

2005-04-0740

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION  
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UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN F. HILDEBRANDT, M.D.,

Defendant.

NO. 1:06-CR-88

HON. GORDON J. QUIST

PLEA AGREEMENT

This constitutes the plea agreement between JOHN F. HILDEBRANDT, M.D., and the United States Attorney's Office for the Western District of Michigan. The terms of the agreement are as follows:

1. The Defendant Agrees to Plead Guilty. The Defendant gives up the right to indictment by a grand jury and agrees to plead guilty to an Information, charging him with mail fraud, in violation of Title 18, United States Code, Section 1341. The Defendant waives any statute of limitations defense to the charge contained in the Information.

2. The Defendant Understands the Crime In order for the Defendant to be guilty of violating Title 18, United States Code, Section 1341, the following must be true:

- (1) The Defendant knowingly participated in a scheme to defraud, (2) the scheme included a material misrepresentation or concealment of a material fact, (3) the

Defendant had the intent to defraud, (4) the Defendant caused the mails to be used in furtherance of the scheme.

The defendant further understands that to be found guilty of the offense it is also sufficient that he intentionally helped or encouraged someone else to commit the crime, in which case proof of the following is required: (1) the crime of mail fraud was committed, (2) the Defendant helped someone commit the crime or encouraged someone else to commit it, and (3) the Defendant intended to help commit or encourage the crime.

The defendant further understands that criminal liability may be established if there is evidence that the defendant deliberately ignored a high probability that the crime of mail fraud was occurring.

The Defendant is pleading guilty because he is guilty of the charge described above.

3. The Defendant Understands the Penalty The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1341, is the following: five (5) years' imprisonment; a three (3) -year period of supervised release; a fine of \$250,000.00, or twice the gross gain or gross loss resulting from the offense, whichever is greater; and a mandatory special assessment of \$100.00 The Defendant agrees to pay the special assessment at or before the time of sentencing unless the Defendant affirmatively demonstrates to the Court that he lacks the ability to pay.

4. Mandatory Restitution The Defendant understands that he will be required to pay full restitution to the victims of the offense as well as all victims of any

relevant conduct as defined by USSG § 1B1.3. The Defendant agrees that the restitution order is not restricted to the amounts alleged in the count to which the Defendant is pleading guilty. The parties currently believe that the applicable amount of restitution is approximately \$191,000.00, but recognize and agree that this amount could change based on facts that come to the attention of the parties prior to sentencing

In order to facilitate the collection of amounts due under any order of restitution entered in this case, the Defendant agrees to disclose to law enforcement officials the whereabouts of, the Defendant's ownership interest in, and all other information known to the Defendant about, all monies, property or assets of any kind in which the Defendant holds an ownership interest of any kind. The Defendant further agrees to forfeit all rights, title, and interest in and to such items as necessary to satisfy any order of restitution imposed in this case. The Defendant further agrees to supplement, if necessary, financial information he has provided to the U.S. Attorney's Office

5. Suspension/Revocation of Licenses

A. The Defendant understands that the conviction in this case may result in the suspension or revocation of his professional license.

B. Regardless of whether any action is taken on his professional license, the Defendant agrees to voluntarily surrender his DEA license by executing a DEA Form 104 (Voluntary Surrender of Controlled Substances Privileges) at or before sentencing

6. Program Exclusion The Defendant understands, pursuant to Title 42, United States Code, Section 1320a-7, upon sentencing the Secretary of the

Department of Health and Human Services will exclude the Defendant from participation in any federal health care program for a period of at least five years.

7. The United States Attorney's Office Agrees. In consideration of the promises made by the Defendant in this agreement the United States Attorney's Office agrees as follows:

A. Except for crimes of violence and criminal tax violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371), the government agrees not to further prosecute the Defendant for violations of law about which the government is aware as of the date of this agreement, including 21 U.S.C. § 841, 18 U.S.C. § 1035 and 18 U.S.C. § 1347(2), arising out of the Defendant's prescribing of OxyContin and other controlled substances from 1995 into 2000. The Defendant understands that the U.S. Attorney's Office is free to prosecute the Defendant for any other unlawful past conduct or any unlawful conduct that occurs after the date of this agreement.

B. The U.S. Attorney's Office agrees not to oppose the Defendant's request for a two-level reduction of his offense level for acceptance of responsibility under Section 3E1.1(a) of the Sentencing Guidelines. However, the U.S. Attorney's Office reserves the right to object to Defendant's request if it subsequently learns of conduct by the Defendant that is inconsistent with the criteria set forth in the Commentary to Section 3E1.1. Should the Court grant a two-level reduction as provided herein, the government will move the Court to grant an additional one-level reduction if the adjusted offense level is 16 or greater pursuant to Section 3E1.1(b).

C. The U.S. Attorney's Office further agrees not to bring any civil actions against the Defendant arising out of the conduct described in Paragraph 9 of this Agreement, provided that the financial disclosures made by the Defendant to the U.S. Attorney's Office prior to the execution of this Agreement are complete and accurate.

8. The Sentencing Guidelines. The Defendant understands that, although the United States Sentencing Guidelines (the "Guidelines") are not mandatory, the Court must consult the Guidelines and take them into account when sentencing the Defendant. The Defendant understands that the court, with the aid of the presentence report, will determine the facts and calculations relevant to sentencing. The Defendant understands that the Defendant and the Defendant's attorney will have the opportunity to review the presentence report and to make objections, suggestions, and recommendations concerning the calculation of the Guideline range and the sentence to be imposed. The Defendant further understands that the Court may impose a sentence within, above, or below the Guideline range, subject to the statutory maximum penalties described elsewhere in this Agreement. The Defendant further understands that disagreement with the sentence shall not constitute a basis for withdrawal of the plea.

9. Factual Basis of Guilt. The Defendant and the U.S. Attorney's Office agree and stipulate to the following statement of facts which need not be proven at the time of the plea or sentencing:

In 1987, the defendant, John F. Hildebrandt, M.D., became licensed to practice medicine in Michigan. In 1991, he opened a family practice clinic in Ionia, Michigan, and in 1997 he began to treat some of

his patients for chronic pain. As part of that practice of pain management, he prescribed a variety of controlled substances, including narcotics and opiates.

Among the drugs Dr. Hildebrandt prescribed was OxyContin, a Schedule II controlled substance. OxyContin, designed by Purdue Pharma to be safer and less susceptible to abuse, is an analgesic-narcotic that contains oxycodone. Introduced to the market in or about 1996, OxyContin gradually releases steady amounts of narcotics for 12 hours. It has a high potential for abuse because the pills can be crushed and snorted or dissolved and injected to get an immediate high. Abuse can lead to addiction.

In the course of treatment, some of Dr. Hildebrandt's patients abused OxyContin and became addicted to it. Despite signs of abuse, Dr. Hildebrandt continued to prescribe the drug to seven particular patients.<sup>1</sup> By November 1999, treatment for them had progressed to such a point that prescribing of OxyContin was no longer for a legitimate medical purpose. For example, Dr. Hildebrandt knew, or had reason to know, that some patients were not taking the medication as prescribed, were engaging in drug-seeking behaviors, and displayed signs of abuse. Moreover, he continued some patients on this modality of treatment after it ceased having any therapeutic benefit, and he rejected criticism from some pharmacies and some health care professionals. As a consequence, by prescribing the medication under these circumstances Dr. Hildebrandt aided and abetted the patients in their submission of false claims to Medicaid and Express Scripts for payment of the prescriptions.

These patients submitted claims for payments to two health care benefit programs within the meaning of 18 U.S.C. § 24(b), Medicaid, administered by the Michigan Department of Community Health, Medical Services Administration, and Express Scripts, Inc. (Express), an independent pharmacy management service that provides prescription drug coverage to health plans. Medicaid and Express only pay for prescription drugs which are prescribed for a legitimate medical purpose in the normal course of professional practice. The total claims paid for such prescriptions issued as part of this scheme were \$191,291.48.

Claims for prescription services are generated by the pharmacy when prescriptions are filled by a Medicaid beneficiary. The claims were submitted electronically to RX America, the company hired to administer Medicaid prescription claims for the State of Michigan. A Statement of

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<sup>1</sup>These patients are identified by the parties elsewhere in court filings in order to preserve their privacy

Expenses was then generated by RX America and submitted to Molina Healthcare of Michigan ("Molina"), the entity responsible for paying Medicaid claims in Michigan. Molina issued a check according to the Statement of Expenses and sent it via the United States Mail to RX America, which issued its own check to the pharmacy that initiated the claim. The checks to the pharmacy were sent via United States Mail.

On or about November 18, 1999, Dr. Hildebrandt knowingly and willfully aided and abetted patient RR's scheme and artifice to defraud Medicaid by prescribing a dose of OxyContin, 200 doses of 80 mg, which was not for a legitimate medical purpose, knowing or having reason to know, that RR would thereby cause the Medicaid's agent, Molina Healthcare of Michigan, to mail a reimbursement check for medication to which RR was not entitled

The Defendant understands that neither the United States Probation Office nor the Court is bound by any stipulation in this agreement, and that the Court, with the aid of the presentence report, will determine the facts and calculations relevant to sentencing. Both the Defendant and the U.S. Attorney's Office are free to supplement the facts stipulated to in this agreement by supplying relevant information to the United States Probation Office and the Court, and to correct any and all factual misstatements relating to the calculation of the sentence. The Defendant understands that if the Court finds facts or reaches conclusions different from those in any stipulation contained in this agreement, the Defendant cannot, for that reason alone, withdraw his guilty plea.

10. Waiver of Constitutional Rights. By pleading guilty, the Defendant gives up the right to persist in a plea of not guilty and the right to a speedy and public trial by jury or by the Court. As a result of the Defendant's guilty plea, there will be no trial. At any trial whether by jury or by the Court, the Defendant would have had the following rights:

a. The right to the assistance of counsel, including, if the Defendant could not afford an attorney, the right to have the Court appoint an attorney to represent the Defendant.

b. The right to be presumed innocent and to have the burden of proof placed on the Government to prove the Defendant guilty beyond a reasonable doubt.

c. The right to confront and cross-examine witnesses against the Defendant.

d. The right, if the Defendant wished, to testify on the Defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

e. The right not to be compelled to testify, and, if the Defendant chose not to testify or present evidence, to have that choice not be used against the Defendant.

By pleading guilty, the Defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

11. The Court is not a Party to this Agreement. The Defendant understands that the Court is not a party to this agreement and is under no obligation to accept any recommendation by the U.S. Attorney's Office or the parties regarding the sentence to be imposed. The Defendant further understands that, even if the Court ignores such a recommendation or imposes any sentence up to the maximum established by statute, the Defendant cannot, for that reason, withdraw his guilty plea, and he will remain bound to fulfill all his obligations under this agreement. The Defendant understands that no one – not the prosecutor, the Defendant's attorney, or the Court – can make a

binding prediction or promise regarding the sentence the Defendant will receive, except that it will be within the statutory maximum.

12. This Agreement is Limited to the Parties. This agreement is limited to the U.S. Attorney's Office for the Western District of Michigan, and cannot bind any other federal, state or local prosecuting, administrative or regulatory authority.

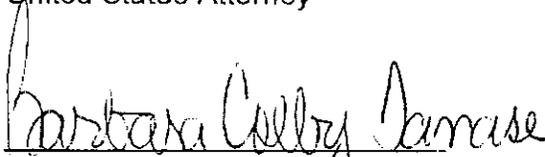
13. Consequences of Breach. If the Defendant breaches any provision of this agreement, including any promise of cooperation, whether before or after sentencing, the United States shall have the right to terminate this agreement, or deny any or all benefits to which the Defendant would otherwise be entitled under the terms of this agreement. In the event that the United States elects to terminate this agreement, the agreement shall be considered null and void, and the parties shall return to the same position they were in prior to the execution of this agreement, as though no agreement ever existed. In such an event, the Defendant shall remain liable for prosecution on all original charges, and the United States shall be free to bring such additional charges as the law and facts warrant. The Defendant further agrees to waive and forever give up his right to raise any claim that such a prosecution is time-barred if the prosecution is brought within one (1) year of the breach that gives rise to the termination of this agreement.

14. This is the Complete Agreement. This agreement has been entered into by both sides freely, knowingly, and voluntarily, and it incorporates the complete understanding between the parties. No other promises have been made, nor may any

additional agreements, understandings or conditions be entered into unless in a writing signed by all parties or on the record in open court.

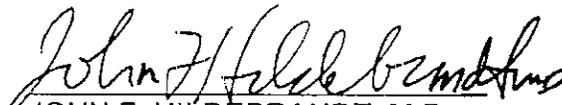
MARGARET M. CHIARA  
United States Attorney

Dated: April 19, 2006

  
BARBARA COLBY TANASE  
Assistant United States Attorney

I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

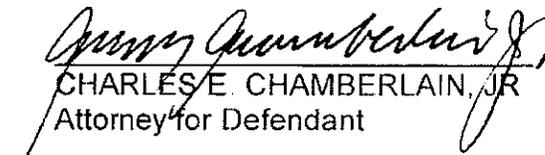
Date:

  
JOHN F. HILDEBRANDT, M.D.  
Defendant

I am JOHN F. HILDEBRANDT, M.D.'s attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date:

April 19, 2006

  
CHARLES E. CHAMBERLAIN, JR.  
Attorney for Defendant