

CONSENT AGREEMENT
BETWEEN
ANTHONY G. POLITO, D.P.M.
AND
THE STATE MEDICAL BOARD OF OHIO

This Consent Agreement is entered into by and between ANTHONY G. POLITO, D.P.M., and THE STATE MEDICAL BOARD OF OHIO, a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

ANTHONY G. POLITO, D.P.M., voluntarily enters into this Consent Agreement being fully informed of his rights under Chapter 119, Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

This Consent Agreement contains the entire Consent Agreement between the parties, there being no other Consent Agreement of any kind, verbal or otherwise, which varies the terms of this Consent Agreement.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. THE STATE MEDICAL BOARD OF OHIO is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for any of the enumerated violations.
- B. THE STATE MEDICAL BOARD OF OHIO enters into this Consent Agreement in lieu of further formal proceedings based upon the violations of Section 4731.22, Ohio Revised Code, set forth in the Notice of Opportunity for Hearing issued by the BOARD on September 13, 2000, attached hereto as Exhibit A and incorporated herein by this reference. The BOARD expressly reserves the right to institute additional formal proceedings based upon any other violations of Chapter 4731 of the Ohio Revised Code, whether occurring before or after the effective date of this Consent Agreement.
- C. ANTHONY G. POLITO, D.P.M., is licensed to practice podiatric medicine and surgery in the State of Ohio with license number 36-002626.

ANTHONY G. POLITO, D.P.M., STATES that he is not licensed to practice podiatric medicine or surgery in any other state or jurisdiction.

ANTHONY G. POLITO, D.P.M.

Consent Agreement

Page 2

- D. ANTHONY G. POLITO, D.P.M., ADMITS that on January 13, 1998, in the Cuyahoga County Court of Common Pleas, he pled guilty to and was found guilty of one misdemeanor count of Theft, in amount less than \$300.00, in violation of R.C. 2913.02. ANTHONY G. POLITO, D.P.M., ADMITS that this Theft occurred in the course of his podiatry practice. ANTHONY G. POLITO, D.P.M., FURTHER ADMITS that the act underlying this guilty plea was that on June 6, 1994, he billed Medical Mutual for a debridement procedure performed on a patient under CPT code 11043, when the correct CPT code for the procedure was 11042.
- E. ANTHONY G. POLITO, D.P.M., ADMITS that his conduct as set forth in paragraph D, above, constitutes a violation of R.C. 4731.22(B)(5) and R.C. 4731.22(B)(11). ANTHONY G. POLITO, D.P.M., FURTHER ADMITS that he paid restitution to Medical Mutual in the amount of \$80,000.

AGREED CONDITIONS

WHEREFORE, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any further formal proceedings at this time, the STATE MEDICAL BOARD hereby dismisses the allegation in the Notice of Opportunity for Hearing issued September 13, 2000, that the acts underlying DOCTOR POLITO's plea of guilty and judicial finding of guilt were fraudulent upcoding of insurance claims submitted to Medical Mutual during the period 1994 to 1996 and that DOCTOR POLITO's conduct violated R.C. 4731.22(B)(8).

ANTHONY G. POLITO, D.P.M., knowingly and voluntarily agrees with THE STATE MEDICAL BOARD OF OHIO, (hereinafter BOARD), to the following terms, conditions and limitations:

I. Suspension of Certificate

The certificate of ANTHONY G. POLITO, D.P.M., to practice podiatric medicine and surgery in the State of Ohio shall be SUSPENDED for a period of THIRTY (30) days. Such suspension shall be effective on April 14, 2001 through May 13, 2001. In accordance with such suspension, DOCTOR POLITO shall promptly surrender his current wallet registration card and wall certificate to the BOARD or its designee. Any period of suspension in effect prior to receipt by the BOARD or its designee of the current wallet registration card and wall certificate shall not apply toward the period of suspension specified by this Consent Agreement. Upon completion of the suspension period, DOCTOR POLITO's license, the wall certificate and a current wallet registration card will be promptly returned to DOCTOR POLITO.

II. Probationary Conditions

Upon completion of the thirty day suspension, ANTHONY G. POLITO shall be subject to the following PROBATIONARY terms, conditions, and limitations for an indefinite period of time but not less than THREE (3) years:

- A. DOCTOR POLITO shall obey all federal, state and local laws, and all rules governing the practice of podiatric medicine in Ohio.
- B. DOCTOR POLITO shall perform TWO HUNDRED (200) hours of free podiatric services in a free clinic or homeless shelter within the first eighteen (18) months of the probationary period. DOCTOR POLITO SHALL SUBMIT a plan for the provision of these free podiatric services which shall include the location, the time period for performing these services and what services will be performed. This plan must be approved by the BOARD PRIOR to commencement of the services. DOCTOR POLITO shall provide written verification from the approved clinic or homeless shelter that he has completed the required number of hours of service in accordance with the plan approved by the BOARD.
- C. Before the end of the first year of probation, or as otherwise approved by the BOARD, DOCTOR POLITO shall provide acceptable documentation of successful completion of a course or courses dealing with professional ethics. The exact number of hours and the specific content of the course or courses shall be subject to the prior approval of the BOARD or its designee. Any courses taken in compliance with this provision shall be in addition to the Continuing Medical Education requirements for relicensure for the biennial registration period(s) in which they are completed.
- D. DOCTOR POLITO shall submit quarterly declarations under penalty of BOARD disciplinary action or criminal prosecution stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the BOARD'S offices on the first day of the third month following the month in which this Consent Agreement becomes effective, provided that if the effective date is on or after the 16th day of the month, the first quarterly declaration must be received in the BOARD'S offices on the first day of the fourth month following. Subsequent quarterly declarations must be received in the BOARD'S offices on or before the first day of every third month.
- E. DOCTOR POLITO shall appear in person for quarterly interviews before the BOARD or its designated representative, or as otherwise directed by the BOARD.

If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled. (Example: The first quarterly appearance is scheduled for February, but based upon the doctor's serious personal illness he is permitted to delay appearance until April. The next appearance will still be scheduled for May, three months after the appearance as originally scheduled.) Although the BOARD will normally give DOCTOR POLITO written notification of scheduled appearances, it is DOCTOR POLITO's responsibility to know when personal appearances will occur. If he does not receive written notification from the BOARD by the end of the month in which the appearance should have occurred, DOCTOR POLITO shall immediately submit to the BOARD a written request to be notified of his next scheduled appearance.

- F. In the event that DOCTOR POLITO should leave Ohio for three (3) continuous months, or reside or practice outside the State, DOCTOR POLITO must notify the BOARD in writing of the dates of departure and return. Periods of time spent outside Ohio will not apply to the reduction of this period under the Consent Agreement, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that probationary monitoring is otherwise being performed.

III. Required Reporting by Licensee

Within thirty (30) days of the effective date of this Consent Agreement, DOCTOR POLITO shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR POLITO shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.

Within thirty (30) days of the effective date of this Consent Agreement, DOCTOR POLITO shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. DOCTOR POLITO further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any professional license or reinstatement of any professional license. Further, DOCTOR POLITO shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.

IV. Failure to Comply

- A. DOCTOR POLITO agrees that if any declaration or report required by this Consent Agreement is not received in the BOARD's offices on or before its due date, DOCTOR POLITO shall cease practicing beginning the day next following receipt from the BOARD of notice of non-receipt, either by writing, by telephone, or by personal contact until the declaration or report is received in the BOARD offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.60 of the Revised Code.
- B. In the event DOCTOR POLITO is found by the Secretary of the BOARD to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such periods of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

If, in the discretion of the Secretary and Supervising Member of THE STATE MEDICAL BOARD OF OHIO, DOCTOR POLITO appears to have violated or breached any term or condition of this Consent Agreement, THE STATE MEDICAL BOARD OF OHIO reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

MODIFICATION OF TERMS

DOCTOR POLITO SHALL NOT request modification of the above-described terms, limitations and conditions for a period of ONE (1) YEAR. After that one year period, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

Periods of time during which DOCTOR POLITO's certificate to practice podiatric medicine and surgery is inactive due to nonpayment of renewal fees will not apply to the reduction of the time periods set forth in this Consent Agreement, unless otherwise determined by motion of the BOARD in instances where the BOARD can be assured that the purposes of the probationary monitoring will be fulfilled.

ACKNOWLEDGMENTS/LIABILITY RELEASE

DOCTOR POLITO acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

ANTHONY G. POLITO, D.P.M.

Consent Agreement

Page 6

Any action initiated by the BOARD based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR POLITO hereby releases the STATE MEDICAL BOARD OF OHIO, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

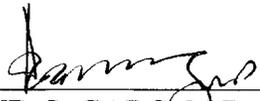
This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. DOCTOR POLITO acknowledges that his social security number will be used if this information is so reported, and DOCTOR POLITO agrees to provide his social security number to the Board for such purpose.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the BOARD prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.



ANTHONY G. POLITO, D.P.M.



ANAND G. GARG, M.D.
Secretary

3/13/01

DATE

4/11/01

DATE



ERIC L. PLINKE
Attorney for Dr. Polito



RAYMOND J. ALBERT
Supervising Member

3/14/01

DATE

4/11/01

DATE



REBECCA J. ALBERS
Assistant Attorney General

4/11/01

DATE



State Medical Board of Ohio

77 S. High Street, 17th Floor • Columbus, Ohio 43266-0315 • 614/466-3934 • Website: www.state.oh.us/med/

September 13, 2000

Anthony G. Polito, D.P.M.
17206 Ernadale Avenue
Cleveland, OH 44111

Dear Doctor Polito:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice podiatry, or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about January 13, 1998, in the Cuyahoga County Court of Common Pleas, you pleaded guilty to, and were found guilty of, one misdemeanor count of Theft, in violation of Section 2913.02, Ohio Revised Code. You were sentenced to six (6) months in the Cuyahoga County Jail, which was suspended, and you were placed on probation for 180 days. The Information, Journal Entry of Judgment and Sentencing, and Transcript of Proceedings are attached hereto and incorporated herein.

The acts underlying your plea of guilty, and judicial finding of guilt, were your fraudulent upcoding of insurance claims that you submitted to Medical Mutual of Ohio during the period 1994 to 1996. As a consequence, you agreed to pay restitution to Medical Mutual in the amount of \$80,000.

Your acts, conduct, and/or omissions underlying your guilty plea, and judicial finding of guilt, as alleged in paragraph (1) above, individually and/or collectively, constitute "publishing a false, fraudulent, deceptive, or misleading statement," as that clause is used in Section 4731.22(B)(5), Ohio Revised Code (as in effect prior to March 9, 1999).

Further, your acts, conduct, and/or omissions underlying your guilty plea, and judicial finding of guilt, as alleged in paragraph (1) above, individually and/or collectively, constitute "[t]he obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice," as that clause is used in Section 4731.22(B)(8), Ohio Revised Code.

Further, your guilty plea and judicial finding of guilt, as alleged in paragraph (1) above, individually and/or collectively, constitute "[a] plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code (as in effect prior to March 9, 1999) to wit: Section 2913.02, Ohio Revised Code.

Mailed 9/14/00

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice podiatry or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, Section 4731.22(L), Ohio Revised Code, effective March 9, 1999, provides that "[w]hen the board refuses to grant a certificate to an applicant, revokes an individual's certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

**CERTIFIED MAIL # Z 281 981 593
RETURN RECEIPT REQUESTED**

844 North Court Street
Medina, Ohio 44256
**CERTIFIED MAIL # Z 281 981 594
RETURN RECEIPT REQUESTED**

THE STATE OF OHIO VS. ANTHONY POLITO	INFORMATION THEFT R.C. 2913.02
---	--

Gene Cross
12-10-98

DATE OF OFFENSE June 6, 1994	THE TERM OF JANUARY OF 1998	CASE NO. CR 358414	Count 1
---------------------------------	--------------------------------	-----------------------	------------

The State of Ohio, }
 CUYAHOGA COUNTY } SS.

The affiant, Stephanie Tubbs Jones, Prosecuting Attorney of Cuyahoga County, State of Ohio, or her designee, being properly sworn, deposes, says and presents information that the above named Defendant, on or about the date of the offense set forth above, in the County of Cuyahoga, unlawfully knowingly did obtain or exert control over money with the purpose to deprive the owner, Medical Mutual, of said property or services, which was beyond the scope of the express or implied consent of the owner or person authorized to give consent and/or knowingly and by deception obtained or exerted control over money with the purpose to deprive the owner, Medical Mutual, of said property or services.

The value of said property or services being less than \$300.00,

PROCESSED
 JAN - 6 1998
 GERALD E. FUERST
 MICRO-DATA DEPT.

RECEIVED FOR FILING
 JAN 5 1998
 GERALD E. FUERST, CLERK

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

STATE OF OHIO)
 CUYAHOGA COUNTY) SS:

Donald Rolla
 Assistant Prosecuting Attorney

STEPHANIE TUBBS JONES, being duly sworn, says that she is the duly elected Prosecutor for Cuyahoga County, State of Ohio. STEPHANIE TUBBS JONES or her designee DONALD ROLLA, an assistant Prosecuting Attorney, says that she/he makes this affidavit on behalf of the State of Ohio as such Prosecuting Attorney, and that the facts set forth in support of the foregoing information are true as she/he verily believes.

Donald Rolla
 Assistant Prosecuting Attorney

SWORN TO AND SUBSCRIBED BEFORE ME, a Notary Public and in my presence, the said DONALD ROLLA this 5th day of January, 19 98

Sandra Patton Campbell
 NOTARY PUBLIC
 SANDRA PATTON CAMPBELL, Notary Public
 State of Ohio
 My Commission Expires 9-23-98

STATE OF OHIO,
CUYAHOGA COUNTY

SS.

IN THE COURT OF COMMON PLEAS

JANUARY TERM, 19 98
19 98

STATE OF OHIO

PLAINTIFF

TO-WIT: JANUARY 06
NO. CR 358414

VS.

INDICTMENT THEFT

ANTHONY POLITO

DEFENDANT

JOURNAL ENTRY

NOW COMES THE PROSECUTING ATTORNEY ON BEHALF OF THE STATE OF OHIO AND THE DEFENDANT, ANTHONY POLITO, IN OPEN COURT WITH HIS/HER COUNSEL PRESENT AND WAS FULLY ADVISED OF HIS/HER CONSTITUTIONAL RIGHTS. ATTORNEY PHIL KUSHNER AND PROSECUTOR JAMES GUTIERREZ PRESENT.

THEREUPON, SAID DEFENDANT RETRACTS HIS/HER FORMER PLEA OF NOT GUILTY HERETOFORE ENTERED, AND FOR PLEA TO SAID INFORMATION SAYS HE/SHE IS GUILTY OF THEFT 2913.02 MISD-1 CHARGED IN INFORMATION, WHICH PLEA/PLEAS, ON THE RECOMMENDATION OF THE PROSECUTING ATTORNEY IS/ARE ACCEPTED BY THE COURT.

THEREUPON, THE COURT INQUIRED OF THE DEFENDANT IF HE/SHE HAD ANYTHING TO SAY WHY JUDGMENT SHOULD NOT BE PRONOUNCED AGAINST HIM/HER; AND HAVING NOTHING BUT WHAT HE/SHE HAD ALREADY SAID AND SHOWING NO GOOD AND SUFFICIENT CAUSE WHY JUDGMENT SHOULD NOT BE PRONOUNCED.

IT IS THEREFORE, ORDERED AND ADJUDGED BY THE COURT THAT SAID DEFENDANT, ANTHONY POLITO, IS SENTENCED TO THE CUYAHOGA COUNTY JAIL FOR A TERM OF 6 MONTHS AND IS TO PAY COSTS. SENTENCE SUSPENDED; SERVE 180 DAYS PROBATION AND PAY COSTS AND PROBATION FEE.

01-06-98

VOL 642 PG 323

P-S MAR 01/06/98 15:57

JUDGE

RICHARD J. MCMONA CLERK OF COURTS
CUYAHOGA COUNTY OH

FILED
JAN 13 1998
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY OH

COPIES SENT TO:

- Sheriff _____ Other _____
- Defendant _____

THE STATE OF OHIO }
Cuyahoga County } SS. I, GERALD E. FUERST, CLERK OF
THE COURT OF COMMON PLEAS
WITHIN AND FOR SAID COUNTY,
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
MADE AND COPIED FROM THE ORIGINAL
FILED IN THE COURT OF SAID COUNTY.
AND SEAL OF SAID COURT THIS
DAY OF _____ A.D. 1998
GERALD E. FUERST, Clerk
By _____ Deputy

THE STATE OF OHIO,)
) SS: RICHARD J. McMONAGLE, J.
COUNTY OF CUYAHOGA.)

IN THE COURT OF COMMON PLEAS

(CRIMINAL DIVISION)

THE STATE OF OHIO,)
)
 Plaintiff,)
)
 vs.) Case No. CR-358414
)
 ANTHONY POLITO, M.D.,)
)
 Defendant.)

--- o0o ---

TRANSCRIPT OF PROCEEDINGS

--- o0o ---

APPEARANCES:

On Behalf of the State of Ohio, WILLIAM D. MASON,
County Prosecutor:

BY: JAMES GUTIERREZ, ESQ.

On Behalf of the Defendant:

BY: PHIL KUSHNER, ESQ.

--- o0o ---

Thomas C. Walters
Official Court Reporters
Cuyahoga County, Ohio

1 1 TUESDAY AFTERNOON SESSION, JANUARY 6, 1998

2

3 P R O C E E D I N G S

4

5 THE COURT: We're here in Case
6 Number 358414, the State of Ohio versus Anthony
7 Polito.

8 The Mr. Polito, you understand that you
9 have to be arraigned on this information which
10 means you, just for starters, we enter a plea
11 of not guilty, and so you waive the reading,
12 the 24 hour notice and enter a plea of not
13 guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, it's \$1,000
16 personal bond on him. Now, you understand that
17 we are proceeding by what we call an
18 information. And, normally, we proceed by way
19 of an indictment, but an indictment is in front
20 of the grand jury.

21 The grand jury would hear some
22 evidence, the prosecution's side, and may or
23 may not return a felony or a misdemeanor. You
24 understand you have a your constitutional right
25 to have your case presented to a grand jury and

1 it's my understanding that you're waiving that
2 right and you're going to proceed by this
3 information, going around the grand jury, is
4 that correct?

5 THE DEFENDANT: Yes.

6 THE COURT: And you have read
7 this waiver and you signed it?

8 THE DEFENDANT: Yes.

9 THE COURT: Counsel signed.

10 THE DEFENDANT: Yes.

11 THE COURT: I'll sign it, too.

12 Mr. Gutierrez, you signed it?

13 GUTIERREZ: That's correct.

14 THE COURT: Now, we're here
15 with wards to an information on this matter.

16 Mr. Gutierrez?

17 GUTIERREZ: Thank you, your
18 Honor. We are here in Case Number 358414, the
19 State of Ohio versus Anthony Polito. It's my
20 understanding at this time that we are here by
21 way of information that the defendant is going
22 to plead guilty to one count, to a one count
23 indictment which is a misdemeanor, theft,
24 2913.02. The value of the property or services
25 being less than \$300.

1 My understanding is that the defendant
2 has agreed to make restitution in the amount of
3 \$80,000 payable to Medical Mutual. The State
4 also agreed to remain mute on sentencing.

5 This is a misdemeanor of the first
6 degree and carries a possible sentence of six
7 months in jail and \$1,000 fine.

8 Besides those representations there
9 have been no threats or promises to get him to
10 plead. No threats and no promises were made
11 concerning any type of sentence, except for
12 what I have just stated regarding the State's
13 willingness to remain mute at the time of
14 sentencing.

15 THE COURT: Is that correct?

16 MR. KUSHNER: Yes, your Honor.

17 THE COURT: All right. Do you
18 understand you're giving up some of your
19 constitutional rights by pleading guilty?

20 THE DEFENDANT: Yes.

21 THE COURT: You're a medical
22 doctor.

23 THE DEFENDANT: I'm a podiatrist.

24 THE COURT: Now, you under any
25 medication or drugs at this time?

1 THE DEFENDANT: No.

2 THE COURT: Probation or
3 parole?

4 THE DEFENDANT: No.

5 THE COURT: You heard
6 everything your attorney and the prosecutor
7 said. Do you understand why you're here?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand
10 that under the law you have the right to try
11 your case to a judge with or without a jury if
12 you want?

13 THE DEFENDANT: Yes.

14 THE COURT: You have a right to
15 have your lawyer confront the witnesses. You
16 have the right to confront the witnesses and
17 through your lawyer and you have the right to
18 have your lawyer cross-examine these witnesses.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: You have the right
22 to subpoena process for the obtaining of
23 witnesses on your own behalf, and to require
24 the State to prove your guilt beyond a
25 reasonable doubt at trial.

1 You can produce witnesses on your own
2 behalf at any trial if if you so desire. You
3 have all these rights.

4 THE DEFENDANT: Yes.

5 THE COURT: Furthermore, if you
6 wish, you could take the witness stand and
7 testify if you want to or you don't have to
8 testimony against yourself and the State can't
9 comment on your failure to take the witness
10 stand.

11 Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: You are giving up
14 all these rights by pleading guilty?

15 THE DEFENDANT: Yes.

16 THE COURT: Anybody, including
17 your attorney, the prosecutor or the Court made
18 any promises, threats to you to induce you into
19 entering into this plea?

20 THE DEFENDANT: No.

21 THE COURT: The charge under
22 the indictment or the information, that you are
23 going to plead guilty to here is to a
24 misdemeanor of the first degree, probationable,
25 and you could receive a sentence up to six

1 months in a local institution and a fine not to
2 exceed \$1,000.

3 THE DEFENDANT: Yes.

4 THE COURT: Also, you
5 understand, as the information has been
6 presented to you in open court is that you're
7 also going to make full restitution;
8 what would amount to \$80,000 to Medical Mutual,
9 is that correct?

10 THE DEFENDANT: Yes.

11 MR. KUSHNER: We'll pay that
12 today.

13 THE COURT: All right.

14 Satisfied with your lawyers
15 representation?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Anything about your
18 case or these proceedings you don't understand
19 and you want me to explain to you more fully?

20 THE DEFENDANT: No.

21 THE COURT: Any questions?

22 THE DEFENDANT: No.

23 THE COURT: How do you plead to
24 this information then that on or about June
25 6th, 1994 that you apparently committed a theft

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

offense against Medical Mutual?

THE DEFENDANT: Guilty.

THE COURT: How do you plead,
guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Is this plea
voluntarily made and of your own free will?

THE DEFENDANT: Yes.

THE COURT: I'll accept the
plea. I'm going to sentence you now.

What do you have to say? Counsel?

MR. KUSHNER: Your Honor, neither
I or my client have anything to say at this
time.

THE COURT: Six months, county
jail, suspend the sentence, be on probation for
180 days. You're going to go down to the
probation department at the present time to be
processed through, processed tomorrow morning.
I would suggest you go to the probation
department just to check in.

MR. KUSHNER: He has patients
scheduled tomorrow. can he show up at
probation tomorrow?

THE COURT: Yeah, any time.

2