

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
At Albuquerque NM
JUL 26 2010 *WJ*

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 CHRISTINE HORNING,)
)
 Defendant.)

Cr. No. 10-981 LH

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, **CHRISTINE HORNING**, and the Defendant's counsel, Thomas B. Jameson:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

2. The Defendant further understands the Defendant's rights:
- a. to be prosecuted by indictment;
 - b. to plead not guilty, or having already so pleaded, to persist in that plea;
 - c. to have a trial by jury; and
 - d. at a trial:
 - 1) to confront and cross-examine adverse witnesses,

- 2) to be protected from compelled self-incrimination,
- 3) to testify and present evidence on the Defendant's own behalf, and
- 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to Count 1 of the Information, charging a violation of 18 U.S.C. § 1028A, that being Aggravated Identity Theft, and to Count 2 of the Information, charging a violation of 18 U.S.C. § 1347, that being Health Care Fraud.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose is:
 - a. As to Count 1 of the Information:
 - 1) a mandatory term of imprisonment of 2 (two) years;
 - 2) a fine not to exceed \$250,000;
 - 3) a mandatory term of supervised release of not more than 1 year that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
 - 4) a mandatory special penalty assessment of \$100.00; and
 - 5) restitution as may be ordered by the Court.

b. As to Count 2 of the Information:

- 1) imprisonment for a period of not more than 20 years;
- 2) a fine not to exceed \$250,000;
- 3) a mandatory term of supervised release of not more than 5 years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
- 4) a mandatory special penalty assessment of \$100.00; and
- 5) restitution as may be ordered by the Court.

5. The parties recognize that the federal sentencing guidelines are advisory, and that the Court is required to consider them in determining the sentence it imposes.

6. The parties agree that, as part of the Defendant's sentence, the Court will enter an order of restitution pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A. In this case, the Defendant agrees to pay restitution in the total principal amount of \$24,679.48.

7. The United States reserves the right to make known to the United States Pretrial Services and Probation Office and to the Court, for inclusion in the presentence report to be prepared under Federal Rule of Criminal Procedure 32 any information the United States

believes may be helpful to the Court, including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

DEFENDANT'S ADMISSION OF FACTS

8. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offense(s) to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this plea, the United States could prove facts sufficient to establish my guilt of the offense(s) to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

- a. I worked in the pharmacy of Presbyterian Healthcare Services (PHS) in Albuquerque, New Mexico, from January 24, 2005, until I was fired on June 22, 2009.
- b. From about May 22, 2008, to June 4, 2009, I used the PHS computer database to create 17 fraudulent customer prescription reimbursement checks.
- c. In generating these checks I used the names and Member ID's of PHS members who were known to me, including the names and Member ID's of two minor children of my ex-husband's friend, two step-nieces, the daughter of one step-niece, a former boyfriend, and the parents of my boyfriend at the time.
- d. For each fraudulent check I generated, I changed the payee name address from the name and address for that Member, to a name and address of my choosing. I caused checks to be mailed to, among others, my mother in Kansas, my then-boyfriend's parents (sometimes addressed to them but sent to my home address), and a former boyfriend.
- e. I knew that the fraudulent checks would be generated by the reimbursement company in Illinois, and that I was causing the fraudulent checks to be mailed to the names and addresses of my choosing.

f. I convinced the recipients of the fraudulent checks I generated to provide the proceeds to me.

g. I received a total of \$24,679.48 from the fraudulent reimbursement checks.

9. By signing this agreement, the Defendant admits that there is a factual basis for each element of the crime(s) to which the Defendant will plead guilty. The Defendant agrees that the Court may rely on any of these facts, as well as facts in the presentence report, to determine the Defendant's sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

10. The United States and the Defendant stipulate as follows:

a. Defendant is subject to a two-year mandatory term of imprisonment for Count 1 of the Information, that being Aggravated Identity Theft.

b. As to Count 2 of the Information, that being Health Care Fraud, as of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to U.S.S.G. § 3E1.1, so long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a reduction of two levels from the base offense level as calculated under the sentencing guidelines. The United States is free to withdraw this stipulation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing. Such conduct would include committing additional crimes,

failing to appear in Court as required, and/or failing to obey any conditions of release that the Court may set.

- c. The Defendant agrees to pay full restitution to all the victims of the Defendant's crimes related to this case. As of the date of the signing of this plea agreement, the parties estimate the approximate total principal loss to be \$24,679.48, which the Defendant agrees to pay as follows:

\$16,646.09 to Medicaid Salud Program;

\$6,690.98 to Presbyterian Insurance Company; and

\$1,342.41 to Presbyterian Employees Plan.

- d. The Defendant recognizes that this plea agreement has already conferred a benefit on the Defendant.
- e. The United States will not oppose a request that the Defendant be sentenced to a term of imprisonment for Count 2 of the Information, Health Care Fraud at the low end of the applicable advisory guideline range, and that any such imprisonment be served concurrent to the mandatory two-year term for Count 1 of the Information, Aggravated Identity Theft.
- f. Regarding any imprisonment for Count 2 of the Information, Health Care Fraud, the United States and the Defendant reserve their rights to assert any position or argument with respect to the sentence to be imposed, including but not limited to the applicability of particular sentencing

guidelines, adjustments under the guidelines, departures or variances from the guidelines, and the application of factors in 18 U.S.C. § 3553(a).

- g. Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the Defendant agrees that, upon the Defendant's signing of this plea agreement, the facts that the Defendant has admitted under this plea agreement as set forth above, as well as any facts to which the Defendant admits in open court at the Defendant's plea hearing, shall be admissible against the Defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the Defendant expressly waives the Defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the Defendant admits in conjunction with this plea agreement.

11. The Defendant understands that the above stipulations are not binding on the Court and that whether the Court accepts these stipulations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Further, the Defendant understands that the Court may choose to vary from the advisory guideline sentence. The Defendant understands that if the Court does not accept any one or more of the above stipulations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court varies from the advisory guideline range, the Defendant will not seek to withdraw the Defendant's plea of guilty. In other words, regardless of any stipulations the parties may enter into, the Defendant's final sentence is solely within the discretion of the Court.

DEFENDANT'S ADDITIONAL OBLIGATIONS

12. The Defendant understands the Defendant's obligation to provide the United States Pretrial Services and Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

WAIVER OF APPEAL RIGHTS

13. The Defendant is aware that 28 U.S.C. § 1291 and 18 U.S.C. § 3742 afford a Defendant the right to appeal a conviction(s) and the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal his conviction(s) and any sentence, including any order of restitution, within the applicable advisory guideline range as determined by the Court. The Defendant specifically agrees not to appeal the Court's resolution of any contested sentencing factor in determining the advisory sentencing guideline range. In other words, the Defendant waives the right to appeal both the Defendant's conviction(s) and the right to appeal any sentence imposed in this case except to the extent, if any, that the Court may depart or vary upward from the advisory sentencing guideline range as determined by the Court. In addition, the Defendant agrees to waive any collateral attack to the Defendant's conviction(s) pursuant to 28 U.S.C. § 2255, except on the issue of ineffective assistance of counsel.

GOVERNMENT'S AGREEMENT

14. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that:

- a. Following sentencing, the United States will move to dismiss the Indictment.

- b. The United States will not bring additional criminal charges against the Defendant arising out of the facts forming the basis of the present Information or the Indictment.

15. This agreement is limited to the United States Attorney's Office for the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities.

VOLUNTARY PLEA

16. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no promises from anyone as to what sentence the Court will impose. The Defendant also represents that the Defendant is pleading guilty because the Defendant is in fact guilty.

VIOLATION OF PLEA AGREEMENT

17. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

18. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico

87102, a money order or certified check payable to the order of the **United States District Court** in the amount of \$ 200 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

19. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this 26th day of July, 2010.

KENNETH J. GONZALES
United States Attorney



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THOMAS B. JAMESON
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Attorney for Defendant

I have read this agreement and carefully reviewed every part of it with my attorney. I understand the agreement and voluntarily sign it.

Date 7/26/10



Christine Horning
Defendant