

BEFORE THE WEST VIRGINIA BOARD OF OSTEOPATHIC MEDICINE

In RE:

JONATHAN YATES, D.O.

**Complaint Nos.: 2019-26; 2020-07; 2020-08;
2020-09; 2020-10; 2020-11;
2020-12; 2020-13; 2020-14;
2020-15; 2020-16; 2020-17;
2020-18; 2020-19; 2020-20;
2020-31**

CONSENT ORDER

The West Virginia Board of Osteopathic Medicine ("Board") and Jonathan Yates, D.O. ("Dr. Yates"), agree to entry of the following Consent Order pursuant to West Virginia Code § 30-14-1 *et seq.*

FINDINGS OF FACT

The West Virginia Board of Osteopathic Medicine makes the following findings:

1. Dr. Yates is a licensee of the Board, possessing Board-issued license number 2379 to practice osteopathic medicine and surgery in the state of West Virginia.
2. Sixteen (16) separate complaints are currently pending before the Board against Dr. Yates: Complaint Nos. 2019-26; 2020-07; 2020-08; 2020-09; 2020-10; 2020-11; 2020-12; 2020-13; 2020-14; 2020-15; 2020-16; 2020-17; 2020-18; 2020-19; 2020-20; 2020-31.
3. On or about April 2, 2020, Dr. Yates was arrested by federal authorities.
4. On April 17, 2020, Dr. Yates entered into a Voluntary Agreement with the Board to cease practicing osteopathic medicine and surgery in the state of West Virginia during the pendency of his federal criminal proceedings. *See Exhibit 1.*
5. On May 12, 2020, an Indictment was filed in the United States District Court for the Southern District of West Virginia, Case Number 5:20-cr-00075, captioned *United States of America v. Jonathan Yates*, charging Dr. Yates with the following: five counts of deprivation of

rights under color of law, all in violation of Title 18, United States Code, Section 242; and two counts of abusive sexual conduct, all in violation of Title 18, United States Code, Section 2244(b).

6. Dr. Yates' license with this Board expired on June 30, 2020.

7. On September 17, 2020, in Case Number 5:20-cr-00075, *United States of America v. Jonathan Yates*, in the United States District Court for the Southern District of West Virginia, Dr. Yates entered a guilty plea to three counts of deprivation of rights under color of law, all in violation of Title 18, United States Code, Section 242, which was accepted by the Court. See *Exhibit 2*.

8. The terms of Dr. Yates' Plea Agreement with the United States of America require Dr. Yates to voluntarily enter into a consent order with the Board which permanently revokes his license to practice osteopathic medicine and surgery in the state of West Virginia. See *Exhibit 3*.

9. The terms of Dr. Yates' Plea Agreement with the United States of America also require Dr. Yates to refrain from seeking new licenses and seeking reinstatement of licenses to practice osteopathic medicine and surgery in the United States. See *Exhibit 3*.

10. Dr. Yates first obtained his license from this Board on February 4, 2009, and was a licensee of the Board during the events set forth in the Plea Agreement.

CONCLUSIONS OF LAW

1. The West Virginia Board of Osteopathic Medicine is a board of examination and registration created for the purpose of regulating the practice of osteopathic medicine and surgery in the state of West Virginia. W. Va. Code § 30-14-1 *et seq.*

2. The West Virginia Board of Osteopathic Medicine is authorized to enter into consent decrees for the benefit of the practice of osteopathic medicine and protection of the public interest. W. Va. Code § 30-1-8(g).

ACKNOWLEDGMENT OF RIGHTS

I, Jonathan Yates, D.O., having read this document and by signing my name to it, understand and acknowledge the following:

1. This is a legally binding document that affects my rights and privileges.
2. I have the right to consult a lawyer concerning the terms of this agreement and the legal rights and remedies that may otherwise be available to me, and I have exercised that right in this matter.
3. I understand that the terms of my Plea Agreement with the United States of America in Case Number 5:20-cr-00075, *United States of America v. Jonathan Yates*, in the United States District Court for the Southern District of West Virginia, require me to voluntarily enter into a consent order with the West Virginia Board of Osteopathic Medicine which permanently revokes my license to practice osteopathic medicine and surgery in the state of West Virginia.
4. I further understand that the terms of my Plea Agreement with the United States of America in Case Number 5:20-cr-00075, *United States of America v. Jonathan Yates*, in the United States District Court for the Southern District of West Virginia, require me to refrain from seeking new licenses and seeking reinstatement of licenses to practice osteopathic medicine and surgery in the United States
5. I understand that the following sixteen (16) complaints currently pending with the Board against me will be resolved by entry of this Consent Order: Complaint Nos. 2019-26; 2020-07; 2020-08; 2020-09; 2020-10; 2020-11; 2020-12; 2020-13; 2020-14; 2020-15; 2020-16; 2020-17; 2020-18; 2020-19; 2020-20; 2020-31.
6. I understand that this is a public document and that the Board is legally obligated to allow any person to review this Consent Order. I also understand that this action and order

may be reported to other jurisdictions, to the National Practitioner Data Bank, and to the Federation of State Medical Boards.

TERMS OF ORDER

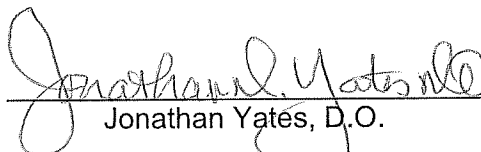
The Board hereby **ORDERS** the following:

1. Jonathan Yates' license to practice osteopathic medicine and surgery in the state of West Virginia, license number 2379, is **SURRENDERED** and **PERMANENTLY REVOKED**.
2. Complaint Nos. 2019-26; 2020-07; 2020-08; 2020-09; 2020-10; 2020-11; 2020-12; 2020-13; 2020-14; 2020-15; 2020-16; 2020-17; 2020-18; 2020-19; 2020-20; 2020-31, currently pending before the Board against Jonathan Yates, are hereby resolved by entry of this Consent Order.

ACKNOWLEDGMENT OF LICENSEE:

I have reviewed the provisions of this Consent Order. I agree to abide by the terms set out herein and to be bound by them.

Signed:


Jonathan Yates, D.O.

Date:

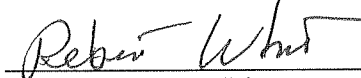

October 20, 2020

ORDERED BY THE BOARD OF OSTEOPATHIC MEDICINE:

By agreement of the West Virginia Board of Osteopathic Medicine, it is so ORDERED and entered this 29th day of October 2020.

WEST VIRGINIA BOARD OF OSTEOPATHIC MEDICINE

by:



Robert Whitler
President

West Virginia Board of Osteopathic Medicine

EXHIBIT 1

BEFORE THE WEST VIRGINIA BOARD OF OSTEOPATHIC MEDICINE

IN RE: JONATHAN YATES, D.O.

**Complaint Nos: 2019-26; 2020-07; 2020-08;
2020-09; 2020-10; 2020-11; 2020-12; 2020-13;
2020-14; 2020-15; 2020-16; 2020-17; 2020-18;
2020-19; and 2020-20**

**VOLUNTARY AGREEMENT
TO TEMPORARILY CEASE PRACTICE OF MEDICINE**

1. The West Virginia Board of Osteopathic Medicine ("Board") is currently investigating the above-referenced complaints regarding Respondent, Jonathan Yates, D.O., ("Respondent").

2. Effective immediately, Respondent agrees to cease practice of medicine in any form in the State of West Virginia during the pendency of the federal criminal matter currently pending against Respondent in the Southern District of West Virginia.

3. Respondent enters this Agreement voluntarily.

4. This Agreement will remain in effect until completion of the federal criminal proceedings; until the Board determines this Agreement should be modified or terminated; or until the Board takes final action in the above-referenced matter(s).

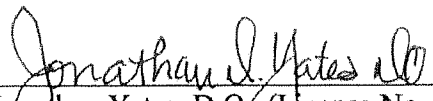
5. Respondent understands that any violation of this Agreement may result in immediate action against his license by the Board.

6. Respondent understands that this Agreement is a public document and may be subject to disclosure.

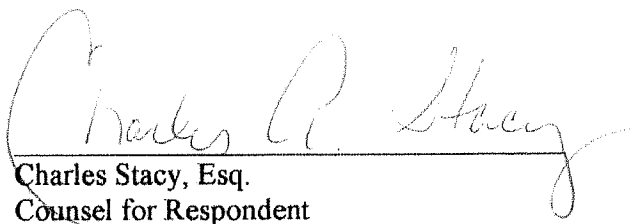
7. Respondent acknowledges that this Agreement is non-disciplinary but will be reported by the Board to the appropriate entities, including the National Practitioner Data Bank.

8. Respondent understands that by voluntarily agreeing to temporarily cease practice of medicine in the State of West Virginia pursuant to this Agreement, Respondent does not waive his right to contest any allegations brought against him. Nothing contained in this Agreement shall be construed as an admission or acknowledgement by Respondent as to wrongdoing of any kind in the practice of medicine or otherwise.


9. This Agreement represents the entire agreement between the Board and Respondent at this time and applies to all of the above-referenced complaints.


Jonathan Yates, D.O. (License No. 2379)
Respondent

04-17-2020
Date


Charles Stacy, Esq.
Counsel for Respondent

4-17-2020
Date


Robert Whitler
President
West Virginia Board of Osteopathic Medicine

5/19/2020
Date

EXHIBIT 2

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

AT BECKLEY

UNITED STATES OF AMERICA,

v.

CRIMINAL ACTION NO. 5:20-cr-00075

JONATHAN YATES,

ORDER

On September 17, 2020, came the Defendant, Jonathan Yates, in person and by counsel, E. Ward Morgan, and also came the United States by Assistant United States Attorneys' Kyle Boynton and R. Gregory McVey, for purposes of the Defendant's entry of a plea of guilty to Counts One, Three, and Four of the Indictment.

The Court inquired of the Defendant, both personally and through counsel, to determine the Defendant's competency. The Court found the Defendant competent and capable of entering an informed plea.

Counsel for the United States summarized and offered for the Court's consideration the entirety of the written plea agreement signed by both the Defendant and his counsel. The Court reserved acceptance of the plea agreement until sentencing but ordered the original plea agreement filed with the Clerk.

The Defendant waived the reading of the Indictment. The Court inquired as to the Defendant's plea. The Defendant then pled guilty to Counts One, Three, and Four of the Indictment.

The Court read the pertinent portion of 18 U.S.C. § 242 and explained the elements that the United States would have had to prove had this matter gone to trial. After hearing the Defendant's explanation of why the Defendant deemed himself guilty and the proffer of the United States, and having considered the parties' Stipulation, the Court found that there was a sufficient factual basis for the Defendant's plea of guilty.

The Court further informed the Defendant, pursuant to the requirements of *Federal Rule of Criminal Procedure Rule 11(c)(1)*, about the nature of the charge and the consequences of pleading guilty to the charge. After thoroughly explaining these issues and hearing and considering the Defendant's responses to the Court's questions, the Court found that the Defendant understood the nature of the charge and the consequences of pleading guilty.

The Court also informed the Defendant, pursuant to the requirements of *Federal Rule of Criminal Procedure Rule 11(c)(3), (c)(4)*, of the constitutional and other legal rights he was forfeiting by pleading guilty. After thoroughly explaining these issues and hearing and considering the Defendant's responses, the Court found that the Defendant understood his constitutional and other legal rights.

The Court then inquired of the Defendant, pursuant to *Rule 11(d)*, to ensure that the Defendant's plea was voluntary. After hearing and considering the Defendant's responses, the Court found that the Defendant's plea was voluntary.

The Defendant executed a written plea of guilty which was witnessed by the Defendant's counsel and ordered filed by the Court. The Court accepted the Defendant's plea. Accordingly, the Court **ADJUDGES** the Defendant, Jonathan Yates, guilty, and the Defendant

now stands convicted of violating 18 U.S.C. § 242. The Court **ORDERS** that the previously scheduled trial date in this matter is **VACATED**.

The Court **ORDERS** that the Probation Office prepare and forward a draft presentence report to the United States and counsel for the Defendant no later than **October 30, 2020**; that the United States Attorney and counsel for the Defendant file objections to the draft presentence report no later than **November 13, 2020**; that the Probation Office submit a final presentence report to the Court no later than **November 27, 2020**; and that the United States and counsel for the Defendant file a sentencing memorandum no later than **December 4, 2020**. **THE AFORESAID PRESENTENCE REPORT DEADLINES HAVE BEEN ESTABLISHED BY THE COURT AND MAY BE ALTERED ONLY BY THE COURT. REQUESTS TO EXTEND ANY DEADLINE SHALL BE SUBMITTED TO THE COURT IN WRITING IN ADVANCE OF THE ESTABLISHED DEADLINE. SUCH DEADLINES WILL BE EXTENDED ONLY UPON GOOD CAUSE SHOWN.**

Pursuant to *United States v. Booker*, 543 U.S. 220 (2005) and *United States v. Hughes*, 401 F.3d 540 (4th Cir. 2005), the Government and the Defendant are hereby **ORDERED** to file sentencing memoranda addressing the sentencing factors set forth in 18 U.S.C. § 3553(a). The memoranda may also address such other matters not previously addressed in the form of motions or objections to the Presentence Report and may include argument as to the appropriate sentence to be imposed. Sentencing memoranda shall be no more than five (5) pages in length.

The Court **ORDERS** that final disposition of this matter be scheduled for **January 4, 2021, at 1:30 p.m.**, and that the Defendant be detained pending sentencing. The Court

DIRECTS that the Defendant be committed to the custody of the United States Marshal for confinement.

The Court further **DIRECTS** that the Defendant be afforded reasonable opportunity for private consultation with counsel. Finally, the Court **DIRECTS** that, on order of a Court of the United States or on request of an attorney for the United States, the person in charge of the correctional facility in which the Defendant is confined deliver the Defendant for the purpose of an appearance in connection with court proceedings.

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant and counsel, to the United States Attorney, to the United States Probation Office, and to the Office of the United States Marshal.

ENTER: September 22, 2020



A handwritten signature in black ink that reads "Frank W. Volk". The signature is written in a cursive, flowing style.

Frank W. Volk
United States District Judge

EXHIBIT 3

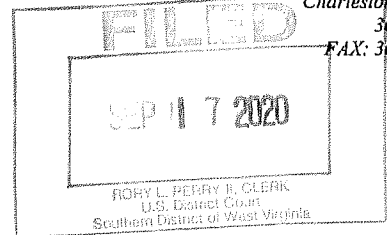


United States Department of Justice

*United States Attorney
Southern District of West Virginia*

Robert C. Byrd United States Courthouse
300 Virginia Street, East
Suite 4000
Charleston, WV 25301
1-800-659-8726

Mailing Address
Post Office Box 1713
Charleston, WV 25326
304-345-2200
FAX: 304-347-5104



July 3, 2020

E. Ward Morgan
3217 Cumberland Road
Bluefield, WV 24701

Re: United States v. Jonathan Yates
Criminal No. 5:20-cr-00075 (USDC SDWV)

Dear Mr. Morgan:

This will confirm our conversations with regard to your client, Jonathan Yates (hereinafter "Dr. Yates"). As a result of these conversations, it is agreed by and between the United States and Dr. Yates as follows:

1. **PENDING CHARGES.** Dr. Yates is charged in a seven-count indictment as follows:

- (a) Count One charges Dr. Yates with a violation of 18 U.S.C. § 242 (Deprivation of Rights Under Color of Law), resulting in bodily injury and including kidnapping;
- (b) Count Two charges Dr. Yates with a violation of 18 U.S.C. § 2244(b) (Abusive Sexual Contact);
- (c) Count Three charges Dr. Yates with a violation of 18 U.S.C. § 242 (Deprivation of Rights Under Color of Law), resulting in bodily injury;
- (d) Count Four charges Dr. Yates with a violation of 18 U.S.C. § 242 (Deprivation of Rights Under Color of Law), resulting in bodily injury and including kidnapping;

A handwritten signature in dark ink, appearing to read "J. Yates", is written over a horizontal line.

Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 2

Re: Jonathan Yates

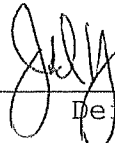
- (e) Count Five charges Dr. Yates with a violation of 18 U.S.C. § 242 (Deprivation of Rights Under Color of Law), resulting in bodily injury;
- (f) Count Six charges Dr. Yates with a violation of 18 U.S.C. § 242 (Deprivation of Rights Under Color of Law), resulting in bodily injury; and
- (g) Count Seven charges Dr. Yates with a violation of 18 U.S.C. § 2244(b) (Abusive Sexual Contact).

2. **RESOLUTION OF CHARGES.** Dr. Yates will plead guilty to Counts One, Three, and Four of said indictment, which charge him with violations of 18 U.S.C. § 242. For each of Counts One, Three, and Four, Dr. Yates will admit that his offense resulted in bodily injury. The United States will move the Court to strike "and the offense included kidnapping" from Counts One and Four. Following final disposition, the United States will move the Court to dismiss Counts Two, Five, Six, and Seven in Criminal No. 5:20-cr-00075 as to Dr. Yates.

3. **TERMINATION OF PROSECUTION.** The conviction and final disposition of Dr. Yates pursuant to this plea agreement will conclude the prosecution of Dr. Yates by the United States in the Southern District of West Virginia and the Civil Rights Division of the United States Department of Justice for any additional 18 U.S.C. §§ 242 and 2244(b) violations arising from his conduct at the Beckley Veterans Affairs Medical Center and with 21 U.S.C. § 841 violations for his prescribing behavior within the applicable statute of limitation.

4. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Dr. Yates will be exposed by virtue of this guilty plea is as follows:

Count One


Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 3

Re: Jonathan Yates

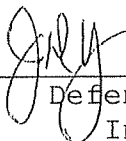
- (a) Imprisonment for a period of not more than 10 years;
- (b) A fine of ~~\$150,000~~ ^{\$250,000 MCB/ma}, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of not more than three years;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) Restitution as may be ordered by the Court pursuant to 18 U.S.C. §§ 3663A and 3664, or as otherwise set forth in this plea agreement.

Count Three

- (a) Imprisonment for a period of not more than 10 years;
- (b) A fine of ~~\$500,000~~ ^{\$250,000 MCB/ma}, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of not more than three years;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) Restitution as may be ordered by the Court pursuant to 18 U.S.C. §§ 3663A and 3664, or as otherwise set forth in this plea agreement.

Count Four

- (a) Imprisonment for a period of not more than 10 years;



Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 4

Re: Jonathan Yates

- \$250,000 MMB / W / J*
- (b) A fine of ~~\$150,000~~, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
 - (c) A term of supervised release of not more than three years;
 - (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
 - (e) Restitution as may be ordered by the Court pursuant to 18 U.S.C. §§ 3663A and 3664, or as otherwise set forth in this plea agreement.

Total Combined Penalty:

- (a) Imprisonment for a period of not more than 30 years;
- \$750,000 MMB / W / J*
(b) A fine of ~~\$800,000~~, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of not more than three years;
- (d) A mandatory special assessment of \$300 pursuant to 18 U.S.C. § 3013; and
- (e) Restitution as may be ordered by the Court pursuant to 18 U.S.C. §§ 3663A and 3664, or as otherwise set forth in this plea agreement.

5. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Dr. Yates will tender a check or

July

Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 5


Re: Jonathan Yates

money order to the Clerk of the United States District Court for \$300, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Dr. Yates will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Dr. Yates fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Dr. Yates.

6. **PAYMENT OF MONETARY PENALTIES.** Dr. Yates authorizes the Financial Litigation Unit in the United States Attorney's Office to obtain a credit report from any major credit reporting agency prior to sentencing in order to assess his financial condition for sentencing purposes. Dr. Yates agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Dr. Yates further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

Dr. Yates authorizes the United States, through the Financial Litigation Unit, to submit any unpaid criminal monetary penalty to the United States Treasury for offset in accordance with the Treasury Offset Program, regardless of the defendant's payment status or history at that time.

In addition to any payment ordered by the Court, Dr. Yates shall pay all monies received from any source other than earned



Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 6

Re: Jonathan Yates

income, including but not limited to, lottery winnings, gambling proceeds, judgments, inheritances, and tax refunds, toward the court ordered restitution or fine.


Dr. Yates agrees that if he retains counsel or has appointed counsel in response to the United States' efforts to collect any monetary penalty, he shall immediately notify the United States Attorney's Office, Attention: Financial Litigation Unit, P.O. Box 1713, Charleston, West Virginia 25326-1713, in writing and shall instruct his attorney to notify FLU immediately of his representation.

7. **COOPERATION.** Dr. Yates will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Dr. Yates may have counsel present except when appearing before a grand jury.

8. **SURRENDER OF REGISTRATION.** Dr. Yates agrees:

- (a) To surrender his Drug Enforcement Administration Certificate of Registration (DEA Form 223);
- (b) To execute a DEA Form 104;
- (c) Not to oppose revocation of his registration to dispense controlled substances pursuant to 21 U.S.C. § 824(a) and 21 C.F.R. § 1301.45 on any ground, including on the ground that he has committed such acts as would render his registration under 21 U.S.C. § 823 inconsistent with the public interest as determined under that section.

9. **SURRENDER OF MEDICAL LICENSE.** Dr. Yates hereby agrees to surrender and abandon to the United States his license to practice as a doctor of osteopathic medicine, West Virginia license


Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 7

Re: Jonathan Yates


number 2379, and any and all other active medical licenses he holds in other states. Dr. Yates agrees to permanently surrender the license and to never seek reinstatement of said license(s) and to voluntarily enter into a consent order with the West Virginia Board of Osteopathic Medicine which permanently revokes his license to practice as a doctor of osteopathic medicine. Dr. Yates agrees to refrain from both (1) applying for new licenses and (2) seeking reinstatement of licenses to practice as a doctor of osteopathic medicine in the United States.

10. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Dr. Yates, and except as expressly provided for in paragraph 12 below, nothing contained in any statement or testimony provided by him pursuant to this agreement, or any evidence developed therefrom, will be used against him, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

11. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Dr. Yates for any violations of federal or state laws. The United States reserves the right to prosecute Dr. Yates for perjury or false statement if such a situation should occur pursuant to this agreement.

12. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Dr. Yates stipulate and agree that the facts comprising the offense of conviction include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit A." The Stipulation of Facts does not include all relevant conduct.

Dr. Yates agrees that if he withdraws from this agreement, or


Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 8

Re: Jonathan Yates

this agreement is voided as a result of a breach of its terms by him, and he is subsequently tried for his conduct alleged in the indictment, as more specifically described in the Stipulation of Facts, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Dr. Yates or of any of his witnesses, or in rebuttal of any testimony introduced by him or on his behalf. Dr. Yates knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Dr. Yates understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

13. AGREEMENT ON SENTENCING GUIDELINES. Based on the foregoing Stipulation of Facts, the United States and Dr. Yates agree that the following provisions of the United States Sentencing Guidelines apply to this case.

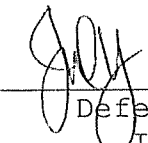
Count One of the Indictment:

USSG §2H1.1(a)(2), cross-referenced to §2A3.4(a)(3)

Base offense level 12

Color of law + 6

USSG Chapter Three Adjustments


Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 9

Re: Jonathan Yates

Vulnerable victim	+ 2
Adjusted offense level	20

Count Three of the Indictment:

USSG §2H1.1(a)(2), cross-referenced to §2A3.1(a)(2)

Base offense level	30
Color of law	+ 6

USSG Chapter Three Adjustments

Vulnerable victim	+ 2
Adjusted offense level	38

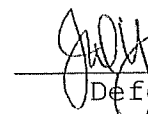
Count Four of the Indictment:

USSG §2H1.1(a)(2), cross-referenced to §2A3.4(a)(3)

Base offense level	12
Color of law	+ 6

USSG Chapter Three Adjustments

Vulnerable victim	+ 2
Adjusted offense level	38



Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 10

Re: Jonathan Yates

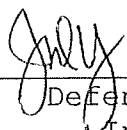
<u>Multiple Count Adjustment</u>	+ 1.0 Unit
<u>Combined Offense Level</u>	39

The United States and Dr. Yates acknowledge and understand that the Court and the Probation Office are not bound by the parties' calculation of the United States Sentencing Guidelines set forth above and that the parties shall not have the right to withdraw from the plea agreement due to a disagreement with the Court's calculation of the appropriate guideline range.

14. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Dr. Yates knowingly and voluntarily waives his right to seek appellate review of his conviction and of any sentence of imprisonment, fine, or term of supervised release imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742. Dr. Yates also knowingly and voluntarily waives any right to seek appellate review of any claim or argument that (1) the statute of conviction 18 U.S.C. § 242 is unconstitutional, and (2) Dr. Yates' conduct set forth in the Stipulation of Facts (Plea Agreement Exhibit A) does not fall within the scope of 18 U.S.C. § 242. Dr. Yates may appeal the following:

- (a) a sentence that exceeds the maximum penalty prescribed by statute; and
- (b) a decision by the District Court, pursuant to the Sentencing Guidelines or 18 U.S.C. § 3553(a), to make an "upward departure" or "upward variance" from the total offense level calculated by the District Court or the guideline range corresponding to that level.

The United State also waives its right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18



Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 11

Re: Jonathan Yates

U.S.C. § 3742, except:


- (a) a sentence that is below the minimum penalty, if any, prescribed by statute; and
- (b) The United States may appeal a decision by the District Court, pursuant to the Sentencing Guidelines or 18 U.S.C. § 3553(a), to make a "downward departure" or "downward variance" from the total offense level calculated by the District Court or the guideline range corresponding to that level.

Dr. Yates also knowingly and voluntarily waives the right to challenge his guilty plea and conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

15. **WAIVER OF FOIA AND PRIVACY RIGHT.** Dr. Yates knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

16. **REGISTRATION REQUIREMENT.** Dr. Yates understands and acknowledges that under the Federal Sex Offender Registration and Notification Act, he must register as a sex offender and keep the registration current in each of the following jurisdictions: where he resides, where he is an employee and where he is a student. Dr. Yates understands that the federal registration requirement and



Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 12


Re: Jonathan Yates

any state registration requirement may apply throughout his life. Dr. Yates further understands that the requirement to keep the registration current includes informing at least one of the aforementioned jurisdictions not later than three days after any change of name, residence, employment or student status. Dr. Yates understands that failure to comply with these obligations subjects him to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

17. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Dr. Yates;
- (f) Advise the Court concerning the nature and extent of Dr. Yates's cooperation; and
- (g) Address the Court regarding the issue of Dr. Yates's acceptance of responsibility.

18. **VOIDING OF AGREEMENT.** If either the United States or Dr. Yates violates the terms of this agreement, the other party


Defendant's
Initials

E. Ward Morgan
July 3, 2020
Page 13


Re: Jonathan Yates

will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.



19. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Dr. Yates in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Dr. Yates in any Court other than the United States District Court for the Southern District of West Virginia.

Acknowledged and agreed to on behalf of the United States:

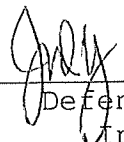
MICHAEL B. STUART
United States Attorney

By: 
R. Gregory McVey
Assistant United States Attorney

ERIC S. DREIBAND
Assistant Attorney General
Civil Rights Division


Samantha Trepel
Special Litigation Counsel
Civil Rights Division

Kyle Boynton
Trial Attorney
Civil Rights Division

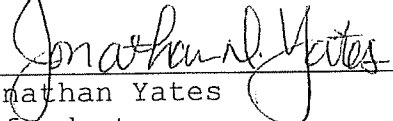
GMC/sdw


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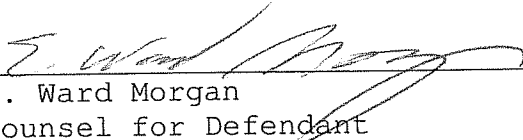
E. Ward Morgan
July 3, 2020
Page 14

Re: Jonathan Yates


I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this 14-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.


Jonathan Yates
Defendant

07/07/20
Date Signed


E. Ward Morgan
Counsel for Defendant

7/7/20
Date Signed


Defendant's
Initials

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 5:20-cr-00075

JONATHAN YATES

STIPULATION OF FACTS

The United States and Jonathan Yates (hereinafter "defendant" or "Dr. Yates") stipulate and agree that the facts comprising the offenses of conviction (Counts One, Three, and Four in the Indictment in the Southern District of West Virginia, Criminal No. 5:20-cr-00075), include the following:

Dr. Yates is a doctor of osteopathic medicine who was employed at the Veteran's Affairs Medical Center ("VAMC") located in Beckley, Raleigh County, West Virginia, which is within the Southern District of West Virginia. Between June 4, 2018, and February 27, 2019, in his role as the VAMC's Director of Whole Health, Dr. Yates was employed by the federal government to treat veterans using osteopathic manipulative treatment. Osteopathic manipulative treatment is a set of hands-on techniques used by doctors of osteopathic medicine to diagnose and treat musculoskeletal issues, including by moving, stretching, and applying pressure to a patient's muscles and joints.

On February 20, 2019, while working in his capacity as an employee of the Department of Veterans Affairs, Dr. Yates saw Veteran One for a medical appointment at the VAMC. Veteran One is a 42-year-old male veteran of the U.S. Army with 100% service-connected disability. Veteran One was seeking a referral from Dr. Yates that would permit Veteran One to continue with massage therapy appointments for his chronic back pain, as well as pain in his toes, fingers, and hips.

During the appointment, and under the guise of providing legitimate osteopathic manipulative treatment, Dr. Yates removed Veteran One's underwear, and rubbed and massaged Veteran One's perineum, causing Veteran One pain. Dr. Yates also cupped and

massaged Veteran One's testicles. Dr. Yates repeatedly told Veteran One that it was okay to be sexually aroused by Dr. Yates' contact. Dr. Yates then directed Veteran One to roll onto his stomach. While in that position, Dr. Yates massaged Veteran One's buttocks and perineum at the same time, again causing Veteran One pain. Veteran One told Dr. Yates to stop, but Dr. Yates continued the contact. When Veteran One asked Dr. Yates to stop for a second time, Dr. Yates stopped and then smacked Veteran One's buttocks. Dr. Yates knew at that time that he took these actions without Veteran One's consent and without a legitimate medical purpose.

On February 6, 2019, while working in his capacity as an employee of the Department of Veterans Affairs, Dr. Yates saw Veteran Two for a medical appointment at the VAMC. Veteran Two is a 59-year-old male veteran of the U.S. Air Force with 100% service-connected disability. Veteran Two sought an appointment for osteopathic manipulative therapy at the VAMC to manage chronic pain associated with his sciatica and headaches.

During the appointment, and under the guise of providing legitimate osteopathic manipulative treatment, Dr. Yates massaged the area around Veteran Two's anus and slightly penetrated Veteran Two's anus, and caused Veteran Two's penis to become erect. The anal penetration caused Veteran Two pain. Later in the appointment, under the guise of performing a rectal exam, Dr. Yates used his fingers to repeatedly penetrate Veteran Two's anus, while Dr. Yates held Veteran Two's penis and testicles with his other hand. This caused Veteran Two's penis to become erect, and he ejaculated. The anal penetration caused Veteran Two pain. Dr. Yates knew at that time that he took these actions without Veteran Two's consent and without a legitimate medical purpose. Dr. Yates falsely described his conduct as a legitimate medical procedure, and, at the time of the act, Veteran Two was incapable of appraising the nature of Dr. Yates' conduct, that is, that the rectal penetration lacked a legitimate medical purpose.

On September 26, 2018, while working in his capacity as an employee of the Department of Veterans Affairs, Dr. Yates saw Veteran Three for a medical appointment at the VAMC. Veteran Three is a 37-year-old male veteran of the U.S. Army. Veteran Three sought an appointment for osteopathic manipulative therapy at the VAMC to treat a sciatic nerve injury and to manage back pain.

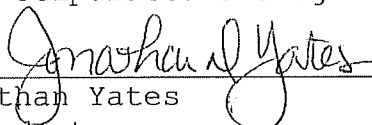
During the appointment, and under the guise of providing legitimate osteopathic manipulative treatment, Dr. Yates pulled down Veteran Three's underwear, placed acupuncture needles along his back and into his buttocks, and began massaging Veteran Three's

PLEA AGREEMENT EXHIBIT A

buttocks. While the pain associated with the acupuncture needles prevented Veteran Three from moving his lower body, Dr. Yates continued to massage Veteran Three's buttocks and pressed his hand against Veteran Three's perineum, causing Veteran Three additional pain. Veteran Three told Dr. Yates to stop. Dr. Yates then moved his hand away from Veteran Three's perineum, but continued to massage Veteran Three's buttocks while removing the acupuncture needles. Dr. Yates then slapped Veteran Three on the buttocks. Dr. Yates knew at that time that he took these actions without Veteran Three's consent and without a legitimate medical purpose.

This Stipulation of Facts does not contain each and every fact known to the defendant and to the United States concerning his involvement and the involvement of others in the charges set forth in the Indictment, and is set forth for the limited purpose of establishing a factual basis for defendant's guilty plea.


Stipulated and agreed to:


Jonathan Yates
Defendant

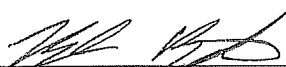
07/07/20
Date


E. Ward Morgan
Counsel for Defendant

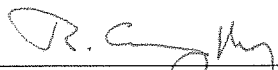
7/7/20
Date


Samantha Trepel
Special Litigation Counsel
Civil Rights Division

9/17/20
Date


Kyle Boynton
Trial Attorney
Civil Rights Division

9/17/20
Date


R. Gregory McVey
Assistant United States Attorney

9/17/2020
Date