

IN THE MATTER OF

DAVID RUSSO, P.D.

License Number 09176

Respondent

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BEFORE THE

MARYLAND STATE

BOARD OF PHARMACY

Case Number: PI-11-057

\* \* \* \* \*

**FINAL ORDER**

On July 12, 2013, the Maryland State Board of Pharmacy (the "Board") notified **DAVID RUSSO, P.D.** (the "Respondent") (D.O.B.: 5/26/1951), License Number 09176, of its intent to revoke his license to practice pharmacy in the State of Maryland pursuant to the Maryland Pharmacy Act (the "Act"), codified at Md. Code Ann. Health Occ. ("Health Occ.") §§ 12-101 *et seq* (2009 Repl. Vol. and 2012 Supp.).

Specifically, the Board charged the Respondent with violating the following provisions of the Act:

§ 12-313. Denials, reprimands, suspensions, and revocations – Grounds.

(b) In general. -- Subject to the hearing provisions of § 12-315 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant for a pharmacist's license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of a pharmacist if the applicant or licensee:

(2) Fraudulently or deceptively uses a license;

(22) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

## **FINDINGS OF FACT**

The Board makes the following findings of fact:

### **I. Background**

1. The Respondent was initially licensed to practice pharmacy in Maryland on July 16, 1979, under License Number 09176. The Respondent's license is current through May 31, 2014.

2. At all times relevant hereto, the Respondent was self-employed as the owner and operator of Russo's Rx, a pharmacy located in Hagerstown, Maryland.

### **II. Procedural History**

3. On or about December 22, 2010, the Board issued an order summarily suspending the Respondent's license to practice pharmacy in Maryland (the "Order"). The Order was based on concerns about the Respondent's dispensing of controlled dangerous substances ("CDS"), following complaints and an investigation of Russo's Rx by inspectors from the Maryland Division of Drug Control ("DDC").

4. On or about February 23, 2011, the Board issued an Interim Consent Order Staying Summary Suspension (the "Interim Order"). Under the terms of the Interim Order, the suspension of the Respondent's license was lifted and the Respondent agreed to restrict his practice by, among other conditions, ceasing dispensing CDS.

5. On or about July 18, 2012, the Board issued disciplinary charges against the Respondent, alleging various violations of the Act, including but not limited to: fraudulently or deceptively using a license, in violation of Health Occ. § 12-313(b) (2); and violating his "corresponding responsibility" when filling numerous prescriptions for

CDS not issued for a legitimate medical purpose, in violation of COMAR 10.19.03.07 C (1).

6. On or about January 6, 2013, an Administrative Law Judge (“ALJ”) at the Office of Administrative Hearings (“OAH”) convened a hearing on the charges. The ALJ issued a Proposed Decision on March 27, 2013, to which the State filed Exceptions and the Respondent filed a Response to the State’s Exceptions.

7. The Respondent was awaiting an Exceptions Hearing before the Board, and he remains bound by the terms of the Interim Order pending a final disposition of the Charges.<sup>1</sup>

### **III. Current Complaint**

8. On or about June 14, 2013, the United States Attorney’s Office for the District of Maryland issued a press release (the “Complaint”) regarding the Respondent entitled, “Hagerstown Pharmacist Pleads Guilty to Health Care Fraud for Improperly Billing Medicare and Medicaid.”

9. According to the Complaint, on June 14, 2013, the Respondent pleaded guilty to “health care fraud in connection with a scheme to defraud Medicare and Medicaid by billing for prescriptions that Russo knew were not written for a legitimate medical purpose.”

10. The Complaint further stated that, by the Plea Agreement, the Respondent and the Government agreed to jointly recommend that the Respondent serve thirty (30) months in prison at the sentencing hearing scheduled for August 22, 2013. However,

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<sup>1</sup>By letter dated November 20, 2013, the Responder’s counsel notified the Board that the Respondent would not respond to the Notice of Intent to Revoke, and, therefore, the need for the Exceptions hearing is moot.

based on the Respondent's criminal actions, the Court could impose up to ten (10) years in prison.

11. Based on the Complaint, the Board began an investigation.

#### **IV. Board Investigation**

12. In furtherance of the investigation, the Board obtained Federal court documents including: the Criminal Docket, the Order Setting Conditions for Release, the Regular Sentencing Order, and the Plea Agreement referenced in the Complaint **(attached hereto and incorporated herein as "Exhibits A, B, C, & D," respectively)**.

13. The court documents confirm that on or about June 14, 2013, in the United States District Court for the District of Maryland, the Respondent signed a Plea Agreement with the United States Attorney's Office in the case captioned *the United States of America v. David Russo*, Case Number 1:13-cr-00240-GLR, by which he pleaded guilty to one count of felony Health Care Fraud, in violation of 18 U.S.C. § 1347, and "admits that he is, in fact, guilty of that offense." Under the Order Setting Conditions for Release, the Respondent was ordered to surrender his passport and is restricted from leaving the continental United States pending resolution of his case.

14. According to Paragraph 21 of the Plea Agreement, "The Defendant [the Respondent] agrees to forfeit his pharmacy license and agrees not to seek a new license in Maryland or any other state."

15. The Plea Agreement contained a Statement of Facts to which the Respondent stipulated, which states that, "RUSSO dispensed and caused others to dispense controlled substances pursuant to prescriptions that he knew were not written for a legitimate medical purpose."

16. The following excerpts from the Statement of Facts illustrate the Respondent's multifaceted and extremely profitable criminal scheme:

- a. "Specifically, from sometime in or about January 2009 and continuing through December 2010, RUSSO devised and intended to devise a scheme and artifice to defraud Medicare and Medicaid, and to obtain from Medicare and Medicaid money and property by means of material false and fraudulent pretenses, representations, and promises, well knowing that the pretenses, representations, and promises would be and were false when made."
- b. "Further, RUSSO made gross sales of over \$700,000 a month for several months in 2010 – a dramatic increase over previous months. He also made at least 55 cash deposits between December 1, 2009 and June 15, 2010 totaling \$862,000. RUSSO even maintained a cash counting machine in his pharmacy."
- c. Russo's Rx was the "one and only pharmacy that would fill" prescriptions from Dr. T and Dr. Z, according to "customers of RUSSO's Pharmacy who were drug users who admitted to buying the drugs for resale – sometimes in the parking lot of the pharmacy."
- d. The Respondent's knowledge that the purported prescriptions were not legitimate was based on a series of red flags, many noted by the State at the Respondent's hearing at OAH, including:
  - i. "the vast majority of prescriptions were from two physicians (hereinafter "Dr. T" and "Dr. Z") whose offices were not geographically located near Russo's Rx";
  - ii. "RUSSO accepted cash for Schedule II drugs when the drugs were not covered by Medicare or Medicaid";
  - iii. "excessive amounts of oxycodone and methadone were being dispensed to the patients of the two physicians";
  - iv. "RUSSO filled two prescriptions for a Schedule II drugs on the same day for the same patient but charged one to insurance and accepted cash for the other";
  - v. "customers travelled from out of state or in vanloads to his pharmacy"; and

- vi. "many customers were receiving the same 'cocktail' prescription of oxycodone, Roxicodone, and Xanax."
- e. "In December 2010, the DEA executed a search warrant at Russo's Rx. Since that date, RUSSO deleted thousands of unlawful prescriptions from his prescription database, including hundreds from Dr. T and Dr. Z. The DEA seized \$39,000 in cash from the pharmacy – cash that was earned from unlawful dispensation of oxycodone, methadone, and benzodiazepines by RUSSO."
- f. "Russo's Rx was one of the largest dispensers of these controlled dangerous substances in the entire State of Maryland. For these prescriptions, RUSSO improperly billed, and received payment for, over \$109,207.26 to Medicare and at least \$90,939.07 to Medicaid. Thus the total approximate fraud loss is \$200,146.33."

### **CONCLUSIONS OF LAW**

Based on the foregoing Findings of Fact, the Board comes to the following conclusions as a matter of law:

**The Respondent pleaded guilty to a felony.**

17. The Respondent pleaded guilty to a felony, *to wit*, Health Care Fraud, in violation of 18 U.S.C. § 1347. The maximum sentence upon conviction is ten (10) years imprisonment. 18 U.S.C. § 1347. Any federal criminal offense with a maximum sentence of ten (10) years is classified as a Class D felony. 18 USC § 3559 (a) (4). Thus the Respondent pleaded guilty to a felony.

**The Respondent pleaded guilty to a crime involving moral turpitude.**

18. The Respondent's conduct in violating 18 U.S.C. § 1347 constitutes the commission of a crime involving moral turpitude. If fraud or an intent to defraud is one of the essential elements of a statute, then as a matter of law, violation of that statute involves moral turpitude. *See, e.g., Attorney Grievance Commission v. Klauber*, 289 Md. 446, 457-59, *cert. denied*, 451 U.S. 1018 (1981) (defining the term 'moral turpitude' as connoting a fraudulent or dishonest intent). The statute that the Respondent admits he

violated, 18 U.S.C. § 1347, contains fraud as an essential element (“(a) Whoever knowingly and willfully executes, or attempts to execute, a scheme or artifice—(1) to defraud any health care benefit program; or (2) to obtain, by means of false or fraudulent pretenses...”.) Therefore, the Respondent’s violation of 18 U.S.C. § 1347 constitutes commission of a crime involved moral turpitude.

19. Other health care licensing agencies have determined that Health Care Fraud constitutes a crime involving moral turpitude. The Maryland State Board of Physicians has concluded that Health Care Fraud, in violation of 18 U.S.C. § 1347, is a crime involving moral turpitude. See, e.g., *In the Matter of Douglas F. Greer, M.D.* Case Nos. 2008-0640, 2008-0653, July 23, 2009. The Respondent pleaded guilty to this very offense, and, in doing so, committed a crime of moral turpitude.

The Respondent’s actions constitute violations of the Act.

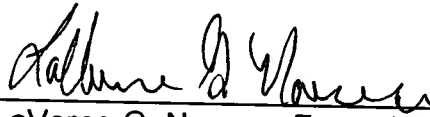
20. The Respondent’s conduct, including: committing and pleading guilty to felony Health Care Fraud, constitutes: fraudulently or deceptively using a license, in violation of Health Occ. 12-313(b)(2); and pleading guilty to a felony or to a crime involving moral turpitude, in violation of Health Occ. 12-313(b)(22).

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is this 10<sup>th</sup> day of March, 2014, by a majority of the Board:

**ORDERED** that the license to practice pharmacy issued to David Russo is hereby **REVOKED**; and it is further

**ORDERED** that this is a Final Order and, as such, is a **PUBLIC** document pursuant to Md. State Gov't Code Ann. §§ 10-611 *et seq.* (2009 Repl. Vol.).



LaVerne G. Naesea, Executive Director  
Maryland State Board of Pharmacy

**NOTICE OF RIGHT TO APPEAL**

The Respondent has the right to take a direct judicial appeal. Any appeal shall be filed within thirty (30) days from the date of this Final Order and shall be made as provided for judicial review of a final decision in the Maryland Administrative Procedure Act, Md. State Gov't Code Ann. § 10-222 and Title 7, Chapter 200 of the Maryland Rules of Procedure.

If the Applicant files an appeal, the Board is a party and should be served with the court's process at the following address:

Maryland State Board of Pharmacy  
LaVerne G. Naesea, Executive Director  
Baltimore, Maryland 21215



The Administrative Prosecutor is no longer a party to this case and need not be served or copied.

3/19/14  
Date

*for* Lenna G. Norek  
Lenna Israbian-Jamgochian, P.D., President  
Maryland State Board of Pharmacy

**U.S. District Court  
District of Maryland (Baltimore)  
CRIMINAL DOCKET FOR CASE #: 1:13-cr-00240-GLR All Defendants**

Case title USA v Russo

Date Filed 05/13/2013

Assigned to Judge George Levi  
Russell, III

**Defendant (1)**

**David Russo**

represented by **Gina Laurie Simms**  
Ober Kaler Grimes and Shriver PC  
1401 H St NW Fifth Fl  
Washington, DC 20005  
12024088400  
Fax: 12024080640  
Email: gsimms@ober.com  
*ATTORNEY TO BE NOTICED*

**Richard Melvin Karceski**  
Law Offices of Richard M Karceski  
305 Washington Ave Ste 301  
Towson, MD 21204  
14104947100  
Fax: 14102963443  
Email: karceskilaw@mindspring.com  
*ATTORNEY TO BE NOTICED*

**Pending Counts**

18.1347 HEALTH CARE FRAUD  
18.2 AIDING AND ABETTING  
(1)

**Disposition**

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

None

**Disposition**

**Highest Offense Level (Terminated)**

None

**EXHIBIT A**

Complaints

None

Disposition

Plaintiff

USA

represented by **Sandra Wilkinson**  
 Office of the US Attorney  
 36 S Charles St Fourth Fl  
 Baltimore, MD 21201  
 14102094800  
 Fax 14109620716  
 Email: sandra.wilkinson@usdoj.gov  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*  
*Designation: Assistant US Attorney*

**Rod J Rosenstein**  
 Office of the United States Attorney  
 Do Not Mail  
 Baltimore, MD 21201  
 14102094800  
 Email: rod.rosenstein@usdoj.gov  
*Designation: Assistant US Attorney*

Date Filed	#	Docket Text
05/13/2013	1	INFORMATION as to David Russo (1) count(s) 1 (apls, Deputy Clerk) (Entered: 05/14/2013)
05/16/2013		PAPERLESS NOTICE OF HEARING by U.S. Attorney's Office as to David Russo. PLEASE NOTE: Defendant is not in custody. A writ has not been requested. A come up has not been requested. An interpreter will not be needed. Initial/Arrestment & Plea Hearing set for 6/14/2013 10:00 AM in Courtroom 7A, 101 West Lombard Street, Baltimore, Maryland 21201, before Judge George Levi Russell III. (Wilkinson, Sandra) (Entered: 05/16/2013)
05/17/2013	3	NOTICE OF ATTORNEY APPEARANCE: Richard Melvin Karceski as Retained Counsel appearing for David Russo (Karceski, Richard) (Entered: 05/17/2013)
05/20/2013	4	NOTICE OF ATTORNEY APPEARANCE: Gina Laurie Simms as Retained Counsel appearing for David Russo (Simms, Gina) (Entered: 05/20/2013)
06/04/2013	5	Initial Appearance/Arrestment/Guilty Plea set for 6/14/2013 at 10:00 A.M. in Courtroom 5A, 101 West Lombard Street, Baltimore, Maryland 21201, before Judge George Levi Russell III. (daf, Chambers) (Entered: 06/04/2013)
06/14/2013	6	

		Arraignment as to David Russo (1) Count 1 held on 6/14/2013, Plea entered Guilty Count 1 before Judge George Levi Russell, III (Court Reporter M Giordano) (pat, Deputy Clerk) (Entered: 06/14/2013)
06/14/2013	7	WAIVER OF INDICTMENT by David Russo (apls, Deputy Clerk) (Entered: 06/14/2013)
06/14/2013	8	PLEA AGREEMENT as to David Russo (apls, Deputy Clerk) (Entered: 06/14/2013)
06/14/2013	9	-SEALED- PLEA SUPPLEMENT as to David Russo (apls, Deputy Clerk) (Entered: 06/14/2013)
06/14/2013	10	Regular Sentencing Order as to David Russo. Signed by Judge George Levi Russell, III on 6/14/13. (apls, Deputy Clerk) (Entered: 06/14/2013)
06/14/2013	11	ORDER Setting Conditions of Release as to David Russo. Signed by Judge George Levi Russell, III on 6/14/13 (apls, Deputy Clerk) (Entered: 06/14/2013)
06/14/2013	12	RESTITUTION ORDER as to David Russo. Signed by Judge George Levi Russell, III on 6/14/13 (apls, Deputy Clerk) (Entered: 06/14/2013)
06/14/2013	13	FORFEITURE ORDER as to David Russo. Signed by Judge George Levi Russell, III on 6/14/13 (apls, Deputy Clerk) (Entered: 06/14/2013)
06/17/2013	14	Receipt for Surrender of Passport as to David Russo (ko, Deputy Clerk) (Entered: 06/17/2013)
06/17/2013		PAPERLESS NOTICE OF HEARING by U.S. Attorney's Office as to David Russo. PLEASE NOTE Defendant is not in custody. A writ has not been requested. A come up has not been requested. An interpreter will not be needed. Sentencing set for 8/22/2013 02:00 PM in Courtroom 7A, 101 West Lombard Street, Baltimore, Maryland 21201, before Judge George Levi Russell III (Wilkinson, Sandra) (Entered: 06/17/2013)

PACER Service Center			
Transaction Receipt			
07/10/2013 14:31:56			
PACER Login:	dlr1548	Client Code:	
Description:	Docket Report	Search Criteria:	13-cr-00240-GJR
Billable Pages:	2	Cost:	0.20

UNITED STATES DISTRICT COURT

for the District of Maryland

FILED  
U.S. DISTRICT COURT  
DISTRICT OF MARYLAND  
7/11/14 10:12:50

United States of America )  
v. )  
David Russo )  
Defendant )

Case No. GLR-13-0240

ORDER SETTING CONDITIONS OF RELEASE

IT IS ORDERED that the defendant's release is subject to these conditions:

- (1) The defendant must not violate any federal, state or local law while on release.
- (2) The defendant must cooperate in the collection of a DNA sample if the collection is authorized by 42 U.S.C. § 14135a.
- (3) The defendant's residence must be approved by the Court and the defendant must advise the court, defense counsel, and the U.S. attorney in writing before any change in address or telephone number.
- (4) The defendant must appear in court as required and must surrender to serve any sentence imposed.

The defendant must appear at (if blank, to be notified) \_\_\_\_\_  
Place  
\_\_\_\_\_ on \_\_\_\_\_  
Date and Time

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released on condition that:

- (5) The defendant promises to appear in court as required and surrender to serve any sentence imposed.
- (6) The defendant executes an unsecured bond binding the defendant to pay to the United States the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) in the event of a failure to appear as required or surrender to serve any sentence imposed.

ADDITIONAL CONDITIONS OF RELEASE

Upon finding that release by one of the above methods will not by itself reasonably assure the defendant's appearance and the safety of other persons or the community,

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below.

- (7) The defendant is placed in the custody of (name of person or organization) \_\_\_\_\_ at an address approved by the Pretrial Services Office. The defendant must not change that address without advance approval by the Pretrial Services Office who agrees (a) to supervise the defendant in accordance with all of the conditions of release, (b) to use every effort to assure the defendant's appearance at all scheduled court proceedings, and (c) to notify the court immediately if the defendant violates any condition of release or disappears.

Signed: \_\_\_\_\_  
Custodian or Proxy Date Tel. No (only if above is an organization)

- (8) The defendant must:
  - (a) report to the \_\_\_\_\_ telephone number \_\_\_\_\_, no later than \_\_\_\_\_
  - (b) report on a regular basis to the supervising officer. The defendant shall promptly obey all reasonable directions and instructions of the supervising officer
  - (c) execute a bond or an agreement to forfeit upon failing to appear as required the following sum of money or designated property: \_\_\_\_\_
  - (d) post with the court the following proof of ownership of the designated property, or the following amount or percentage of the above-described sum: \_\_\_\_\_
  - (e) execute a bail bond with solvent sureties in the amount of \$ \_\_\_\_\_
  - (f) maintain or actively seek employment as approved by the U.S. Pretrial Services Officer
  - (g) maintain or commence an education program.
  - (h) surrender any passport to: Clerks Office by COB June 17, 2013
  - (i) obtain no passport
  - (j) abide by the following restrictions on personal association, place of abode, or travel:  
Travel restricted to the Continental United States
  - (k) avoid all contact directly or indirectly, with any person who is or may become a victim or potential witness in the investigation or prosecution, including but not limited to: \_\_\_\_\_
  - (l) undergo medical or psychiatric treatment: \_\_\_\_\_
  - (m) abide by a curfew from \_\_\_\_\_ to \_\_\_\_\_
  - (n) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary.
  - (o) refrain from possessing a firearm, destructive device, or other dangerous weapons.
  - (p) refrain from  any  excessive use of alcohol.
  - (q) refrain from use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.
  - (r) submit to any testing required by the pretrial services office or the supervising officer to determine whether the defendant is using a prohibited substance. Any testing may be used with random frequency and include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or monitoring which is (are) required as a condition of release.
  - (s) participate in a program of inpatient or outpatient substance abuse therapy and counseling if the pretrial services office or supervising officer considers it advisable.
  - (t) submit to a location monitoring program
    - (i) as directed by the supervising officer; or
    - (ii) restricted to the residence except for employment, education, religious services, medical purposes, substance abuse testing/treatment, mental health treatment, attorney visits, court appearances, or other court ordered obligations; or
    - (iii) restricted to the residence except for medical purposes, court appearances, or other activities specifically approved by the court.
  - (u) Refrain from the use of computer systems, Internet-capable devices and/or similar electronic devices at any location (including employment or educational program) without the prior written approval of the U. S. Probation or Pretrial Services Officer. The defendant shall cooperate with the U.S. Probation and Pretrial Services Office monitoring of compliance with this condition. Cooperation shall include, but not be limited to, participating in a Computer & Internet Monitoring Program, identifying computer systems, Internet-capable devices and/or similar electronic devices the defendant has access to, allowing the installation of monitoring software/hardware at the defendant's expense, and permitting random, unannounced examinations of computer systems, Internet-capable devices and similar electronic devices under the defendant's control
  - (v) \_\_\_\_\_
  - (w) \_\_\_\_\_

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

Violating any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of your release, an order of detention, a forfeiture of any bond and a prosecution for contempt of court and could result in imprisonment, a fine, or both.

While on release, if you commit a federal felony offense the punishment is an additional prison term of not more than ten years and for a federal misdemeanor offense the punishment is an additional prison term of not more than one year. This sentence will be consecutive (i.e., in addition to) to any other sentence you receive.

It is a crime punishable by up to ten years in prison, and a \$250,000 fine, or both, to: obstruct a criminal investigation, tamper with a witness, victim, or informant, retaliate or attempt to retaliate against a witness, victim, or informant, or intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If, after release, you knowingly fail to appear as the conditions of release require, or to surrender to serve a sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more - you will be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years - you will be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony - you will be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor - you will be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender will be consecutive to any other sentence you receive. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

**Acknowledgment of the Defendant**

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and surrender to serve any sentence imposed. I am aware of the penalties and sanctions set forth above.

*David L. Russell*

Defendant's Signature

*Hagerston, MD*

City and State

**Directions to the United States Marshal**

- The defendant is ORDERED released after processing. The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. If still in custody, the defendant must be produced before the appropriate judge at the time and place specified.
- The appropriate judge at the time and place specified.

Date June 14, 2013

*George L. Russell III*

Judicial Officer's Signature

GEORGE L. RUSSELL III  
UNITED STATES DISTRICT JUDGE

Printed name and title

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

United States of America

v.

David Russo

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FILED  
2013 JUN 17 PM 5:1

Criminal Case No. GLR-13-0240

**REGULAR SENTENCING ORDER**

- (1) On or before July 24, 2013 (not more than 40 days from the date of this order), the Probation Officer shall serve two copies of the presentence report upon counsel for the Defendant, who shall review the report with and, provide one of the copies to the Defendant. The Probation Officer shall also serve one copy of the presentence report upon counsel for the Government.
- (2) On or before August 7, 2013 (not less than 14 days from date in paragraph 1), counsel shall submit, in writing, to the Probation Officer and opposing counsel, any objections to any material information, sentencing classifications, advisory sentencing guideline ranges, or policy statements contained in or omitted from the report.
- (3) After receiving counsel's objections, the Probation Officer shall conduct any necessary further investigation and may require counsel for both parties to meet with the Probation Officer to discuss unresolved factual and legal issues. The Probation Officer shall make any revisions to the presentence report deemed proper, and, in the event that any objections made by counsel remain unresolved, the Probation Officer shall prepare an addendum setting forth those objections and any comment thereon.
- (4) On or before August 19, 2013 (not less than 11 days from date in paragraph 2), the Probation Officer shall serve two copies of any revisions and addendum to the presentence report upon counsel for the Defendant, who shall provide one of the copies to the Defendant. The



Probation Officer shall also serve one copy of any revision and addendum to the presentence report upon counsel for the Government. The Probation Officer shall then submit the report (and any revisions and addendum thereto) to the Court.

(5) If counsel for either party intends to call any witnesses at the sentencing hearing, counsel shall submit, in writing, to the Court and opposing counsel, on or before August 8, 2013 (*not less than 14 days before sentencing*), a statement containing (a) the names of the witnesses, (b) a synopsis of their anticipated testimony, and (c) an estimate of the anticipated length of the hearing.

(6) Sentencing memoranda are not required unless a party intends to request a sentence outside the advisory guidelines range on the basis of a non-guideline factor. If submitted, they shall be filed with the Clerk and a copy delivered to chambers on or before August 8, 2013 (*not less than 14 days before sentencing*). Opposing or responding memoranda are not required. If submitted, they shall be delivered to chambers on or before August 15, 2013 (*not less than 7 days before sentencing*). Copies of all memoranda must be sent to the Probation Officer.

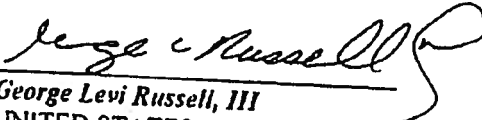
(7) Sentencing shall be on Thursday August 22, 2013 at 2:00 PM.

(8) The presentence report, any revisions, and any proposed findings made by the Probation Officer in the addendum to the report shall constitute the tentative findings of the Court under section 6A1.3 of the sentencing guidelines. In resolving disputed issues of fact, the Court may consider any reliable information presented by the Probation Officer, the Defendant, or the Government, and the Court may issue its own tentative or final findings at any time before or during the sentencing hearing.

(9) Nothing in this Order requires the disclosure of any portions of the presentence report that are not discloseable under Federal Rules of Criminal Procedure 32

(10) The dates of service set forth in this Order refer to the date of receipt of the paper being served. If the Probation Officer or counsel are making service of a paper by mail, they must mail the paper at least three days before the date set forth in the Order.

June 14, 2013  
Date

  
George Levi Russell, III  
UNITED STATES DISTRICT JUDGE

**ATTACHMENT A-STATEMENT OF FACTS**

*The undersigned parties hereby stipulate and agree that if this case had proceeded to trial, government would have proven the following facts beyond a reasonable doubt. The undersigned parties also stipulate and agree that the following facts do not encompass all of the evidence that would have been presented had this matter proceeded to trial.*

**DAVID RUSSO**, age 61, is a licensed pharmacist in the State of Maryland. **RUSSO** owned and operated a pharmacy under the corporate name Western Maryland Pharmaceutical Service, Inc., doing business as "Russo's Rx", located at 25 North Cannon Avenue, Hagerstown, Maryland.

As a licensed pharmacist, **RUSSO** was authorized by law to fill prescriptions for controlled substances only if issued in accordance with the governing laws and regulations. A prescription for a controlled substance must be issued for a legitimate medical purpose by an individual medical practitioner acting in the usual course of his or her professional practice. Medical practitioners are responsible for properly prescribing controlled substances, but the pharmacist who filled the prescription bears a corresponding responsibility to properly dispense controlled substances. A prescription issued outside the usual course of professional treatment and that is not for a legitimate medical purpose is not a prescription within the meaning and intent of the law that otherwise permits the issuance and filling of prescriptions. Licensed pharmacists know that it is improper to issue or fill a prescription that is issued outside the usual course of medical treatment. **RUSSO** dispensed and caused others to dispense controlled substances pursuant to prescriptions that he knew were not written for a legitimate medical purpose.

On many instances, **RUSSO** caused Medicare and Medicaid to improperly pay for controlled dangerous substances that he dispensed pursuant to prescriptions he knew had no legitimate medical purpose. Specifically, from sometime in or about January 2009 and continuing through December 2010, **RUSSO** knowingly and willfully devised and intended to devise a scheme and artifice to defraud Medicare and Medicaid, and to obtain from Medicare and Medicaid money and property by means of material false and fraudulent pretenses, representations, and promises, well knowing that the pretenses, representations, and promises would be and were false when made.

Medicare and Medicaid are both health care benefit programs under 18 U.S.C. § 24(b), that is, a public or private plan or contract, affecting commerce, under which medical benefits, items and services were provided to individuals. Neither Medicare nor Medicaid would reimburse pharmacists for controlled substances pursuant to prescriptions written by doctors that the pharmacist knew were not issued for a legitimate medical purpose.

The Drug Enforcement Administration (DEA) is the federal agency charged with the responsibility of regulating pharmaceutical controlled substances under the Controlled Substances Act (CSA) [21 U.S.C. §§ 801-971]. The CSA mandates that DEA prevent, detect and investigate the diversion of legally manufactured controlled substances. To enable the DEA to achieve these goals, the CSA established five schedules into which controlled substances are separated according to their

approved medical use and abuse potential. Schedule I controlled substances are those deemed not to have legitimate medical uses and have a very high potential for abuse. Schedule II substances, including oxycodone and methadone, are approved for medical use and also have a very high abuse potential. Schedules III, IV and V include controlled substances that have all been approved for medical use and have diminishing potential for abuse. Oxycodone is a schedule II narcotic analgesic and is widely used in clinical medicine. Because oxycodone is a strong pain medication, it is subject to abuse by drug addicts and is known on the street as OC, OX, Oxy, Oxycotton, hillbilly heroin or kicker. Methadone is a schedule II narcotic used for pain management; it is also abused by drug addicts. Benzodiazepines are a schedule IV class of drugs used to treat anxiety-related disorders and are sold under brand and generic names such as Xanax, Alprazolam, Diazepam and Clonazepam.

**RUSSO** knew that prescriptions being filled for oxycodone, methadone and benzodiazepines were issued outside of the legitimate medical course and that he was fraudulently billing Medicare and Medicaid for the prescriptions. **RUSSO** knowledge was based on numerous factors including (a) the vast majority of prescriptions were from two physicians (hereinafter "Dr. T" and "Dr. Z") whose offices were not geographically located near Russo's Rx, (b) **RUSSO** accepted cash for Schedule II drugs when the drugs were not covered by Medicaid or Medicare, (c) excessive amounts of oxycodone and methadone were being dispensed to the patients of the two physicians, (d) **RUSSO** "split" prescriptions, that is, he accepted an amount of cash at the time of a transaction and then accepted the remaining amount at a later time, (e) **RUSSO** filled two prescriptions for a Schedule II drug on the same day for the same patient but charged one to insurance and accepted cash for the other, (f) customers would call ahead of time to ask if he had oxycontin "in stock", how much it would cost, (g) customers traveled from out of state or in van loads to his pharmacy and (h) many customers were receiving the same "cocktail" prescription of oxycodone, Roxicodone and Xanax. Cocktail prescriptions (multiple opiates) are well known in medicine and pharmacy as life threatening, abused by drug users for the combination and synergistic narcotic effects, and requiring expertise and training in pain management because of the severe side effects and potential for addiction and abuse.

Further, **RUSSO** made gross sales of nearly \$700,000 a month for several months in 2010 - a dramatic increase over previous months. He also made at least 55 cash deposits between December 1, 2009 and June 15, 2010 totaling \$862,000. **RUSSO** even maintained a cash counting machine in his pharmacy.

As part of the investigation, the Drug Enforcement Administration (DEA) interviewed other pharmacies in the same geographic area as **RUSSO**, each of which advised the DEA about the concerns about the legitimacy or lack thereof of the Dr. T and Dr. Z's prescriptions and that these pharmacies would not fill them because they were clearly not for legitimate medical purposes. The DEA also interviewed customers of **RUSSO**'s pharmacy who were drug users who admitted to buying the drugs for resale - sometimes in the parking lot of the pharmacy. These specific customers knew that Russo's Rx was the 'one and only pharmacy that would fill' the doctors' prescriptions.

In December 2010, the DEA executed a search warrant at Russo's Rx. Since that date, RUSSO deleted thousands of unlawful prescriptions from his prescription database, including hundreds from Dr. T and Dr. Z. The DEA seized \$39,000 in cash from the pharmacy - cash that was earned from unlawful dispensation of oxycodone, methadone and benzodiazepines by RUSSO.

From January 1, 2009 through December 31, 2010, Russo's Rx dispensed approximately 6,371 prescriptions to Dr. T's patients, the majority of which were for oxycodone and methadone - and constituting over 630,000 dosage units of oxycodone and 17,000 dosage units for methadone. The vast majority of the remaining prescriptions were for other schedule II narcotics and benzodiazepines. In the same time period, Russo's Rx dispensed approximately 1,526 prescriptions to Dr. Z's patients the majority of which were for oxycodone and methadone. All told, more than 70,000 dosage units of oxycodone and 100,000 units of methadone were dispensed to Dr. Z's patients. Russo's Rx was one of the largest dispensers of these controlled dangerous substances in the entire State of Maryland. For these prescriptions, RUSSO improperly billed, and received payment for, over \$109,207.26 to Medicare and at least \$90,939.07 to Medicaid. Thus, the total approximate fraud loss is \$200,146.33.

\* \* \*

I have read this statement of facts, and carefully reviewed it with my attorney. I acknowledge that it is true and correct.

6/14/13  
Date

David Russo  
David Russo



United States Attorney  
District of Maryland  
Northern Division

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U.S. DISTRICT COURT  
DISTRICT OF MARYLAND  
2013 JUN 14 P 12:51

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May 3, 2013

Richard Karceski, Esq.  
305 Washington Avenue  
Baltimore, MD 21204

Gina Simms, Esq.  
Ober Kaler  
1401 H Street, NW  
Washington, DC 20005

RE: United States v. Russo, Criminal No.: TBD

Dear Mr. Karceski:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by May 15, 2013, it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees to waive indictment and plead guilty to a one count Criminal Information which will charge him with Health Care Fraud, in violation of 18 U.S.C. § 1347. The Defendant admits that he is, in fact, guilty of that offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are that the defendant: (1) knowingly and willfully executed, or attempted to execute, (2) a scheme or artifice to (a) defraud any health care benefit program or (b) obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any health care benefit program.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant

is pleading guilty is as follows imprisonment of ten (10) years, a three year term of supervised release, and a fine of \$250,000. In addition, the Defendant must pay \$100.00 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court will also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664. If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

#### Waiver of Rights

4. The Defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

a. If the Defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed

b. The Defendant has the right to have his case presented to a Grand Jury, which would decide whether there is probable cause to return an indictment against him. By agreeing to proceed by way of Information, he is giving up that right, and understands that the charges will be filed by the United States Attorney without the Grand Jury.

c. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

d. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

e. The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

f. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against him. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

g. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

h. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

i. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status. The Defendant recognizes that if he is not a citizen of the United States, pleading guilty may have consequences with respect to his immigration status. Under federal law, conviction for a broad range of crimes can lead to adverse immigration consequences, including automatic removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and the Defendant understands that no one, including his attorney or the Court, can predict with certainty the effect of a conviction on immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any potential immigration consequences.

#### Advisory Sentencing Guidelines Apply

5. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

#### Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto which this Office would prove beyond a reasonable doubt, and to the following applicable sentencing guidelines factors:

a. The base offense level for health care fraud is six (6) pursuant to U.S.S.G. § 2B1.1(a)(1)



b. Because the loss exceeded \$200,000 but was less than \$400,000, the offense level is increased by twelve (12). U.S.S.G. § 2B1.1(b)(1)(G).

c. Because the defendant abused a position of public and private trust and used a special skill in a manner that significantly facilitated the commission of the offense, the offense level is increased by two (2). U.S.S.G. § 3B1.3.

d. This Office does not oppose a two-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3B1.1(b) for an additional one-level decrease in recognition of the Defendant's timely notification of his intention to plead guilty. This Office may oppose any adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

Thus, the final adjusted offense level is 17.

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

8. This Office and the Defendant agree that with respect to the calculation of criminal history, the calculation of the advisory guidelines range and application of the 18 U.S.C. § 3553(a) factors, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines or in 18 U.S.C. § 3553(a) will be raised or are in dispute.

9. At the time of sentencing, the parties will jointly recommend a sentence of 30 months in this case.

10. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct.

Agreement not to Pursue Civil Claims

11. This Office will not pursue Civil Penalties under 21 U.S.C. §842(a)(2) & (5) or under the False Claims Act, 31 U.S.C. § 3729 *et seq.* against the Defendant for violations of federal criminal law that arise from the facts stipulated by the Defendant and this Office, attached hereto and incorporated herein, that form the basis of this plea agreement.

Agreement not to Prosecute Other Offenses the Defendant May Have Committed

12. Other than the offense to which the Defendant has agreed to plead guilty, and with the exception of crimes of violence, crimes against children and tax violations, this Office will not prosecute the Defendant for any other violations of federal criminal law that arise from the facts stipulated by the Defendant and this Office, attached hereto and incorporated herein, that form the basis of this plea agreement.

Forfeiture

13. The defendant understands that the court will upon acceptance of his guilty plea enter an order of forfeiture as part of his sentence, and that the order will include assets directly traceable to his offense, substitute assets and/or a money judgment equal to the value of the property subject to forfeiture. Specifically, the court will order the forfeiture of any and all property, real and personal, constituting or derived, directly or indirectly, from gross proceeds traceable to the commission of the offenses, including, but not limited to \$39,000 seized by the Drug Enforcement Administration (DEA) and that is the subject of the matter currently pending as USA v. S \$39,000.00 in U.S. Currency. 1:11-cv-01285-GJR.

14. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

15. The defendant further agrees to waive all constitutional, legal and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this agreement, and will not assist any third party with regard to such challenge or review or with regard to the filing of a petition for remission of forfeiture.

Restitution

16. The Defendant agrees that, pursuant to 18 U.S.C. §§ 3663 and 3663A and §§ 3563(b)(2) and 3583(d), the Court may order restitution of the full amount of the actual, total loss

caused by the offense conduct set forth in the factual stipulation. In this regard, the Defendant agrees to the entry of a Restitution Order for the full amount of the victims' losses as set forth in Attachment A - Statement of Facts and that he will, in fact, make full restitution to the Medicare and Medicaid programs at or before his sentencing.

Collection/Payment of Financial Obligations

17. The defendant agrees to assist fully in the forfeiture of the foregoing assets and in the payment of his restitution discussed above. The defendant agrees to disclose all of his assets and sources of income to the United States, and to take all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. The defendant also agrees to give this Office permission to request and review his federal and state income tax returns, and any credit reports maintained by any consumer credit reporting entity, until such time as the forfeiture money judgment and the order of restitution are satisfied. In this regard, the defendant agrees to complete and sign a copy of IRS Form 8821 (relating to the voluntary disclosure of federal tax return information) as well as whatever disclosure form may be required by any credit reporting entity.

18. The Defendant agrees that he will fully disclose to the probation officer and to the Court, subject to the penalty of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in the factual stipulation. The Defendant further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution.

19. The Defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report in order to evaluate the Defendant's ability to satisfy any financial obligation imposed by the Court. In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the Defendant agrees to disclose fully all assets in which the Defendant has any interest or over which the Defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. The Defendant will promptly submit a completed financial statement to the United States Attorney's Office, in a form this Office prescribes and as it directs. The Defendant promises that the financial statement and disclosures will be complete, accurate and truthful, and understands that any willful falsehood on the financial statement will be a separate crime and may be punished under 18 U.S.C. § 1001 by an additional five years' incarceration and fine.

20. If the Defendant does not fulfill any provision related to forfeiture, restitution and the collection and payment of his financial obligations, it will be considered a material breach of this plea agreement, and this Office may seek to be relieved of its obligations under this agreement including but not limited to its obligations under Paragraph 9 above.

Licensure

21. The Defendant agrees to forfeit his pharmacy license and agrees not to seek a new license in Maryland or any other state.

Waiver of Appeal

22. In exchange for the concessions made by this Office and the Defendant in this plea agreement, this Office and the Defendant waive their rights to appeal as follows:

a. The Defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291 or otherwise, to appeal the Defendant's conviction.

b. The Defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal whatever sentence is imposed (including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and the decision whether to impose and the calculation of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of supervised release), except as follows: both parties reserve the right to appeal any sentence other than 30 months imprisonment

c. Nothing in this agreement shall be construed to prevent the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a) or from appealing from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical, or other clear error.

d. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

23. The Defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, (iii) moves to withdraw his guilty plea, or (iv) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant

acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

24. The Defendant expressly understands that the Court is not a party to this agreement in the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

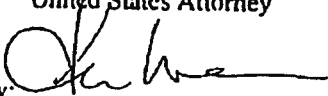
Entire Agreement

25. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this agreement, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein  
United States Attorney

By:   
Sandra Wilkinson  
Thomas Corcoran  
Ayn M. Ducao  
Assistant United States Attorneys

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorneys. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorneys, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorneys.

6/14/13  
Date

David Russo  
David Russo

We are Mr. Russo's attorneys. We have carefully reviewed every part of this agreement, including the Sealed Supplement, with him. He advises us that he understands and accepts its terms. To our knowledge, his decision to enter into this agreement is an informed and voluntary one.

6/14/2013  
Date

Richard Karceski, Esq.  
Gina Simms, Esq.