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BOARD OF PHARMACY

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the New Jersey Board of Pharmacy
Division of Law - 5th Floor
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

By: Marianne W. Greenwald
Deputy Attorney General
Tel. No. (973)648-4876

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PHARMACY

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

MING C. TUNG, R.Ph.
License No. 01511400

TO PRACTICE PHARMACY IN THE
STATE OF NEW JERSEY

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: Administrative Action
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: **CONSENT ORDER OF REVOCATION**
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: **OF LICENSE**
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This matter was opened to the New Jersey State Board of Pharmacy upon the receipt of information that respondent on August 24, 2007 pled guilty to one count of health care fraud in violation of 18 U.S.C. § 1347 in United States District Court, District of New Jersey.

Dr. Tung has maintained medical offices as "Baldwin foot & Ankle, P.A." at various addresses including 8 Baldwin Avenue, Jersey City, New Jersey, and has been licensed to practice podiatry and pharmacy during all times pertinent to the within matter. He was also registered as a Medicare provider and during a period including but not limited to 2001 through 2005, he offered podiatry

services at various low-income residential buildings located in Hudson and Middlesex Counties.

Dr. Tung was the subject of a federal civil and criminal investigation involving fraud on the Medicare program. On August 8, 2007, Dr. Tung agreed to pay \$868,313.38 in settlement of civil claims alleged by the United States Department of Justice and the Office of Inspector General (OIGHHS) of the Department of Health and Human Services (HHS).

On August 24, 2007, before the Hon. U.S. District Senior Judge Joseph E. Irenas, Dr. Tung pled guilty to a one-count Information, Criminal No. 07-7019(JEI) in the United States District Court of New Jersey, charging Health Care Fraud in violation of 18 U.S.C. § 1347. See Exhibit A, attached. A plea agreement is attached as Exhibit B. The total of civil settlement and criminal restitution to the federal government will be \$1,218,313.38. The U.S. District Court Judgment of Conviction is incorporated into, and shall be attached to this Order upon entry as Exhibit C.

Respondent Dr. Tung has been and continues to be represented by the law firm of Kern, Augustine, Conroy & Schoppmann, P.C., Bridgewater, N.J. Respondent, having consulted with his attorneys, and desirous of resolving this matter amicably in lieu of the imminently anticipated administrative disciplinary proceeding, acknowledges that his federal settlement of the civil

matter and his plea of guilty to the criminal charges, and the investigative material underlying the Information to which Dr. Tung has pled guilty, constitute grounds for disciplinary action by the Board of Pharmacy under N.J.S.A. 45:1-21(b), (e), (f) and (h). Dr. Tung has determined to waive his right to await the filing of a formal Administrative Complaint. Respondent has offered to surrender his license to practice pharmacy in this State, such surrender to be deemed a revocation.

The Board having considered the totality of the circumstances, and having determined to waive assessment of monetary penalty by the Board and other remedies as otherwise authorized by N.J.S.A. 45:1-22 and 45:1-25, in light of Dr. Tung's resolution of the federal proceedings in accordance with the terms of his plea agreements, and for good cause shown,

IT IS, ON THIS 7th DAY OF NOVEMBER 2007

ORDERED:

1. The surrender of license by Ming C. Tung, R.P. to practice pharmacy in the State of New Jersey be and it is hereby accepted and deemed a revocation of license effective immediately upon entry of this Order.

2. Respondent shall surrender his original license and biennial renewal card immediately upon signing this Order by forwarding it to Joanne Boyer, Executive Director, State Board of Pharmacy, 124 Halsey Street, 6th Floor, Newark, New Jersey 07101.

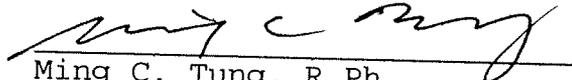
3. Respondent shall immediately cease and desist from engaging in the practice of pharmacy in the State of New Jersey in any manner or form, including but not limited to the following. He shall not be present in the prescription area of any pharmacy - defined for the purposes of this order as the working area for the prescription counter utilized for the processing and/or compounding of prescriptions, and including any area where prescription legend drugs, devices and controlled dangerous substances are stored. He shall not handle, order, inventory, compound, count, fill, refill or dispense and drug; he shall not engage in the acceptance of any prescription in person or by telephone; he shall not engage in the verification of refill authorization by telephone; he shall not advise or consult with any person concerning the properties and actions of drugs; he shall not handle or dispense prescriptions; he shall not type labels for prescriptions or enter information on profile cards. However, nothing in this Order shall preclude respondent in the capacity of a customer/patient from requesting or receiving pharmaceutical services.

THIS ORDER SHALL BE EFFECTIVE UPON ENTRY.

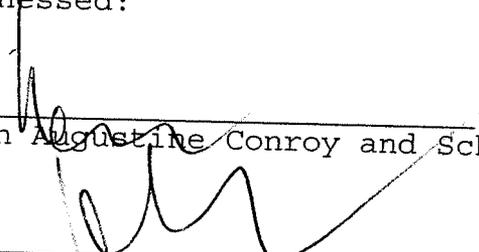
NEW JERSEY STATE BOARD OF PHARMACY

By: Edward G. McGinley
Edward G. McGinley, R.Ph.
Board President

I have read the above Order and understand its terms. I consent to the entry of this Order by the State Board of Pharmacy.


Ming C. Tung, R.Ph.
Respondent

Witnessed:


Kern Augustine Conroy and Schoppmann, P.C.

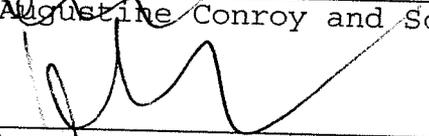
By: 
Robert J. Conroy, Esq.
Counsel for Dr. Tung

EXHIBIT A

CASE NUMBER: 07-

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

MING TUNG

INFORMATION FOR

18 U.S.C. §§ 1347 and 2

CHRISTOPHER J. CHRISTIE
U.S. ATTORNEY NEWARK, NEW JERSEY

LISA ROSE
ASSISTANT U.S. ATTORNEY
NEWARK, NEW JERSEY
(973) 645-2869

USAO#2004R00371/LR

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon. Joseph E. Irenas
v. : Crim. No. 07-701 (JET)
MING TUNG : 18 U.S.C. §§ 1347 and 2

I N F O R M A T I O N

The defendant having waived in open court prosecution by indictment, the United States Attorney for the District of New Jersey charges:

HEALTH CARE FRAUD

The Defendant & the Medicare Program

1. At all times relevant to this Information:
 - a. Defendant MING TUNG was a podiatrist licensed to practice in the State of New Jersey and eligible as a Medicare provider. Defendant MING TUNG was the owner and operator of Baldwin Foot & Ankle, P.A. ("Baldwin"), a podiatry practice in Hudson and Middlesex Counties, New Jersey.
 - b. A podiatrist was required to be licensed by the state in which he or she practiced. Podiatry was a limited practice specialty which meant that a doctor of podiatric medicine was included within the definition of a physician, but only with respect to those areas within the scope of his or her license. A doctor of podiatric medicine had a limited license to treat conditions from the lower leg to the foot. Within these

limitations, a podiatrist was permitted to make diagnoses, treat patients, perform surgical procedures, take x-rays and prescribe medication.

c. Medicare was a federal health insurance program established by the Social Security Act of 1965, codified as amended in various sections of Title 42 of the United States Code, to provide medical services, medical equipment, and supplies to aged, blind, and disabled individuals who qualified under the Social Security Act ("beneficiaries"). Medicare was administered by the Centers for Medicare and Medicaid Services ("CMS"), a federal agency within the United States Department of Health and Human Services. The Medicare Part B program was a federally-funded supplemental insurance program that provided supplementary Medicare insurance benefits for individuals aged 65 or older and certain individuals who were disabled. The Medicare Part B program paid for medical services, including podiatry, for beneficiaries. Under this program, Medicare paid a large percentage of the costs associated with medical services provided to beneficiaries, that is, approximately 80 percent of the total for which a health care provider submitted a claim.

d. Medicare required health care providers to complete an enrollment application and be approved to participate as a provider in the program. Once approved, the provider was assigned a unique Medicare provider number. Upon enrollment and

periodically thereafter, each Medicare provider was furnished with information relevant to participating in the program and how to bill for services rendered. Each claim for payment, commonly referred to as "reimbursement," submitted on behalf of a health care provider - whether in paper form or electronically - was required to identify the claimant's Medicare provider number.

e. Claims submitted to Medicare required the provider to state a diagnosis of the patient's condition. Medicare required further that the services be rendered consistent with its rules, regulations and policies, many of which were governed by the applicable state's laws and regulations. The provider was also required to certify the location and dates the services were rendered. Providers participating in Medicare were required to agree in writing that they would be responsible for the accuracy of all claims submitted by them, their employees or agents, and that all claims submitted under their provider numbers were accurate, complete and truthful.

f. Under Medicare regulations, podiatric services that fell under the general category of "routine foot care" were ordinarily not reimbursed. Routine foot care included, but was not limited to, toenail clipping which was generally not covered by Medicare absent a defined, systemic medical condition, such as advanced diabetes with complications that adversely affected the patient's extremities. In such cases, Medicare covered these

services because toenail clipping could be harmful to the patient if the patient or lay person were to clip the toenails.

Furthermore, Medicare did not cover podiatry services of any kind in the absence of an identifiable localized illness, injury or symptoms involving the foot.

g. Under Medicare regulations, reimbursement for routine foot care was only provided when treatment was medically necessary. The podiatrist was required to reflect in the patient's record that the patient's primary care physician had determined the need for a podiatrist to render routine foot care due to the patient's medical condition.

h. Medicare covered provider "house calls" to patients under specified circumstances that rendered such special visits medically necessary, such as the patient's inability to travel to the podiatrist's office because of illness or debilitation. The provider was required to adequately document the patient's record to justify the medical necessity of the home visit.

The Charge

2. From in or about January 2001 to on or about December 31, 2005, in Hudson and Middlesex Counties, in the District of New Jersey, and elsewhere, defendant

MING TUNG

did knowingly and willfully execute and attempt to execute a scheme and artifice (1) to defraud a health care benefit program, that is, the Medicare Program, and (2) to obtain, by means of false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of the Medicare Program in connection with the delivery of and payment for health care benefits, items, and services as set forth below.

The Scheme & Artifice to Defraud

3. It was the primary object of the scheme and artifice to defraud for defendant MING TUNG to obtain payment from Medicare for false and fraudulent claims.

Manner & Means of the Scheme

4. It was part of the scheme and artifice to defraud that from in or about January 2001 to on or about December 31, 2005:

a. Defendant MING TUNG provided most Medicare-covered patients with routine foot care services and falsely billed Medicare as though these patients suffered from systemic podiatric problems, such as diabetes. This fraudulent billing

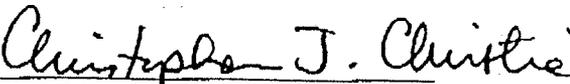
practice enabled defendant MING TUNG to receive Medicare reimbursements for services which otherwise would not be covered.

b. Defendant MING TUNG provided some Medicare-covered patients with routine foot care services, such as toenail clipping and foot massage, and falsely billed Medicare as though he had provided more complex, time-consuming procedures, such as the removal of infected toenails. This fraudulent billing practice also enabled defendant MING TUNG to receive Medicare reimbursements for services which otherwise would not be covered.

c. Defendant MING TUNG fraudulently obtained reimbursement from Medicare for home visits when they were not medically necessary. This fraudulent billing practice further enabled defendant MING TUNG to receive Medicare reimbursements for services which otherwise would not be covered.

d. In all, by the above means, defendant MING TUNG obtained approximately \$350,000 from Medicare, in payment on the fraudulent claims, to which he was not entitled.

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


CHRISTOPHER J. CHRISTIE
UNITED STATES ATTORNEY



U.S. Department of Justice

United States Attorney
District of New Jersey

Cr. 07-701 (JEI)

970 Broad Street, Suite 700
Newark, NJ 07102

973/645-2700

CFM/PL AGR
2004R00371

December 18, 2006

Robert J. Conroy, Esq.
Kern, Augustine, Conroy & Schoppmann, P.C.
1120 Route 22 East
Bridgewater, NJ 08807

Re: Plea Agreement with Ming Tung

Dear Mr. Conroy:

This letter sets forth the plea agreement between your client, Ming Tung, and the United States Attorney for the District of New Jersey ("this Office").

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Ming Tung to a one-count Information which charges him with health care fraud, in violation of 18 U.S.C. § 1347. If Ming Tung enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Ming Tung for his scheme and artifice to defraud a health care benefit program, namely Medicare, during the period from on or about January 1, 2001 to on or about December 31, 2005. However, in the event that the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, any dismissed charges and any other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Ming Tung may be commenced against him, notwithstanding the expiration of the limitations period after Ming Tung signs the agreement. Ming Tung agrees to waive any statute of limitations with respect to any crime that would otherwise expire after Ming Tung signs the agreement.

Sentencing

The violation of 18 U.S.C. § 1347 to which Ming Tung agrees to plead guilty carries a statutory maximum prison

EXHIBIT B

sentence of ten years and a statutory maximum fine equal to the greatest of: (1) \$250,000; (2) twice the gross amount of any pecuniary gain that any persons derived from the offense; or (3) twice the gross amount of any pecuniary loss sustained by any victims of the offense. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Ming Tung is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what guideline range may be found by the sentencing judge, or as to what sentence Ming Tung ultimately will receive.

Further, in addition to imposing any other penalty on Ming Tung, the sentencing judge: (1) will order Ming Tung to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) must order Ming Tung to pay restitution pursuant to 18 U.S.C. §§ 3663 et seq.; (3) may order Ming Tung, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; and (4) pursuant to 18 U.S.C. § 3583, may order Ming Tung to serve a term of supervised release of not more than three years, which will begin at the expiration of any term of imprisonment imposed. Should Ming Tung be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Ming Tung may be sentenced to not more than two years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

In addition, Ming Tung agrees to make full restitution to the United States for all losses resulting from the offense of conviction and from the scheme, conspiracy, and pattern of criminal activity underlying that offense, in the amount of \$350,000.00. Ming Tung agrees to pay the full restitution amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey.

In addition, Ming Tung agrees to surrender any and all licenses to practice podiatry that he currently maintains and cease all participation in the ownership and/or operation of any podiatric or medical service providers within sixty days of the signing of this agreement.

Rights of this Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Ming Tung by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Ming Tung's activities and relevant conduct with respect to this case.

Stipulations

This Office and Ming Tung agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Ming Tung from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict the Government's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Ming Tung waive certain rights to file an appeal, collateral attack, writ or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Ming Tung. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service and the Department of Health and Human Services), or any third party from initiating or prosecuting any civil proceeding against Ming Tung.

No Other Promises

This agreement constitutes the plea agreement between Ming Tung and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

CHRISTOPHER J. CHRISTIE
United States Attorney

Coleen F. Middleton

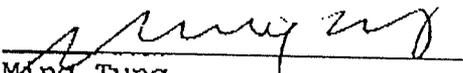
By: COLEEN F. MIDDLETON
Assistant U.S. Attorney

APPROVED:

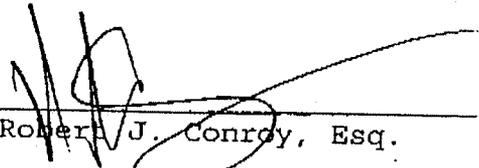
Walter A. [Signature]
Chief, Government Fraud Unit

I have received this letter from my attorney, Robert J. Conroy, Esq., I have read it, and I understand it fully. I hereby accept the terms and conditions set forth in this letter and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

AGREED AND ACCEPTED:


Ming Tung

Date: 12-22-06


Robert J. Conroy, Esq.

Date: 12/22/06

Plea Agreement With Ming Tung

Schedule A

1. This Office and Ming Tung recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and Ming Tung agree to the stipulations set forth herein, but both sides reserve the right to argue for a variance from the Guidelines range that results from the agreed total Guidelines offense level, pursuant to the Supreme Court decision in United States v. Booker, 543 U.S. 220 (2005), and the Third Circuit's subsequent decisions, including United States v. Cooper, 437 F.3d 324 (3d Cir. 2006).
2. The version of the United States Sentencing Guidelines effective November 1, 2005 applies in this case. The applicable guideline is U.S.S.G. § 2B1.1. This guideline carries a Base Offense Level of 6.
3. Specific Offense Characteristic § 2B1.1(b)(1)(G) applies because the loss exceeded \$200,000 but was not more than \$400,000. This Specific Offense Characteristic results in an increase of 12 levels.
4. The parties do not agree as to the applicability of U.S.S.G. § 3B1.3, and both sides reserve the right to argue their respective positions at sentencing. The government's position is that Ming Tung abused a position of public or private trust and used a special skill in a manner that significantly facilitated the commission and concealment of the relevant criminal activity, which results in a 2-level enhancement pursuant to U.S.S.G. § 3B1.3. Ming Tung's position is that U.S.S.G. § 3B1.3 is inapplicable, because he did not abuse a position of public or private trust or use a special skill in a manner that significantly facilitated the commission or concealment of the relevant criminal activity.
5. As of the date of this letter, Ming Tung has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if Ming Tung's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).
6. As of the date of this letter, Ming Tung has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention

to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If Ming Tung enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and if in addition Ming Tung's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, Ming Tung will be entitled to a further 1-point reduction in his offense level pursuant to U.S.S.G. § 3E1.1(b).

7. In accordance with the above, the parties agree that (a) if the Court finds that Ming Tung did not abuse a position of public or private trust or use a special skill in a manner that significantly facilitated the commission or concealment of the relevant criminal activity, the total Guidelines offense level applicable to Ming Tung will be 15, and that (b) if the Court finds that Ming Tung abused a position of public or private trust or used a special skill in a manner that significantly facilitated the commission or concealment of the relevant criminal activity, the total Guidelines offense level applicable to Ming Tung will be 17 (collectively, "the agreed total Guidelines offense level").

8. The parties agree not to seek or argue for any upward or downward departure or any upward or downward adjustment not set forth herein.

9. Ming Tung knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court if that sentence falls within or below the Guidelines range that results from a total Guidelines offense level of 17. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from a total Guidelines offense level of 15. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

10. Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.