

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

MICHAEL J. GALATIS,

Petitioner.

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Criminal Action No. 1:13-cr-10266-IT

MEMORANDUM & ORDER

March 25, 2025

TALWANI, D.J.

On December 3, 2014, Petitioner Michael J. Galatis was convicted following a 15-day jury trial of conspiracy to commit health care fraud pursuant to 18 U.S.C. § 1349, ten counts of health care fraud pursuant to 18 U.S.C. §§ 1347 and 2, and seven counts of money laundering pursuant to 18 U.S.C. §§ 1957. See Jury Verdict [Doc. No. 186]. Petitioner was sentenced to a term of imprisonment of 92 months, three years of supervised release, an \$1,800 special assessment, a \$50,000 fine, and \$7,000,000 of restitution. See Judgment [Doc. No. 226]. Pending before the court is Petitioner Michael J. Galatis's Motion to Vacate [Doc. No. 397] pursuant to 28 U.S.C. § 2255. For the reasons specified herein, Petitioner's motion is DENIED.

I. Background

A. The Indictment

The Indictment [Doc. No. 3] charged Petitioner and co-defendant Janice Troisi with one count of conspiracy to commit health care fraud and eleven counts of health care fraud,¹ and also charged Petitioner alone with seven counts of money laundering.

¹ One count for health care fraud was later dismissed based on a motion from the government. See Order [Doc. No. 164].

As alleged in the Indictment [Doc. No. 3], Petitioner was the owner and operator of MJG Management, d/b/a At Home VNA (“AHVNA”), a home health agency that purported to provide medical services to individuals in need of home health care. See Indictment ¶¶ 1, 3 [Doc. No. 3]. The Indictment alleged that from at least January 1, 2006, through at least October 2, 2012, Petitioner and Troisi devised a scheme and artifice to defraud Medicare by causing the submission to Medicare of false and fraudulent claims for home health and related services. See id. ¶ 20.

The Indictment alleged that Defendants and their co-conspirators caused the submission of more than \$27 million of dollars in false and fraudulent claims to Medicare. See id. ¶ 33. The Indictment alleged, *inter alia*, that Defendants manipulated reports by training AHVNA nurses to complete the forms in a manner that made it appear as though patients were homebound (as required for reimbursement) when they were not. See id. ¶ 26. Defendants recruited a physician, AHVNA’s Medical Director Spencer Wilking, M.D., who attended weekly company meetings at which he signed certifications for patients he had never met. See id. ¶ 28.²

The Indictment further alleged that Petitioner, but not Troisi, committed several violations of the money laundering statute, 18 U.S.C. §§ 1957 and 2, with the amount of money laundered totaling \$699,329.74. See id. ¶ 42.

² Dr. Wilking pleaded guilty on February 25, 2014, to one count of health care fraud in violation of 18 U.S.C. § 1347. See Plea Agreement, United States v. Spencer Wilking, 13-cr-10333-DPW [Doc. No. 13]. Based on Wilking’s substantial assistance and role as a key witness in the government’s prosecution of Petitioner and Troisi, the government eventually recommended a sentence of 15 months of incarceration, 24 months of supervised release, a \$7,500 fine, asset forfeiture of \$42,000, and restitution in the amount of \$29,775.86. See Gov’t Sentencing Mem., United States v. Spencer Wilking, 13-cr-10333-DPW [Doc. No. 41].

B. The Trial

Attorney Alexander J. Repasky was Petitioner's lead attorney at trial.³ In advance of trial, Attorney Repasky filed motions in limine [Doc. Nos. 90, 91], proposed jury instructions [Doc. No. 88], a trial brief [Doc. No. 89], a notice of intent to present an expert witness [Doc. No. 104],⁴ and an opposition [Doc. No. 114] to a motion in limine from the government.

Trial commenced on October 27, 2014.⁵ In its opening statement, the government informed the jury, *inter alia*, that it would hear testimony from Dr. Wilking to the effect that he worked at AHVNA, that he signed certifications without seeing patients or reviewing patient files, that not one patient was ever found not to qualify for home health care, that Petitioner repeatedly reassured Dr. Wilking his conduct was legal, and that Dr. Wilking eventually realized the business model was illegal but continued working with AHVNA anyways. See Oct. 28, 2014 Tr. 19:24-22:3 [Doc. No. 243].

³ Attorney Repasky began representing Petitioner before this court *pro hac vice* starting October 9, 2013. In a memorandum filed shortly before trial, after the government raised a potential conflict of interest, Attorney Repasky reported that: "[o]ver the course of the past two years, counsel and Galatis have developed a strong attorney-client relationship built on Galatis's trust in Repasky, due in large part to Repasky's hundreds of hours of pretrial preparation. Together, they have reviewed hundreds of thousands of documents and prepared to present a defense to the charges. Repasky is prepared to represent Galatis at trial on October 27, 2014, has interviewed scores of witnesses in preparation for trial and has fully prepared the defense." Def. Galatis's Mem. ISO his Right to Retain Counsel of Choice at 1-2 [Doc. No. 113]. The court conducted two colloquies with Galatis regarding the potential conflict before swearing in the jury, see Elec. Clerk's Notes [Doc. Nos. 120, 142], and Galatis confirmed that he wished to proceed with Attorney Repasky representing him.

⁴ The government moved to exclude the expert or alternatively for a Daubert Hearing [Doc. No. 105], and following that hearing, the expert witness was withdrawn. See Elec. Clerk's Notes [Doc. No. 137].

⁵ The trial began as a joint trial of Galatis and Troisi. However, on November 30, 2014, the court declared a mistrial as to Troisi due to a health condition. See Elec. Clerk's Notes [Doc. No. 172]. Troisi was subsequently convicted on all of the fraud charges after a bench trial, and that conviction was affirmed on appeal. U.S. v. Troisi, 849 F.3d 490 (1st Cir. 2017).

In his opening statement on behalf of Petitioner, Attorney Repasky advanced an overarching theory of the case that the services delivered by AHVNA were legitimate. This theory encompassed claims that the patients who allegedly received unnecessary services suffered from diagnoses that required repeat visits, that Dr. Wilking was not required to see patients until 2011 regulations went into effect and that such regulations authorized visits by nurses and other practitioners who reported to Dr. Wilking, and that patients testifying to receiving unnecessary services either overestimated their own capacity or were fearful in the face of a federal investigation. See id. at 34:16-38:24. Attorney Repasky stated further:

Dr. Wilking, you will see, is an elderly physician that has tremendous health problems. We expect the evidence to show that you will see from his own condition that the threat of this prosecution was probably more than he could take. And I expect that at the end of the day you will see that Dr. Wilking, in fact, did the right thing. Dr. Wilking is a good man. Dr. Wilking was a volunteer with Mr. Galatis many years ago, and you will find that Dr. Wilking is going to tell him the truth. At the end of the day, Dr. Wilking will tell the truth in this case, and I expect that you will acquit Mr. Galatis . . . in this case.

See id. at 38:25-39:11.

Mr. Repasky cross-examined all but one of the government's witnesses at trial.⁶ On the fourteenth day of trial, Dr. Wilking testified that, beginning in 2007, he signed certifications without looking at them, that he did not meet face to face with patients even after Medicare regulations began requiring such meetings, and that he never refused to sign a certification. See Dec. 1, 2014 Tr. 15:7-13 [Doc. No. 204-1]; id. at 34:9; id. at 38:20-21; id. at 40:8. He stated that,

⁶ The trial court interrupted the government's direct examination of Maria Dorcena shortly after she began and ordered that her further direct testimony would not be permitted on the basis offered by the prosecution. See Nov. 13, 2014 Tr. 78:12-16, 88:15-17 [Doc. No. 267]. The court subsequently offered Defendants the opportunity to cross-examine her, and neither Attorney Repasky nor Ms. Troica's counsel chose to do so. See Nov. 17, 2014, Tr. 5:5-10, 15:5-14 [Doc. No. 248].

once he stopped seeing patients, he became uncomfortable signing the certification forms but chose to ignore his concerns. See id. at 39:11-14. He further testified that he raised his concerns with Petitioner on multiple occasions and that Petitioner sought to reassure him by pointing to a section of the Federal Register that Petitioner claimed gave Dr. Wilking authorization to sign the forms. See id. at 52:1-21.

Attorney Repasky engaged in cross examination of Dr. Wilking, during which he, *inter alia*, probed into Dr. Wilking's motive to cooperate with the government to reduce his own sentence, see id. at 125:12-15, challenged Dr. Wilking's view that only nurse practitioners and physicians assistants qualified as non-physician practitioners who could conduct the required face-to-face meetings with patients, see id. at 149:9, and challenged Dr. Wilking's suggestion that there was a conspiracy between himself and Petitioner, which led Dr. Wilking to state that his agreement with Petitioner was a "tacit understanding" as opposed to an explicit agreement to commit Medicare fraud, see id. at 157:4.

Mid-trial, Attorney Repasky filed a motion to exclude the testimony of certain witnesses and for a mistrial. See Mot. to Exclude [Doc. No. 157]. The court excluded those government witnesses and denied the motion to exclude as moot. See Elec. Clerk's Notes [Doc. No. 173]. The government rested and the defense did as well, without calling any witnesses. See Dec. 1, 2014 Tr. 172:16 [Doc. No. 204-1].

In his closing statement, Attorney Repasky portrayed Dr. Wilking as an incredible witness due to his cooperation agreement with the government. See Dec. 2, 2014 Tr. 116:25-117:7 [Doc. No. 278]. Attorney Repasky averred that that while Dr. Wilking may have engaged in unlawful conduct, he acted on his own, and Petitioner had no role in the unlawful conduct. See id. at 87:19-23.

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