

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

JOSHUA D. BARON

No. 11 CR 744

Judge Rebecca R. Pallmeyer

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant JOSHUA D. BARON, and his attorney, E. STEVEN YONOVER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with dispensing a controlled substance, namely, a quantity of a mixture and substance containing amphetamine, a Schedule II Controlled Substance, outside of the usual course of professional practice and without a legitimate medical purpose, in violation of Title 21, United States Code, Section 841(a)(1) [Counts One through Thirty One]; and attempting to dispense a controlled substance, namely, a quantity of a mixture and substance containing amphetamine, a Schedule II Controlled Substance, outside of the usual course of professional practice and without a legitimate medical purpose, in

violation of Title 21, United States Code, Section 841(a)(1), in violation of Title 21, United States Code, Section 846 [Count Thirty Two].

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following count of the indictment: Count Eight, which charges defendant with knowingly and intentionally dispensing a controlled substance, namely, a quantity of a mixture and substance containing amphetamine, a Schedule II Controlled Substance, outside of the usual course of professional practice and without a legitimate medical purpose, in violation of Title 21, United States Code, Section 841(a)(1).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count Eight of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

On or about March 4, 2009, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, JOSHUA BARON (“BARON”), did knowingly and intentionally dispense a controlled substance, namely, a quantity of a mixture and substance containing amphetamine, a Schedule II Controlled Substance, outside of the

usual course of professional practice and without a legitimate medical purpose, in violation of Title 21, United States Code, Section 841(a)(1).

Specifically, since approximately May 8, 2006, BARON has been licensed to practice medicine in the State of Illinois. BARON specialized in pediatric neurology. Until approximately January 2011, in Chicago, BARON was on staff and maintained offices where he would examine and treat patients at Rush University Medical Center located at 1725 West Harrison Street, John H. Stroger, Jr., Hospital of Cook County at 1900 W. Polk Street, and St. Anthony's Hospital at 2875 W. 19th Street.

On February 18, 2009, BARON posted an advertisement on Craigslist's "Casual Encounters" section entitled "Need Adderall or Xanax? - m4w." The advertisement read, "Let me know what you are willing to do in exchange. . . Please send a pic. . ." BARON listed his location as Chicago.

BARON received an email response to his advertisement from Individual A, a woman in her early 20s, asking for Adderall. Individual A offered to give BARON a massage in lingerie in exchange for Adderall and told him that, if the massage was not enough, she would give him oral sex in exchange for Adderall. BARON corresponded with Individual A using the email address jdb1_m@yahoo.com with the user name "Zap Jones." During that email exchange, BARON told Individual A that he was a physician. BARON sent Individual A a link to his profile and picture on the website for Rush University Medical Center in Chicago. During these emails, BARON agreed to write Individual A a prescription for 30 pills of Adderall, 20 mg, in exchange for sexual

acts. BARON agreed to meet Individual A at her apartment in Chicago. BARON told Individual A that he would be coming from Chicago's Medical District.

On March 4, 2009, BARON arrived at Individual A's apartment in Chicago. Individual A gave BARON a massage. After the massage, BARON asked Individual A for oral sex. Individual A began to perform oral sex on BARON and BARON asked her to have sexual intercourse with him. BARON and Individual A then had sexual intercourse.

In exchange for these sex acts, BARON wrote Individual A a prescription for 30 pills of Adderall, 20 mg, a mixture and substance containing actual amphetamine, a Schedule II Controlled Substance, and gave it to her.

BARON dispensed this prescription for Adderall (amphetamine) to Individual A outside of the usual course of professional practice and without a legitimate medical purpose. Individual A was not BARON's patient and never visited his offices as a patient. BARON never conducted a medical examination of her and never asked Individual A about her medical issues, any medication she was taking, or her medical or mental health history. BARON did not ask her to fill out any medical forms, review her medical records, or attempt to diagnose her. BARON only dispensed the prescription for Adderall to Individual A on March 4, 2009 in exchange for sex. BARON was able to dispense this controlled substance given his position of trust and special skills as a medical doctor with a controlled substances license. BARON acknowledges that the prescription was filled at a Chicago-area pharmacy.

7. Defendant also acknowledges that for the purpose of computing his sentence under the Sentencing Guidelines, the following conduct, to which he stipulates, constitutes relevant conduct under Guideline § 1B1.3:

On multiple occasions between in or about late 2006 and in or about 2011, BARON dispensed prescriptions for Schedule II, III, and IV controlled substances to individuals outside of the usual course of professional practice and without a legitimate medical purpose, in violation of Title 21, United States Code, Section 841(a)(1).

Specifically, BARON posted at least 78 advertisements offering to trade various prescription drugs, including Adderall, Norco, Percocet, Xanax, Vicodin, Ativan, Ritalin, Darvocet, Oxycontin, and Klonopin, on the online website Craigslist.com through one of three email addresses he used. BARON posted most or all of these advertisements under the “Men Who Would Pay” and “Casual Encounters” section of the Craigslist Personals. BARON wrote and dispensed prescriptions for controlled substances to individuals in exchange for sexual acts and/or money.

BARON’s dispensations included, but were not limited to, approximately 149 prescriptions for Schedule II, III, and IV controlled substances he wrote for Individuals A-P. These individuals were never patients of BARON’s and they never visited his offices as a patient. BARON never conducted a medical examination of these individuals and never asked them about their medical issues, any medications they were taking, or their medical or mental health history. BARON did not ask them to fill out any medical forms, review their medical records, or attempt to diagnose them. BARON was able to dispense controlled substances to these individuals given his

position of trust and special skills as a medical doctor with a controlled substances license.

Through these prescriptions, BARON dispensed to Individuals A-P the following amounts of Schedule II, III, and IV controlled substances:

Approximately 45,600 milligrams or 1,680 pills of Adderall, a mixture and substance containing actual amphetamine, a Schedule II Controlled Substance;

Approximately 1,650 milligrams or 180 pills of Percocet, a mixture and substance containing oxycodone, a Schedule II Controlled Substance;

Approximately 18,000 milligrams or 180 pills of Demerol, a mixture and substance containing meperidine hydrochloride, a Schedule II Controlled Substance;

Approximately 360 milligrams or 90 pills of Dilaudid, a mixture and substance containing hydromorphone, a Schedule II Controlled Substance;

Approximately 900 milligrams or 120 pills of Focalin, a mixture and substance containing dexmethylphenidate, a Schedule II Controlled Substance;

Approximately 450 milligrams or 15 pills of Morphine Sulfate, a mixture and substance containing morphine, a Schedule II Controlled Substance;

Approximately 18,225 milligrams or 1,830 pills of Norco, a mixture and substance containing hydrocodone, a Schedule III Controlled Substance;

Approximately 2,025 milligrams or 270 pills of Vicodin, a mixture and substance containing hydrocodone, a Schedule III Controlled Substance;

Approximately 3,390 milligrams or 1,710 pills of Xanax, a mixture and substance containing alprazolam, a Schedule IV Controlled Substance;

Approximately 5,625 milligrams or 150 pills of Phentermine, a mixture and substance containing phentermine, a Schedule IV Controlled Substance; and

Approximately 60 milligrams or 30 pills of Klonopin, a mixture and substance containing clonazepam, a Schedule IV Controlled Substance.

BARON acknowledges that the prescriptions he dispensed to Individuals A-P for these controlled substances were filled at various Chicago-area pharmacies.

Further, on or about January 13, 2011, at Wilmette, in the Northern District of Illinois, Eastern Division, and elsewhere, BARON did attempt to knowingly and intentionally dispense a controlled substance, namely, a signed prescription for 60 pills of Adderall, 30 mg, a mixture and substance containing amphetamine, a Schedule II Controlled Substance, outside of the usual course of professional practice and without a legitimate medical purpose; in violation of Title 21, United States Code, Section 841(a)(1); in violation of Title 21, United States Code, Section 846.

Specifically, BARON attempted to dispense this prescription to an individual who, unbeknownst to him, was a detective with the Wilmette Police Department working in an undercover capacity ("the UC"). BARON believed the UC to be a 24-year-old woman named Katherine Blackwell who had responded to an advertisement he posted in Craigslist's Casual Encounters section. The advertisement was entitled, "Do you need Adderall? - m4w - 34 (Chicago)." The advertisement said, "Please let me know what you are willing to trade. Please also send a pic. I am good-looking, fun and into just about anything." BARON emailed with the UC using the email address rcrumb54@yahoo.com and the email user name "Robert Crumb" and agreed to meet the

UC to dispense the prescription for 60 pills of Adderall, 30 mg, in exchange for oral sex with the possibility of vaginal sex, which was outside of the usual course of professional practice and without a legitimate medical purpose.

Maximum Statutory Penalties

8. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense also carries a maximum fine of \$1,000,000. Defendant further understands that the judge also must impose a term of supervised release of at least three years, and up to any number of years, including life.

b. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty imposed.

Sentencing Guidelines Calculations

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following

statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2013 Guidelines Manual.

b. Offense Level Calculations.

i. The amount of controlled substances involved in the offense of conviction and relevant conduct for which defendant is accountable is approximately 47,400 milligrams or 1,740 pills of Adderall; 1,650 milligrams or 180 pills of Percocet; 18,000 milligrams or 180 pills of Demerol; 360 milligrams or 90 pills of Dilaudid; 900 milligrams or 120 pills of Focalin; 450 milligrams or 15 pills of Morphine Sulfate; 18,225 milligrams or 1,830 pills of Norco; 2,025 milligrams or 270 pills of Vicodin; 3,390 milligrams or 1,710 pills of Xanax; 5,625 milligrams or 150 pills of Phentermine; and 60 milligrams or 30 pills of Klonopin.

ii. Pursuant to Application Note 8(B) to Guideline § 2D1.1, when determining the offense level for an offense involving different controlled substances, each drug is to be converted to its marijuana equivalent, combined, and then referred to the Drug Quantity Table in § 2D1.1 to obtain the combined offense level. Combining the marijuana equivalents for the controlled substances for which defendant is accountable equals approximately 963 kilograms of marijuana, which is at least 700 kilograms but less than 1,000 kilograms. Therefore, the base offense level is 30, pursuant to Guidelines § 2D1.1(a)(5) and (c)(5).

iii. Pursuant to Guideline § 2D1.1(b)(7), defendant's offense level is increased two levels because he distributed a controlled substance through mass-marketing by means of an interactive computer service, namely Craigslist, Inc.

iv. Pursuant to Guideline § 3B1.3, defendant's offense level is increased two levels because he abused a position of public or private trust, namely, his position as a medical doctor licensed to dispense controlled substances, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense.

v. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine that may be imposed in this case, a two-level reduction in the offense level is appropriate.

vi. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

vii. Defendant maintains that Guideline § 5C1.2 is applicable, and that his offense level should be reduced by two levels, pursuant to Guideline

§ 2D1.1(b)(16). The government reserves the right to dispute the applicability of Guideline § 5Cl.2 and maintains that, at this time, the defendant has failed to meet the criteria set forth in Guideline § 5Cl.2(a)(5).

b. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

c. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 31, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 108 to 135 months' imprisonment, in addition to any supervised release and fine the Court may impose.

d. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's

concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

11. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

12. Each party is free to recommend whatever sentence it deems appropriate.

13. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

14. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

15. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

16. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 11 CR 744.

17. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

18. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant

would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

19. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights

Presentence Investigation Report/Post-Sentence Supervision

20. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at

sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

21. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

22. For the purpose of monitoring defendant's compliance with his obligations to pay a fine during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's

request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

23. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

Conclusion

24. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

25. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with

this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

26. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

27. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

28. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

ZACHARY T. FARDON
United States Attorney

JOSHUA D. BARON
Defendant

CAROL A. BELL
Assistant U.S. Attorney

E. STEVEN YONOVER
Attorney for Defendant