

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:13-CR- 232-T-30EAJ

SAMUEL WAHBA

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Robert E. O'Neill, United States Attorney for the Middle District of Florida, and the defendant, SAMUEL WAHBA, and the attorney for the defendant, Bjorn E. Brunvand, Esq., mutually agree as follows:

A. **Particularized Terms**

1. Count(s) Pleading To

The defendant shall enter a plea of guilty to Count One of the Information. Count One charges the defendant with conspiracy to commit various offenses against the United States, including: health care fraud, false statements to a Federal Agency, False Claims for Payment to Federal Health Care Programs, and Concealment and Failure to Disclose Exclusion from Federal Health Care Programs in Connection with Claims for Payment, in violation of 18 U.S.C. § 371.

Defendant's Initials

AF Approval

2. Maximum Penalties

Count One carries a maximum sentence of 5 years imprisonment; a fine of \$250,000.00, or twice the gross gain caused by the offense, or twice the gross loss caused by the offense, whichever is greater; a term of supervised release of 3 years, and a special assessment of \$100 per felony count.

3. Elements of the Offense(s)

The defendant acknowledges understanding the nature and elements of the offense(s) with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

- First: two or more persons in some way agreed to try to accomplish a shared and unlawful plan;
- Second: the defendant knew the unlawful purpose of the plan and willfully joined in it;
- Third: during the conspiracy, one of the conspirators knowingly engaged in at least one overt act as described in the Information; and
- Fourth: the overt act was committed at or about the time alleged and with the purpose of carrying out or accomplishing some object of the conspiracy.

4. Indictment Waiver

Defendant will waive the right to be charged by way of indictment before a federal grand jury.

Defendant's Initials

W

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Permanent Exclusion from All Federal Health Care Programs

Pursuant to this plea agreement and 42 U.S.C. §§ 1320a-7(a)(1) and (a)(3), and 1320a-7(b)(7) and (b)(16), the defendant agrees to be permanently excluded from participation in Medicare, Medicaid, TRICARE, and all other Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f), commencing on the date of the defendant's Rule 11 (guilty plea) hearing.

Such exclusion shall have national effect and shall also apply to all other Federal procurement and non-procurement programs. Federal health care programs will not pay anyone for items or services, including administrative or management services, furnished, ordered, or prescribed by the defendant in any capacity while the defendant is excluded. This payment prohibition applies to the defendant, anyone who employs or contracts with the defendant, and any hospital or other provider where the defendant provides services. The exclusion applies regardless of who submits the claims or other requests for payment. The

Defendant's Initials



defendant waives any further notice of the exclusion and agrees not to contest such exclusion either administratively or in any State or Federal court.

Violation of the conditions of the defendant's exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. See 42 U.S.C. §§ 1320a-7a and 1320a-7b.

The defendant further agrees to hold the Federal health care programs, and all Federal beneficiaries and/or sponsors, harmless from any financial responsibility for goods or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion.

Reinstatement to program participation is not automatic. Typically, a person who wishes to apply for reinstatement must submit a written request for reinstatement in accordance with the provisions of 42 C.F.R. §§ 1001.3001 – 1001.3005. Pursuant to this agreement, however, the defendant will never apply for reinstatement to participate in Medicare, Medicaid, TRICARE, and all other Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f).

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States

Defendant's Initials

W

has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG §3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.4., the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of

Defendant's Initials

W

responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

9. Low End

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will not oppose the defendant's request to the Court that the defendant receive a sentence at the low end of the applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

10. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government

Defendant's Initials

D

agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

11. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of defendant's cooperation and pursuant to this agreement shall be used in

Defendant's Initials



determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

12. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and

Defendant's Initials

 W

may either seek reinstatement of or refile such charges and prosecute the defendant thereon in the event such charges have been dismissed pursuant to this agreement. With regard to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by rescission of any order dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United States may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement, and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

Defendant's Initials

W

(4) The government may use against the defendant the defendant's own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the United States, the United States may move the Court to declare this entire plea agreement null and void.

13. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 982(a)(7) and 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, a money judgment in the amount of \$5,281,931.00, representing the amount of proceeds obtained as a result of the offense(s) charged in Count One of the Information. The defendant also hereby agrees to waive all constitutional, statutory and

Defendant's Initials



procedural challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1)(A), the United States and the defendant request that promptly after accepting this Plea Agreement, the Court make a determination that the government has established the amount of the proceeds of the offense(s) to which defendant is pleading guilty is \$5,281,931.00 and enter an order of forfeiture. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees that the United States shall, at its option, be entitled to the forfeiture of any property (substitute assets) of the defendant up to the value of the money judgment. The Court shall retain jurisdiction to settle any

Defendant's Initials

W

disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

The defendant agrees to take all steps necessary to identify and locate all substitute assets and to transfer custody of such assets to the United States before the defendant's sentencing. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees that Federal Rule of Criminal Procedure 11 and U.S.S.G. § 1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of his cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to any substitute assets before the defendant's sentencing. In addition to providing full and complete information about substitute assets, these steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

Defendant's Initials



The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the government will not recommend a low end Guidelines sentence, the defendant may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and the defendant may be eligible for an obstruction of justice enhancement.

The defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that determination shall be binding upon defendant's heirs, successors and assigns until the agreed forfeiture, including any agreed money judgment amount, is collected in full.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any

Defendant's Initials

W

victim of the offense(s), pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987), including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied. Notwithstanding the above, the United States will not pursue restitution for payments Medicare, Medicaid, and TRICARE made to St. George Pharmacy during the time frame of the offense described in the Factual Basis of this agreement.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this obligation is satisfied, the Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of \$100.00, payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing. The defendant understands that this agreement imposes no limitation as to fine.

Defendant's Initials

W

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the

Defendant's Initials

United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his/her financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he/she has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records

Defendant's Initials

W

and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

5. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence,

Defendant's Initials

W

whether or not such decision is consistent with the government's recommendations contained herein.

6. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

7. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

Defendant's Initials

W

8. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

9. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those

Defendant's Initials

W

rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

10. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

Beginning on an unknown date, but at least as early as on or about October 15, 2002, and continuing up through the present day, in the Middle District of Florida and elsewhere, the defendant, SAMUEL WAHBA ("WAHBA"), conspired with various individuals to commit health care fraud, in violation of 18 U.S.C. § 1347, to make materially false statements and submit fraudulent

Defendant's Initials



documents to a federal agency, in violation of 18 U.S.C. § 1001(a)(2) and (a)(3), to submit false claims for payment to multiple federal health care programs, in violation of 18 U.S.C. § 1035(a)(2), and to conceal and fail to disclose WAHBA's exclusion from participation in all Federal health care programs in connection with claims for payment submitted by St. George Pharmacy, Inc. ("St. George Pharmacy"), in violation of 42 U.S.C. § 1320a-7b(a)(3). During the course of this conspiracy, WAHBA and his co-conspirators fraudulently submitted, and caused to be submitted, thousands of claims for reimbursement to the Medicaid Program, Part D of the Medicare Program, and TRICARE, all of which were "health care benefit programs" under 18 U.S.C. § 24(b) and "Federal health care programs" under 42 U.S.C. § 1320a-7b(f). Through these fraudulent claims for reimbursement, the conspirators—primarily WAHBA—received approximately \$5,281,931.00 in federal funds from these various federal health care programs.

On or about August 10, 2001, WAHBA was convicted of one count of violating the Florida Racketeering Influenced and Corrupt Organization Act (RICO), one count of Medicaid Provider Fraud, one count of Grand Theft (Second Degree), and one count of Grand Theft (Third Degree), in the State of Florida v. Samuel Wahba, Case No. CRC00-15237CFANO, in the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida (the "2001 felony convictions"). These felony criminal convictions arose out of WAHBA's operation

Defendant's Initials



of Clover Pharmacy, located at 3325 Tampa Road, in Palm Harbor, Pinellas County, Florida.

On or about July 31, 2002, WAHBA received notice that he was "excluded in any capacity from participation in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) of the Social Security Act (Act) for a minimum period of 15 years." (emphasis in original). This exclusion was based on WAHBA's 2001 felony convictions. This exclusion notice also advised WAHBA of the following:

You are excluded from participation in the Medicare, Medicaid, and all Federal health care programs as defined in section 1128B(f) (42 U.S.C. 1320a-7b) of the Social Security Act. The effect of this exclusion is that no program payment will be made to you for anything that you do, order, or prescribe, or to any employer for anything that you do, order, or prescribe to program patients . . . during the period you are excluded.

This exclusion is global, regardless of your job or location. It applies in all States and in all programs. It applies to all Federal procurement and non-procurement programs and activities.

* * *

Notwithstanding 42 U.S.C. 1395w-4(g)(4), any service you provide is a non-covered service. Therefore, you cannot submit claims or cause claims to be submitted for payment under any Federal health care program. Violations of the conditions of your exclusion may subject you to criminal prosecution, the imposition of civil monetary penalties (42 U.S.C. 1320a-7a – 42 U.S.C. 1320a-7b), and the denial of your reinstatement to the programs.

* * *

YOUR REINSTATEMENT IS NOT AUTOMATIC. You will not be reinstated at the conclusion of the minimum period of

Defendant's Initials

W

exclusion, or anytime thereafter, **UNLESS YOU APPLY TO THE OIG AND ARE GRANTED REINSTATEMENT** to the Medicare and Federal health care programs under the provisions of 42 U.S.C. 1320a-7(g) and 42 CFR 1001.3001-.3005.

(emphasis in original).

After being excluded from participation in any and all federal health care programs, WAHBA went about devising a scheme to form a new pharmacy, called St. George Pharmacy, that could secretly be owned and controlled by him. WAHBA knew that he would only be able to bill Medicaid, Medicare Part D, TRICARE, and other federal health care programs, if his ownership and control of St. George Pharmacy was covert. This aspect of the scheme required WAHBA to enlist the assistance of individuals to pretend, at various times, to be the owners and operators of St. George Pharmacy. The main objective in creating these fictional ("nominee") owners was to enable St. George Pharmacy to bill federal health care programs notwithstanding WAHBA's exclusion from participation in these programs. During the time frame of the conspiracy, WAHBA recruited three individuals to serve as nominee owners of St. George Pharmacy: (1) Nominee I.N., (2) Nominee S.B.; and (3) Nominee L.B.

In the fall of 2002, WAHBA selected Nominee I.N. as the first person to serve as a nominee owner of St. George Pharmacy. Shortly after receiving his notice of exclusion in July 2002, WAHBA caused one of his family members to approach Nominee I.N. about becoming a "silent partner" in St. George Pharmacy. Nominee I.N. agreed. Nominee I.N. knew that WAHBA

Defendant's Initials

W

needed her to serve as a nominee owner of St. George Pharmacy because WAHBA had been excluded from participation in all federal health care programs. WAHBA paid Nominee I.N. a one-time fee of \$5,000 to serve as the owner of St. George Pharmacy; Nominee I.N. received no other compensation for her involvement in this scheme, notwithstanding her purported ownership of the pharmacy.

On or about October 15, 2002, WAHBA registered St. George Pharmacy, or caused it to be registered, with the Florida Secretary of State, Division of Corporations. The Electronic Articles of Incorporation listed St. George Pharmacy as being located at 3325 Tampa Road, in Palm Harbor, Pinellas County, Florida—the same location as Clover Pharmacy, which WAHBA previously owned and operated. Pursuant to the Articles of Incorporation, Nominee I.N. was the sole incorporator, officer, director, and registered agent of St. George Pharmacy. This was false. In truth and in fact, WAHBA was the sole owner and operator of St. George Pharmacy. WAHBA used Nominee I.N. to register St. George Pharmacy with the Florida Secretary of State to conceal his connection with the pharmacy.

On or about December 5, 2002, SAMUEL WAHBA and Nominee I.N. opened a corporate signature card account in the name of St. George Pharmacy at Bank of America. SAMUEL WAHBA signed the signature card for this bank account, representing himself to be the “Manager” of St. George

Defendant's Initials

A handwritten signature in blue ink, appearing to be 'S. Wahba', written over a horizontal line.

Pharmacy. Nominee I.N. was falsely listed on the signature card as the "President" of St. George Pharmacy.

On or about December 5, 2002, WAHBA submitted a Medicaid Provider Enrollment Application for St. George Pharmacy to the Florida Agency for Health Care Administration ("AHCA"), the state agency responsible for administering the Medicaid Program in the state of Florida. AHCA received St. George Pharmacy's Medicaid Provider Enrollment Application on or about January 6, 2003. The Medicaid Provider Enrollment Application required the applicant to "identify all managers, billing agents, officers, directors and principal owners" of St. George Pharmacy. Notwithstanding this requirement, the Medicaid Provider Enrollment Application omitted any mention of WAHBA and falsely represented that Nominee I.N. was the 100% owner of St. George Pharmacy. In addition, the Medicaid Provider Enrollment Application required the applicant to explain whether any of the individuals listed as managers, billing agents, officers, directors and principal owners of St. George Pharmacy had ever been: (a) convicted of a felony, and (b) excluded from Medicare or Medicaid in any state. By omitting WAHBA as a manager and principal owner of St. George Pharmacy, WAHBA was able to fraudulently conceal from AHCA his 2001 felony convictions and exclusion from participating in Medicaid, Medicare, TRICARE, and all other Federal health care programs. These false representations and omissions from St. George Pharmacy's Medicaid Provider Enrollment Application

Defendant's Initials

W

25

were material to AHCA's decision to issue a Medicaid Provider Number to St. George Pharmacy. As a result of this fraudulent application, AHCA issued a Medicaid Provider Number to St. George Pharmacy and, subsequently, St. George Pharmacy began submitting claims for reimbursement to Medicaid for prescription services provided to Medicaid beneficiaries.

Between October 15, 2002 and February of 2006, Nominee I.N. served as the nominee owner of St. George Pharmacy. In reality, however, Nominee I.N. was only physically present at St. George Pharmacy on one occasion and, thereafter, had absolutely no involvement in the operations of the pharmacy while she served as its owner on paper.

In February of 2006, WAHBA recruited Nominee I.B. to serve as the second nominee owner of St. George Pharmacy. Nominee I.B. originally worked as a pharmacist at St. George Pharmacy. Nominee I.B. knew that WAHBA had been excluded from participation in all federal health care programs. From February of 2006 through April 10, 2007, Nominee I.B. pretended to be the owner of St. George Pharmacy to mask WAHBA's ownership and operation of the pharmacy from the federal health care programs that were billed by the pharmacy.

On or about April 10, 2007, WAHBA recruited Nominee L.B. to serve as the third nominee owner of St. George Pharmacy. Nominee L.B. has served as the nominee owner of St. George Pharmacy from April 10, 2007, up

Defendant's Initials

W

through the present day. Initially, Nominee L.B. worked as a pharmacy manager at St. George Pharmacy. However, around April 2007, WAHBA recruited Nominee L.B. to serve as the owner, on paper, of St. George Pharmacy. When Nominee L.B. became the nominee owner of St. George Pharmacy, she was aware that WAHBA was the sole owner of St. George Pharmacy and had been excluded from participating in any and all federal health care programs. Notwithstanding, Nominee L.B. served as nominee owner of St. George Pharmacy to conceal WAHBA's ownership and operation of the pharmacy from these federal health care programs. While serving as the nominee owner of St. George Pharmacy, WAHBA regularly provided Nominee L.B. with documents to sign for the pharmacy. In particular, WAHBA directed Nominee L.B. to sign her name on various checks for the pharmacy's business operations.

Between 2007 and 2009, while Nominee L.B. worked as a pharmacy manager at St. George Pharmacy and served as its nominee owner, she received approximately \$181,000.00 in compensation. Notwithstanding Nominee L.B.'s purported ownership of St. George Pharmacy, she received no compensation during 2010 or 2011. On the other hand, between 2006 and 2011, WAHBA and businesses exclusively controlled by WAHBA received no less than \$3,300,000.00 from St. George Pharmacy's corporate bank account.

During the time frame of the conspiracy, St. George Pharmacy submitted millions of dollars in claims for reimbursement to Medicaid, Medicare

Defendant's Initials



Part D, and TRICARE for prescription drug services. For example, on or about June 26, 2004, SAMUEL WAHBA caused St. George Pharmacy to submit a claim for reimbursement to the Medicaid Program in the amount of \$289.62 for dispensing a prescription of Lidoderm to Medicaid beneficiary M.V. On or about November 25, 2009, SAMUEL WAHBA caused St. George Pharmacy to submit a claim for reimbursement to TRICARE in the amount of \$319.41 for dispensing a prescription of Nexium to TRICARE beneficiary B.T. On or about January 25, 2012, SAMUEL WAHBA caused St. George Pharmacy to submit a claim for reimbursement to Medicare Part D in the amount of \$103.15 for dispensing a prescription of Plavix to Medicare beneficiary L.O. All of these claims were paid by the various federal health care programs.

Throughout its operation, St. George Pharmacy submitted thousands of claims for reimbursement to Medicaid, Medicare Part D, and TRICARE (or their fiscal intermediaries or pharmacy networks) for providing prescription drug services to its respective beneficiaries and, in return, St. George Pharmacy received reimbursement payments in the following amounts:

- (a) The Medicaid Program - \$1,158,800.00;
- (b) The Medicare Program, Part D - \$3,427,262.00; and
- (c) TRICARE - \$695,869.00.

In total, between January 2003 and August 2012, as a result of all of the fraudulent claims for reimbursement submitted by St. George Pharmacy to

Defendant's Initials 

Medicaid, Medicare Part D, and TRICARE during the course of the conspiracy, WAHBA and his co-conspirators fraudulently obtained approximately \$5,281,931.00 from these federal health care programs. This shall be considered the loss amount for sentencing purposes.

11. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

12. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

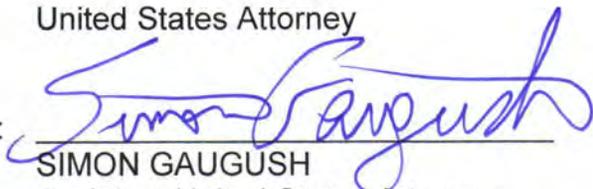
DATED this 3rd day of May, 2013.



SAMUEL WAHBA
Defendant

By:

ROBERT E. O'NEILL
United States Attorney


SIMON GAUGUSH
Assistant United States Attorney



BJORN E. BRUNVAND, ESQ.
Attorney for Defendant


ROBERT MOSAKOWSKI
Assistant United States Attorney
Chief, Economic Crimes Section