settled that the right to counsel can be waived, but only where such waiver is "knowing, voluntary, and intelligent." *Benitez v. United States*, 521 F.3d 625, 630 (6th Cir. 2008) (citing *King v. Bobby*, 433 F.3d 483, 490 (6th Cir. 2006)). The waiver must be "a clear and unequivocal assertion of a defendant's right to self-representation." *United States v. Cromer*, 389 F.3d 662, 683 (6th Cir. 2004).

Defendant contends that during the June 6, 2024, hearing, he was "confused," "disoriented" and made contradictory statements with regard to waiving his right to counsel. But the transcript tells a different story. To be sure, Defendant initially stated that he wanted Statman to represent him "if it's at all possible." However, he ultimately reasserted his desire to proceed *pro se*: "I don't want or need a lawyer. Mr. Statman can

go on his way. I'm not going to waive my right to this conflict, and I will be there a week from Monday for the trial to go forth, and I'll represent myself pro se." These are not hesitant, contradictory or equivocal statements; to the contrary, Defendant spoke decisively, affirmatively and unequivocally. Indeed, broken down, Defendant reasserted his right to self-representation in five different ways: (1) he did not want a lawyer, (2) he did not need a lawyer, (3) his current lawyer was dismissed, (4) he would not waive a conflict such that a lawyer he had could represent him, and (5) he would be in court representing himself "*pro se*" at trial. Further, at no point, until the filing of this motion for a new trial, has he disavowed these statements.

Defendant further argues that even if his waiver were unequivocal, it is invalid because a second *Faretta* hearing was required.

Before a defendant may exercise his right to self-representation, a district court is required to ensure that the defendant is knowingly and voluntarily waiving his right to counsel. *See Faretta v. California*, 422 U.S. 806, 833–34 (1975); *Cromer*, 389 F.3d at 680. "[T]o ensure that a defendant's waiver of counsel is knowing and intelligent," a district court must engage in a *Faretta* inquiry, essentially a series of questions from the Bench Book for United States District Court Judges. *Id.*; *United States v. Evans*, 559 Fed.Appx. 475, 480 (6th Cir. 2014). "Substantial compliance with this series of questions is sufficient." *Cromer*, 389 F.3d at 680. This substantial compliance standard means that the district court need not conduct a formal inquiry consisting of all thirteen questions plus the admonition against self-representation. Rather, if a judge addressed "the relevant considerations behind the model inquiry, such as the defendant's familiarity with the law, ... the gravity of the charges and the dangers of self-representation, and whether the

defendant's decision to waive counsel is voluntary. Where the record shows that the defendant kn[ew] what he [wa]s doing and his choice [wa]s made with eyes open, the *Faretta* inquiry is adequate. *United States v. Bankston*, 820 F.3d 215, 224 (6th Cir. 2016) (internal citations and quotations omitted). As long as the record shows that the defendant was literate, competent, "voluntarily exercising his informed free will," and the judge informed the defendant that "he thought it was a mistake not to accept the assistance of counsel and that the [defendant] would be required to follow all the 'ground rules' of trial procedure" the court will conclude there was valid waiver of the right to counsel. *Faretta*, 422 U.S. at 835–36.

Again, Defendant appears to concede that Judge Smith conducted the required colloquy in August of 2023 and concluded that he knowingly and voluntarily waived his right to counsel. He instead argues that a second inquiry was required after Statman withdrew and he reasserted his waiver of his right to counsel.

A court is under no obligation to repeat the *Faretta* inquiry absent a substantial change in circumstances. *United States v. McBride*, 362 F.3d 360, 367 (6th Cir. 2004). The question is, what is a "substantial change in circumstances?" Defendant urges that Statman's appearance for twenty days qualifies. The Court disagrees. The facts present here are more akin to an "interim change of heart" which is not enough to warrant a second *Faretta* hearing where Defendant "ultimately gave [this court] no reason to suspect that he was uncertain of representing himself." *United States v. Modena*, 302 F.3d 626, 631 (6th Cir. 2002). Given his adamant statements at the close of the June 6 hearing, the Court did not perceive any reservation or doubt by Defendant regarding self-representation. There is no reason to "break new ground by requiring that a district court

reevaluate the acceptance of the defendant's waiver of counsel solely because the defendant at one point had second thoughts about representing himself." *Id.* Indeed, to require as much would be create an untenable, unworkable protocol. Every slight expression of hesitation would, post-hoc, trigger any number of hearings.

The Court recognizes that this case presents a unique set of circumstances. In seeking a new trial, Defendant has, for the first time, alleged a "clandestine scheme to manipulate him." He claims that his defense was manipulated by a non-party, disbarred attorney who was pulling-the-strings behind the scenes to Defendant's detriment. Yet, Defendant actively concealed this non-party's involvement from the Court. Now, he claims that he was tricked into proceeding *pro se*, revealing that this "shadow" operator participated in the June 2024 hearing; he was in the room with Statman and texting Defendant during the hearing. Yet, this was not disclosed during the roll call. Moreover, when the Court explicitly asked Defendant if he had "spoken with anybody else about this issue other than Mr. Statman? [About this potential conflict[?]," Defendant remained silent. To now cry wolf is, at best, disingenuous. It smacks of the kind of strategic machinations and trifling with the Court which, unfortunately, can be used to manipulate the rules governing self-representation.

In this case, the Court engaged in a detailed, proper *Faretta* inquiry; the Defendant concedes as much. An additional hearing was not required.

Defendant further argues that he was deprived of Due Process, including a fair trial, by the aforementioned involvement of a non-party. Defendant claims that by counselling him throughout this litigation, this individual engaged in the unauthorized practice of law and a new trial is warranted.

The Court is not aware of any duty to police a Defendant's, *pro se* or otherwise, personal communications or choices. Nor is the Court required to undo the consequences of those choices. The Court undertook the appropriate self-representation and conflict of interest inquiries, explaining the rules and procedures along the way. As the United States points out, Defendant urges this Court to embrace a non-existent and unworkable rule. He claims that a non-party, disbarred attorney advised him, "charted the direction of this case" and manipulated him. If this set of facts requires a new trial, then every time a criminal defendant represents himself, receives bad advice from a nonlawyer, a subsequent guilty verdict will not stand.

Incredibly, Defendant now claims that he did not proceed *pro se* by choice, and that he was "abandoned" by Statman. He insists that had he been represented by counsel, he may very well have obtained a different result. He concludes that given the possibility of a "different result", due process requires a new trial. The Court is not aware of any cases which support this novel argument. Nor has Defendant cited any.

As for Defendant's suggestion that he suffered from debilitating eye issues before and during trial, and, as such, a new trial is warranted, it is unavailing. Defendant, did, in fact, inform the Court during trial that he had had eye surgery, "[y]our Honor, I had an eye procedure about three weeks ago so I'm not at the top of my game." (Doc. # 248, p. 23). However, he never implied, much less stated, that it affected his ability to represent himself. His remarks are to the contrary, "[m]y eyeballs are not really good right now, but I can see it." Doc. # 266, p. 112. Later, he mentioned his eye surgery again, alluding that it was difficult to see something on a page of an exhibit; the undersigned offered to lend Defendant his own eyeglasses, but Defendant declined and continued with his

examination. Doc. # 267 p. 99. At no point did Defendant state that he could not represent himself. As such, this scenario falls well short of the injustice contemplated by Rule 33.

IV.

A defendant has a right to counsel. A defendant also has the right to waive that right. A defendant does not, however, have an unfettered right to a do-over. Yet, that is precisely what Defendant seeks – a do-over. Despite being warned repeatedly by the Court and by his former counsel about the dangers of self-representation, Defendant affirmatively, knowingly and voluntarily waived his right to counsel. Now, after an unfavorable result, he implores the Court to turn back the clock, read his mind, undo decisions he made, delve into matters outside the record and break new ground by re-writing the protocol of *pro se* representation. The Court is neither required nor inclined to do so.

Accordingly, **IT IS HEREBY ORDERED** that Defendant Michael Fletcher, M.D.'s Motion for a New Trial (Doc. # 273) is **DENIED**. Defendant's Sentencing will be set by subsequent Order.

This 9th day of March 2025.

Signed By:
David L. Bunning
Chief United States District Judge

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at COVINGTON

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UNITED STATES OF AMERICA,	:	Docket No. 21-cr-63-2
Plaintiff,	:	Covington, Kentucky
	:	Friday, July 19, 2024
versus	:	10:00 a.m.
MICHAEL FLETCHER, M.D.,	:	
Defendant.	:	

- - -

TRANSCRIPT OF VERDICT HEARING
BEFORE DAVID L. BUNNING
UNITED STATES DISTRICT COURT JUDGE

- - -

APPEARANCES:

For the United States: DERMOT WILLIAM LYNCH, ESQ.
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U.S. Department of Justice
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For the Defendant: Pro Se

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Official Court Reporter
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Proceedings recorded by mechanical stenography, transcript produced by computer.

(Proceedings commenced at 9:58 a.m.)

THE COURT: Madam Clerk, if you would call the matter scheduled for 10:00, please.

COURTROOM DEPUTY: Covington Criminal 21-63, United States versus Michael Fletcher, M.D.

THE COURT: All right. We have the defendant present, and then Ms. Kanerva and Mr. Lynch present for the United States.

We are here for a hearing relating to the verdict in the case which was previously tried last month here in Covington. I will go ahead and announce the verdict, and then I'm going to explain how I got there. I will also ultimately order the court reporter to transcribe my oral verdict and then file that of record.

You don't need to stand.

Upon consideration of the evidence in the case that was presented during the bench trial, weighing the credibility of the witnesses as the trier of fact and applying the law governing the conspiracy and distribution counts to the evidence, the Court finds the defendant not guilty of Count 1 and guilty of Counts 2, 3, and 4.

I will explain my verdict now and the evidence or the lack of evidence as it relates to Count 1 supporting the verdict.

Of course, Count 1 alleges a conspiracy to distribute

controlled substances to certain IPS patients in violation of 21 U.S. Code Section 841. Defendant is charged with conspiring with Kendall Hansen and others. The elements of this are, first, that two or more persons conspired, or agreed, to distribute a controlled substance in violation of federal law. And, second, that the defendant knowingly and voluntarily joined the conspiracy.

The evidence here in this count requires, initially, evidence of an agreement between Hansen and Fletcher, but my review of the testimony and the evidence reveals that there was very little that they agreed on and that, in fact, they didn't agree on much.

The Court recognizes that an agreement can be unspoken and can be proven by circumstantial evidence. However, there still needs to be evidence beyond a reasonable doubt of an agreement between Hansen and Fletcher. Virtually every witness who testified indicated that Dr. Hansen ran the office and really wouldn't take too kindly to anyone who disagreed with him.

Those same witnesses also indicated that other doctors, including Dr. Fletcher, didn't have much control over IPS -- how IPS operated.

Now, there was some sporadic evidence that he was instrumental in perhaps obtaining the drug testing equipment that was ultimately used and had sent some emails back and

forth. But, frankly, that's not really evidence of the conspiracy as relates to the distribution of controlled substances. You'd have to jump over a number of hoops to make that connection.

At trial, the United States produced evidence that Hansen was disappointed in Fletcher's production numbers, gave him additional production metrics that he did not satisfy. And there's a number of pieces of evidence, documents that were admitted regarding that.

After that, Dr. Fletcher proposed a contract where he would be paid more to work less. And that's Government Exhibit 173, which is the proposed contract.

The testimony established that Dr. Hansen pressured most of his doctors to perform procedures, not just Dr. Fletcher.

In the Court's view, the evidence at trial was simply insufficient to establish the existence of an agreement beyond a reasonable doubt to distribute controlled substances in violation of federal law between Fletcher and Hansen or Fletcher and other doctors, for that matter.

In the Court's view, that's fatal to the conspiracy count. Because there's insufficient evidence of an agreement beyond a reasonable doubt, the Court need not discuss the remaining element of the conspiracy count.

For these reasons, the Court finds that the government has not produced sufficient evidence beyond a reasonable doubt

on Count 1, and the Court finds him not guilty on Count 1.

Now, Counts 2, 3, and 4 are a different matter. These counts allege that the defendant, Dr. Fletcher, violated 21 U.S. Code Section 841(a)(1) when he wrote prescriptions for patients Charles Hickman and Steven Kasselmann, both of whom ultimately passed away soon after the last script was written.

The distribution of controlled substances in violation of 21 U.S. Code Section 841(a)(1) has three primary elements, and these elements are certainly governed by the more recent *Ruan* decision and then even more recently by the *Stanton* decision in the Sixth Circuit.

The elements are, first, that the defendant knowingly or intentionally distributed controlled substances -- in this case, oxycodone -- on or about the dates alleged in the indictment.

Second, that the defendant knew at the time of the distribution that the substance was a controlled substance. And, frankly, both of those elements have not been in dispute at all. He wrote the scripts. He knew they were controlled substances, opioids.

It's the third element that the parties here and, in fact, in most of these cases seems to be the one that is in dispute. That is that the defendant knowingly or intentionally acted in an unauthorized manner when he distributed the controlled substances.

Acting in an unauthorized manner means that the prescriptions were without a legitimate medical purpose and outside the usual course of professional practice.

In making the Court's finding with respect to Counts 2, 3, and 4, the Court is certainly mindful that it is ordinarily not this Court's job to second guess the legitimate prescribing practices of a physician or assess whether, perhaps, they've been negligent or perhaps did not meet the civil standard of care in a particular situation with an individual patient.

Having said that, the law governing these types of cases simply does not permit a defendant to, in essence, put his head in the sand and ignore obvious red flags.

Deliberate ignorance can support a distribution conviction post-*Ruan*. Deliberate ignorance is established when the defendant was aware of a high probability that the prescriptions were not issued for a legitimate medical purpose by a practitioner acting within the usual course of professional practice and that the defendant deliberately closed his eyes to what was obvious.

The Court recognizes -- and let me repeat. I recognize that carelessness or negligence or foolishness on the defendant's part is not the same as knowledge. If that's all we had here, that would be insufficient to convict.

In its recent *Stanton* decision -- and *Stanton* now has

been published at 103 F.4th 1204, that's a 2024 case from last month here in the Sixth Circuit -- the Sixth Circuit determined that a deliberate ignorance instruction satisfies *Ruan*, when it reminds the factfinder -- in this case, the Court -- that the standard sits well above carelessness, negligence, and mistake. In that case, deliberate ignorance was established by the defendant's knowledge of the unusual patient population, the clinic's lack of concern about drug testing, and other telltale signs of a pill mill.

Now, I recognize that this is not a pill mill. He's not being charged with running a pill mill, as was the case with *Stanton*. But the holding relating to deliberate ignorance post-*Ruan* applies to Dr. Fletcher or any other doctor who's charged with this type of offense post-*Ruan*.

Now, I do want to -- there are buckets, as I've described previously in other cases, of evidence. Some of the evidence relates specifically to Patients Hickman and Kasselmann. Some relates to other patients which are indicative of deliberate ignorance and/or knowledge, and there are some other initial comments I want to make for any reviewing court before getting into the specific evidence that supports the verdict.

During closing argument, Dr. Fletcher argued and mentioned a number of points that were simply not part of the evidence in the case. And I think the record will reflect that I kind of stopped him and reminded him of that because he

did not, in fact, testify in the case, the things that he identified in closing that were not part of the testimony and evidence simply can't be considered by the Court in reaching the verdict.

For example, character, charitable acts, church attendance, other, I guess, travel to do charitable works. While I certainly think that's great information and might certainly be relevant for sentencing, I don't believe it's something that I can consider in rendering a verdict because it's not something that was part of the evidence.

Additionally, Fletcher's attack on the legitimacy of KASPER reports is unfounded. There's simply no evidence that was put before the Court to conclude that the KASPER reports were inaccurate. He didn't object to the admission of the reports, and the physical prescriptions and patient notes in the record corroborate the information that was produced in the KASPER reports.

Additionally, Dr. Fletcher alluded a number of times during trial that perhaps certain errors in the patient file or patient files were attributed to the nurse or the MA that may have prepared them for his signature at the end of all the -- there was a -- his signature was put on the bottom, and it was prepared by somebody else.

To the extent he's kind of seeking to blame that someone else, whoever it was, the Court attributes those errors to

Dr. Fletcher, who signed and approved them.

It would kind of akin to myself, who I have a number of law clerks who assist me with orders that are signed by myself. It would be similar to an order that was prepared that I signed, that I authorized to be signed, and then it goes on, and there's an issue with it and I blame my law clerk instead of myself. Ultimately, I'm responsible for everything that goes out of my chambers.

Similarly, a doctor who has his name at the end of a patient file certainly, even if he doesn't know anything about what's in there, if it's his patient, he's responsible for it, and that kind of leads into this deliberate ignorance type finding.

And even if he didn't approve them, he was deliberately ignorant to what those records contained.

Now, there's a number of pieces of evidence, in the Court's view, that support a conviction and a finding beyond a reasonable doubt on the three distribution counts.

First, the testimony relating to the defendant's time on the KBML board. And this is through the testimony of Sara Farmer, the attorney. The Court recognizes that his time on the board was -- his appointment to the board occurred after the time period alleged in the indictment.

His time on the board included disciplining other doctors, and he was therefore aware of the standards for

proper prescribing and what improper prescribing may have looked like.

In this particular case, the testimony was he had voted to sanction that particular doctor -- I think it was Lockett was the name of the doctor -- for inappropriately prescribing during the same time period as the conduct he is accused of here.

Her red flags were prescribing both injections and narcotics, prescribing benzos and other opiates at the same time, and disorganized charting in the patient files. Now, Fletcher did some of the same things, perhaps minus prescribing benzos. He did prescribe to patients concurrently. Plus, there were multiple times where there was additional drug testing that showed that his patients were being noncompliant.

Dr. Murphy. Where do I start with Dr. Murphy? Ultimately, he was simply just not credible on a variety of levels to assist the Court in understanding the evidence or determining any of the facts here.

He did testify that he didn't find any instance -- any instance -- where he did not believe Fletcher's prescribing was within the usual course of professional practice. In essence, everything that Dr. Fletcher did, Dr. Murphy gave a thumbs up and said there were no issues at all. In fact, he said the charting was great and the patient records were

complete and was very glowing on what Dr. Fletcher did.

In fact, he emphasized that every prescription for each of the 27 patients that he reviewed was in the usual course of professional practice, and he didn't see a single instance in the patient notes where that was not the case.

In the Court's view, Dr. Murphy's opinions are less credible because he, in essence, has taken the position that it is in the usual course of professional practice if the physician has the intent to alleviate a patient's pain.

Just saying that doesn't make it so.

Dr. Murphy testified that Fletcher's care was individualized and specific to patients, but he did not testify how or evaluate any specific patients. His opinions were not connected to any of Fletcher's action's, in the Court's view.

And here during the trial, during cross-examination of Dr. Murphy, as well as the closing argument, the United States pointed out several errors in his report. I get that the response was, well, he was just preparing it and cut and pasting and trying to do it in maybe a condensed way, and errors just happen.

Well, a number of errors were significant. He discussed the many years that Imogene Casey and Patrick Johnson were treated at IPS when they were only treated for a short period of time; four months for Ms. Casey and nine months for

Mr. Johnson.

Dr. Murphy did opine that Patrick Johnson was a difficult case, and I'm sure he was. He testified that Johnson was very sick and was basically a palliative care patient. While he had significant comorbidities, no records support the assertion that he was only seeking palliative care.

Emily Murphy testified that IPS had cancer patients, but the practice was not primarily focused on that.

For instance, five of Johnson's urine drug screens that could potentially be positive for heroin and its metabolites were not sufficiently addressed by Fletcher and IPS. Nonetheless, he continued to receive his full prescriptions.

Significantly, Dr. Murphy, my notes reflected he declined to answer whether continuing to use -- I'm sorry, continuing to prescribe opioids after multiple heroin positive urine drug screens was outside the usual course of professional practice.

Dr. Murphy also said Patrick Johnson died from cardiomyopathy, but the autopsy and toxicology reports, which were admitted as Government's Exhibits 215B and 215C, said he overdosed on oxycodone.

There was some testimony additionally regarding legacy patients. And having presided over the trial, I understood and do understand that IPS and Dr. Fletcher may have been inundated with patients due to the closure of other clinics and perhaps the death of other providers.

Now, that does not mean -- just because you have more patients, that does not mean that simply continuing them on their meds without doing sufficient due diligence is appropriate. In fact, just the opposite in this case, in the Court's view.

Although the defendant's actions relating to patients like Imogene Casey and Patrick Johnson are not specifically charged in this case, the evidence is relevant, in the Court's view, to establish the defendant's knowledge and intent under Rule 404(b), Federal Rule of Evidence 404(b).

According to Dr. Fletcher's own witness, Emily Murphy, who was a nurse at IPS, the St. Elizabeth records were actually easy to obtain. There was some testimony that, well, it's very hard to get psychiatric records from North Key or other places, and there was testimony in this case that if you wanted to get patient records, you could have had them sign a HIPAA release and they could have been obtained.

Now, it's different saying, well, we just didn't get them because it was hard, versus the record reflects that we tried to get them and weren't able to. In this case, it was the former. They just didn't, with the very rare exception. There were some MRIs and, in this particular case, there's two pages of a 15-page fax that St. Elizabeth was able to provide to IPS.

But for the most part, while there was testimony that

these were difficult to obtain, it stopped there. There weren't notes that we tried to obtain them, and we weren't able to. They just didn't try to obtain most of them.

IPS, in this particular case with Imogene Casey, received two pages of 15 pages which clearly stated that she had overdosed and was exhibiting drug-seeking behaviors while there. Not only did Dr. Fletcher not inquire into the records he received, according to the records from IPS, the patient notes do not reflect that the records were considered at all or anything about the missing pages from the fax.

In fact, I think it was -- I can't remember -- page 2 and 11 or 4 and 11. There were a number of other pages that weren't received. Given the testimony of Emily Murphy, St. E records were easy to get so they could have gotten all 15 pages, but there's no record of that.

The records admitted during the trial established that Ms. Casey's dose was increased the very next month. Casey overdosed and died the day after her last prescription from Fletcher in January of 2014. That's Government Exhibit 206C where the cause of death was acute polypharmacy with morphine, oxycodone, and diazepam.

Now, additionally, former IPS employee Darla Stewart testified. I certainly understand that Dr. Fletcher took some arrows at her testimony. Certainly not surprising. She testified that she observed medical assistants getting

prescriptions signed without the doctors visiting with the patients, and she was concerned with IPS overbilling patient time.

In fact, the record reflects that in Exhibit 166, which is an email to Dr. Hansen where that was discussed. She testified that she spoke with Dr. Fletcher about the same subject and he did not seem concerned or change his practices after the conversation. She noticed no change in the volume of patients.

Karen Spaulding, Darla Stewart, and Emily Murphy testified that nurses and MAs left prescriptions on surgical trays for any doctor to pick up and sign. Spaulding observed doctors signing prescriptions without reviewing the medical records of the patients or speaking to the patients. She also observed Dr. Fletcher signing prescriptions for Hansen patients despite making comments that they were for a lot, meaning large MMEs.

Spaulding, an IPS nurse who worked on the medical management side, testified that she never saw Fletcher speaking with patients. Although other nurses and MAs disputed that, they testified that they disputed that, including Donna Kramer and Emily Murphy, they primarily worked in the procedure side of IPS and would have had less interaction with patients who were only at IPS to receive their monthly prescriptions on the med management side.

Now, there was quite a bit of testimony that when there was an increase or change in medication, the doctor was consulted. But without any change, most of the witnesses said there really wasn't much interaction. That's what the record reflects and the Court's notes reflect.

Additionally, long-time patient Melissa Brennan testified that she did not know Fletcher had even left the practice for almost two years. That testimony also supports the conclusion that Fletcher was not spending much time with his patients who were receiving prescriptions for controlled substances.

In the Court's view, one of the more significant pieces of evidence to support the defendant's knowledge is the testimony when Dr. Fletcher expressed concerns to other IPS employees about how IPS was prescribing controlled substances.

This evidence included Fletcher asking questions about prescribing practices to Ms. Spaulding and her daughter in either the winter of 2015 or 2016. The dates were unclear, but the meeting itself was -- the comments as they were about to go to lunch, I find that that meeting did occur, and I believe it was credible, that testimony of Ms. Spaulding.

The evidence shows that he stopped them on their way to lunch to ask how many patients she saw, how many were on med management, what the average prescription was for, and tried to do the math to figure out how many pills that they were sending out into the community.

He asked her if she thought it was a crazy amount, looked as if he had, indeed, thought about it. She testified that he thought -- it looked like he thought it was a lot of pills going out the door.

On cross-examination, Dr. Fletcher asked her if he, meaning himself, would ask a question if he didn't know the answer to it, implying that he had actual knowledge of the improper prescribing before he actually spoke with them.

Dr. Roberts also testified that when he joined the practice in 2013 -- they didn't overlap for long at IPS. But when he joined the practice in 2013, Dr. Fletcher instructed him on IPS procedures, including the narcotics agreement that every patient signs, which requires that the misuse of medication is grounds to stop treatment.

Despite several clear violations of the narcotics agreements by both Hickman and Kasselmann, their treatment was never stopped or modified.

Karen Spaulding and Amber Constantino both testified that after a patient died, Hansen required all IPS staff to reduce patient dosages. Each of them remember things changing a little bit after that, but everyone went back to their regular dose after a few weeks. Fletcher was practicing at IPS and was aware of what had occurred.

The evidence also supports that after one of the patients died, I think it was Hickman, there was a discussion with the

group at IPS about it, but nothing really was done.

Here, based upon the prescribing history and patient information that was provided during the visits, the Court concludes that the defendant knowingly acted in an unauthorized manner. Patients testing positive for illicit substances, testing negative for prescribed meds, statements in the patient notes they were overtaking their meds.

In the Court's view, Dr. Fletcher also displayed deliberate ignorance based on minimal face-to-face time with patients, several examples of inaccurate patient records, failure to even request -- to even request previous records from patients that would reveal previous opioid treatments, overdoses, mental health concerns, evidence of drug-seeking behavior or a lack of follow-up after failed urine drug screens, infrequent or no pill counts, and no follow-up on patients who missed appointments or died.

These are multiple red flags to support knowledge and deliberate ignorance, in the Court's view.

Now, with respect to Counts 2 and 3, the evidence supporting the Charles Hickman counts, the two counts here are June 6, 2016, and June 30, 2016. That's Counts 2 and 3, respectively.

The evidence in this case reflects on his very first visit in June of 2015, Charles Hickman indicated that he used recreational drugs, and it was never followed up or explored

by Dr. Fletcher, his prescriber. He also noted that medication therapy has proven unsuccessful for him and that he was issued a 30-day supply of oxycodone.

The next month, July 2015, Hickman received an increase in meds from two times a day to three times a day and took his very first urine drug screen.

At his August 2015 appointment, his patient notes reflect that Hickman failed the very first urine drug screen by overtaking his meds and not testing positive for his prescribed medication. However, he was still issued his regular prescription.

No pill counts were ordered for the months after, despite Dr. Fletcher being on notice that he was overtaking his meds. Month after month, he continued to receive his regular prescription.

November 2015, Charles Hickman had the issues relating to the vomiting during the procedure or -- not during the procedure, but during the attempt to get a urine drug screen. And these issues were just left unaddressed, in the Court's view.

The October urine drug screen was not mentioned in his patient notes, although Dr. King testified he was positive for his meds but did not take -- sorry. He was positive for his meds but not the metabolite, which indicated inconsistence in taking his meds.

At this visit, Hickman was noted to be extremely distressed, observed to have alcohol on his breath at 9 a.m. in the morning, threw up on himself in the bathroom, and was unable to complete a urine drug screen.

Dr. Roberts testified that these conditions would have been suitable for a potential discharge, weaning of medication, or a referral for substance abuse treatment, not a writing of a full prescription. He testified that's something -- he would have known that since his residency. Just basic knowledge if you have a situation like this at a pain clinic. When Dr. Roberts had a patient who couldn't take a urine drug screen, he testified that he would just simply rip up the prescription.

Additionally, Dr. Murphy testified that these conditions would be appropriate for a referral to an addiction treatment and discharge.

Dr. Stephens, the young individual who started as an MA at IPS who is now a doctor, also testified that he would not expect that patient to receive a prescription for any opioid.

However, despite these obvious and glaring red flags, Dr. Fletcher gave Hickman his full prescription in November of 2015 and made no referral for addiction treatment.

Patient notes also indicated that Hickman tolerated the procedure well, despite it being aborted, which obviously was not the case. And the Court, in saying many of these things,

understands that when you have a large practice, there's going to be errors occasionally in the medical charting. This is more than just an error in the medical charting. In fact, there were several examples of a repetitive kind of cut and paste, if you will, of the same thing over and over and over, whether it applied or not for a particular patient.

At the December 2015 visit, Hickman's patient notes indicated that Hickman was feeling much better today, going to counseling at North Key.

Dr. Roberts, Dr. Murphy, and witnesses Constantino and Stewart all agree that Dr. Fletcher should have made an attempt to obtain the records from North Key. If he had, he would have learned that Hickman was previously an inpatient -- was previously inpatient for substance abuse of cocaine, heroin, and alcohol. Additionally, these notes indicated that Hickman was being treated for depression, anxiety, alcoholism and PTSD and was trying to get anti-anxiety medications from North Key.

There was no November urine drug screen to review, and the patient notes indicated that Hickman passed a urine drug screen in October, despite Dr. King's testimony that it was inconsistent because there was no metabolite.

Hickman also told Fletcher he ran out of meds early because he fell in the shower, and he was given his full normal prescription once again.

Now, one instance of overlooking something, if that's all we had, the Court's verdict may have been different. But there's multiple red flags over the course of a number of months.

On his January 2016 visit, Fletcher and Hickman reviewed and re-signed the narcotics agreement. Despite that counseling, Hickman asked for an increase in his oxycodone prescription to four times a day, and Dr. Fletcher agreed. Fletcher also ordered another urine drug screen for Charles Hickman.

In February 2016, it was noted that Hickman passed his January urine drug screen, but the test was negative for the oxycodone metabolite. Despite this inconsistent result, he received his normal prescription.

Hickman's March 2016 notes contain a cloned note from February that Hickman's January urine drug screen was passed. No urine drug was ordered in February, and he received his normal prescription.

The notes from Hickman's May 2016 appointment were disorganized at best and perhaps misleading at worst, intentionally misleading at worst. The notes indicate that an April drug screen was ordered and results will be received once available.

Testimony at trial indicated the tests were typically available within days, and every urine drug screen so far was

available the month after Hickman took it. The issue with this disorganized charting is the fact that the April urine drug screen is when Hickman tested for cocaine and negative for his prescriptions. Despite that, he received his full regular prescription on this date.

On his first June 2016 visit, the positive cocaine test from April was finally addressed with Hickman. He asked for a change in meds and was denied, and he denied doing any cocaine.

Witnesses Roberts, Kramer, Murphy, and Stewart all testified that they would prescribe no more opioids after this. Despite what they said, Hickman got a prescription anyway for post-op meds until his test was confirmed. The post-op meds is part of Counts 2 and 3.

Dr. King did not recommend prescribing post-op opioids for the procedure Hickman received on this date. In fact, Dr. King testified that he had performed the same procedure 500-plus times and testified he never prescribed opioids afterwards.

No testimony indicated that it would take more than two months to confirm a urine drug screen. Another urine drug screen was not ordered on this date, despite his last urine drug screen occurring two months prior. Knowing Hickman had previously tested positive for cocaine, Dr. Fletcher could have used an instant cup or LC-MS result in the office that

was online from a number of months earlier. Fletcher would easily have been able to test Hickman's levels in 2016 and did not do so.

At his second June 2016 appointment, Hickman's patient notes indicate that the positive cocaine test was discussed, and Hickman was again prescribed post-op meds. No additional urine drug screen was performed. Patient notes reflect that the urine drug screen was performed at his May appointment, which was simply not true.

In July 2016, roughly a week after his last appointment, Hickman died of a drug overdose, and the records reflect it was from heroin and cocaine.

Dr. King testified that in his opinion, Hickman demonstrated multiple aberrant drug-seeking behaviors in multiple areas that come together to support a diagnosis of substance abuse disorder, illegal drug use, and addiction:

Past history of recreational drug use, out of his prescriptions early and often, multiple drug screens that were fails. He also presented in the office intoxicated. There was the presence of cocaine in urine drug screens. He should have also been diagnosed with substance abuse disorder and was not a candidate for opioids.

With respect to Patient Hickman, the evidence at trial indicated that Dr. Fletcher, on multiple occasions, rewarded

noncompliance by increasing Hickman's meds from two times a day to three times a day and then from three times a day to four times a day at the patient's request, despite multiple red flags in the patient notes.

He failed his very first drug screen, and each one he took after showed some signs that he was being inconsistent with his meds. His drug screen that tested positive for cocaine was not addressed until two months later.

Several witnesses -- several of the defendant's own witnesses testified that the November vomiting incident would have been enough to discharge Hickman or refer him to a substance abuse treatment. Instead, he received nine more prescriptions from Fletcher until his death in 2016.

For all of these reasons, the Court finds that the government has submitted sufficient evidence beyond a reasonable doubt on Counts 2 and 3 and finds the defendant, Fletcher, guilty of both of those counts.

Now, Count 4, of course, involves a prescription issued to Steven Kasselmann. He was a patient at IPS for a much longer period of time than Charles Hickman, approximately four years. According to the patient notes, his pain score was the same at his first visit and his last: 6 of 10.

Now, in discussing the evidence relating to Steven Kasselmann, Dr. King's opinions are simply more credible than those of Dr. Murphy. Dr. King's standards are higher than

perhaps what's in the KBML, the Kentucky standards. I am not saying that each and every box wasn't checked, necessarily, as it relates to Kasselmann. What I am saying is that this idea of pain scores, certainly Dr. King put a lot of emphasis on that. The United States presented evidence relating to that. That's one thing, of course, that the Court is relying on but not the only thing in making its decision relating to Kasselmann.

Dr. King testified that Kasselmann presented as a normal 30-year-old male and his MRI performed at the start of his treatment appears to be normal. His intake notes contained "evaluate later," indicating that a full evaluation, perhaps, had been rushed or not completed, but he received a full prescription on his first visit anyway.

Kasselmann had Hepatitis C and esophageal varices, indicative of alcoholism, that were simply not addressed by IPS, despite risk of opioid treatment to his liver. His notes also indicated that he suffered from depression and was medicated for it. No attempt to get records from his previous providers that would have informed IPS of his previous overdoses. And there were several overdoses, according to the evidence presented.

This is another situation where just because it was perhaps hard to obtain records from North Key or other mental health providers, the record reflected no attempt to get the

records. And, again, if there had been an attempt in the records to get -- in the patient notes that we tried to get the records and they refused, or the patient wouldn't sign a medical release, nothing like that. Nothing like that here.

In January 2016, Kasselmann's IPS visit includes notes in the patient file that his problem was worsening and occurring persistently. After almost four years of treatment at IPS, it was noted that Kasselmann still found it difficult to ascend and descend stairs, complete errands, stand from a seated position, walk household distances, and walk community distances. On the first visit, he did not report a problem walking household distances.

It is significant that Dr. Fletcher acknowledged in his notes that opioids simply were not working for Kasselmann eight months before the prescription at issue in Count 4 of the indictment.

Dr. King testified that because Kasselmann's pain was not opioid responsive, there was no medical rationale to continue prescribing opioids for him. There was no evidence in Kasselmann's medical records that activity and functionality were improving.

Part of the analysis for standard of care -- and, again, standard of care doesn't necessarily equal the requirement under *Ruan*, but it is something the Court can consider. It does require some basis for saying functionality has improved

for the patient after receiving opioids.

Just prescribing them to a patient over a long period of time without any improvement in function is just not appropriate, according to Dr. King.

Dr. King determined that the August 2016 prescription was not in the usual course of professional practice because his medical condition had not been established. There was no diagnosis that deserved opioid treatment that was defined in the patient notes, let alone for such a long period of time, more than four years.

Patient notes reflect that he was just continued on his opioid regimen month to month, year to year. The indication was he abused alcohol, was a high-risk patient. There was no documentation, despite years of treatment, that there was any indication of improvement in pain, function, or quality of life.

Just like Hickman, Kasselmann's urine drug screens showed that he was not taking his medications consistently.

In June 2016, his urine drug screen was missing a metabolite for oxycodone, oxymorphone. This was never addressed in the patient files.

Like Hickman, the June 2016 urine drug screen for Kasselmann was unavailable for his visit the following month with no explanation. At this visit, it was noted again that his problem was worsening and that his pain occurred

persistently. Despite that, Kasselmann received his full prescription from Dr. Fletcher.

Now, Dr. Fletcher argued that and inferred during the presentation at trial that the pain would have been far worse, and he'd have been in danger of dying had we not given him these prescriptions.

Dr. Murphy, the defendant's expert, kind of tried to make the same point. But ultimately here, there has to be something more than just the patient needs it, says he needs it, he's had it a long time. That's just not going to be an adequate defense, in the Court's view, in these types of cases.

On his visit where Kasselmann received the prescription in the indictment at Count 4, his June 2016 urine drug screen was noted as passed, despite the fact that it was missing a metabolite for oxycodone.

Kasselmann's long-time partner, Natisha Agnew, testified there was never a month that Kasselmann did not receive pills from IPS. She testified that he would overtake the prescriptions or sell them to buy heroin.

The Court finds that the repeated documentation that opioids were not helping Kasselmann, as well as the failure to follow up on his multiple failed urine drug screens, when combined with the other evidence related to Patient Charles Hickman and the other evidence of deliberate ignorance that

the Court explained previously, that that evidence is sufficient to establish that the prescribing practices were outside the usual course of professional practice as it relates to the prescription for Steven Kasselmann in Count 4.

For these reasons, the Court finds that the government has submitted sufficient evidence beyond a reasonable doubt on Count 4, and the Court finds Dr. Fletcher guilty on Count 4.

So I will go ahead and order that that verdict be filed of record as the Court's oral finding. Pursuant to Rule 23(c), the Court has stated its specific reasoning for its verdict in open court. We can just file it as a verdict finding and file it of record.

All right. Couple of things. I need to schedule this matter for sentencing. I will need to get a presentence interview prepared.

Before we do that, let me ask you, Mr. Lynch, you indicated that you were getting ready to argue *Suetholz*. Has that been done?

MR. LYNCH: I'm arguing it next week, Your Honor.

THE COURT: Next week, okay. I just was curious.

Okay. So today is July 19th. I'm looking at a date likely, given the nature of the offense, probably in November or December for a sentencing date.

MR. LYNCH: Your Honor, for what it's worth, I have the three-week trial in Lexington.

THE COURT: When is that?

MR. LYNCH: That starts on November 4.

THE COURT: November 4, all right.

Tuesday, December 17. Subject to intervening orders of the Court, sentencing will be December 17, 2024, at 10 a.m. here in Covington.

Now, Dr. Fletcher, you're going to be interviewed by the probation officer. I don't know who's going to set that up. Likely, given the fact that you're in Oklahoma, they'll set it up via Zoom or Teams or whatever they're using these days to do that.

Are you seeking detention?

MR. LYNCH: Your Honor, you know what the statute says.

THE COURT: I know what it says.

MR. LYNCH: We're not taking a position on that, Your Honor.

THE COURT: I'll allow you to remain out pending sentencing. I'm treating you similarly to Dr. Suetholz. I did the same thing in his case. I haven't looked at the sentencing guidelines. I don't make it a point to put carts in front of horses. Until such time as I have a presentence report and I'm able to review it, any objections, I simply don't know what the recommendations with respect to the guidelines are going to be by the sentencing commission, and I

just don't know what the appropriate disposition on the sentencing perspective is, and I think it's important that you have the opportunity to raise whatever you want to raise on appeal after we have a sentencing.

So I am going to remind you of the bond conditions that were previously imposed, and I did check with the probation officer. Your bond conditions were part of the 21-64 case. There were not separate conditions in this case.

I thought what I would do is have the minutes reflect that the conditions that were previously imposed in 21-64, those same conditions will be imposed here. Your travel will continue to be preapproved in advance by Probation. I don't believe you're a risk of flight.

The conditions under 3143(a)(2), I'm not convinced that they're satisfied at this point because I'm not sure what the ultimate disposition is going to be from a sentencing perspective. If I were to remand you today and the sentence I decide is less than, perhaps, the time that you'd serve and perhaps what any appeal would take, I think that would be inappropriate. I kind of took the same position with respect to Dr. Suetholz, who is currently on bond pending appeal.

So that will be the order of the Court. I'll be entering a separate sentencing order setting forth deadlines for the filing of objections.

What happens after the presentence interview is prepared

or is done, there's a presentence report prepared. I would suggest that it be emailed directly to the United States and to Dr. Fletcher himself.

Hannah, if you would give the email that to Ms. Vonderhaar, she can email the presentence report -- or whoever prepares it with Probation -- to Dr. Fletcher at his personal email address.

And then you'll need to notify the probation officer regarding any objections you have to the report, and then we'll have a sentencing. If I have to have an objection hearing, I'll have it prior to the formal sentencing, usually the same day. So I'll set aside two hours for the sentencing at this point, anticipating perhaps one or more parties will object to something just based upon my experience in these types of cases.

All right. What else? Anything else?

MR. LYNCH: Nothing from the government, Your Honor.

THE COURT: Dr. Fletcher?

THE DEFENDANT: No, sir.

THE COURT: All right. Very well. That will be the order of the Court. I will not be entering a formal written order. There wasn't a request for one. I ruled orally.

We will reflect in the minutes, Madam Clerk, that for reasons stated in the transcript that's going to be filed relating to the verdict, the defendant was found not guilty of

Count 1, guilty of Counts 2, 3, and 4 with the sentencing being December 17, 2024, at 10 a.m. The presentence report will be prepared by Probation.

Very well. We'll be in recess.

Defendant released on the same bond.

(Proceedings concluded at 10:47 a.m.)

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C E R T I F I C A T E

I, LISA REED WIESMAN RDR-CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled case.

/s/ Lisa Reed Wiesman July 25, 2024
LISA REED WIESMAN, RDR-CRR Date of Certification
Official Court Reporter

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

UNITED STATES DISTRICT COURT

Eastern District of Kentucky – Northern Division at Covington

UNITED STATES OF AMERICA

v.

Michael Fletcher, MD

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:21-CR-063-SS-DLB-02

USM Number: 76616-509

Eric G. Eckes
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) 2SS, 3SS, and 4SS after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21:841(a)(1) & 18:2	Distribution of a Controlled Substance	June 6, 2016	2SS
21:841(a)(1) & 18:2	Distribution of a Controlled Substance	June 30, 2016	3SS
21:841(a)(1) & 18:2	Distribution of a Controlled Substance	August 8, 2016	4SS

The defendant is sentenced as provided in pages 2 through 6 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) 1SS

☐ 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.

May 8, 2025
Date of Imposition of Judgment

Signature of Judge

Honorable David L. Bunning, Chief U.S. District Judge
Name and Title of Judge

May 9, 2025
Date

DEFENDANT: Michael Fletcher, MD
CASE NUMBER: 2:21-CR-063-SS-DLB-02

PROBATION

You are hereby sentenced to probation for a term of:

Three (3) Years Probation on each of Counts 2SS, 3SS, and 4SS, to be served concurrently, for Total Probation Term of THREE (3) YEARS

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 placement on probation 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 cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
5. ☐ 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 which you reside, work, are a student, or were convicted of a qualifying offense. *(Check, if applicable.)*
6. ☐ You must participate in an approved program for domestic violence. *(Check, if applicable.)*
7. ☐ You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. *(check if applicable)*
8. You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9. If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
10. You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

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.

DEFENDANT: Michael Fletcher, MD
CASE NUMBER: 2:21-CR-063-SS-DLB-02

STANDARD CONDITIONS OF SUPERVISION

As part of your probation, 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 the time you were sentenced, 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.
14. You must comply strictly with the orders of your physicians or other prescribing source with respect to the use of any prescribed controlled substances. You must report any changes regarding your prescriptions to your probation officer immediately (i.e., no later than 72 hours). The probation officer may verify your prescriptions and your compliance with this paragraph

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 _____

DEFENDANT: Michael Fletcher, MD
CASE NUMBER: 2:21-CR-063-SS-DLB-02

SPECIAL CONDITIONS OF SUPERVISION

1. You will be placed on home detention for a period of ten (10) months. During this time, you must remain at your place of residence except for employment and other activities approved in advance by the probation officer. You must wear an electronic device and must observe the rules specified by the Probation Department. You must pay for the cost of location monitoring to the extent you are able as determined by the probation officer.

DEFENDANT: Michael Fletcher, MD
CASE NUMBER: 2:21-CR-063-SS-DLB-02

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	$ 300.00 ($100/Count)	$ Waived	$ Waived	$ N/A	$ N/A

☐ 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

TOTALS	$ _____	$ _____

☐ 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.

DEFENDANT: Michael Fletcher, MD
CASE NUMBER: 2:21-CR-063-SS-DLB-02

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 $ 300.00 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:

Criminal monetary penalties are payable to:
Clerk, U. S. District Court, Eastern District of Kentucky
35 West 5th Street, Room 289, Covington, KY 41011-1401

INCLUDE CASE NUMBER WITH ALL CORRESPONDENCE

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.