VER/SWM

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF :

:

ALEX L. KUSHKIN, D.P.M. :

ENTRY OF ORDER

On January 8, 2001, Alex L. Kushkin, D.P.M. executed a Voluntary Surrender of his Certificate to practice podiatry in the State of Ohio with a consent to revocation, which document is attached hereto and fully incorporated herein.

In consideration of the foregoing and of Dr. Kushkin's express waiver of the provision of Section 4731.22(B), Ohio Revised Code, requiring that six (6) Board members vote to revoke said certificate, it is hereby ORDERED that Certificate No. 36-001427 authorizing Alex L. Kushkin, D.P.M., to practice podiatry be permanently REVOKED, effective January 9, 2001.

This Order is hereby entered upon the Journal of the State Medical Board of Ohio for the 9th day of January, 2001, and the original thereof shall be kept with said Journal.

Anand G. Garg, M.D.
Secretary

(seal)

01/10/01
Date

OHIO MEDICAL BOARD
JAN - 9 2001

STATE OF OHIO
THE STATE MEDICAL BOARD

PERMANENT SURRENDER OF CERTIFICATE
TO PRACTICE PODIATRY

I, ALEX L. KUSHKIN, D.P.M., am aware of my rights to representation by counsel, the right of being formally charged and having a formal adjudicative hearing, and do hereby freely execute this document and choose to take the actions described herein.

I, ALEX L. KUSHKIN, D.P.M., do hereby voluntarily, knowingly, intelligently and permanently surrender my certificate to practice podiatry, No. 36-001427, to the State Medical Board of Ohio, thereby relinquishing all rights to practice podiatry in Ohio. This surrender shall be effective upon acceptance by the Secretary and Supervising Member of the State Medical Board of Ohio.

I understand that as a result of the surrender herein that I am no longer permitted to practice podiatry in any form or manner in the State of Ohio.

I agree that I shall be ineligible for, and shall not apply for, reinstatement of certificate to practice podiatry No. 36-001427, or issuance of any other certificate pursuant to Chapters 4730., 4731., 4760., or 4762., Ohio Revised Code, on or after the date of signing this Permanent Surrender of Certificate to Practice Podiatry. Any such attempted reapplication shall be considered null and void and shall not be processed by the Board.

I hereby authorize the State Medical Board of Ohio to enter upon its Journal an Order permanently revoking my certificate to practice podiatry, No. 36-001427, in conjunction with which I expressly waive the provision of Section 4731.22(B), Ohio Revised Code, requiring that six (6) Board Members vote to revoke said certificate, and further expressly and forever waive all rights as set forth in Chapter 119., Ohio Revised Code, including but not limited to my right to counsel, right to a hearing, right to present evidence, right to cross-examine witnesses, and right to appeal the Order of the Board revoking my certificate to practice podiatry.

I, ALEX L. KUSHKIN, D.P.M., hereby release the State Medical Board of Ohio, its members, employees, agents and officers, jointly and severally, from any and all liability arising from the within matter.

This document shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code.

Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

OHIO MEDICAL BOARD
JAN - 9 2001

I stipulate and agree that I am taking the action described herein in lieu of formal disciplinary proceedings pursuant to Section 4731.22(B)(9), Ohio Revised Code, resulting from my having entered a guilty plea to Count One (1) of the Information, Number CR-2-00-184, filed in the United States District Court For the Southern District Of Ohio on November 17, 2000, and charging me with Obtaining a Controlled Substance by Misrepresentation and Fraud, in violation of Title 21, United States Code, Section 843 (a)(3); and to Count Two (2) of the same Information, charging me with Making False Statements Relating To Health Care Matters, in violation of Title 18, United States Code, Sections 1035 and 2. Copies of the Information, Plea Agreement, and Arraignment Proceedings Transcript are attached hereto and fully incorporated herein.

Signed this 8th day of January, 2001.

ALEX L. KUSHKIN, D.P.M.

Linda L. Myers
Witness

Witness

Sworn to and subscribed before me this 8th day of January, 2001.

Notary Public

SAMUEL B. WEINER, Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147.03 R. C.

SEAL **(This form must be either witnessed OR notarized)**

Accepted by the State Medical Board of Ohio:

ANAND G. GARG, M.D.
SECRETARY

01/09/01
DATE

RAYMOND J. ALBERT
SUPERVISING MEMBER

1/09/01
DATE

3 Attachments:
Information, No: CR2-00-184
Plea Agreement, No: CR2-00-184
Arraignment Proceedings Transcript, No. CR2-00-184

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
KENNETH J. MURPHY
00 NOV 17 PM 3:42
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EAST. DIV. COLUMBUS

UNITED STATES OF AMERICA	:	No. CR2 00 184
	:	
vs.	:	JUDGE MARBLEY
	:	18 U.S.C. §2
	:	18 U.S.C. §1035
ALEX L. KUSHKIN	:	21 U.S.C. §843(a)(3)

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN MY OFFICE ON November 17, 2000
KENNETH J. MURPHY, CLERK
BY: [signature] Deputy Clerk
DATE: January 4, 2001

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

COUNT 1

For all periods material to this Information:

1. Defendant ALEX L. KUSHKIN is a physician licensed to practice podiatry in the State of Ohio, with offices at 5109 West Broad Street and 1430 South High Street, Columbus, Ohio, d/b/a Alex L. Kushkin, D.P.M. and Columbus Foot Health Center, Inc.

2. From on or about January 1, 1997 through August 18, 2000, the exact dates being unknown, in the Southern District of Ohio, Defendant ALEX L. KUSHKIN knowingly and intentionally obtained controlled substances by misrepresentation and fraud, in violation of 21 U.S.C. §843 (a)(3).

3. Defendant ALEX L. KUSHKIN telephoned in orders known as "scripts", which are commonly used by physicians to order controlled substances they have prescribed for their patients. The scripts are typically taken to or telephoned into a pharmacy, and controlled substances are dispensed in reliance on the order of the physician.

4. Defendant ALEX L. KUSHKIN telephoned and placed in person scripts for

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present and former patients, had the prescriptions filled at various pharmacies, and picked up the filled prescriptions, thereby obtaining controlled substances for his personal use by misrepresentation and fraud.

5. On or about May 27, 1999, in the Southern District of Ohio, Defendant ALEX L. KUSHKIN knowingly and intentionally obtained Vicodin, a Schedule III controlled substance, by misrepresentation and fraud, by tendering a script in the name of a former patient.

In violation of 21 U.S.C. §843 (a)(3).

COUNT 2

1. Paragraph 1 of Count 1 of this Information is hereby incorporated by reference as part of this count as if fully set forth herein.

2. From on or about August 21, 1996, to December 31, 1997, the exact dates being unknown, in Southern District of Ohio, Defendant ALEX L. KUSHKIN knowingly and willfully made and used materially false writings and documents, in connection with the delivery of and payment for health care benefits, items and services, in order to increase reimbursement from Medicare, and caused others to do so, in violation of 18 U.S.C. §1035 and §2.

3. Defendant ALEX L. KUSHKIN filled out documents which indicated that he performed podiatry services known as "hemiphalangectomy or interphalangeal joint excision: toe", and "partial excision of bone, phalanx of toe" when in fact he performed no such services. These documents were used by office staff employed by Defendant ALEX L. KUSHKIN to prepare claim forms which were sent to Medicare. Medicare reimburses providers based on the information contained on the claim forms. Based on the notations provided by Defendant ALEX L. KUSHKIN, fraudulent bills were submitted to Medicare, which paid for services that were not

performed.

4. On or about December 31, 1997, in the Southern District of Ohio, Defendant ALEX L. KUSHKIN knowingly and willfully, in connection with the payment of health care services, made and used a materially false writing and document knowing the same to contain a false, fictitious and fraudulent statement and entry, and caused a bill to be submitted to Medicare for a procedure known as a "hemiphalangectomy or interphalangeal joint excision; toe", claimed to have been provided on or about December 9, 1997 to an individual insured under the Medicare insurance program when, in fact, Defendant ALEX L. KUSHKIN did not perform said procedure.

In violation of 18 U.S.C. §1035 and §2.

SHARON J. ZEALEY
UNITED STATES ATTORNEY

SALVADOR A. DOMINGUEZ (0056232)
First Assistant United States Attorney

FILED
KENNETH J. MURPHY
00 NOV 17 PM 3:43
U.S. DISTRICT COURT
SOUTHERN DIST. OHIO
EASTERN COLUMBUS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA :
:
v. : NO. CR2 00 184
:
ALEX L. KUSHKIN :

JUDGE MARBLEY

PLEA AGREEMENT

The United States of America and Defendant ALEX L. KUSHKIN hereby enter into the following Plea Agreement pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure:

1. Defendant ALEX L. KUSHKIN will enter pleas of guilty to Count 1 of the Information filed herein, which charges him with Obtaining a Controlled Substance by Misrepresentation and Fraud, in violation of 21 U.S.C. §843 (a)(3), and to Count 2 of the Information filed herein, which charges him with False Statements Relating To Health Care Matters, in violation of 18 U.S.C. §1035 and §2.

2. Defendant ALEX L. KUSHKIN understands that the maximum penalty which may be imposed pursuant to his plea of guilty to Count 1 of the Information, Obtaining a Controlled Substance by Misrepresentation and Fraud, in violation of 21 U.S.C. §843 (a)(3), is a term of imprisonment of four (4) years, a fine of $250,000.00, and a one (1) year term of supervised release. Defendant ALEX L. KUSHIN understands that the maximum penalty which may be imposed pursuant to his plea of guilty to Count 2 of the Information, False Statements relating to Health Care Matters, in violation of 18 U.S.C. §1035, is a term of imprisonment of five (5) years, a fine of $250,000.00, and a three (3) year term of supervised release.

3. Defendant ALEX L. KUSHKIN will pay a special assessment of $100.00 for each

I CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN MY OFFICE ON November 17 2000
KENNETH J. MURPHY, CLERK
BY [signature] Deputy Clerk
DATE: January 4, 2001

13

Count, for a total of $200.00, as required by 18 U.S.C. §3013. This assessment shall be paid by the Defendant before sentencing is imposed and Defendant will furnish a receipt at the time of sentencing. The payment shall be made to the United States District Court, at the Clerk's Office, 85 Marconi Blvd., Columbus, OH 43215.

4. Defendant ALEX L. KUSHKIN agrees to testify truthfully and completely concerning all matters pertaining to the Information and to any and all other unlawful activities related to the delivery of health care services and obtaining controlled substances by misrepresentation and fraud in which he may have been involved or as to which he may have knowledge. Defendant further agrees to provide a complete statement to authorities of the United States concerning such matters prior to the entry of his guilty plea pursuant to this agreement. Defendant agrees to submit to supplemental debriefings and testify on such matters whenever requested by authorities of the United States, whether before or after his plea is entered.

Pursuant to §1B1.8 of the Federal Sentencing Guidelines, the United States agrees that any self-incriminating information so provided will not be used against the Defendant in determining the applicable guideline range for sentencing, or as a basis for upward departure from such guideline range.

5. If such pleas of guilty are entered, and not withdrawn, and Defendant ALEX L. KUSHKIN acts in accordance with all other terms of this agreement, the United States Attorney for the Southern District of Ohio agrees not to file additional criminal charges against Defendant based on his activities charged in the Information or based on other unlawful activities related to the delivery of health care services and obtaining controlled substances by misrepresentation and

fraud occurring prior to the date of the Information and as to which Defendant ALEX L. KUSHKIN gives testimony or makes statements pursuant to this agreement.

6. The parties agree that as to Count 1, the applicable base offense level is determined pursuant to United States Sentencing Guideline ("U.S.S.G.") §2D2.2. The parties understand that this agreement is not binding on the Court and the final determination concerning the offense level for purposes of sentencing rests with the Court.

7. The parties agree that as to Count 2, pursuant to U.S.S.G. §2F1.1(b)(1), the relevant conduct attributable to Defendant ALEX L. KUSHKIN, as the specific offense characteristic which can be proved by the United States independent of the proffer for the offense to which he is pleading guilty is more than $2,000.00 but less than $5,000.00. The parties understand that this agreement is not binding on the Court and the final determination concerning the amount of money to be considered as relevant conduct for purposes of sentencing rests with the Court.

8. The parties agree that as to Count 2, Defendant ALEX L. KUSHKIN is liable for full restitution to Medicare in an amount to be determined by the United States Probation Department and submitted to the Court prior to sentencing. The parties understand that this agreement is not binding on the Court and the final determination of the amount of restitution rests with the Court.

9. The parties agree that as to Count 2, pursuant to U.S.S.G. §2F1.1(b)(2)(A), the offense to which Defendant ALEX L. KUSHKIN is pleading involved more than minimal planning and, therefore, must accept enhancement of the offense level by an increase of two (2) levels. The parties understand that this agreement is not binding on the Court and the final

determination concerning the level of planning involved for purposes of sentencing rests with the Court.

10. The parties agree that U.S.S.G. §3D1.1 applies to the determination of the total offense level. The parties further agree that pursuant to U.S.S.G. §3D1.2, Counts 1 and 2 are not closely related counts. The parties further agree that pursuant to U.S.S.G. §3D1.4, Defendant must accept a two (2) level increase in the offense level based on a total of two (2) units. The parties understand that this agreement is not binding on the Court and the final determination concerning the combined offense level for purposes of sentencing rests with the Court.

11. The parties agree that as to Counts 1 and 2, pursuant to U.S.S.G. §3E1.1, at the time of his plea, Defendant ALEX L. KUSHKIN has accepted responsibility for these offenses and that he is entitled to a two (2) level reduction in the applicable offense level under the sentencing guidelines. At the time of sentencing, the United States will not object to this same determination provided Defendant's conduct has continued to demonstrate compliance with the terms of U.S.S.G. §3E1.1. The parties further understand that this agreement is not binding on the Court and the final determination concerning the Defendant's acceptance of responsibility for purposes of sentencing rests with the Court.

12. By virtue of pleading guilty to Counts 1 and 2 of the Information, Defendant ALEX L. KUSHKIN understands that he is not a prevailing party as defined in 18 U.S.C. §3006(A), and hereby expressly waives his right to sue the United States.

13. Defendant ALEX L. KUSHKIN understands that this agreement does not protect him from prosecution for perjury, should he testify untruthfully, or for making false statements, nor does it protect him from prosecution for other crimes or offenses as to which he does not

make admissions or give truthful information and which the United States discovers by independent investigation. Further, should Defendant fail to comply with the terms and conditions set forth herein or should he fail to appear as required for sentencing, this agreement is void and of no effect, and Defendant shall be subject to prosecution as if the agreement had never been made.

14. Defendant ALEX L. KUSHKIN is aware that his sentence will be imposed in accordance with the United States Sentencing Guidelines and Policy Statements. The Defendant is further aware that the District Court has jurisdiction and authority to impose any sentence within the statutory maximum set forth for the offenses to which the Defendant pleads guilty. The Defendant is aware that the Court has not yet determined a sentence. The Defendant is also aware that any estimate of the probable sentencing range under the United States Sentencing Guidelines that the Defendant may have received from his counsel, the United States, or the Probation Office is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. The United States makes no promise or representation concerning what sentence the Defendant will receive, and the Defendant cannot withdraw the guilty pleas based upon the actual sentence imposed.

15. It is agreed that if the Court refuses to accept any provision of this Plea Agreement, neither party is bound by any of its provisions, Defendant ALEX L. KUSHKIN may withdraw his guilty plea, and the United States Attorney for the Southern District of Ohio may pursue prosecution of the same or additional charges without prejudice.

16. No additional promises, agreements or conditions have been made relative to this matter other than those expressly set forth herein, and none will be made unless in writing and

signed by all parties.

1-8-2000
DATED

ALEX L. KUSHKIN
Defendant

SAM B. WEINER
Attorney for Defendant

SHARON J. ZEALEY
United States Attorney

MARK T. D'ALESSANDRO (0019877)
Assistant United States Attorney

1

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF OHIO

4 EASTERN DIVISION

5 - - -

6 UNITED STATES OF AMERICA, :

7 PLAINTIFF, :

8 V. : CASE NO. CR2-00-184

9 ALEX KUSHKIN, :

10 DEFENDANT. :

11 - - -

12

13 ARRAIGNMENT PROCEEDINGS

14 BEFORE THE HONORABLE ALGENON L. MARBLEY, UNITED STATES

15 DISTRICT JUDGE, SITTING AT COLUMBUS, OHIO, ON FRIDAY,

16 DECEMBER 15, 2000.

17

18 APPEARANCES:

19 SHARON J. ZEALEY, UNITED STATES ATTORNEY
BY MARCIA HARRIS, ASST. UNITED STATES ATTORNEY,

20 ON BEHALF OF THE GOVERNMENT.

21

22 SAM WEINER, ATTORNEY AT LAW,

23 ON BEHALF OF THE DEFENDANT.

24 - - -

25 JOAN E. KOENIG, FEDERAL COURT REPORTER
COMPUTERIZED TRANSCRIPTION

1 FRIDAY MORNING SESSION

2 DECEMBER 15, 2000

3 - - -

4 THE COURT: Would you please call the case,

5 Mrs. Clark.

6 THE CLERK: CR-2-00-184, the United States of

7 America v. Alex Kushkin. Would the defendant please come

8 forward.

9 THE COURT: Would counsel please identify

10 themselves for the record, beginning with counsel for the

11 government.

12 MS. HARRIS: Marcia Harris with the United States

13 Attorney's Office here on behalf of the United States.

14 MR. WEINER: Sam Weiner for Dr. Kushkin, your

15 Honor.

16 Your Honor, before we commence the hearing, could

17 the government and you and I have a sidebar for a brief

18 minute?

19 THE COURT: Certainly. Do we need to be on the

20 record?

21 MR. WEINER: No, your Honor.

22 (Discussion off the record.)

23 MR. WEINER: Thank you very much, your Honor.

24 THE COURT: What does the United States Attorney

25 propose in this proceeding, Ms. Harris?

1 MS. HARRIS: May it please the Court:

2 Your Honor, the United States Attorney proposes to
3 file an information charging Alex L. Kushkin with one count
4 of obtaining controlled substances by misrepresentation and
5 fraud, in violation of 21 U.S.C. 843, and one count of
6 making false statements relating to health care matters, in
7 violation of 18 U.S.C. 1035 and Section 2.

8 The defendant is before the Court this morning for
9 purposes of arraignment on these charges.

10 THE COURT: Mr. Weiner, have you explained to this
11 defendant his right to have the facts of this case presented
12 to a grand jury?

13 MR. WEINER: I have, your Honor.

14 THE COURT: Does the defendant wish to have the
15 facts of this case presented to a grand jury, or has he
16 indicated his consent to be charged by way of information?

17 MR. WEINER: He has indicated his consent to be
18 charged by way of information, your Honor.

19 THE COURT: Dr. Kushkin, have you received a copy
20 of the information the United States Attorney proposes to
21 file in this proceeding?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Did you receive it before your
24 appearance in court today?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Have you read the information?
2 THE DEFENDANT: Yes, I have, your Honor.
3 THE COURT: Have you discussed the information
4 with your attorney, Mr. Weiner?
5 THE DEFENDANT: Yes.
6 THE COURT: Has Mr. Weiner explained to you the
7 offenses against the United States charged in the
8 information?
9 THE DEFENDANT: Yes, your Honor.
10 THE COURT: Do you understand the nature and
11 meaning of the offenses charged in the information?
12 THE DEFENDANT: Yes.
13 THE COURT: Mr. Weiner, based on your conferences
14 with Dr. Kushkin, what is your belief as to his
15 understanding of the nature and meaning of the offenses?
16 MR. WEINER: He does understand the nature and
17 meaning of the offenses, your Honor.
18 THE COURT: Dr. Kushkin, the information the
19 United States Attorney proposes to file charges you with
20 obtaining controlled substances by misrepresentation and
21 fraud and false statements relating to health care matters.
22 Since the United States Attorney proposes to
23 charge you with the commission of a felony, you have the
24 constitutional right to have the facts of this case
25 presented to a grand jury. If you choose to exercise this

1 right, the grand jury may or may not return an indictment
2 against you. If the grand jury does return an indictment,
3 presumably you will be charged with the same offenses in the
4 same language as the United States Attorney proposes in the
5 information. Do you understand that, doctor?
6 THE DEFENDANT: Yes, I do, your Honor.
7 THE COURT: You may waive your right to have this
8 case presented to a grand jury and consent to be charged by
9 way of information. If you choose to be charged by
10 information, you must sign a written consent form here in
11 open court. Do you understand that?
12 THE DEFENDANT: Yes.
13 THE COURT: If you choose to be charged by
14 information, you do not waive any of your other
15 constitutional rights. You have the right to plead not
16 guilty, to be tried by a jury, to be represented by counsel
17 throughout the proceeding, to face the prosecution witnesses
18 against you, and the government must prove the charges by
19 competent evidence beyond a reasonable doubt. Do you
20 understand that, doctor?
21 THE DEFENDANT: Yes, your Honor.
22 THE COURT: Do you fully understand your right to
23 have this case presented to a grand jury?
24 THE DEFENDANT: Yes, your Honor.
25 THE COURT: Do you understand your right to choose

1 to be charged by way of information?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Do you wish to waive your right to

4 have your case presented to a grand jury?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you wish to choose to be charged by

7 the filing of an information?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: I will ask Mrs. Clark to hand to you

10 the waiver. Mr. Weiner can examine it, explain it to you

11 before having you sign it.

12 (Execution of waiver.)

13 THE COURT: Upon execution of the waiver, the

14 Court determines that the defendant has competently

15 exercised his right to waive the presentation of the facts

16 of his case to a grand jury and has signed the necessary

17 waiver in open court. I will have Mrs. Clark file the

18 waiver.

19 Dr. Kushkin, how do you plead to Count 1 of the

20 information: obtaining controlled substances by

21 misrepresentation and fraud; guilty or not guilty?

22 THE DEFENDANT: Guilty, your Honor.

23 THE COURT: How do you plead to Count 2 of the

24 information: making false statements relating to health care

25 matters; guilty or not guilty?

1 THE DEFENDANT: Guilty, your Honor.

2 THE COURT: Dr. Kushkin, before accepting your
3 plea of guilty, the Court must determine that it is made
4 voluntarily, with a full understanding of the nature of the
5 charges and the consequences of the plea. In order to make
6 this determination, the Court must ask you several
7 questions. Mrs. Clark, would you swear Dr. Kushkin.

8 (Oath administered.)

9 THE COURT: Dr. Kushkin, do you understand that
10 you are now under oath; that any false answers that you give
11 to my questions will result in your possibly being charged
12 with perjury or with making a false statement?

13 THE DEFENDANT: Yes.

14 THE COURT: Please state your full name.

15 THE DEFENDANT: Alex Leslie Kushkin.

16 THE COURT: How old are you, Dr. Kushkin?

17 THE DEFENDANT: Sixty.

18 THE COURT: What is your date of birth?

19 THE DEFENDANT: 11-14-40.

20 THE COURT: What is your educational background?

21 THE DEFENDANT: Graduate doctorate degree from the
22 Ohio College of Podiatric Medicine in Cleveland, Ohio.

23 THE COURT: Have you ever been treated for any
24 mental illness or addiction to narcotics of any kind?

25 THE DEFENDANT: Yes.

THE COURT: Would you tell the Court about that.

THE DEFENDANT: I was treated in approximately 1970-71.

THE COURT: For what?

THE DEFENDANT: For narcotics.

THE COURT: What kind of narcotics?

THE DEFENDANT: In 1971 it was Demerol, and then again in, I believe it was about '84 or '85, and that was for Darvocet.

THE COURT: Have you undergone any treatment for your addictions?

THE DEFENDANT: Yes, and out-patient at this time.

THE COURT: You are still undergoing treatment?

THE DEFENDANT: Yes.

THE COURT: As an out-patient?

THE DEFENDANT: Yes.

THE COURT: Under whose care?

THE DEFENDANT: Dr. Nick Marzella.

THE COURT: Is he associated or affiliated with any particular institution?

THE DEFENDANT: No, he has a private practice. He's a clinical psychologist.

THE COURT: Is that the extent of the treatment that you are presently undergoing?

THE DEFENDANT: I have been attending meetings

1 out-patient at OSU East, Talbot Hall.

2 THE COURT: Are you on any kind of medication

3 presently as a result of your addiction or in connection

4 with your treatment?

5 THE DEFENDANT: No.

6 THE COURT: Within the past 24 hours, have you

7 taken any narcotic drugs, consumed any alcoholic beverages

8 or taken any prescription medication?

9 THE DEFENDANT: Prescription medication.

10 THE COURT: What prescription medication are

11 you taking?

12 THE DEFENDANT: One is called Celebrex.

13 THE COURT: What is that for?

14 THE DEFENDANT: It's an anti-inflammatory. Both

15 of them are for a heart condition that I have had in the

16 past and presently. And the other is Ultrim, which is a

17 pain and anti-inflammatory medication.

18 THE COURT: Mr. Weiner, do you have any doubt as

19 to Dr. Kushkin's competence to plead at this time?

20 MR. WEINER: I do not, your Honor.

21 THE COURT: Does the medication that you are

22 taking, Dr. Kushkin, in any way interfere with your ability

23 to comprehend my questions?

24 THE DEFENDANT: Absolutely not, your Honor.

25 THE COURT: Does it in any way impair your ability

1 to articulate answers?

2 THE DEFENDANT: No.

3 THE COURT: The information you have received

4 charges you with one count of obtaining controlled

5 substances by misrepresentation and fraud and one count of

6 making false statements relating to health care matters.

7 Do you understand the nature and meaning of these charges?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Have you told your lawyer everything

10 you know about this case?

11 THE DEFENDANT: Yes, I have, your Honor.

12 THE COURT: Do you believe that Mr. Weiner is

13 fully informed about the facts and circumstances giving rise

14 to this case?

15 THE DEFENDANT: Yes, he is, your Honor.

16 THE COURT: Has Mr. Weiner fully advised you on

17 the nature of the charge and any defenses that you might

18 have to these charges?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you satisfied with Mr. Weiner's

21 advice and representation?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Every criminal defense, Dr. Kushkin,

24 has certain elements or basic facts that the government must

25 prove by competent evidence beyond a reasonable doubt before

1 a jury could find you guilty. In this case the elements
2 under Count 1, that is obtaining controlled substances by
3 misrepresentation and fraud, are as follows:
4 That the defendant obtained controlled substances
5 by misrepresentation and fraud;
6 Secondly, that the defendant acted knowingly
7 and intentionally, and
8 Third, that the act occurred within the Southern
9 District of Ohio at or about the dates set forth
10 in the information.
11 Do you understand that those are the elements
12 under Count 1 of the offense with which you are charged?
13 THE DEFENDANT: Yes, your Honor.
14 THE COURT: Under Count 2 of the information, that
15 is making false statements, the elements are as follows:
16 That the defendant knowingly made a false,
17 fictitious or fraudulent statement, representation
18 or writing in a matter involving a health care benefit
19 program, in this case Medicare;
20 Second, that the false, fictitious or fraudulent
21 statement, representation or writing related to a
22 material matter;
23 Third, that the defendant acted willfully and
24 with knowledge of the falsity, and
25 Fourth, that the act occurred within the Southern

1 District of Ohio at or about the dates set forth
2 in the information.
3 Do you understand that those are the elements
4 under Count 2 of the information?
5 THE DEFENDANT: Yes.
6 THE COURT: Do you understand that the maximum
7 possible penalty under Count 1 is 4 years imprisonment,
8 an alternative fine of $250,000, one year supervised release
9 and a $100 special assessment?
10 THE DEFENDANT: Yes, your Honor.
11 THE COURT: Do you understand that the maximum
12 possible penalty under Count 2 of the information is 5 years
13 imprisonment, a $250,000 fine, $100 special assessment and
14 3 years supervised release? Do you understand that?
15 THE DEFENDANT: Yes, sir.
16 THE COURT: Do you understand that if the Court
17 accepts your plea of guilty, it can impose this maximum
18 penalty?
19 THE DEFENDANT: Yes, your Honor.
20 THE COURT: Do you understand that if your plea of
21 guilty is accepted, the Court can impose the same penalty as
22 though you pleaded not guilty, stood trial, and were
23 convicted by a jury?
24 THE DEFENDANT: Yes, your Honor.
25 THE COURT: Do you understand that the offenses to

1 which you are pleading are felony offenses; that if your
2 plea is accepted, you will be adjudged guilty of those
3 offenses, and that such adjudication may deprive you of
4 valuable civil rights, including the right to vote, the
5 right to hold public office or the right to possess any kind
6 of firearm? Do you understand that?
7 THE DEFENDANT: Yes.
8 THE COURT: Do you understand that if your
9 sentence of imprisonment is more than one year, you will
10 also be sentenced to a term of supervised release and that
11 the Court may order a term of supervised release to follow
12 imprisonment in any other case? Do you understand that?
13 THE DEFENDANT: Yes, sir.
14 THE COURT: Supervised release, Dr. Kushkin, is a
15 period of supervision by the United States Probation Office
16 following a period of imprisonment, it is under terms and
17 conditions imposed by the Court, and a violation of any of
18 those terms and conditions may lead to an additional period
19 of imprisonment for a term up to the full time of the period
20 of supervised release, that would be without credit for any
21 time already served under supervised release. Do you
22 understand that?
23 THE DEFENDANT: Yes, your Honor.
24 THE COURT: Under the Sentencing Reform Act of
25 1984, Dr. Kushkin, the United States Sentencing Commission

1 has issued guidelines for courts to follow in determining
2 the sentence in a particular criminal case. Have you and
3 your attorney discussed how the Sentencing Commission
4 guidelines might apply to your case?
5 THE DEFENDANT: Yes, your Honor.
6 THE COURT: Do you understand that the Court will
7 not be able to determine the guideline sentence for your
8 case until after the presentence report has been completed
9 and you and the government have had an opportunity to
10 challenge the facts and conclusions reported by the
11 probation office?
12 THE DEFENDANT: Yes, I do, your Honor.
13 THE COURT: Do you understand that the Court is
14 not bound by any stipulation of fact between you and the
15 government and the Court may, with the aid of the
16 presentence investigation report, determine the facts
17 relevant to sentencing?
18 THE DEFENDANT: Yes, your Honor.
19 THE COURT: Do you understand that after it has
20 been determined what guideline applies to a case, the Court
21 has the authority, in some circumstances, to impose a
22 sentence that is more severe or less severe than the
23 sentence called for by the guidelines?
24 THE DEFENDANT: Yes, sir.
25 THE COURT: Do you understand that if the sentence

1 is more severe than you expected, you will still be bound by
2 your plea and will have no right to withdraw it?
3 THE DEFENDANT: Yes, your Honor.
4 THE COURT: Do you understand that you and the
5 government have the right to appeal any sentence that I
6 impose?
7 THE DEFENDANT: Yes, sir.
8 THE COURT: Do you understand that parole has been
9 abolished and that if you are sentenced to prison, you will
10 not be released on parole?
11 THE DEFENDANT: Yes, your Honor.
12 THE COURT: Do you understand that if the minimum
13 guideline sentence is more than 6 months, the Court cannot
14 place you on probation?
15 THE DEFENDANT: Yes.
16 THE COURT: And please understand that even if the
17 Court can place you on probation, it may or may not choose
18 to do so. Do you understand that?
19 THE DEFENDANT: Yes, I do, your Honor.
20 THE COURT: The Court advises you that under the
21 Constitution and laws of the United States, you have the
22 right to plead not guilty; you have the right to be tried by
23 a jury. And at a speedy and public trial, you would have
24 the right to the assistance of counsel, the right to
25 confront and to cross-examine the witnesses who testify

against you, and the right to refuse to testify yourself unless you voluntarily choose to do so in your own defense.

At such trial you would be presumed innocent until such time, if ever, the government establishes your guilt by competence evidence beyond a reasonable doubt. At such trial you would be entitled to the issuance of subpoenaes to compel the attendance of witnesses on your own behalf. Do you understand that if you plead guilty, you give up all of the rights that I have just mentioned?

THE DEFENDANT: Yes, I do.

THE COURT: Do you understand that if you plead guilty, there will not be a further trial of any kind in your case, so that by pleading guilty you are giving up your right to a trial?

THE DEFENDANT: Yes, your Honor.

THE COURT: Do you also understand that by pleading guilty, you will have to waive your right not to incriminate yourself since I will have to ask you questions about what you did in order to satisfy myself that you are in fact guilty of the offenses charged and you will have to acknowledge your guilt?

THE DEFENDANT: Yes.

THE COURT: Are you willing to waive and to give up your right to a trial and all of the other rights that I have just mentioned?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: You should understand, Dr. Kushkin,
3 that proper plea agreements are permissible and that you and
4 all counsel have a duty to disclose the existence and the
5 terms of any such agreement.

6 Ms. Harris, is there such an agreement in this case?

7 MS. HARRIS: There is, your Honor.

8 THE COURT: Would you summarize the essential
9 terms of the agreement for the Court.

10 MS. HARRIS: Yes, your Honor. In summary, the
11 defendant is to plead guilty to the information, the two
12 counts with which he is charged. He is to cooperate with
13 the United States and testify truthfully if called upon
14 concerning matters contained in the information.

15 With respect to Count 1, there is an agreement
16 that Section 2D2.2 is the base offense level that applies in
17 this case; however, the parties agree that this is not
18 binding on the Court.

19 With respect to Count 2, the parties have also
20 agreed that Section 2F1.1 regarding relevant conduct applies
21 in this case, that would be the portion that states that is
22 'greater than $2,000 but less than $5,000' would be the
23 appropriate relevant conduct in this case. Again, this is
24 a binding agreement made between the parties but not binding
25 on the Court.

1 Again, with respect to Count 2, the doctor is to
2 make full restitution to Medicare.
3 With regard to Count 2, the defendant agrees to
4 the application of Section 2F1.1(b)(2)(A), more than minimal
5 planning would apply in this case. Again, this is nonbinding
6 on the Court.
7 With respect to Counts 1 and 2, the defendant has
8 agreed that Counts 1 and 2 are not closely related and he
9 therefore must accept a two level enhancement to the base
10 offense level pursuant to Section 3D1.2 and 3D1.4. Again,
11 this is nonbinding on the Court.
12 And, lastly, your Honor, the parties have agreed
13 that the defendant has accepted responsibility and therefore
14 should be eligible for a two level reduction of his offense
15 level pursuant to Section 3E1.1.
16 The agreement also states that the doctor
17 understands that he is not a prevailing party as defined by
18 the statute.
19 There are no other agreements.
20 THE COURT: Thank you, Ms. Harris.
21 Mr. Weiner, is this your understanding of the
22 plea agreement?
23 MR. WEINER: It is, your Honor.
24 THE COURT: Dr. Kushkin, is this your
25 understanding of the plea agreement?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Dr. Kushkin, has anyone made any other

3 or different promises or assurances of any kind that induced

4 you to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Pursuant to Rule 11(e) of the Federal

7 Rules of Criminal Procedure, the Court hereby accepts this

8 plea agreement. The judgment and sentence imposed in this

9 case will conform to the essential terms of the plea

10 agreement.

11 Aside from the plea agreement which we have just

12 discussed, has any person, including any officer or agent of

13 the government, or any of the lawyers in this case, promised

14 or even suggested that you will receive a lighter sentence

15 or some other form of leniency in exchange for your plea of

16 guilty?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Is your decision to plead guilty your

19 own free and voluntary act?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Have you been subjected to any threats

22 of force of any kind which caused you to plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Ms. Harris, is there an agent

25 available who can testify as to the facts giving rise to

1 this matter?

2 MS. HARRIS: There is, your Honor. Special Agent

3 Matt Daly with the Federal Bureau of Investigation is here.

4 THE COURT: Special Agent Daly, please come

5 forward and be sworn.

6 (Oath administered.)

7 THE CLERK: Please proceed, sir.

8 AGENT DALY: Alex L. Kushkin is a physician

9 licensed to practice podiatry in the State of Ohio with

10 offices in Columbus, Ohio. In 1996 and 1997, in the course

11 of his practice, Dr. Kushkin filled out patient progress

12 notes that indicated he performed surgical services on eight

13 patients, when in fact he performed no such services. These

14 documents were used by Dr. Kushkin's office staff to prepare

15 claim forms which were sent to Medicare.

16 Based on the materially false notations provided

17 by Dr. Kushkin, fraudulent bills were submitted to Medicare

18 which paid for services that were not performed.

19 From 1997 to 2000, Dr. Kushkin obtained controlled

20 substances on numerous occasions by misrepresentation and

21 fraud. Dr. Kushkin telephoned in and placed in person

22 prescriptions at various local pharmacies for Vicodin, a

23 Schedule 3 controlled substance in the names of present and

24 former patients, had the prescriptions filled at various

25 pharmacies, and picked up the filled prescriptions, thereby

1 obtaining controlled substances for his personal use by
2 misrepresentation and fraud.
3 All of these activities occurred in the Southern
4 District of Ohio.
5 This concludes my statement.
6 THE COURT: Thank you, special agent. You may be
7 seated.
8 Dr. Kushkin, did you hear the statement of facts
9 as recited by Special Agent Daly?
10 THE DEFENDANT: Yes, I did, your Honor.
11 THE COURT: Are those facts true in all material
12 respects?
13 THE DEFENDANT: Yes, your Honor.
14 THE COURT: Are you in fact pleading guilty here
15 today because you are guilty of the offenses charged in the
16 information?
17 THE DEFENDANT: Yes, your Honor.
18 THE COURT: In light of everything I have told you
19 about your rights, and in light of all of my questions,
20 I will ask you again: How do you plead to Counts 1 and 2 of
21 the information, guilty or not guilty?
22 THE DEFENDANT: Guilty, your Honor.
23 THE COURT: The Court has observed the appearance
24 and responsiveness of the defendant in giving his answers to
25 the questions asked. Based on such observation and the

1 answers given, the Court is satisfied that Dr. Kushkin is in
2 full possession of his faculties; he is not suffering from
3 any apparent physical or mental illness; he is presently not
4 under the influence of narcotics or alcohol; he understands
5 the proceedings in which he is engaged; he understands the
6 nature and meaning of the charges and the consequences of
7 his plea of guilty. He is aware of all plea negotiations
8 undertaken in his behalf.
9 The Court finds that the defendant is fully
10 competent and capable of entering an informed plea and that
11 his plea of guilty is a knowing and voluntary plea,
12 supported by an independent basis in fact containing each of
13 the essential elements of the offenses charged. His plea
14 is therefore accepted and he is now adjudged guilty of the
15 offenses contained in Counts 1 and 2 of the information.
16 In accordance with the rules of the Southern
17 District of Ohio, a written presentence report will be
18 prepared by the probation office to assist the Court in
19 sentencing. Dr. Kushkin, you will be asked to give
20 information to the probation officer and your attorney,
21 Mr. Weiner, may be present if you wish him to be. You and
22 your attorney may make objections to the findings and
23 conclusions of the probation officer in accordance with the
24 local rules and the Rules of Criminal Procedure.
25 At the sentencing hearing, you and your attorney

1 may present evidence and arguments in support of your
2 position with respect to any unresolved objections to the
3 presentence investigation report.
4 What is the custodial status of the defendant,
5 Ms. Harris?
6 MS. HARRIS: Your Honor, back in September of this
7 year, Dr. Kushkin was placed on bond by the magistrate. We
8 received a report from pretrial services recommending that
9 he be continued on that same bond. We would have no
10 objection.
11 THE COURT: Are there any other matters that we
12 will need to take up at this time? From the government?
13 MS. HARRIS: No, your Honor.
14 THE COURT: Mr. Weiner?
15 MR. WEINER: No, your Honor.
16 THE COURT: Thank you very much. This matter is
17 adjourned.
18 MR. WEINER: Thank you, your Honor.
19 THE DEFENDANT: Thank you, your Honor.
20 (Adjournment at 10:30.)
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23 - - -
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CERTIFICATE

I certify that the foregoing is a true and correct record of plea proceedings in the above-entitled matter, heard before the Honorable Algenon L. Marbley, United States District Judge, sitting at Columbus, Ohio on December 15, 2000.

Joan E. Koenig

Joan E. Koenig
Official Federal Court Reporter

1-4-2001
Date

- - -

VOLUNTARY SURRENDER OF CONTROLLED SUBSTANCES PRIVILEGES	BNDD USE ONLY FILE NO.

After being full advised of my rights, and understanding that I am not required to surrender my controlled substances privileges, I freely execute this document and choose to take the actions described herein.

☐ In view of my alleged failure to comply with the Federal requirements pertaining to controlled substances, and as an indication of my good faith in desiring to remedy any incorrect or unlawful practices on my part;

☒ In view of my desire to terminate handling of controlled substances listed in schedule(s) all schedules ;

I hereby voluntarily surrender my Bureau of Narcotics and Dangerous Drugs Certificate of Registration, unused order forms, and all my controlled substances listed in schedule(s) all schedules as evidence of my agreement to relinquish my privilege to handle controlled substances listed in schedule(s) all schedules . Further, I agree and consent that this document shall be authority for the Director of Bureau of Narcotics and Dangerous Drugs to terminate and revoke my registration without an order to show cause, a hearing, or any other proceedings, (and if not all controlled substances privileges are surrendered, be issued a new registration certificate limited to schedule(s) none).

I waive refund of any payments made by me in connection with my registration.

I understand that I will not be permitted to order, manufacture, distribute, possess, dispense, administer, prescribe, or engage in any other controlled substance activities whatever, until such time an I am again properly registered.

NAME OF REGISTRANT *(Print)*	ADDRESS OF REGISTRANT	
ALEX L. KUSHKIN	West Broad Professional Bldg. 5704 West Broad St. P. O. Box 28210 Columbus, Ohio 43235	
SIGNATURE OF REGISTRANT OR AUTHORIZED INDIVIDUAL	DATE	BNDD REGISTRATION NO.
[signature]	Dec 19 1973	AK 2[illegible]

WITNESSES:

NAME AND DATE	TITLE
[signature]	[signature]
NAME AND DATE	TITLE
[signature] 12/19/73	Compliance Investigator

BND FORM (NOV 1971) — 104 SUPERSEDES BND-104(7/69), WHICH IS OBSOLETE.