U.S. Department of Justice

United States Attorney
Southern District of West Virginia

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FILED
JUL 18 2008
TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

July 14, 2008

Robert B. Allen, Esquire
Bryant J. Spann, Esquire
Allen Guthrie McHugh & Thomas PLLC
500 Lee Street, East, Suite 800
Charleston, West Virginia 25301

Re: United States v. Tracy E. Webber

Dear Messrs. Allen and Spann:

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

1. **CHARGING AGREEMENT.** Mr. Webber agrees to waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a single-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."

2. **RESOLUTION OF CHARGES.** Mr. Webber will plead guilty to violations of 18 U.S.C. § 1347 and 18 U.S.C. § 2 (healthcare fraud, aided and abetted by others) as charged in said information.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Webber will be exposed by virtue of this guilty plea is as follows:

(a) Imprisonment for a period of ten years;

(b) A fine of $250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;

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(c) A term of supervised release of three years;

(d) A mandatory special assessment of $100.00 pursuant to 18 U.S.C. § 3013; and

(e) An order of restitution pursuant to 18 U.S.C. §§ 3663A and 3664, or as otherwise set forth in this plea agreement.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Webber will tender a check or money order to the Clerk of the United States District Court for $100, 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. Mr. Webber 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 Mr. Webber 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 Mr. Webber.

5. **RESTITUTION.** Notwithstanding the offense of conviction, Mr. Webber agrees that he owes restitution in the amount of $57,588.69 and agrees to pay such restitution, with interest as allowed by law, to the fullest extent financially feasible. In aid of restitution, Mr. Webber further agrees as follows:

(a) Mr. Webber agrees to fully assist the United States in identifying and locating any assets to be applied toward restitution and to give signed, sworn statements and testimony concerning assets upon request of the United States.

(b) Mr. Webber will fully complete and execute, under oath, a Financial Statement and a Release of Financial Information on forms supplied by the United States and will return these completed forms to counsel for the United States within seven calendar days from the date of the signing of this plea agreement.

Defendant's initials

(c) Mr. Webber agrees not to dispose of, transfer or otherwise encumber any real or personal property which he currently owns or in which he holds an interest.

(d) Mr. Webber agrees to fully cooperate with the United States in the liquidation of assets to be applied towards restitution, to execute any and all documents necessary to transfer title of any assets available to satisfy restitution, to release any and all right, title and interest he may have in and to such property, and waives his right to exemptions under the Federal Debt Collection Procedures Act upon levy against and the sale of any such property.

(e) Mr. Webber agrees not to appeal any order of the District Court imposing restitution unless the amount of restitution imposed exceeds the amount set forth in this plea agreement. However, nothing in this provision is intended to preclude the Court from ordering Mr. Webber to pay a greater or lesser sum of restitution in accordance with law.

The parties agree and stipulate that defendant paid $525,000 to the United States to settle related civil claims and that pursuant to 18 U.S.C. § 3664(j)(2)(A), any restitution ordered by the Court in this matter should be reduced by the amount paid by defendant to settle the related civil claims.

6. **PAYMENT OF MONETARY PENALTIES.** Mr. Webber 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, Mr. Webber 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.

7. **COOPERATION.** Mr. Webber will be forthright and truthful with this office and other law enforcement agencies with regard to

Defendant's initials

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, Mr. Webber may have counsel present except when appearing before a grand jury.

Mr. Webber agrees to be named as an unindicted co-conspirator and unindicted aider and abettor as may be deemed appropriate in any counts of any indictments which may be returned by a federal grand jury.

8. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Webber, nothing contained in any statement or testimony provided by him pursuant to this agreement, or any evidence developed therefrom, will be used against Mr. Webber, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

9. **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 Mr. Webber for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Webber for perjury or false statement if such a situation should occur pursuant to this agreement.

10. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Webber stipulate and agree that the facts comprising the offenses of conviction and relevant conduct include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit B."

Mr. Webber agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by Mr. Webber, and he is subsequently tried on any of the charges in the information, the United States may use and introduce the "Stipulation of Facts" in the United States case-in-chief, in cross-examination of Mr. Webber or of any of his witnesses, or in rebuttal of any testimony introduced by Mr. Webber or on his behalf. Mr. Webber knowingly and voluntarily waives, see United

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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 Mr. Webber 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.

11. **AGREEMENT ON SENTENCING GUIDELINES.** Based on the foregoing Stipulation of Facts, the United States and Mr. Webber agree that the following provisions of the United States Sentencing Guidelines (November 1, 2007 edition) apply to this case.

Single Count Information:

USSG §2B1.1	
Base offense level	6
Loss of $57,588.69	+6
USSG Chapter Three Adjustments	
Aggravating role, defendant was organizer of criminal activity involving at least five other participants	+4
Adjusted offense level	16

The United States stipulates and agrees that, as of April 24, 2008, there is insufficient readily provable evidence to support enhancements pursuant to USSG §2B1.1(b)(a)(c) (sophisticated means) and §3B1.3 (abuse of a position of trust).

The United States and Mr. Webber acknowledge and understand that the Court and the Probation Office are not bound by the

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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.

12. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Webber is aware that 18 U.S.C. § 3742 affords him the right to appeal the sentence imposed by the District Court. Nonetheless, Mr. Webber knowingly and voluntarily waives his 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 U.S.C. § 3742, so long as that sentence of imprisonment or fine is below or within the Sentencing Guideline range corresponding to offense level 16, prior to the operation of USSG §3E1.1(a) concerning a decrease in the offense level for demonstrating acceptance of responsibility. The United States 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 U.S.C. § 3742, so long as that sentence of imprisonment or fine is within or above the Sentencing Guideline range corresponding to offense level 16, prior to the operation of USSG §3E1.1(a) concerning a decrease in the offense level for demonstrating acceptance of responsibility. Mr. Webber also waives his right to appeal a determination that he has failed to accept responsibility for his conduct and any denial of credit therefor pursuant to USSG §3E1.1. The United States agrees that should Mr. Webber receive credit for acceptance of responsibility pursuant to USSG §3E1.1, it will move the court to decrease the resulting offense level by 1 additional level.

Mr. Webber also knowingly and voluntarily waives the right to challenge his guilty plea and his 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.

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13. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Webber 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.

14. **WAIVER OF STATUTES OF LIMITATIONS AND PRETRIAL DELAY.** Mr. Webber knowingly and voluntarily agrees that in the event (a) this agreement is voided or not accepted by the District Court, (b) he withdraws from the agreement, or (c) his convictions are vacated for any reason, then any prosecution of an offense or offenses that was completed as of April 24, 2008, and that could be joined with the charge contained in the April 24, 2008 Information under Fed. R. Crim. P. 8, may be commenced or reinstated against him. Any such prosecution, however, must be commenced or reinstated not later than six months after the occurrence of one of the conditions in (a), (b) or (c) above. Mr. Webber knowingly and voluntarily waives all defenses based on the applicable statutes of limitations, and pre-indictment delay under the Federal Rules of Criminal Procedure or the Constitution, with respect to any such potential future prosecution.

15. **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 Mr. Webber;

Defendant's initials

(f) Advise the Court concerning the nature and extent of Mr. Webber's cooperation; and

(g) Address the Court regarding the issue of Mr. Webber's acceptance of responsibility.

16. **VOIDING OF AGREEMENT.** If either the United States or Mr. Webber violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

17. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Webber in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against him 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:

CHARLES T. MILLER
United States Attorney

By: Monica K. Schwartz
MONICA K. SCHWARTZ
Assistant United States Attorney

MKS/fgc

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 eight-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.

Tracy E. Webber
TRACY E. WEBBER
Defendant

7-15-08
Date Signed

ROBERT B. ALLEN, ESQUIRE
BRYANT J. SPANN, ESQUIRE
Counsel for Defendant

7-15-08
Date Signed

UNITED STATES
U. S. DISTRICT COURT
Southern District of West Virginia
Beckley Division

4 00005340 - MS
July 17, 2008

Code	Case #	Qty	Amount
SPECIAL	5:-0000090		100.00 CK
Debtor -	USA V. TRACY WEBBER		

TOTAL→ 100.00

FROM: TRACY E. WEBBER
101 HONEYSUCKLE LANE
BECKLEY, WV 25801

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

UNITED STATES OF AMERICA

v. CRIMINAL NO. _____

18 U.S.C. § 1347
18 U.S.C. § 2

TRACY E. WEBBER

I N F O R M A T I O N

The United States Attorney Charges:

At all relevant times:

1. Defendant TRACY E. WEBBER was an owner/officer/managing member of and/or associated with Group II Medical Supports Limited Liability Company ("Group II"), a durable medical equipment company with its headquarters in or near Beckley, West Virginia.

2. Defendant TRACY E. WEBBER, aided and abetted by others known to the United States Attorney, generally operated the business and marketed Group II's product in the southern and central parts of West Virginia and Virginia, and elsewhere.

3. Group II maintained agreements with various government health benefit programs, including Medicare, and received reimbursement from Medicare for durable medical equipment, specifically, Group II Support Surfaces, Alternating Air Pressure Reducing Mattress Replacement Systems ("the group II mattresses") provided to Medicare beneficiaries.

4. The Medicare health care benefit program was established and fully funded by the United States to provide health insurance to the elderly and others with severe disabilities or chronic medical conditions. Medicare is administered by the United States

Department of Health and Human Services. Individuals insured by Medicare are known as beneficiaries.

The Scheme to Defraud

5. From on or about July 20, 1998, and continuing though early 2004, at or near Beckley, Raleigh County, West Virginia, within the Southern District of West Virginia and elsewhere, defendant TRACY E. WEBBER, aided and abetted by others known to the United States Attorney, did knowingly and willfully develop, refine, and execute a scheme and artifice to defraud the Medicare program and to obtain, by means of materially false and fraudulent pretenses and representations, money owed and under the control and custody of the Medicare program in connection with the payment for the group II mattresses.

Manner and Means of
Execution of the Scheme

6. It was part of the scheme that defendant TRACY E. WEBBER, aided and abetted by others known to the United States Attorney, would and did cause group II mattresses to be provided to Medicare beneficiaries who were not medically eligible for group II mattresses.

7. It was further part of the scheme that defendant TRACY E. WEBBER, aided and abetted by others known to the United States Attorney, would and did falsely represent to Medicare beneficiaries or their care providers, including but not limited to, personal care home (PCH) personnel, the qualifications for medical eligibility for the group II mattresses.

8. It was further part of the scheme that defendant TRACY E. WEBBER, aided and abetted by others known to the United States Attorney, would and did falsify "Statements of Ordering Physicians" and present them to care providers and/or PCH personnel and physicians for their signatures, on behalf of Medicare beneficiaries, thereby causing Medicare to authorize initial placement of, and/or payment for, group II mattresses.

9. It was further part of the scheme that defendant TRACY E. WEBBER, aided and abetted by others known to the United States Attorney, would and did complete "Monthly Patient Information Update Sheets" falsely indicating that Medicare beneficiaries had a continued need for the group II mattresses, thereby facilitating continued billing by group II and, payments by Medicare.

10. As a result of the fraudulent scheme defendant TRACY E. WEBBER, aided and abetted by others known to the United States Attorney, would and did cause the Medicare program fraudulently to pay to Group II money to which Group II was not entitled.

In violation of Title 18, United States Code, Sections 1347 and 2.

UNITED STATES OF AMERICA

CHARLES T. MILLER
United States Attorney

By: _____
MONICA K. SCHWARTZ
Assistant United States Attorney

Date Filed: April 28, 2008

"PLEA AGREEMENT EXHIBIT A"

STIPULATION OF FACTS

1. Tracy E. Webber ("Webber"), along with Charles E. Gwinn ("Gwinn") founded Group II Medical Supports, LLC ("Group II"), a West Virginia limited liability company, in August 1997. Webber and Gwinn remained the principals of Group II until they sold it to a third party in June 2003. Throughout this period, Group II's principal place of business was Beckley, West Virginia.

2. Group II's primary business was supplying durable medical equipment ("DME")—specifically, pressure-reducing mattresses ("group II mattresses") – to care home residents. In September 1997, Group II became an authorized Medicare DME supplier, and was thus permitted to market and place group II mattresses for Medicare beneficiaries and to bill Medicare for the group II mattresses, in accordance with applicable Medicare regulations. Webber and Gwinn began the company with the intention of supplying mattresses only to eligible Medicare recipients.

3. Beginning in or about January 1998, Webber and Gwinn, aided and abetted by others, developed a business plan which resulted in Group II obtaining payment for group II mattresses leased to Medicare beneficiaries who, under the applicable Medicare regulations, did not qualify for the group II mattresses. In furtherance of this plan, Webber and Gwinn did various acts, including the following:

a. training Group II salesmen to market the group II mattresses to care homes as devices that could prevent their

residents from developing decubitus ulcers as well as curing ulcers, knowing that applicable Medicare regulations did not permit placement of the group II mattresses as preventive devices;

b. training Group II salesmen to fill-out the factual portion of the Statement of Ordering Physician ("SOP") – a form certifying that an individual met the Medicare coverage criteria for a group II mattress for a particular beneficiary—knowing that Medicare regulations prohibit DME suppliers from filling-out such forms;

c. training Group II salesmen to fill-out the factual portion of the SOP in a manner that would justify the placement of a group II mattress, while knowing, or willfully blind to, the fact that the individual beneficiary's medical records indicated that he or she did not qualify for a group II mattress under applicable Medicare regulations;

d. training Group II salesmen to indicate on patient information sheets that a beneficiary's medical condition qualified him or her for placement of a group II mattress, while knowing, or willfully blind to, the fact that the beneficiary's medical records reflected the absence of a qualifying medical condition;

e. presenting false or misleading SOP's to physicians for their signature, while knowing, or willfully blind to, the fact that the SOP's were false or misleading; and

f. training Group II salesmen to complete monthly update sheets—which were kept by Group II to satisfy Medicare regulations

to justify the continued lease of a group II mattress—in a manner indicating that the beneficiary's medical condition qualified him or her for continued lease of a group II mattress, while knowing, or willfully blind to, the fact that the beneficiary actually did not qualify.

4. Having leased group II mattresses as a result of the above acts, Webber and Gwinn caused Group II to submit to Medicare false or fraudulent claims for payment, *i.e.*, the monthly payments for group II mattresses, while knowing those claims to be false, or willfully blind to the fact that those claims were false.

5. As of this date, the United States can readily prove and Webber stipulates and agrees that Group II improperly received payments on such claims of $58,000 during the period from January 1998 to February 2004.

Stipulated and agreed to:

Tracy E. Webber
TRACY E. WEBBER
Defendant

4-24-08
Date Signed

ROBERT B. ALLEN, ESQ.
BRYANT J. SPANN, ESQ.
Counsel for Defendant

04-28-2008
Date Signed

Monica K. Schwartz
MONICA K. SCHWARTZ
Assistant United States Attorney

4-28-08
Date Signed