

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

**FILED**

December 31, 2008

**NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS**

By: Doreen A. Hafner  
Deputy Attorney General  
(973) 648-7454

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

IN THE MATTER OF THE LICENSE OF

MICHAEL BRUMER, D.P.M.  
License No. 25MD00165800

TO PRACTICE PODIATRIC MEDICINE  
IN THE STATE OF NEW JERSEY

Administrative Action

FINAL ORDER OF DISCIPLINE

This matter was opened to the New Jersey State Board of Medical Examiners ("Board") upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

**FINDINGS OF FACT**

1. Respondent, Michael Brumer, D.P.M., is the holder of License No. 25MD00165800 and has been licensed to practice podiatric medicine in the State of New Jersey since August 1, 1986. Respondent's license is currently expired.

2. On April 2, 2002, Respondent entered into a Plea Agreement in which he pled guilty to Counts One through Three of a Criminal

**CERTIFIED TRUE COPY**

Indictment. In this Plea Agreement, Respondent agreed to surrender any and all licenses to practice podiatry that he currently maintained and to cease all participation in the ownership and/or operation of any podiatric or medical clinic. Further, as a condition of his supervised release, Respondent agreed that he will not apply for, or otherwise obtain, any podiatric licenses, nor will he own and/or operate podiatric or other medical clinics.

3. Respondent never surrendered his New Jersey Podiatric License# 25MD00165800.

4. On February 5, 2007, in the United States District Court for the Southern District of New York, Respondent was adjudicated guilty of Counts One through Three of the Criminal Indictment. Specifically, Respondent was found guilty of conspiring to commit health care fraud, mail fraud, and the making of material misstatements in connection with the payment of health care services through his ownership of Citywide Footcare, P.C. and its related entities from 1986 to February, 2000, in violation of Title 18, United States Code, Section 371. Respondent was also found guilty of defrauding health care benefit programs, including Medicare, through his delivery of podiatric services at Citywide Footcare, P.C. from September, 1996 to 1999, in violation of Title 18, United States Code, Section 1347. Lastly, Respondent was found guilty of conspiring to violate the Medicare statute by paying kickbacks in exchange for referrals to medical providers

participating in the Medicare plan from April, 1994 to May, 1997, in violation of Title 18, United States Code, Section 371.

5. Respondent was sentenced to sixty-three (63) months imprisonment followed by a term of two (2) years of supervised release. Respondent was also jointly and severally liable to pay restitution to Medicare in the amount of \$29,551.00.

6. On June 10, 2008, the United States Court of Appeals for the Second Circuit affirmed the District Court's Judgment of Conviction entered on February 5, 2007. Respondent surrendered for service of his term of imprisonment at the Federal Correctional Institution at Otisville, New York on June 18, 2008.

#### CONCLUSIONS OF LAW

1. The above criminal conviction in the United States District Court for the Southern District of New York provides grounds to take disciplinary action against Respondent's license to practice podiatric medicine in New Jersey pursuant to N.J.S.A. 45:1-21(f), in that Respondent has been convicted of a crime involving moral turpitude and relating adversely to the activity regulated by the Board.

2. The above criminal conviction in the United States District Court for the Southern District of New York provides grounds to take disciplinary action against Respondent's license to practice podiatric medicine in New Jersey pursuant to N.J.S.A. 45:1-21(k), in that Respondent has been convicted of committing and conspiring

to commit health care fraud under Title 18, United States Code, Sections 371 and 1347.

#### DISCUSSION ON FINALIZATION

Based on the foregoing findings and conclusions, a Provisional Order of Discipline ("POD") revoking Respondent's license to practice podiatric medicine in the State of New Jersey was entered by this Board on August 14, 2008. On August 18, 2008, the POD was served on Respondent by both regular and certified mail return-receipt to his place of incarceration at the Federal Correctional Institution, P.O. Box 1000, Otisville, NY 10963 to the attention of Michael Brumer, D.P.M., inmate no. 48239-054. The green return-receipt for the POD mailed by certified mail was returned signed. The POD sent by regular mail was not returned by the Post Office as undeliverable. Thus, the Board deems service to have been effected.

The POD was subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed, and submitting any and all documents or other written evidence supporting Respondent's request for consideration or offered in mitigation of the penalty.

The Board, having received no request for either modification or dismissal of the Stated Findings of Fact or Conclusions of Law, has determined that further proceedings are not necessary and that the POD should be made final.

ACCORDINGLY, IT IS on this 31st day of December, 2008,  
ORDERED THAT:

1. Respondent Michael Brumer's license to practice podiatric medicine in the State of New Jersey shall be and hereby is revoked.

NEW JERSEY STATE BOARD OF  
MEDICAL EXAMINERS

By: \_\_\_\_\_

  
Paul C. Mendelowitz  
Board President

ANNE MILGRAM  
ATTORNEY GENERAL OF NEW JERSEY  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, New Jersey 07101

**FILED**  
AUGUST 14, 2008  
NEW JERSEY STATE BOARD  
OF MEDICAL EXAMINERS

By: Doreen A. Hafner  
Deputy Attorney General  
(973) 648-7454

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

<u>IN THE MATTER OF THE SUSPENSION</u>	:	
<u>OR REVOCATION OF THE LICENSE OF</u>	:	Administrative Action
	:	
MICHAEL BRUMER, D.P.M.	:	
LICENSE NO. 25MD00165800	:	CERTIFICATION OF DOREEN
	:	A. HAFNER IN SUPPORT OF
TO PRACTICE PODIATRIC MEDICINE	:	THE PROVISIONAL ORDER
<u>IN THE STATE OF NEW JERSEY</u>	:	OF DISCIPLINE

DOREEN A. HAFNER, being of full age, certifies that:

1. I am a Deputy Attorney General of New Jersey and an attorney-at-law in the State of New Jersey. I submit this Certification in support of the Provisional Order of Discipline.
2. At all times relevant to this matter, Michael Brumer ("Respondent") held a license with the Board of Medical Examiners under License No. 25MD00165800.
3. On April 2, 2002, Respondent entered into a Plea Agreement in which he pled guilty to Counts One through Three of the Criminal Indictment. In this Plea Agreement, Respondent agreed to surrender any and all licenses to practice podiatry that he currently

maintained and to cease all participation in the ownership and/or operation of any podiatric or medical clinics. Further, as a condition of his supervised release, Respondent agreed that he will not apply for, or otherwise obtain, any podiatric licenses, nor will he own and/or operate podiatric or other medical clinics. A copy of the Plea Agreement signed and dated by both Michael Brumer and his former attorney, Joseph Tacopina, Esq., was received from the United States Attorney's Office. This Plea Agreement was submitted by Appellant Michael Brumer in the Appendix (A-68 to A-75) of his appeal from the Judgment of Conviction in the United States District Court for the Southern District of New York. The Plea Agreement is attached hereto as Exhibit A.

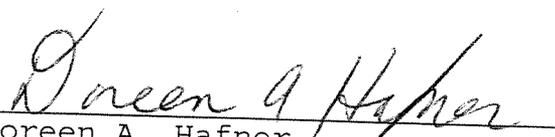
4. On February 5, 2007, in the United States District Court for the Southern District of New York, Respondent was adjudicated guilty of Counts One through Three of the Criminal Indictment. Specifically, Respondent was found guilty of conspiring to commit health care fraud, mail fraud, and the making of material misstatements in connection with the payment of health care services through his ownership of Citywide Footcare, P.C. and its related entities from 1986 to February, 2000, in violation of Title 18, United States Code, Section 371. Respondent was also found guilty of defrauding health care benefit programs, including Medicare, through his delivery of podiatric services at Citywide Footcare, P.C. from September, 1996 to 1999, in violation of Title

18, United States Code, Section 1347. Lastly, Respondent was found guilty of conspiring to violate the Medicare statute by paying kickbacks in exchange for referrals to medical providers participating in the Medicare plan from April, 1994 to May, 1997, in violation of Title 18, United States Code, Section 371. The Judgment of Conviction, bearing both a seal purporting to be that of the United States District Court and a signature purporting to be an attestation of a true copy, is attached hereto as Exhibit B.

5. On June 10, 2008, the United States Court of Appeals for the Second Circuit affirmed the District Court's Judgment of Conviction entered on February 5, 2007. The Mandate, bearing both a seal purporting to be that of the United States Court of Appeals and a signature purporting to be an attestation of a true copy, is attached hereto as Exhibit C.

6. The Federal Bureau of Prisons' website, [www.bop.gov](http://www.bop.gov), contains information that Michael Brumer, Register Number 48239-054, is currently located in FCI Otisville, Federal Correctional Institution, P.O. Box 1000, Otisville, New York, 10963.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

  
Doreen A. Hafner

Dated: August 7, 2008

**EXHIBIT A**

# 07-0715-cr(L)

## 07-0716-cr(CON)

IN THE  
**United States Court of Appeals**  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

*Appellee.*

--against--

MICHAEL BRUMER and LAWRENCE KLEIN,

*Defendants-Appellants.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

### APPENDIX

MICHAEL J. GARCIA  
UNITED STATES ATTORNEY FOR THE  
SOUTHERN DISTRICT OF NEW YORK  
MARC A. WEINSTEIN  
ASSISTANT UNITED STATES ATTORNEY  
One St. Andrews Plaza  
New York, New York 10007  
(212) 637 2547  
*Attorneys for Appellee*

JOHN W. MITCHELL  
LAW OFFICE OF  
JOHN W. MITCHELL, ESQ  
443 Greenwich Street  
New York, New York 10013  
(212) 696-9500  
*Attorney for Defendants Appellants*

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U.S. Department of Justice

 United States Attorney  
 Southern District of New York

 The Silvio J. Mollo Building  
 One Saint Andrew's Plaza  
 New York, New York 10007

April 2, 2002

 Joseph Tacopina, Esq.  
 321 Broadway  
 New York, New York 10007

 Re: United States v. Michael Brumer  
 00 Cr. 92 (RMW)

Dear Mr. Tacopina:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from MICHAEL BRUMER ("the defendant") to Counts One through Three of the above-referenced indictment. Count One of the indictment charges the defendant with a violation of Title 18, United States Code, Section 371, in connection with his participation in a conspiracy to commit health care fraud, mail fraud, and the making of material misstatements in connection with the payment of health care services through his ownership of Citywide Footcare, P.C. and its related entities as described in paragraphs one through five of the indictment ("Citywide Footcare"). This conduct occurred during the period from in or about 1986 up to and including in or about February 2000. This charge carries a maximum sentence of five years' imprisonment, a maximum term of three years' supervised release, a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment. It is further understood that the defendant shall make restitution in an amount to be specified by the Court in accordance with Title 18, United States Code, sections 3663, 3663A and 3664. This amount shall be paid according to a plan established by the Court.

Count Two of the indictment charges the defendant with a violation of Title 18, United States Code, Section 1347, in connection with his participation in a scheme to defraud health

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care benefit programs, including Medicare, through his ownership of Citywide Footcare during the period from in or about September 1996 up to and including in or about 1999. This charge carries a maximum sentence of ten years' imprisonment, a maximum term of three years' supervised release, a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment. It is further understood that the defendant shall make restitution in an amount to be specified by the Court in accordance with 18 U.S.C. §§ 3663, 3663A and 3664. This amount shall be paid according to a plan established by the Court.

Count Three charges the defendant with conspiring to violate the Medicare statute prohibiting the payment of kickbacks in exchange for referrals to medical providers participating in the Medicare plan during the period from in or about April 1994 up to and including in or about May 1997, in violation of Title 18, United States Code, Section 371. This charge carries a maximum sentence of five years' imprisonment, a maximum term of three years' supervised release, a maximum fine, pursuant to Title 18, United States Code, Section 3571 of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment. It is further understood that the defendant shall make restitution in an amount to be specified by the Court in accordance with 18 U.S.C. §§ 3663 and 3664. This amount shall be paid according to a plan established by the Court.

The combined maximum term of imprisonment for Counts One through Three is 20 years.

The defendant also hereby agrees to surrender any and all licenses to practice podiatry that the defendant currently maintains and cease all participation in the ownership and/or operation of any podiatric or medical clinics within sixty days of the signing of this agreement, unless the Government and defense counsel mutually agree to extend this deadline. Further, as a condition of supervised release, the defendant agrees that he will not apply for, or otherwise obtain, any podiatric licenses, nor will he own and/or operate podiatric or other

}  
x

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medical clinics.

In consideration of his plea to the above offenses, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for his participation in a conspiracy to commit and committing health care fraud from in or about 1986 up to and including in or about February 2000, and conspiring to violate the statute prohibiting receipt of kickbacks for referrals to a Medicare provider from in or about April 1994 through in or about 1997, as charged in Counts One through Three of the Indictment. In addition, at the time of sentencing, the Government will move to dismiss any open Counts against BRUMER. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

In consideration of the foregoing, and pursuant to U.S.S.G. § 6B1.4, the parties hereby stipulate to the following:

A. Offense Level:

1. Pursuant to U.S.S.G. § 3D1.2, Counts One through Three are grouped together because each group involves substantially the same harm.
  2. Pursuant to U.S.S.G. § 2F1.1(a), the base offense level for Counts One through Three is six.
  3. Because the intended loss amount exceeded \$10,000,000, but was not more than \$20,000,000, a 15-level increase in the offense level is warranted pursuant to U.S.S.G. § 2F1.1(b)(1)(P).
  4. Because the offense involved more than minimal planning and involved a scheme to defraud more than one victim, a two-level increase in the offense level is warranted pursuant to
- 
- Because the Sentencing Guidelines in effect at the time the crime was committed--i.e., the 2000 Guidelines--are more favorable to the defendant than those in effect at the time of sentence, the 2000 Guidelines are applied herein.

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U.S.S.G. §§ 2F1.1(b)(2)(A) and (B).

5. Because the defendant abused a position of public or private trust, and used a special skill, in a manner that significantly facilitated the commission of the offense, a two-level increase in the offense level is warranted pursuant to U.S.S.G. § 3B1.3.

6. Based on the defendant's role in the offense as an organizer or leader of a criminal activity that involved five or more participants, and was otherwise extensive, a four-level increase in the offense level is warranted pursuant to U.S.S.G. § 3B1.1(a).

7. Upon the entry of his guilty plea and assuming an allocation acceptable to the Court, a two-level reduction in the offense level will be warranted for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(a). Because the defendant has timely notified the Government of his intent to plead guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently, an additional one-level reduction will be warranted pursuant to U.S.S.G. § 3E1.1(b)(2).

#### B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has zero criminal history points.

In accordance with the above, the defendant's Criminal History Category is I.

#### C. Sentencing Range

There is no stipulation on the issue of whether the defendant's conduct affected a financial institution. The Government hereby gives notice of its intention to argue that there should be an additional four level increase because the conduct affected insurance companies, which are financial institutions, pursuant to Section 2F1.1(b)(8)(B). The defendant reserves the right to argue that Section 2F1.1(b)(8)(B) does not apply.

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If the Court finds that the defendant's conduct affected a financial institution and thereby increases the defendant's base offense level by four levels, the defendant's base offense level is 30 and the stipulated sentencing guidelines range ("Stipulated Guidelines Range") is 97-121 months' imprisonment. If the Court finds that the defendant's conduct did not affect a financial institution and thereby does not increase the defendant's base offense level by four levels, the defendant's base offense level is 26 and the Stipulated Guidelines Range is 63-78 months' imprisonment. In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to §5E1.2. At guidelines level 26, the applicable fine range is \$12,500-\$125,000. At guidelines level 30, the applicable fine range is \$15,000-\$150,000.

The parties agree that in light of these stipulations neither a downward nor an upward departure from the Stipulated Guideline Ranges set forth above is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court sua sponte consider such a departure or adjustment.

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and BRUMER, nothing in this agreement limits the right of the parties (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range the defendant should be sentenced; or (iii) to seek an appropriately adjusted sentencing range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, see U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, see U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d),

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neither the Probation Department nor the Court is bound by the above stipulations, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be the result of calculations different from those stipulated to herein.

It is further agreed (1) that the defendant will neither appeal, nor otherwise litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any sentence within or below the range of 63 to 78 months' imprisonment; and (ii) that the Government will not appeal any sentence within or above the range of 97 to 121 months' imprisonment. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal or other sentencing challenge to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulations. The defendant also agrees not to appeal any restitution order that is equal to or less than the loss amount stipulated to above.

The defendant hereby acknowledges that he has accepted this plea Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on appeal or collaterally, on the ground that the Government has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and impeachment material pursuant to Ciglio v. United States, 405 U.S. 150 (1972) that has not already been produced as of the date of the signing of this Agreement.

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It is further agreed that should the convictions following BRUMER's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against BRUMER, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and BRUMER, this Agreement supersedes any prior understandings, promises, or conditions between this Office and BRUMER. No additional

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Brumer Plea Agreement

understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

JAMES B. COMEY  
United States Attorney

By: [Signature]  
Tiffany M. Erwin/Marc A. Weinstein  
Assistant United States Attorneys  
(718) 422-5370/5543

APPROVED:

[Signature]  
George S. Canellos  
Chief, Major Crimes Unit

AGREED AND CONSENTED TO:

[Signature]  
MICHAEL BRUMER

4/3/02  
DATE

APPROVED:

[Signature]  
Joseph Tacopina, Esq.  
Attorney for Michael Brumer

4/3/02  
DATE

**EXHIBIT B**

Doc # 467

UNITED STATES DISTRICT COURT

SOUTHERN

District of

NEW YORK

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

MICHAEL BRUMER

Case Number: 01: 00 CR 92-03(KMW)

USM Number: 48239-054

Alexei Schacht, Esq. (AUSA Marc Weinstein) Defendant's Attorney

THE DEFENDANT:

X pleaded guilty to count(s) 1 (one), 2 (two) and 3 (three)

pleaded nolo contendere to count(s) which was accepted by the court.

was found guilty on count(s) after a plea of not guilty.

DUCKETED AS #070239 A JUDGMENT ON 2/6/07

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC 371	Conspiracy to Commit Health Care Fraud, Mail Fraud and to make False Statements in Connection with Payment of Health Care	2/3/2000	1
18 USC 1347	Health Care Fraud	9/30/1999	2
18 USC 371	Conspiracy to Pay Kickbacks in Connection with Payment of Health Care Services	5/31/1997	3

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)

Count(s) all outstanding counts is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

January 12, 2007

Date of Imposition of Judgment

Kimba M. Wood

Signature of Judge

KIMBA M. WOOD, CHIEF JUDGE

Name and Title of Judge

FER 05 CERTIFIED AS A TRUE COPY ON

THIS DATE

2/3/2007

February 5, 2007

Date

BY

[Signature] Clerk Deputy

FEB - 6 2007 - 3:00 PM

DEFENDANT: MICHAEL BRUMER  
CASE NUMBER: 01: 00 CR 92-03(KMW)

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 63 months; 60 months on Count 1, 63 months on Count 2 and 60 months on Count 3, all to run concurrently.

X The court makes the following recommendations to the Bureau of Prisons:

That the defendant be imprisoned at FCI Otisville, so that he may be near his family.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

a \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

X The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

X before 10:00am on March 12, 2007

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MICHAEL BRUMER  
CASE NUMBER: 01: 00 CR 92-03(KMW)

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 2 years on each of Counts 1, 2  
and 3, to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: MICHAEL BRUMER  
CASE NUMBER: 01: 00 CR 92-03(KMW)

### SPECIAL CONDITIONS OF SUPERVISION

The standard and mandatory conditions of supervised release apply, along with the following special conditions;

The defendant shall submit his person, residence, place of business, vehicle, or any other premises under his control to a search, on the basis that the probation officer has reasonable belief that contraband or evidence of a violation of the conditions of the release may be found. The search must be conducted at a reasonable time and in a reasonable manner. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to search pursuant to this condition.

The defendant shall provide the probation officer with access to any requested financial information

The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant is in compliance with the installment payment schedule.

The defendant is to report to the nearest Probation Office within 72 hours of release from custody.

The defendant shall be supervised by the district of his residence.

DEFENDANT: MICHAEL BRUMER  
CASE NUMBER: 01: 00 CR 92-03(KMW)

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>		<u>Fine</u>		<u>Restitution</u>
<b>TOTALS</b>	\$ 300.00		\$ -0-		\$ 29,551.00

The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Medicare	\$29,551.00	\$29,551.00	

<b>TOTALS</b>	\$ _____	\$29,551.00	\$ _____	\$29,551.00
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Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MICHAEL BRUMER  
CASE NUMBER: 01:00 CR 92-03(KMW)

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ 300.00 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

**X** Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Co-Defendant: Lawrence Klein, 00 CR 92-08.  
 Total Amount: \$29,551.00  
 Joint and Several Amount for Defendant Klein: \$29,551.00  
 Payee: Medicare

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

**EXHIBIT C**

# MANDATE

SDNY-NYNY  
00-cr-92  
WOOD

## United States Court of Appeals FOR THE SECOND CIRCUIT

### JUDGMENT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 10<sup>th</sup> day of June, two thousand eight,

Before: Hon. Dennis Jacobs,  
*Chief Judge,*  
Hon. Guido Calabresi,  
Hon. Robert D. Sack,  
*Circuit Judges.*



Docket No. 07-0715-cr (L), 07-0716-cr (con)

United States of America,

*Appellee,*

v.

Michael Brumer and Lawrence Klein,

*Defendants-Appellants.*

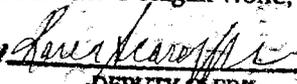
Appeal from judgments of conviction of the United States District Court for the Southern District of New York.

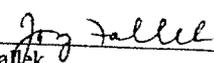
This cause came to be heard on the transcript of record from the United States District Court for the Southern District of New York and was argued by counsel.

ON CONSIDERATION WHEREOF, it is hereby ORDERED, ADJUDGED, and DECREED that the order of the district court is AFFIRMED in accordance with the opinion of this court.

FOR THE COURT:  
CATHERINE O'HAGAN WOLFE, Clerk  
by

A TRUE COPY  
Catherine O'Hagan Wolfe, Clerk

by   
DEPUTY CLERK

  
Joy Fallick  
Administrative Attorney

ISSUED AS MANDATE: 6/10/08

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE  
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE  
HAS BEEN ACCEPTED**

**APPROVED BY THE BOARD ON MAY 10, 2000**

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will be maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

**1. Document Return and Agency Notification**

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

**2. Practice Cessation**

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

### **3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies**

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

### **4. Medical Records**

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of

general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

## **5. Probation/Monitoring Conditions**

With respect to any licensee who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and Inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

**NOTICE OF REPORTING PRACTICES OF BOARD  
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.